

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

....

Original Application No. 653 of 1996

this the 01st day of April'2003.

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER (A)
HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

Kedar Nath, S/o Moti Lal, Ex-Switch Man, R/o Bhola Ka
pura, Sulemsarai, Allahabad.

Applicant.

By Advocate : Sri S. Madhyan.

Versus.

Union of India through General Manager, N.R., Baroda
House, New Delhi.

2. D.R.M., N.R., Allahabad.

Respondents.

By Advocate : Sri A.V. Srivastava.

O R D E R (ORAL)

BY MRS. MEERA CHHIBBER, MEMBER (J)

By this O.A., applicant has sought the following
relief(s):

"(i) The Hon'ble Tribunal may be pleased to issue
a writ of mandamus directing the respondents to
correct the fixation of pay at the rate of Rs.1530/-
instead of Rs.1440/- with all consequential benefits
arising out of the correct fixation of pay.

(ii) The Hon'ble Tribunal may further be pleased to
direct the respondents to pay arrears which are due
to him with 18% interest etc.

(iii) ----.

(iv) ----."

2. It is submitted by the applicant that he retired from
the post of Switchman, Naini, Allahabad on 28.2.1995
and was paid all his settlement dues except DCRG. The
last pay drawn by him was Rs. 1530/- which is evident
from pay Slip of January'95 (Annexure A-2) and even in
May'94 he was getting his pay at the rate of Rs.1500/-



and he got his next increment @ Rs.30/- w.e.f. 1.8.94 and thereafter he was paid @ Rs.1530/- per month (Annexure A-3). When the applicant came to know that his pay had been shown less than the actual pay drawn at the time of retirement, he understood that he was paid three increments less, which is caused a great monetary loss in his gratuity, leave encashment as well as in commutation of pension. The applicant has submitted that he is suffering a loss of Rs.100/- per month in ^{his} pension due to the mistake on the part of the railway administration. Therefore, he requested the dealing Clerk to correct the said mistake. However, when he refused to do so, applicant represented to the higher authorities on 2.5.1995 and 25.3.96 (Annexure A-4 & A-5 respectively), but since the respondents have not given any reply, he has no other option but to file the present O.A. seeking therein fixation of his pay @ Rs.1530/- instead of Rs.1440/- with all consequential benefits arising out of the correct fixation of pay.

3. The respondents have opposed the O.A. and have submitted that the petitioner was awarded punishment of WIP for three years w.e.f. from 1.8.89. According to which his pay from Rs.1530/- to Rs.1380/- normally due on 1.8.89 was to be stopped permanently for three years i.e. upto 31.7.92 and his pay was to be restored @ Rs.1380/- per month from 1.8.92. However, there were some mistake on the part of the Dealing Clerk inasmuch as actual payment was drawn in favour of the applicant without giving effect to the said penalty which resulted into the over payment to the retired employee. However, at the time ^{of} settlement, when this mistake came to the notice, the same was rectified at the time of paying final settlement. They have also shown in para 6 of their reply as to how the applicant could have drawn

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the actual payment wherein they have withheld increments of the applicants from 1.8.89 to 1.8.91. They have, thus, submitted that the applicant is not entitled to any relief as sought by him.

4. In the Rejoinder, the applicant has annexed the appellate order dated 2.5.88 whereby the appellate authority reduced the punishment to one year (WIP one year). The applicant has, thus, submitted that perusal of the Counter shows that at the time of final settlement the respondents had withheld his increments for three years and his pensionary benefits had prepared on the basis of fixation of pay after withholding the increments for three years, whereas the said period has been reduced by the appellate authority to one year only. Therefore, admittedly, two years increment of the applicant has been withheld wrongly by the respondents even at the time of settlement of his dues.

5. We have heard both the counsel and perused the pleadings as well.

6. At the outset, we would like to say that pleadings of both the sides are not up to mark. The applicant has not even annexed the penalty order or appellate order with the O.A., nor there is any averment in the O.A. with regard to those aspects of the matter. Surprisingly, the respondents have also not referred to the appellate order, even though it was passed as far back as on 2.5.88, therefore, we are not in a position to give a definite direction to the respondents ^{nor} can be given relief to the applicant as claimed by him. In view of the facts that there was indeed penalty given to the applicant to withhold the increments initially for three years by the disciplinary authority, which was later reduced to one year by the appellate authority. However, that penalty ^{if not not} ~~has to be~~ given effect to. If some dealing

Clerk had not taken into account the said penalty and the applicant had been allowed the increment in spite of the penalty, applicant cannot claim as a matter of right to prepare his pensionary benefits on the basis of erroneous fixation of his pay as that would give to place manoeuvring fixation of pay by taking dealing clerk to a lower level, therefore, we cannot grant the relief as prayed by the applicant in any case. perusal of the break-up as shown by the respondents in their Counter shows that they have not given increments to the applicant from 18.89 to 1.8.91. It is, therefore, clear that the respondents have given effect to the penalty as awarded by the disciplinary authority and have not even taken into consideration the appellate authorities' order by which this period was reduced to one year. It is also not known whether the penalty was *with* cumulative effect or without cumulative effect because that would change the whole scenario. Therefore, we remit back the matter to the respondents to apply their mind to the given facts of the case and to pass a detailed and reasoned order within a period of four months from the date of receipt of copy of this order. In case the respondents come to the decision that the applicant's pay was wrongly fixed at the time of final settlement, they should *correct the mistake after being apprised* also ~~be~~ paid the arrears to the applicant within three months thereafter.

7. With the above direction, O.A. stands disposed off with no order as to costs.

MEMBER (J)

MEMBER (A)

GIRISH/-