

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD

Dated : Allahabad this the 17th day of July, 1996.

Coram : Hon'ble Mr. T. L. Verma, Member-J

Review Application No. 66 of 1995.

in

O. A. No. 1756 of 1993.

A. N. DwivediApplicant.

Versus

Union of India and others...Respondents.

O R D E R

(By Hon. Mr. T. L. Verma, Member-J)

This application has been filed for review
the order dated 29.3.1995 passed in O.A.No. 1756 of 1993.

2. The aforesaid O.A. was filed for issuing a
direction to the respondents to make payment of retirement
dues to the petitioner as shown in para 4.6 of the O.A.
with interest for delayed payment.

3. The aforesaid O.A. was allowed in part vide
order dated 29.3.1995 with certain directions to the
respondents which were to be complied with within a
period of three months from the date of service of this
order.

....contd. 2---



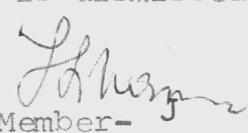
4. It is well settled that power of review may be exercised :-

- i. On the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made.
- ii. Where some mistake or error apparent on the face of the record is found and,
- iii. Any other analogous ground.

5. I have perused the review application ~~and~~ we find that the grounds taken for review suggest that the decision was erroneous on merit. The review provisions cannot be invoked to correct errors if any, committed in deciding the case on merit. The applicant has precisely done the same. It does not appear from the review application that new and important matter or evidence, which after exercise of the due diligence, was not within the knowledge or could not be produced at the time when the case was argued, has been discovered or that mistake or error apparent on the face of the record has been found justifying interference with the order in exercise of review jurisdiction.

6. In view of the above, I find no merit in this review application and the same is dismissed.

XXXXXX


Member-

(Pandey)

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Dated: 29.3.95

Original Application No: 1756 of 1993

A.N.Dwivedi, aged about 58 years,
S/O Late Shri K.S.Dwivedi,
R/O 884 Dildar Nagar, Jhansi.

.... Applicamt.

By Advocate Shri S.K.Mishra

Versus

The Union of India & Ors.

.... Respondents.

By Advocate Shri G.P.Agarwal

* * * *

JUDGEMENT

By Hon'ble Mr. T.L.Verma, Member-J

The applicant was working as Senior T.I.A. at Central Railway under the Administrative Control of FA&CAO Central Railway, Bombay V.T.. He requested for permission for voluntary retirement vide his application dated 3.11.1992. The respondents accepted the request of the applicant and allowed him to retire w.e.f. 28.2.1993 vide order dated 17.11.1992 (Annexre-2). According to the applicant, his retirement dues along with other payments should



::2::

have been made to him on the date of retirement. His grievance is that the payments were either delayed considerably or have not been made at all. According to him, he was entitled to Rs. 39,936/- by way of leave encashment equal to 8 months' leave salary, T.A. for the month of January & February, 1993 amounting to Rs. 850/-, arrears of D.A. for January & February, 1993 Rs. 468/- and excess recovery towards Scooter Advance of Rs. 50/-. He has however, paid a sum of Rs. 37,242/- only and as such he is entitled to payment of Rs. 4,062/- and interest @ 18% on delayed payment at Rs. 780/-. Details of his claim are as follows;

4.6-I Leave encashment equal to 8 months leave salary 39936.00

| | | |
|---|-----------|--------|
| T.A. | CHC | |
| 595 | 44 | Jan 93 |
| <u>179</u> | <u>32</u> | Feb 93 |
| 774 | 76 | 850.00 |
| Arrears of D.A. for Jan & Feb 93 468.00 | | |
| Excess recovery towards SCA 50.00 | | |
| <u>41304.00</u> | | |

Less cheque received and credited to a/c on 20.9.93 37242.00

| | |
|---------|---------|
| Balance | |
| 0/S | 4062.00 |

4.6-II Interest @ 18% on delayed payment for April 93 780/-

| | |
|-------------|-------|
| NC PF | GIC |
| 47929+4096= | 52025 |

Cheque received on 3.5.93 through registered letter No. 1103 of C.P.O. Bombay dt. 30.4.93
(Annexure A-V & A-VI)

::3 ::

4.6-III Interest @ 18% on Rs. 97946 from 1.3.93 to 24.5.93 cheque received vide Regd. letter No. 1881 of 19.5.93 received on 22/25.5.93.

4154.00
8996.00

Gratuity 42900.00

Computed value of pension 57676

Total Rs. 100,576.00

Less recovery 2680.00

towards Int. & future debits

Balance 97896.00

Add excess 50.00

recovered wrongly

9794

4.6-IV Interest @ 18% on Rs. 39936 being leave encashment 3998.00 equal to 8 months salary from 1.3.93 to 19.9.93
Cheque received on 16.9.93 credited to a/c on 20.9.93 Annexure A-X, A-X/1

12994.00

It is stated that the respondents have failed to make payment of the above dues despite repeated representations made by him. Hence, this application for issuing a direction to the respondents to make payments of all the dues shown in para 4.6 and to pay interest for delayed payment as shown in para 4.6-II, III & IV.

::4::

2. The claim of the applicant has been resisted by the respondents. The respondents in their written reply have averred that the applicant has already been paid settlement dues.

3. I have heard the learned counsel for the parties and perused the record. The Railway Board has issued letter No. F(E) III/79/PN-I/15 dated 15.4.1991 regarding payment of interest on account of delayed payment of retirement/death gratuity, copy whereof has been annexed to the Counter Affidavit and marked as Exhibit-B. According to the instructions issued by the Railway Board in the aforesaid letter in cases of retirement under the scheme of voluntary retirement, Pension Sanctioning Authority does not get adequate time for processing pension papers as is available to it in the cases of retirement on superannuation and as such in such cases interest should be payable if payment is delayed beyond 6 months from the date of retirement. In view of the above instructions, the applicant would be entitled to payment of interest on the DCRG ^{only} if the payment thereof is delayed beyond 6 months from the date of his retirement. It is not the case of the applicant that payment of his DCRG has been delayed beyond 6 months as such the question of payment of interest on delayed payment of DCRG does not arise. It would rather appear from Exhibit-G to the Counter Affidavit that DCRG & commuted value of pension was paid by cheque No. 64841 dated 4.5.93 well before the expiry of the prescribed period of 6 months.



::5::

4. The applicant has been paid Rs. 37,242/- by way of leave encashment for 221 days, D.A. arrears for January & February, 1993, T.A. and conveyance allowance for January & February, 1991 by cheque No. 155555 dated 8.9.93 and cheque No. 845044 dtd. 15.10.93 respectively, as noted in supplementary paysheet, Exhibit-D.

The above payments it would thus, appear, have been made after more than 6 months of the retirement of the applicant. The delay in making above payments in the circumstances of the case cannot be said to be such as may entitle the applicant to payment of interest.

5. The controversy, however, remains whether the applicant is entitled to leave encashment benefit for 240 days as claimed by him or 220 days as worked out by the respondents. The applicant claims that the leave account maintained by the respondents is faulty and as such cannot be relied upon for determining the period of leave due to the applicant. It was stated that according to the leave account (Annexure R-2) maintained by the applicant, 240 days leave was due to the applicant on the date of his voluntary retirement. In the normal course, the presumption of correctness would have been attached to the leave account maintained by the respondents but the discrepancy in the leave account annexed by the respondents to the Counter Affidavit

SK

::6::

and marked as Exhibit-C1 is such that a presumption of correctness cannot be attached to the said account. There is *prima facie* discrepancy in the account inasmuch as leave from 23.5.91 to 25.5.91 has been debited twice i.e. in first half ending June 1991 and second half ending December, 1991. There is thus, apparent discrepancy in the statement maintained by the respondents. This discrepancy therefore, necessitates re-examination of the matter.

6. The further case of the applicant is that a sum of Rs. 50/- has been unjustly adjusted against the recovery of the Scooter Advance although the full recovery had been made from his pay for the month of June 1991. In support of this argument, the learned counsel for the applicant placed before me the account slip for the month of May, 1991 in which, while making recovery of Rs. 50/- from the pay of the applicant towards conveyance advance, the balance of one instalment has been shown as due. The account slip for the month of June 1991 shows recovery of Rs. 50/- as the last instalment. The above account slips *prima facie* show that adjustment of Rs. 50/- from the retirement dues of the applicant towards payment of conveyance allowance is *prima facie* against record. The learned counsel for the respondents was not in a position to explain the above discrepancy.

HL

::7::

7. On a careful consideration of the fact and circumstances discussed above, I am satisfied that the applicant is not entitled to payment of interest as claimed by him. The leave account of the applicant as maintained by the respondents however, does not appear to be accurate and therefore, requires to be re-examined and fresh determination of the period of leave due to the applicant has to be done. The recovery of Rs. 50/- towards Scooter Advance also does not appear to be supported by evidence. This issue also, therefore, should be examined afresh.

8. In the result, this application is allowed in part and the respondents are directed to redetermine the leave due to the applicant and pay leave encashment benefit of the balance ~~if any of the~~ leave if found due with interest @ 12% per annum w.e.f. 1.10.93. The respondents are further directed to examine whether the sum of Rs. 50/- has been wrongly adjusted against the terminal benefits and if so, the ^{sum} ~~sum~~ should be refunded with interest @ 12% from the date, the amount was adjusted. The above direction should be complied with within 3 months from the date of service of this order. There will be no order as to costs.



Member-J

/jw/