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**Central Administrative Tribunal
Principal Bench**

OA No. 780/2004

New Delhi, this the 24th day of November, 2005

Hon'ble Mr. Shanker Raju, Member (J)

Shri K.S. Tyagi,
S/o Shri Ranjit Singh,
R/o A-47, Sector - 23,
Raj Nagar, Ghaziabad(UP).

...Applicant

(By Advocate: Shri S.K. Gupta)

-versus-

Union of India through:

1. General Manager,
Northern Railway,
Baroda House,
New Delhi - 110 001.
2. Divisional Railway Manager,
Moradabad Division,
Northern Railway,
Moradabad (UP).
3. F.A. & C.A.O.,
Northern Railway,
State Entry Road,
New Delhi.
4. Senior Accounts Officer,
Moradabad Division,
Northern Railway,
Moradabad (UP).
5. Chief Commercial Manager,
Northern Railway,
Moradabad Division,
Moradabad (UP).
6. Senior Divisional Personnel Officer,
Northern Railway,
Moradabad Division,
Moradabad (UP).

...Respondents

h (By Advocate: Shri R.L. Dhawan)

**ORDER**

By virtue of the present Original Application, the applicant, who has retired on superannuation on 31.12.2001, has sought certain dues in the form of pensionary benefits which included delay in payment of gratuity and interest thereof; arrears of withholding of increment; excessive deduction of pay; amount of subsistence allowances; and arrears of over time allowance.

2. When the applicant was not paid these allowances, he filed O.A. No. 573/2003 before the Tribunal, which was disposed of on 17.3.2003 with a direction to the respondents to pass a detailed order on his representation. By a detailed order passed by the respondents, certain amounts had been paid to the applicant. However, as the grievances of the applicant have not been fully redressed by the respondents and in view of the liberty granted while disposing of his earlier OA, he has filed the present OA.

3. During the course of hearing, this Tribunal directed the respondents to file an affidavit as to the payment of undisputed claims of the applicant. An additional affidavit filed on 3.10.2005 shows that certain amounts have been paid to the applicant but OT bills shown at serial no. 14 to 16 and 46 to 65, though vetted by the office for arranging payments thereof, records of these bills are stated to be not traceable in the office. As such, applicant has been directed



to file an affidavit about the receipt of these amounts so that further action may be taken. After an affidavit filed, in compliance of the order of this Tribunal, by the applicant, no further order has been passed.

4. Learned counsel would contend that there is no limitation involved in the present O.A. as certain amounts had been paid by the applicant vide order passed on representation yet the amounts pertaining to arrears of pay and allowances; overtime allowance from 4.7.1999 to 30.06.2000 and from July, 2000 to December, 2001 and interest thereon including interest on the detailed payment of gratuity had not been paid. There is no such averment on behalf of the respondents though learned counsel of the respondents stated that the delayed action clearly defeats the right of the applicant in the light of a decision of the Apex Court in ***R.C. Samanta vs. Union of India***, JT 1993(3) SC 418.

5. Shri R.L. Dhawan, learned counsel for the respondents contended that all the overtime bills had been cleared and payment made along with regular payment bills. The applicant has played a fraud and misused the process of law by claiming the same relief again and again and as such, the O.A. deserves to be dismissed with costs.

6. I have carefully considered the rival contentions of the parties and perused the material on record. If the stand of the respondents that records are not traceable regarding



payment of overtime allowances pertaining to the period between 2.1.2000 to 12.2.2000 and from 11.3.2001 to 29.12.2001, an affidavit filed by the applicant denying any payment for want of production of records, an adverse inference shall have to be drawn against them. However, if it is stated that the amount have to be cleared as per the affidavit filed yet non-passing of an order for determining those amounts, respondents are estopped from taking a contrary view.

7. In the light of the above, as disputed claim of non-payment of amount due to the applicant on various heads has not been disposed of, this O.A. stands disposed of with a direction to the respondents to pass a suitable order regarding arrears and interest on amount due to the applicant as per affidavit filed on 3.10.2005, within a period of one month from the date of receipt of a copy of this order. If the amounts are found to be due to the applicant, the same would be disbursed to him within one month thereafter.


(Shanker Raju)
Member (J)

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