

OA No. 291/179/2018

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/179/2018

Order reserved on 12.07.2021

DATE OF ORDER: 16.07.2021

CORAM

HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER

S.U. Qureshi S/o Late Shri Rasool Bux Aged about 76 years R/o 382, Sanjay Nagar-'B' Kalwad Road, Jhotwara Jaipur (Retired as SSE-LOCO), Samdari, Jodhpur, Northern Railway).

....Applicant

Ms. Kavita Bhati, counsel for applicant (through Video Conferencing).

VERSUS

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi – 110001.
2. Sr. Divisional Mechanical Engineer (Power), North Railway, Jodhpur Division Jodhpur – 342001.
3. The General Manager, North-Western Railway, Malviya Nagar, Jaipur-302017.
4. The Chief Mechanical Engineer, North Western Railway, Malviya Nagar, Jaipur-302017.

....Respondents

Shri Anupam Agarwal, counsel for respondent Nos. 2 to 4 (through Video Conferencing).

ORDER

Per: Hina P. Shah, Judicial Member

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

- “(i) By an appropriate order or direction the respondents may be directed to immediately release the dues monitory benefits of the applicant under the heads of DCRG, commutation, leave encashment, bonus and national holiday allowance.
- (ii) By an appropriate order or direction the respondents may be directed to pay commuted interest on the delayed payment @ 18% per annum commuted from the date when the same became due till their actual payment.
- (iii) Cost of the application may also kindly be awarded to the poor applicant; and

Any other order or direction which this Hon'ble Tribunal deems fit and proper may also kindly be passed in the favour of the applicant in the larger interest of the equity justice and law.”

2. The brief facts of the case, as stated by the applicant, are that the applicant had earlier filed an O.A. before Central Administrative Tribunal, Jodhpur being O.A. No. 1450/2000 for quashing orders of compulsory retirement. The said O.A. was allowed by the Tribunal vide order dated 17.09.2001 and the penalty order dated 16.09.1999 was declared void ab-

initio and respondents were directed to consider the applicant being retired on his normal date of superannuation i.e. 31.03.2001 and they were further directed to re-compute his retiral benefits. The said order was challenged by respondents before Hon'ble High Court by way of filing D.B. Civil Writ Petition No. 1228/2002 and the said Writ Petition was disposed of vide order dated 25.10.2007 by remanding matter to the Tribunal for fresh consideration. Accordingly, the Tribunal decided the matter vide order dated 10.02.2010 and the impugned order dated 16.09.1999 as well as order dated 05.01.2001 were quashed and set aside and it was observed that the applicant be deemed to have continued in service till actual date of retirement i.e. 31.03.2001 and that he was entitled for all consequential benefits. Again the said order of the Tribunal was challenged by respondents by way of filing D.B. Civil Writ Petition No. 7375/2010, which was dismissed vide order dated 20.02.2015. But though orders were in favour of the applicant, respondents failed to comply the same and the applicant was forced to file Contempt Petition for non-compliance of order dated 10.02.2010. The said Contempt Petition No. 66/2015 was disposed of as

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infructuous as it was pointed out that needful compliance has been made by respondents. As the total compliance of the order was not done, applicant filed an RTI application on 01.08.2016 for information about several benefits and proper classification of payments made under different heads. Respondents sent final settlement details pertaining to DCRG as well as Commutation of Pension to be Rs. 2,66,064/- and 2,61,762/-, respectively, which is payable to the applicant as on 31.03.2001 and it was also pointed out that the amount already paid on 20.09.1999 was Rs. 2,39,613/-under DCRG and Rs. 2,56,944/- under the head of commutation of pension. The difference to be paid to the applicant under both the heads was approximately Rs. 47,042/-. Besides, these dues, the applicant was also not paid leave encashment, National Holiday Allowance as well as Bonus for 3 years. Thereafter, the applicant made several representations to get the said amounts due to him, but the same were not paid. Therefore, being aggrieved by the action of the respondents in not making the said payments, the applicant was compelled to file the present O.A. for redressal of his grievance.

3. The respondents have filed their reply stating that present O.A. is not maintainable under Rule 10 of the CAT Procedure Rules as the applicant is seeking multiple reliefs as the same amounts to plural remedies. It is the claim of the respondents that the applicant is asking for due monetary benefits of DCRG, Commutation, Leave encashment, Bonus and National Holiday Allowance. It is further stated that the applicant has already been paid the amount by issuing PPO. Even the error in computation of amount had been corrected by making further payment of Rs. 20,859/-. Mere assertion without disclosing the illegality therein is of no relevance. Also applicant has failed to claim the amounts of Bonus and National Holiday Allowance within limitation for the period for which it was due. Therefore, in absence of it, any challenge for the relief is without any substance and the same is barred by limitation and applicant has also failed to file application for condonation of delay. Therefore, as there is no illegality in the action of the respondents, the present O.A. deserves to be dismissed.

4. The applicant has filed rejoinder denying the contentions of the respondents. He further states that

respondents have acted contrary to law while depriving the applicant from various pensionary benefits and its erroneous calculation. It is further submitted that respondents have not paid the amount due towards leave encashment, which comes to approx. Rs. 1,61,230/-. It was further stated that it is surprising to note that the documents were destroyed by the respondents when the service/pension case of the applicant is pending and when the applicant was in continuous correspondence with the respondents. It was further added that the respondents have denied the benefits of leave encashment to the applicant without there being any logical answer to the same. Also the claim of the applicant towards National Holiday Allowance as well as Bonus is not belated as he has been putting continuous efforts to get his grievances resolved. The case pertaining to penalty order of compulsory retirement has been finalized only in 2015 after which the contempt was pending. Hence, the applicant was vigilant and was continuously raising his grievances by making several representations before the authorities as well as Hon'ble Courts. Hence, the applicant is entitled to receive his dues of leave encashment, National Holiday Allowance and

Bonus, etc. whatsoever is due and not paid to him. Also revised pension was paid to the applicant as late as on 26.12.2015 and, therefore, the applicant is also entitled to the interest over the delayed payments, which are entirely administrative delay. Thus, the applicant prayed that the present O.A. be allowed.

5. Heard learned counsels for the parties through Video Conferencing and perused the material available on record.

6. The learned counsel for the applicant as well as the respondents reiterated their submissions made earlier.

7. After hearing both the parties and after going through the pleadings, the factual matrix of the case is that the applicant had earlier filed an O.A. before C.A.T., Jodhpur, which was allowed by the Tribunal vide order dated 17.09.2001 in favour of the applicant and the orders dated 15.04.1998 and 16.09.1999 were quashed and set aside. Respondents were directed to consider the applicant as having retired on his normal date of superannuation i.e. 31.03.2001 and his retiral benefits should be

reworked accordingly by adjusting payments already made to the applicant. Thereafter, the said order was challenged before Hon'ble High Court by the respondents by way of filing DBCWP No. 1228/2002 and Hon'ble High Court vide its order dated 25.10.2007 set aside the order impugned and the matter was remanded back to the Tribunal for fresh reconsideration. Thereafter, matter was heard by the Tribunal and vide its order dated 10.02.2010, passed following orders:

"16. On a cumulative analysis the impugned orders dated 16.9.99 (Annex A/2) imposing the punishment of compulsory retirement on the applicant which was confirmed in appeal vide order dated 5.01.2001 (Annex. R/1) are hereby quashed. The applicant would be deemed to have been continued in service till 31.03.2001 and he shall be entitled to all consequential benefits. The payments which have been made already be deducted from the payments to be made to the applicant consequent to this order. His pension and other retiral benefits shall be fixed as if he retired on 31.03.2001. The payments accrued to him shall be paid to him within three month from the date of receipt of a copy of this order. In view of the illegal order compulsorily retiring the applicant passed by the railways and in view of the agony of 10 years' suffered by the applicant, the railway shall pay a cost of Rs. 1,000/- to the applicant. This OA is allowed with the costs of Rs. 1,000/-."

Thereafter, again the matter was taken up by the respondents to Hon'ble High Court by way of filing DBCWP No. 7375/2010 and Hon'ble High Court vide

its order dated 20.02.2015 observed that "we are of the considered opinion that the orders passed by the disciplinary authority as well as the appellate authority are not sustainable being in disregard of the Rules of 1968, as such, we are not inclined to interfere with the order passed by the Tribunal". Accordingly, Writ Petition was dismissed.

8. As seen from the facts, even after passing of the orders by Hon'ble High Court dated 20.02.2015, as the said orders were not complied, applicant filed Contempt Petition No. 66/2015 before the Tribunal and in the said C.P., after issue of notices, respondents filed compliance report before the Tribunal. After consideration of the compliance report, the Tribunal being satisfied in view of the compliance being made vide its order dated 26.09.2016 dismissed the said CP. It is clear that the respondents had paid DCRG as well as Commutation amount being Rs. 2,39,613 and Rs. 2,41,172/-, respectively, as on 20.09.1999 whereas as on 31.03.2001, the said amounts should have been Rs. 2,66,034/- and Rs. 2,61,692/-, respectively. Therefore, the due amounts were Rs. 26,421/- and Rs. 20,520/- of DCRG and

Commutation, respectively. But Rs. 21,334/- and Rs. 4,748/- were paid towards the said categories on 09.10.2015 and the amounts still outstanding were Rs. 5087/- and Rs. 15,772/-, respectively. Accordingly, the remaining amount of Rs. 20,859/- was finally paid vide cheque dated 02.01.2019 under both the heads which were due and payable to the applicant by the respondents.

9. As seen from the records, the applicant had never claimed the amounts of Leave Encashment, National Holiday Allowance as well as Bonus at any point of time nor when the earlier O.A. was pending nor when W.P. was filed before Hon'ble High Court. When the earlier O.A. was finally decided after rehearing, the Tribunal vide its order dated 10.02.2010 had directed the respondents to revise his pension and pay retiral benefits as if he stood retired as on 31.03.2001. The applicant had never prayed for his bonus for the years 1998-1999, 1999-2000 and 2000-2001 at the relevant time. Nor the applicant had at the relevant time prayed for National Holiday Allowance, nor for the leave encashment and, therefore, raising these dues in the present O.A. is not sustainable as the same are

barred by limitation. Even when the C.P was filed by the applicant for non-compliance of the order of Tribunal dated 10.02.2010, this Tribunal after carefully going through the compliance report had dismissed the C.P. as the pending amounts of DCRG as well as commutation were paid as well as the pension of the applicant was revised. Now raising new claims is barred by limitation as it is clear that the applicant should have raised these issues at relevant point of time and making representations for the same subsequently after all dues are settled and relevant records are weeded out vide letter dated 08.08.2018, (Annexure R/1), is not justified. The applicant was also paid arrears of revised pension vide letter dated 26.12.2015 (Annexure A/5). Thus, it is clear that the new claims raised by the applicant belatedly are after-thought as even in C.P., such claims were never raised and, therefore, there is no illegality in the action of the respondents. Therefore, as all due and payable amounts were paid by the respondents and as no payments were due to be payable to the applicant, the action of respondents cannot be said to be unjust or unfair and, thus, the applicant is also not entitled for any interest.

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10. In view of the observations made above, the Original Application filed by the applicant is devoid of merits as the action of the respondents is just and fair. Thus, the Original Application deserves to be dismissed.

11. Accordingly, the Original Application is hereby dismissed. No order as to costs.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

Kumawat