

AB

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.2472/2004
M.A. NO.2943/2004
M.A. NO.356/2006
M.A. NO.1147/2006

This the 14th day of September, 2006

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE SHRI MUKESH KUMAR GUPTA, MEMBER (J)

Laxmi Narain Yadav,
R/O 820 Vill. & P.O. Kapashera,
New Delhi-37.

... Applicant

(By Shri Yogesh Sharma, Advocate)

Versus

1. Union of India through
General Manager,
Northern W. Railway,
Jaipur.
2. Divisional Railway Manager,
Northern W. Railway,
DRM Office, Bikaner.

... Respondents

(By Shri R. L. Dhawan, Advocate)

ORDER (ORAL)

Hon'ble Shri V. K. Majotra, Vice-Chairman (A):

Through this OA applicant has challenged Annexure-1 dated 11.4.2003 whereby respondents have re-fixed applicant's pay w.e.f. 1.1.1973 and also directed recovery to be made from him after taking into consideration his representation made in response to respondents' show cause notice Annexure-2 dated 3.1.2002.

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2. It has been averred that applicant had earlier filed case No.77/52 before the Authority under Payment of Wages Act, Bikaner. That case was decided favouring applicant. Respondents' appeal thereagainst was partly allowed by the District Judge, Bikaner vide orders dated 17.9.1990 (Annexure-7) declaring that applicant's next date of increment should be 19.8.1968 when his basic pay should have been Rs.170/- per month. Respondents' appeal against the orders of the District Judge was rejected. Applicant had filed OA No.2558/2001 before the Tribunal seeking re-fixation of his pay on the basis of the findings of the District Judge. During the pendency of that OA respondents issued a show cause notice dated 2.1.2002 to applicant for re-fixation of his pay. The OA was disposed of on 15.11.2002 with a direction that applicant should submit a reply to show cause notice of 2.1.2002 and that applicant would be at liberty to take all legal and factual pleas available to him before the authorities. Respondents were directed to consider applicant's reply and pass a speaking order while fixing his pay. It is alleged that respondents have not considered applicant's representation dated 5.9.2003 properly and have passed the impugned order in an arbitrary manner.

3. The learned counsel submitted that respondents were supposed to re-fix applicant's pay w.e.f. 19.8.1968 on the basis of the findings in the judgment of the District Judge. Applicant's pay ought to have been fixed at Rs.170/- as on 19.8.1968. Instead the same was fixed at Rs.165/- and accordingly in the impugned orders applicant's pay has been re-fixed violating the findings of the District Judge, and also wrongly directing recovery from applicant's dues. Applicant is stated to have retired on 31.12.2002.



4. Respondents had been directed to file an additional affidavit to explain how applicant's pay was fixed during the period after expiry of leave without pay on 30.6.1969. Through their affidavit filed with MA No.356/2006 respondents have attempted to explain re-fixation of pay from 1.1.1973. However, the period prior to 1.1.1973 has remained unexplained.

5. Vide additional affidavit dated 23.5.2006 respondents have stated that applicant had remained on leave without pay on various dates and not continuously during the period 1.4.1964 to 30.6.1979. He was granted increment from Rs.150/- to Rs.155/- w.e.f. 1.5.1965; from Rs.155/- to Rs.160/- w.e.f. 14.6.1966; and from Rs.160/- to Rs.165/- w.e.f. 19.8.1967 in scale Rs.130-240 as per pay fixation orders dated 18.3.1982. According to respondents, as per the statement enclosed with respondents affidavit dated 23.5.2006, applicant's pay was revised as Rs.165/- from 11.8.1967 to 30.6.1969; again as Rs.165/- from 1.7.1969 to 31.12.1972; as Rs.350/- (scale Rs.330-560) from 1.1.1973 to 30.6.1973; and then his pay was raised to Rs.404/- on 1.7.1973 to 30.6.1974, and thereafter re-fixed as Rs.416/- On 1.7.1974 to 31.12.1975, etc. Applicant is stated to have been undergoing 'WIT' for four years from 1.7.1969 to 30.6.1973. The learned counsel of respondents stated that applicant had not challenged Annexure-6 dated 7.8.1996 whereby his pay had been re-fixed. The learned counsel submitted that it was discovered that applicant's pay had been wrongly re-fixed vide order dated 7.8.1996 due to administrative error. As such, show cause notice for re-fixation of pay was issued to him vide Annexure-2 dated 2.1.2002 and applicant's representation in pursuance of the show cause notice was decided by the impugned orders of 11.4.2003. The learned counsel submitted that respondents have now re-fixed applicant's pay

correctly after taking into consideration applicant's representation in response to the show cause notice.

6. We have considered the respective contentions made on behalf of the parties as also carefully perused the material on record.

7. In appeal no.105/88 against orders dated 23.9.1978 of the Authority under Payment of Wages Act, Bikaner, respondents herein had stated that applicant's period of absence from 19.8.1967 to 22.8.1975 (1099 days) had been sanctioned as leave without pay. As such applicant had not been granted any increments. The learned District Judge relied on Railway Board's letter No.F(62)PAI/E dated 6.12.1962 and rejected respondents' contention. This circular reads:

"The Board with the mention of the President have decided that the periods of Extra Ordinary leave taken in cases of sickness covered by proper medical certificates should be allowed to count for increments without waiting for a request from the Railway servant concerned and in all other cases decision may be taken by the competent authority on receipt of a special request from the Railway servant concerned."

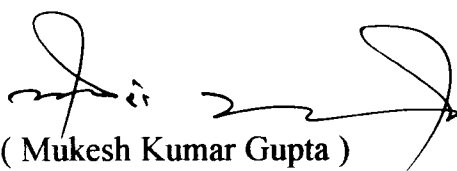
Thus, the learned District Judge had held applicant entitled to increments during the period of extra ordinary leave holding that his pay should be Rs.170/- as on 19.8.1968 and the date of next increment as 19.8.1968.

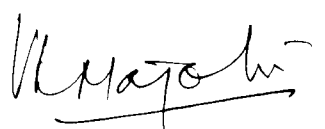
8. In implementation of the decision of the learned District Judge, respondents ought to have fixed applicant's pay at Rs.170/- prior to 19.8.1968 and granted him the next date of increment from 19.8.1968. As the learned District Judge has given his findings in regard to applicant's pay as on 19.8.1968, we do not propose to go behind that period as also accepting findings of the learned District Judge. In the show cause notice dated 2.1.2002 as also the impugned orders dated 11.4.2003 respondents

have indicated that applicant was undergoing WIT for four years from 1.7.1969 to 30.6.1973. In terms of the orders of the District Judge applicant's pay on 19.8.1968 by adding one increment should be Rs.175/-. Thereafter, for the period 1.7.1969 to 31.12.1972 he was to undergo WIT for four years from 1.7.1969 to 30.6.1973. As per the ready reckoner, emoluments for basic pay of Rs.175/- in pay range of Rs.130-195 works out to Rs.353/-. Thus, applicant's pay in grade Rs.130-240 as on 1.1.1973 has to be fixed at Rs.175/-. On the same date in grade Rs.330-560 applicant's pay would be Rs.360/-. On 1.7.1973 it will rise to Rs.404/- and on 1.6.1974 to Rs.416/-. It will rise to Rs.420/- on 1.7.1974. While calculating proper re-fixation of applicant's pay from 1.1.1973 to 1.7.1974, we have taken into consideration that on expiry of WIT of four years from 1.7.1969 to 30.6.1973, applicant would be granted 4+1=5 increments and an advance increment on 1.6.1974. Applicant's pay ought to have been fixed in this manner, which does not result into any recoveries against applicant.

9. Consequently, the impugned order Annexure-1 dated 11.4.2003 is quashed and set aside directing respondents to re-fix applicant's pay on the basis of the above observations w.e.f. 19.8.1968 without effecting any recoveries. Respondents shall complete the entire exercise within a period of three months from the date of communication of these orders.

10. OA is allowed in the above terms.


(Mukesh Kumar Gupta)
Member (J)
/as/


(V. K. Majotra) 14.9.06
Vice-Chairman (A)