

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No.2002/93

New Delhi, this the 25th day of August, 1994.

HON'BLE SHRI P.T.THIRUVENGADAM MEMBER(A)

Shri S.S.Planj
Dy.General Manager (Mechanical)
Rail India Technical &
Economical Services (RITES)
93, Ashok Bhawan, Nehru Place,
New Delhi.

..Applicant

(By Advocate Shri B.S.Mainee)

Vs.

Union of India: through

1. The General Manager,
Central Railway, Bombay V.T.
2. The Divl. Railway Manager,
Central Railway, Jabalpur.
3. The General Manager(Finance)
RITES
Bajaj House, 97, Nehru Place,
New Delhi.

..Respondents

(By Advocate Shri HK Gangwani)

ORDER

HON'BLE SHRI P.T.THIRUVENGADAM MEMBER(A)

The applicant was working as Assistant Mechanical Engineer on the Central Railway when he was sent on deputation to RITES in December, 1985. He was absorbed in RITES in December 1988 after completing 3 years on deputation. The settlement dues were paid in the month of March 1990. By letter dated 9-7-93 (An.A1 to OA) Central Railway had directed the RITES organisation to recover the house building advance (HBA) at Rs.5000/- per month from July 1993 onwards and the recovery was to continue upto November, 1994 with the enhanced rate of recovery at Rs.6000/- from July, 1994. An interim order was passed on 23-9-93 staying the operation of recovery as per the impugned order dated 9-7-93. This O.A. has been filed with the following prayers:-

4. That this Hon'ble Tribunal may be pleased

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to allow this application and quash the impugned order.

2. That this Hon'ble Tribunal may be further pleased to direct the respondents to pay all retirement benefits to the applicant as indicated below:-

- (i) Balance P.F. approx. Rs.11,000/- plus interest upto date.
- (ii) F.D. Rs.2,000/- with interest till date of actual payment.
- (iii) Pension for intervening period from 21-12-88 to the date from which the commuted value of pension becomes payable.
- (iv) That NBR benefit from September 1988 and its effect on retirement benefit.
- (v) Interest at the rate of 18% per annum on the amount of Rs.2,95,000/- paid after delay of 15 months and other pending payments due.
- (vi) Interest at the rate of 18% per annum on the aforesaid amount upto last date of actual payments.

3. That this Hon'ble Tribunal may be further pleased to direct the respondents to work out the balance of the retirement benefit of the applicant as mentioned above and adjust the amount of House Building Advance from the aforesaid due.

3. At the outset I have to note that while challenging the impugned order regarding the recovery of house building advance (HBA) the applicant had raised a number of issues relating to settlement. How far these are maintainable ^{on} ~~and the~~ limitation has to be gone into against every relief.

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4. Taking the issue regarding the balance of provident fund amount, it is the case of the respondents that whatever P.F. was due alongwith interest upto 6 months beyond the date of permanent absorption in RITES has been paid to him and this amount works out to Rs.73,326/-. On the other hand it is the claim of the applicant that interest should have been paid right upto the time the payment was effected in March 1990. In addition, all the P.F. recoveries made from the time the applicant joined the office of the RITES in December 1985 till he was regularly absorbed there in December 1988 has not been connected and thus there is a heavy shortage in the amount paid to him. In the An.3 to the rejoinder the applicant has given details of the recoveries made from his salary while he was working in the RITES and the corresponding cheques with which these were forwarded to the DAO Jabalpur for necessary crediting in his P.F.accounts. The reply of the respondents is not covering this point regarding the recoveries made by RITES and passed on to the Railway, though DAO Jabalpur in his letter dated 9-11-93 addressed to the Personnel Officer at Jabalpur had asked for necessary documentary proof with regard to short payment. I am also not convinced that the applicant is not eligible for interest beyond June 1989 even though the actual payment was made only in March 1990. So long as the P.F. amount remains unpaid, the applicant is eligible for interest and the delay in payment beyond 6 months cannot be held against the applicant. In the circumstances, I direct that the respondents should connect all the recoveries made subsequent to the applicant joining the RITES and pay this amount, as due, as well as interest on this at prevailing rates upto the actual date of payment. In addition, interest for the period from 30-6-89 to March 90 for the actual amount of P.F. released in March 90 should also be allowed alongwith ^{prevailing rate of} interest on this amount from March 90 till actual payment. ^{cl} The respdts are allowed

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a time of four months from the date of receipt of this order for making the above payments.

5. On the issue regarding delayed payment for the 100% commuted value of pension and the non-payment of pension from 21-12-88 till March 1990, I note that even though such claims have been made after a delay of almost four years, yet the delay deserves to be condoned since the issues relate to the legitimate claim of the applicant. Either the pension should have been allowed from December 1988 or interest for delayed payment in granting 100% commutation sanctioned. Both claims cannot be allowed simultaneously. On questioning the ld. counsel for the applicant, it was advised that the relief regarding interest ^{should} ~~should~~ be pressed rather than the pension for the intervening period. I note that the 100% commutation amount of about Rs.2.115 lakhs should have been passed within 3 months from the date of absorption in RITES. Necessary medical examination had also taken place in Decmber 1988 itself. But the payment was delayed right upto March 1990. Hence it is a ^{fit} ~~case~~ for allowing ~~him~~ ¹ interest @ 12% for the 100% commuted amount for the period from March 1989 to March 1990 or in other words for one year. This amount should be calculated and should be set off in favour of the applicant, to be adjusted against ^{43A} ~~BHA~~ repayment, to be discussed later on.

6. Regarding interest on the delayed payment of the gratuity, insurance and leave encashment accounts, I note that even though there was delay in payment, the applicant had approached this Tribunal ~~earlier~~ ^{after} ~~with~~ a long gap, only in September 1993 and hence ^{the claim} is barred by limitation. Limitation ^{also} applies to the benefit of NBR claim with reference to the promotion of one of his juniors in the Railway, 5 days before the date of absorption of the applicant in RITES.

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Accordingly, reliefs on these are disallowed.

7. As regards HBA it is not disputed that an amount of Rs.60,000/- was sanctioned to the applicant - ~~may~~ ~~be~~ by the Zonal Railway. Against this advance, a recovery of Rs.2000/- was made in March 1990, as admitted. In the rejoinder, the applicant has brought out that further amounts totalling Rs.13,000/- have been deducted during the period March to August, 1993. The amounts recovered do not total up to the advance taken by the applicant. Hence the interest to be paid on the delayed payment of 100% commuted amount may also be set off against the balance recovery of HBA. This setting off will relate to the period March, 1990. Respondents should recast the entire statement regarding ^{HBA} ~~BHA~~ by taking into account the actual date of payment of HBA and further instalments of recoveries of Rs.2000/-, Rs.13000/- and the interest on delayed payment of 100 commutation and these recoveries should be reckoned against the relevant periods. After taking these factors into account ^{HBA} ~~BHA~~ amount yet to be recovered should be computed and revised instructions issued in supersession of the orders dated 9-7-93 (An.A1 to the OA). Revised instructions should stipulate the rate of recovery to effect the final pending ^{HBA} ~~BHA~~ amount and also the details of recovery of interest that would actually arise. Such revised instructions should be issued within three months of the date of receipt of this order.

8. The O.A. is disposed of with the above directions as in paras 4 to 7. No costs.

P. J. Thiruvengadam

(P.T. THIRUVENGADAM)
Member(A)

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