

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

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Allahabad : Dated this 24th day of July, 1998

Original Application No. 294 of 1996

District : Bareilly

CORAM :-

Hon'ble Mr. S.K. Agrawal, J.M.

Prithvi Raj Mullick
S/o Late R.A. Mullick
Retd Asst. Commercial Supt, N.E. Railway,
Lucknow, now resident of
23 Gandhinagar, Bareilly.

(Sri AK Sinha, Advocate)

. . . . Applicant

vs.

1. Union of India
Through the General Manager,
N.E. Railway, Gorakhpur.
2. Divisional Railway Manager,
N.E. Railway, Lucknow.

(Sri V.K. Goel, Advocate)

. . . . Respondents

O R D E R

By Hon'ble Mr. S.K. Agrawal, J.M.

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed that the respondents be directed to add 27% of dearness pay to the last pay as monthly average pay of the applicant and then calculate monthly pension thereon with all consequential benefits and interest @ 12% p.a. till the date of payment and to pay other retiral dues with 12% interest.

2. In brief, the facts of the case as stated by the applicant are that the applicant retired as Assistant Commercial Superintendent in Grade 'B'

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Service in N.E. Railway, Lucknow on 30-4-1978 and the respondents were required to give him all retiral dues immediately but since the litigation between the applicant and the respondents was going on in connection with the alteration in the date of birth of the applicant, the respondents did not settle the retiral dues. It is submitted that the applicant was approaching constantly to the respondents to settle the retiral dues of the applicant to pay pension but the respondents did not do so and having no other alternative, the applicant had filed another OA No.907/1989 and the Tribunal in that OA granted the relief as per the judgement and order dated 25-11-1993 at Annexure-A-1. But inspite of this judgement, the respondents did not settle the retiral dues to the applicant. The applicant made several representations but with no result. The applicant filed CCA No.148/94 in OA No.907/1989 before the Tribunal. The CCA was dismissed for non-appearance of the Counsel for the applicant because the Counsel of the applicant Sri J.K. Saxena had liver problem and he remained constantly sick. Therefore, he could not send his illness slip and ultimately he died sometime after July, 1995. The applicant also met with an accident and, therefore, he could not attend the Court. It is submitted that the respondents while fixing the have not added 27% of the dearness pay in the last average ~~pay~~ basic pay with the result that the pension of the applicant was considerably reduced. The applicant had already sent his option for merger of 27% dearness pay into his last pay for the purposes of calculation of his pension to the respondents vide his letter dated 13/14th October, 1979 by registered post. It is

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submitted that the applicant has only received Rs. 15840 as his gratuity whereas he is expected to receive Rs. 19,850/-. There should be addition of Rs. 122 per month in his pension amount. It is also submitted that the applicant received Rs. 7522 by cheque on 18-8-1989 but no interest was given on this amount of PF/WF till the date of payment and the interest appears to have been given only upto October, 1978; It is, therefore, submitted that the respondents be directed to add 27% of dearness pay to the last ten months' average pay of the applicant and then calculate monthly pension thereon with all consequential benefits and interest at 12% till the date of payment and the respondents be directed to pay other retiral dues with 12% interest thereon till the date of payment.

3. Counter affidavit has been filed by the respondents. It is admitted that the OA No. 907/1989 was finally decided by the Tribunal vide its judgement dated 25-11-1993. The applicant also filed contempt petition with the allegations that the judgement and the order dated 25-11-1993 has not been complied with but the contempt petition was dismissed by the Tribunal. It is submitted that the present application has been filed for the same cause of action for which OA No. 907/1998 was filed. The present application is not maintainable on the basis of the principle of Res Judicata. It is submitted that there was no question of any late fixation of pension after judgement dated 25-11-1993. The amount of pension has already been fixed even before the judgement dated 25-11-1993 and all settlement dues including the arrears of pension had already been paid to the applicant before the judgement dated 25-11-1993. It is also submitted that in the contempt application the applicant never

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raised any dispute with regard to non-inclusion of 27% dearness pay for fixation of pension and this Tribunal after considering respective contentions of the parties had found that the terminal benefits were paid to the applicant in the year 1991-92 and under these circumstances the Tribunal by its judgement dated 25-11-1993 also allowed the application partly and directed payment of interest only @ 12% for the period 1-4-1989 till the date of their actual payment and after the pronouncement of the judgement in OA No.907/1989 there remained no dispute with regard to the amount concerning retiral benefits. It is denied that the pensionary benefits of the applicant have been considerably reduced deliberately as a result of non-inclusion of 27% of the dearness allowance. It is submitted that as per the Railway Board letter No.PC III/79/Dp/1 dated 11-6-1979, the applicant had to submit his option to enjoy the benefit but he did not exercise his option and as such the addition of 27% of dearness allowance could not be given. However, in Board's letter an alternate benefit was also given for those employees who had not exercised their option and as such in terms of para 4(b) of the Board's letter under reference, revision of his pension, commutation of pension and DCRG has been made vide letter No.E/256/386-T(I) dated 18-10-1995 merging D.A. into D.P. On the basis of the averments made in the counter affidavit, the respondents have submitted that this OA be dismissed with costs.

4. Rejoinder affidavit has been filed by the applicant. In the rejoinder affidavit it is stated and denied that the respondents have fixed the pension of the applicant giving benefit of para 4(b) of the

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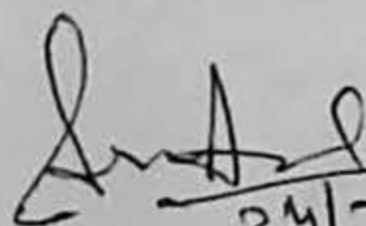
Board's letter under reference and reiterated the fact that the applicant is entitled for the amount less paid plus interest as claimed in Annexure-A-1. It is also submitted that the respondents themselves have admitted in the counter affidavit that they have not paid 27% of DA as merger into basic pay for grant of pension. Thus, the claim of the applicant is maintainable as per the Railway Board letter dated 11-6-1979 also.

5. I have heard learned counsel for the applicant Sri AK Sinha and learned counsel for the respondents Sri VK Goel and perused the whole record.

6. Learned counsel for the applicant submitted that the respondents while fixing the pension, have not added 27% of Dearness pay in the last average basic pay with the result that pension of the applicant was considerably reduced. The applicant has also sent his option vide letter dated 13/14-10-1979 by Registered post but the pension was not fixed accordingly. Therefore, necessary direction be given to the respondents to re-fix the pension.

7. On the other hand learned counsel for the respondents submitted that the applicant was retired on 30-4-1978 and this Original Application was filed in the year, 1996 and, therefore, this OA is barred by limitation. He has further submitted that the issue has already been decided in OA No.907/1989 vide judgement dated 25-11-1993 and to implement the order passed, a contempt application has also been filed which was disposed of. Therefore, in view of the principles of constructive res judicata, this OA is not maintainable.

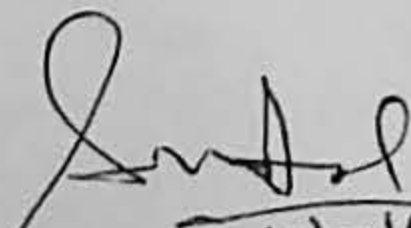
8. I gave thoughtful consideration to the rival


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contentions of both the parties and perused the whole record.


9. It appears that the applicant was retired w.e.f. 30-4-1978. The applicant filed a writ petition no. 281/1978 before the Hon'ble High Court, Lucknow Bench for quashing the order of retirement but vide judgement dated 14-9-1988 the writ petition filed by the applicant was dismissed. Thereafter, the applicant again filed one Original Application No.907/1989 which was also decided vide its judgement dated 25-11-1993. It also appears that all terminal benefits were paid to the applicant in the year 1991-92. Therefore, the respondents were directed to pay simple interest @ 12% per annum on the amount due w.e.f. 01-4-1989 till the date of actual payment vide judgement in OA No.907/89 dated 25-11-1993. Since Rs. 14,295/- was also paid as interest to the applicant, the contempt petition was dismissed vide order of this Tribunal dated 26-4-1995. The applicant did not make a plea of refixation of pension in that contempt petition. It appears that the plea of refixing the pension has been made in this OA which appears to be belated one. It also appears on the perusal of the reply of the respondents that as per the Railway Board letter dated 19-6-1979, the applicant did not submit the option. Therefore, the alternative benefit in terms of para 4(b) of the Circular dated 11-6-1979 was given to the applicant.

10. In view of the above, the applicant fails to make out any case in his favour. Therefore, this OA is to be dismissed.


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11. I, therefore, dismiss this OA with no order
as to costs.


Member (J) 24/7/98

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