

IN CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Original Application No.627 of 1992.

Shri O.P. Talwar Applicant.

Versus.

General Manager,
Central Railways, Bombay V.T.
& another Respondants.

Hon'ble Mr. A.K. Sinha, Member (Judicial).

The applicant aforementioned has prayed that D.R.M. (Central Railways), Jabalpur be directed to pay to the applicant his dues relating to arrears of pay under the new scale Rs.167-70, packing allowance Rs.700/-, overtime allowance Rs.3929.35; and bonus Rs.90/-. He has further prayed for a direction to the pension disbursing authority to reduce his pension from the date of payment of the commutation value or as admissible under the rules and to cancel the orders for reduction of pension from 18.12.86 as mentioned in his P.P.O. He has also prayed that in case any of his claim is found inadmissible by the department D.R.M. (C. Rly) Jabalpur, he may asked to give him a copy of the order.

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2. The case of the applicant is that he was working as T.T.I. Satna (C.Rly) under the respondents upto 30.9.86. New pay scale came into force w.f.f 1.1.86 and the applicant was said to have had opted for the same and on the basis of which on his retirement on 30.9.86, the department gave service certificate to that effect to the applicant showing his last pay Rs.1950/-p.m. It is alleged that the pension of the applicant under the new pay scale was fixed at Rs.907/-p.m. considering his option in the new scale from

1.7.86 instead of 1.1.86. However, consequent upon his representation, his pension was revised raising it to Rs.914/-p.m. taking into account his option for the new scale of pay w.e.f.1.1.86. According to the applicant, the fixation of his pension at Rs.914/-p.m. being still wrong, he put in his representation to the authorities concerned and it was revised and raised to Rs.950/-p.m. and on that basis, he has claimed arrears of pension Rs.167.70p.

3. The applicant has also claimed that at the time of his retirement, he was paid packing allowance of Rs.1400/-only as per old rate although he was entitled to at new scale rate at Rs.2100/- and therefore a balance of Rs.700/-on account of arrears of packing allowance is due with the respondents. The applicant has also claimed over-time allowance, the details of which are mentioned in paragraph 6 (iii)(c) and according to him Rs.3929-35p. is due with the respondents for payment to the applicant. He has also claimed arrears of bonus amounting to Rs.90/-, the details are mentioned in the said paragraph at (d).

4. The applicant claims that he filed several representations to the authorities concerned even to the Railway Minister and when nothing turned out, he has filed this case with the above reliefs.

5. The respondents have appeared and filed their written statement stating inter-alia that the claim of the applicant is barred by limitation. It has been admitted that on the retirement of the applicant, he was given service certificate showing his last pay @ Rs.1950/-. It is stated that when the applicant changed his option dt.3.5.89 to come over to new scale of pay w.e.f.1.1.86 in terms of Rly. Board's letter dt.3.3.89, his pension was revised from Rs.913/-p.m. to Rs.950/-p.m. The respondents have denied the allegations of the applicant that the difference between the old and the new scale to which he was entitled was not

not paid. The respondents have given a detailed chart at page 4 of their written statements showing the total wages including D.A. drawn by the applicant from January 1986 to September 1986 which on perusal would show that the applicant was paid the difference of the old scale and the new scale which on calculation was found to be Rs.1327.50p and the same was paid to him. According to the respondents that the amount of arrears of Rs.1327.50p was admitted by the applicant to have been paid to him.

6. As regards the D.A. arrears payable to the applicant from July 1986 to Sept.1986 are concerned, the respondents have given a detailed chart at page 5 of their written statement and it is stated that total amount received by the applicant from the month of January 1986 to September 1986 including the ADA payable from July 1986 to Sept.1986 was amounting to Rs.17484/- and the applicant was said to have received Rs.16818/- and as such the difference payable to the applicant was Rs.666/-only. Out of this amount, the respondents have said to have deducted Rs.266 which was alleged to have paid to the applicant in excess towards his leave salary and the said amount having been deducted from the arrears aforementioned, the balance of Rs.400/-was paid to the applicant. On that basis, it was sought to be urged by the learned counsel for the respondents that on account of this item, there is nothing due to the applicant.

7. So far as the claim of the applicant regarding packing allowance is concerned, the case of the respondents is that the rates shown in the Rly. Board's letter no. PC/86/AE/ED/SL/7 dt.4.8.86 were applicable to the applicant and in pursuance of the same the lump sum of Rs.900/- only besides transfer allowance of Rs.506-25p. was paid to the applicant and in this connection the respondents have annexed the copy of the said letter Annexure RA-VII dt.

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dt. 4.12.86 showing Rs.900/-as packing allowance admissible to an employee on transfer whose pay scale ranges from Rs.1900 and above but less than Rs.2800/-, and on that basis it was urged on behalf of the respondents that the said amount was correctly paid to the applicant.

8. As regards the claim of the applicant for overtime payment is concerned, the respondents have admitted that the applicant has claimed overtime for the period from 1.9.85 to 19.9.86. It was also admitted by the respondents that the applicant was at first paid Rs609-10p on 23.2.87. It was stated that the declaration form regarding the claim of overtime for the relevant period of the applicant and other staff were put before the Competent Authority who on verifying reduced the claims as per extent rules and, therefore, the applicant was paid the reduced amount of overtime. It is further averred that there was resentment amongst the employees in this regard and the matter was taken up by the employees through the Union who took up the matter with the Rly. Administration and thereafter an agreement was arrived at and in pursuance of the agreement 75% of the claim was admitted on the condition that the staff should give declaration to that effect to the administration through the union under the signature of the Chairman of the branch; and that as a result of the outcome of the said agreement, the applicant was paid Rs.3378/-towards his overtime claim which is admitted to have been received by the applicant. On the basis of these averments it was urged that since the issue regarding the payment of overtime was settled by agreement between the Union and the administration and in pursuance thereof the payments were made to the employees in this regard and as such the claim of the applicant on this item cannot be allowed as an exception because that would be going against the agreement.

9. So far the claim of the applicant towards the amount of bonus is concerned, the case of the respondents is that during the year 1986-87 the ceiling limit for calculation of bonus was at Rs.1600/- and so even on revision of his pay due to his revised option there could no have been any change in the quantum of bonus amount which was correctly paid to him and received by him Rs.1104-60p., and, as such he was not entitled to Rs.90/-as per claim submitted by the applicant.

10. As regards the claim of the applicant that his pension amount be reduced from the date of payment of the commutation value which was changed time to time due the revision of pension and payments of the commuted value, the contention of the respondents is that admittedly the pension of the applicant was revised time to time due to the change in his options and it was revised from Rs.913/-to Rs.950/- and accordingly the commutation amount of pension was revised from Rs.304/- to Rs.316/-.The applicant has admitted to have received the commutation value on 1.4.90 on account of his revision of pension to Rs.950/- and since the principle of reduction in pension due to commutation value is admitted by the applicant, his contention in this regard, it was submitted by the respondents, was not correct inasmuch as by reducing pension due to commutation value, the applicant cannot claim the original pension and claim the difference between these two by way of loss and claim for the same. It has further been averred that Rule 6 of the CCS is not applicable to the applicant who is governed by Rly. Rules.

11. On all these grounds, it has been urged that there is no merit in this application and the same be dismissed.

12. The question that arises for consideration

consideration are as to whether the claims of the applicant are barred by limitation and whether the applicant is entitled to the reliefs or any of the reliefs claimed ?.

13. Article 7 of the Indian Limitation Act, 1963, provides that 'for wages in the case of any other person', the period of limitation provided is three years when the wages accrue due. In other words, a suit by a Govt servant to recover arrears of pay is governed by this article. The term 'wages' includes pension and it also includes dearness allowances. This article will apply only to suits by an employee against the person liable as employer to whose services he had been employed. Under this article the time runs from the date when the 'wages' accrue due. The question when the 'wages' in any particular case accrued due is one of fact to be determined with reference to the facts of each case with reference to the contract, if any, between the parties, or in the absence of any contract, to the course of dealing between the parties.

14. It is noticed that the applicant has claimed arrears of pay since 1.1.86 to 30.9.86. According to him the total arrears of pay admissible to him was Rs.1495-20p. as per his calculation mentioned paragraph 6(iii)(a) of his application. The respondents have denied the claim and has given the chart of calculation and the amount admissible to the applicant and has stated in clear and unequivocal term that the applicant had drawn Rs.16,156-50p. towards his pay & allowances since January 1986 to Sept.'87 and on fixation of his pay as per revision he was entitled to be paid Rs.17,250/-only and thus the difference of Rs.10,000 plus Rs.234/-total Rs.1327-50p was paid to the applicant and this fact is admitted by the applicant himself which is clear from his own statement in this regard. Thus, on a consideration of the rival contentions and the respective calculation, it appears to me that there is no arrears due

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to be paid to the applicant by the respondents towards the arrears of pay as claimed by the applicant.

15. That apart, the claim of arrears amounting to Rs.167.70p. by the applicant is in respect of the period from January 1986 to Sept.1986 and the claim petition by the applicant was filed on 7.5.92 and thus obviously the claim of the applicant towards arrears pay & allowances is beyond three years from the date it became due and as such is barred by limitation. In that view of the matter also, the claim of the applicant is not maintainable.

10. So far the claim of the applicant regarding the packing allowance is concerned, the respondents have filed Rly. Board's letter no.DC-IV/86/Imp.A1/7 dt.4.12.86 which is applicable to Group 'B' 'C' & 'D' officers and at paragraph 5 of the said letter (vide Annexure RA-VII) it is clearly mentioned under the heading "Rates of lump sum transfer grant and packing allowance" and it has been clearly shown that Rs.900/-lump sum packing allowance is admissible to an employee on transfer whose pay scale ranges from Rs.1900/-and above but less than Rs.2800/-. and this amount has been paid to the applicant. According to the respondent the applicant was paid Rs.506-25p as transfer allowance and Rs.900/-as packing allowance as was admissible to him according to his pay scale and thus the applicant was paid a little above Rs.1400/- which is an admitted fact. On the contrary, there is no cogent evidence on the side of the applicant to dislodge the contention of the respondents in this regard. It is true that the applicant has in his rejoinder disputed the assertion of the respondents on this count as 'bogus' but he has not produced any relevant rule in support of his claim and his reference to Annexure AA dt. 16.12.86 only shows that there has been liberalisation of lump sum transfer grant and grant of packing allowances by

but it does not show the rate at which it is admissible to employees drawing pay of various ranges of scales of pay. So in that view of the matter, it appears to me, on consideration of the facts and the rival claims of the parties, that the claim of the applicant on the item is also not tenable and the same is accordingly disallowed apart from the fact that this claim is also barred by limitation inasmuch as the applicant retired on 30.9.86 and his claim on this item too became due in the year 1986 and beyond three years from the date it became due, the claim becomes barred by limitation.

17. In respect of the claim as regards 'bonus', I have gone through the pleadings of the parties and the rejoinder filed by the applicant. The applicant has claimed the amount of 'bonus' for the period 1.1.86 to 31.3.86 at the revised scale of pay although at the old rate it was paid to him and as such the applicant has claimed the difference of the 'bonus' amount Rs.90/-only. In this connection, it is noticed from the averments made in the written statement of the respondents that the period for which the applicant claimed bonus was for the year 1985-86 which appears to be barred by limitation apart from the fact that the quantum of 'bonus' was, as it appears, was limited to the ceiling of pay scale of Rs.1600/-. However, the applicant was paid bonus for the said period at the old rate since the limit of Rs.1600/-stood good for the year 1985-86 for the purpose of calculation of bonus. So, taking into consideration all these material facts, I donot find any merit in the claim of the applicant as regards the 'bonus' is concerned.

18. So far the claim of the applicant as regards his overtime is concerned, it is an admitted fact that the applicant has already received the overtime allowances amounting to Rs.3378/-plus Rs.608-10p., the total of which comes to Rs.3,986-10p. only. He has claimed a further sum

sum of Rs.3,929-35p. on this item. On consideration of the submissions and the pleadings of the parties, it is noticed that the overtime claim for the period from 1.9.85 to 19.9.86, the applicant was paid Rs.609-10p. as per extent rules on reduced rate. In this regard, there was general resentment of the employees and the matter was agitated through their respective union with the authorities concerned and ultimately an agreement was arrived at between the Union and the Authority and in pursuance of that agreement 75% of the claim was admitted and accordingly the employees were paid and in this way the applicant was also paid a further sum of Rs.3378/- which was accepted by the applicant and was admitted to have been received by him. Now, therefore, where as a result of an agreement arrived at between the employees Union and the Administration a formula was evolved for payment of overtime to the extent of 75% of the claim and accordingly, the applicant was paid that amount, the applicant cannot turn round and resile for the position taken by the employees Union in the bilateral agreement between the Union and the Administration in this regard and his case cannot be made an exception to the general rule. In that view of the matter, the decision as regards the payment of overtime was binding upon the applicant.

19. Apart from that, the claim of the applicant in respect of overtime for the period from 1.9.85 to 19.9.86 and the claim being money claim and the amount being due in the month of September/October 1986, and the limitation starts running from the date ^{of amount} of due accrues and the claim having been laid beyond the period of three years limitation, it becomes time barred. So, in that view of the matter also, the claim of overtime cannot be admitted in favour of the applicant.

20. The applicant has prayed that a direction be issued to the pension disbursing authority, ie, Allahabad

Allahabad Bank, Allahabad through the respondents to reduce his pension from the date of payment of commutation value and that the orders for reduction of pension from 18.12.86 mentioned in the P.P.O dt.1.1.88 and 21.2.90 be treated as cancelled. In this connection, the admitted position is that the applicant retired on 30.9.86 and in revised scale his pension was initially fixed at Rs.795/- on 1.10.86. But subsequently on refixation of pay in the new scale, his pension was revised and refixed at Rs.907/- vide P.P.O dt.1.1.88. The amount of commutation was also consequently raised from Rs.265/- to Rs.302/- and the commutation value was paid to him (the applicant) on 1.4.88 but the pension was ordered to be reduced from 18.12.86, the date on which commutation value was paid initially. It is also admitted that the applicant's pension was again revised from Rs.907 to Rs.913 and the amount of commutation was also raised from Rs.302 to 304/- and admittedly the pension was reduced from the date of commutation value was paid. The pension was, however, again revised from Rs.913/- to Rs.950/- w.e.f. 1.10.86 and consequently the commutation value was also raised from Rs.304/- to Rs.316/- and it was paid to the applicant on 1.4.90 but the pension was reduced from 18.12.86. The applicant has stated that such reduction of pension amount instead of from the date of commutation was done from 18.12.86, the initial date of commutation of pension or the pre-revision period which has resulted in loss of the applicant to the tune of Rs.1150/-.

21. It is, however, significant to mention that the rules regarding reduction of pension on commutation is quite clear whether it be Govt. Rule under COS or the Rly Board's Rule which follows the Govt. of India Rule in this regard and it clearly lays down that the reduction in the amount of pension on commutation will become operative from

from the date of receipt of the commuted value by the pensioner or at the end of three months after issue of authority for payment, whichever is earlier. If the pension is drawn through the Bank, the reduction in pension becomes operative from the date of credit of amount in the Bank Account. Further, the rule in this regard is quite clear that when the pension is revised upward retrospectively, the payment of commuted value of the quantum of increase in pension may be authorised without further application from the pensioner and further reduction in the pension will become operative from the date of receipt of difference amount by the pensioner or at the end of three months after issue of authority for payment, whichever is earlier. So in that view of the clear rules in this regard which is also followed by the Rly. Board's circular and even lukewarmly admitted by the respondents, it is quite clear that when the applicant's pension was revised upward retrospectively and payment of commuted value of the quantum of increase in pension was paid at a later date, the reduction of pension will become operative from the date of receipt of difference amount by the pensioner-applicant and not from the date of his initial commutation of pre-revised pension. So in that view of the matter, the claim of the applicant and his prayer for direction to the respondents to direct the pension disbursing authority, the Allahabad Bank at Allahabad to reduce his pension from the date of payment of commutation value is accepted and the order of reduction of pension of the applicant from 18.12.86 by the respondents as mentioned in his P.P.O. dt. 1.1.88 and 21.2.9 is hereby set aside as it was against the Rules of the Rly Board and the Govt. of India. The respondents are directed to issue necessary directions and orders in favour of the applicant in this regard within a period of three months

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months from the receipt of this order.

22. In that view of the matter, the application is allowed in part. The parties, in the circumstances, shall bear their respective costs.

Allahabad Dated
July 19, 1993.

Ashok Kumar Singh
Member (Judicial).
19-7-1993.