

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH ALLAHABAD

Allahabad this the 3<sup>rd</sup> day of January 1995.6

Original application no. 1643 of 1993.

Hon'ble Mr. D.S. Baweja, AM

Krishnadutta Misra S/o Sh. A.P. Misra,  
R/o 104/434 Sisamau P. Road Kanpur.

..... Applicant.

C/A Sri R.S. Misra.

Versus

Union of India through D.R.M.  
Northern Railway, Allahabad.

..... Respondent.

C/R Sri A.K. Shukla

O R D E R

Hon'ble Mr. D.S. Baweja, AM

The applicant retired from the post of Head Travelling Ticket Examiner, Northern Railway, Kanpur in the grade 1400-2300 on 31.8.91. He was drawing the pay of Rs. 1720/- per month with effect from 1.1.91 to 31.8.91, in support of which the pay slips of the months of January 91 and July 91 have been annexed (A-4). However, settlement dues including pension have been finalised by the administration with pay of Rs. 1680 per month for the same period. The service certificate issued to him also indicates the last pay drawn as Rs. 1680/-. The gratuity of the applicant was not released and finally the

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payment was made only on 8.3.94, deducting Rs. 4,176.35. The applicant was informed that his pay has been refixed as Rs. 1,680/- as on 1.1.1991 instead of Rs. 1,720/-, as during checking of the leave record, it was revealed that there was a period of leave without pay from 17.7.78 to 28.8.78 and therefore the increment date should have been postponed from 1.1.79 to 1.2.79.

2. The applicant has prayed the following reliefs.

- a) To order the respondents to disburse the settlement benefits calculating the monthly wages as the applicant was allowed and make payment of difference as per the rules.
- b) To disburse the gratuity to the applicant with interest of 18% for the delayed payment.
- c) Respondents to correct the pension payment order from 1.9.91 on the basis of the pay of Rs. 1720.

3. The applicant has pleaded that he has been denied pension, gratuity and other settlement dues on the date of retirement and holds right of interest on the delayed payment. Further the re-fixation of pay and deduction of the excess payment is arbitrary and has been done without providing reasonable opportunity of defence by giving show cause notice.

4. The respondents in the counter have submitted that at the time of scrutnizing of the leave record of the applicant for fixation of the settlement dues and pension, it was noticed that the applicant was sanctioned leave without pay for the period 17.7.78 to 19.8.78. This period will not count for the increment and the same should have been postpond accoringly. This was not done and therefore this mistake has been rectified at the time of finalising of the settlement dues. The pay at various stages has been refixed and last drawn pay works out to be Rs. 1,680/- due to postponing of the increment date by one month. On account of this mistake, excess payment of

Rs. 4,176/- had been made. This has been adjusted from the gratuity and balance of Rs. 21,023/- has been paid to the applicant on 8.3.94, Pension has been also fixed on the basis of the refixed pay of Rs. 1,600/-.

5. Heard the learned counsel for applicant and the respondents and carefully perused the averments made in the application, rejoinder and the counter replies.

6. Applicant in the rejoinder has averred that he had fallen ill during the period under reference and resumed duty on 28.7.78 with a private medical certificate. On reporting back on duty, he was asked to meet Senior Divisional Commercial Superintendent. He accordingly met him and it was given to understand to the applicant that his period has been regularised. He has also stated that no chargesheet was issued to him for any misconduct on account of unauthorised absence. Therefore the applicant at no stage during the entire period of 14 years of service since then, was aware that his period of leave will not qualify for the annual increment.

As per the comparative table furnished by the respondents indicating the affect of postponing the increment by one month, it is noticed that on 1.1.84, the applicant would be drawing pay of Rs. 470 in the grade Rs. 425-640, if the increment was not postpond and his pay would be Rs. 455 in case increment was postpond by one month. The applicant in the rejoinder as well as in the application has said that even if the increment was postpond by one month, on 1.1.84, with fixation<sup>4</sup> pay in the revised scale, the effect should have been nullified. This contention of the applicant is not valid. On perusal of the comparative table, since the increment date changes to February instead of January, he will draw Rs. 440 on 1.2.83 and not on 1.1.83 and with this, the pay fixation in the new grade as on 1.1.84 will get affected.

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The applicant in A-5 has brought out a valid point that in case he was aware that the increment was postponed, then he had the opportunity of exercising option for fixation of pay on 1.1.84 by waiting earning of the increment in the lower scale. If this option was exercised, the applicant would have got <sup>the</sup> pay of Rs. 470 on 1.2.84 instead of 1.1.85 due to postponing of increment by one month. Even if the contention of the respondent with regard to postponement of the increment, is accepted, this belated action by the respondents at the time of the retirement has deprived the applicant of the benefit of option of pay fixation as admissible. With exercising of option he would have been drawing pay of Rs. 1,720/- for the period from 1.2.91 to 31.8.91 before the retirement.

7. It is admitted that administrative authority has inherent power to correct the accidental mistake committed by it in ignorance or over looking the facts. Principle of natural justice however demands giving of show cause notice to the employee before re-fixing his pay to provide him opportunity to represent against the same. It is admitted fact that no show cause notice was given to the applicant by the respondents. This was all the more necessary as the action of re-fixing the pay with postponement of the increment date was resulting in denial of opportunity which the employee could have availed in 1984, for fixation of his <sup>pay in the</sup> new grade and with this the effect on his pay would have been marginal as brought earlier.

The material placed on the record by the applicant and the respondent is not adequate to go into <sup>real</sup> ~~real~~ contentions with regard to treating the period under dispute as leave without pay. The applicant has also not taken up this plea in the original application, although he was aware of this action of the Administration as per his representation at A-5, and raised the matter in the rejoinder only.

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The applicant however, deserves the opportunity being given for exercising option for pay fixation on 1.1.84 as brought out in his representation of A-5, which could have been availed by him at that <sup>time</sup> if he had known that the his increment date was different.

8. The next issue is with regard to recovery of the over payment on account/<sup>of</sup>refixation of pay, Covering the long period of 13 years starting from 1978. There are several judgements of the Apex Court, High Courts and Tribunals upholding the well settled law that recovery of <sup>over</sup> payment as a result of pay fixation after a long time is arbitrary, and violative of the principles of natural justice. Some of the judgements, 1993 23 ATC 902, 1993 23 ATC 937, 1992 19 ATC 210, (1995) IUPLECS (Tribunal) are quoted in support of this.

9. As per the details furnished by the respondents, the gratuity has been released on 8.3.94, which was due on 1.9.91. No reasons for this delay have been furnished by the respondents in the counter reply/<sup>or during the hearing</sup> Even granting that the excess payment on account of wrong grant of the increment was due from the applicant, the balance amount of the gratuity after deducting the excess payment could have been paid when due. Delayed payment with no fault of the applicant has caused loss to him and the compensation for the same by way/<sup>of</sup> interest <sup>to meet the ends of justice.</sup>

10. Considering the above facts, the application is allowed with the following directions :

- a) The applicant will be allowed the option of fixation of the pay on 1.1.84 and pay fixed accordingly and (b) Pension and settlement dues to be calculated on the <sup>at</sup> basis. <sup>(c) Over-</sup>payment recovered from the gratuity shall be refunded. (d) Payment of interest @ 18 % per annum will be paid for the delayed payment on the entire amount from the date the gratuity was due as per the extant rules. <sup>(e) The compliance of the directions will be done within a period of four months.</sup>

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11. Application is disposed of accordingly as per the directions above with no order as to costs.

*Arvind*  
MEMBER (A)

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