

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 993 OF 2003

ALLAHABAD, THIS THE 24th DAY OF MAY, 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

Krishna Kumar Singh
aged about 66 years,
s/o Late Shri Darbari Lal,
R/o House No.1482/2 Behind Refuse
Colony, Near Officers Bunglow,
Civil Lines,
Jhansi.

.....Applicant

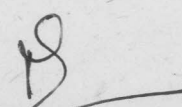
(By Advocate : Shri R. Verma)

V E R S U S

1. Union of India through the General Manager,
North Central Railway,
Allahabad.
2. The Divisional Railway Manager (P)
North Central Railway,
Jhansi Division,
Jhansi.

.....Respondents

(By Advocate : Shri D. Awasthi)



ORDER

24.7.2004

Hon'ble Mrs. Meera Chhibber, J.M.

Shri R. Verma counsel for the applicant. Shri D. Awasthi counsel for the respondents.

By this D.A. applicant had sought the following relief(s):-

- (i) to issue a writ order or direction in the nature of mandamus directing the respondent No.2 to allow the benefits of the scheme of merger of 97% DA as Dearness pay for the purpose of emoluments calculating DCRG extending the benefit of the circular dated 08.08.1995 issued by the Railway Board and to recompute the same and to pay arrears thereof along with interest @18% per annum following the date of retirement i.e. 01.08.1995 till the payment is made in pursuance of para 3 of the aforesaid circular.
- (ii) to issue any other suitable writ, order or direction in the facts and circumstances of the case which this Hon'ble Tribunal may deem fit and proper."

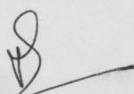
Respondents have stated in the counter affidavit that applicant superannuated on 31.07.1995. The applicant on his retirement was paid the retiral dues, which is admitted by the applicant and the payment has been shown in Annexure No.4 to this Original Application, whereby from the perusal it is clear that the DCRG (death cum retiral benefits) has been given @20% as per the rule which was prevalent at that relevant time. After his retirement, the Railway Board Circular No.PD-V/95/DCRG dated 08.08.1995 which was received by the department on 25.08.1995, which was issued, whereby the Dearness Allowance was to be merged in Dearness Pay for calculation of DCRG from 20% to 97% to the retired employees who have retired on cut off date i.e. 01-04.1995. The Railway Authorities after this circular calculated the difference amount of gratuity and paid to the applicant as under:-

Last Pay	Rs.2,360=00
+97%DA	Rs.2,289=20
Total:	Rs.4,649=20

$Rs.469=20 \times 32.5(\text{Total Service Period}) \times 10/20 = Rs.75,550/-$

Gratuity to be payable	Rs.75,550=00
Gratuity already paid	Rs.46,020=00

Difference amount paid:Rs.29,530=00



It is also submitted that the difference amount of gratuity Rs.29,530/- was passed by the Account Office of DRM/JHS vide CO 7 No.070359 dated 08.11.1995 and sent to the applicant vide Cheque No.324495 dated 20.11.1995, which was duly encashed by the applicant on 08.12.1995. On the strength of the above noted facts, it is clear that just to take benefit of the aforesaid circular, the applicant has concealed the fact which amounts to criminal act and should be punished properly, as this type of practice sets very bad example before this Tribunal, which should not be allowed. The applicant in desperation and greed has failed to mention that he had received the enhanced amount also and was duly encashed by him, which has been verified by the bank. All through and through, the applicant has not raised any independent issue but has only mentioned and relied on the judgment passed by Central Administrative Tribunal, Bombay which is though a matter of record, but is not applicable in the case of applicant as it pertains to the P & T Department. Moreover, after receiving the retirement benefit, the applicant has filed this Original Application, after a period of 5 years which is time barred also. On the strength of the facts and circumstances stated above, this O.A. should be dismissed with costs.

It is seen that counter affidavit was filed by the respondents as back as on 06.11.2003 but till date applicant has not even filed rejoinder to rebut the averments made by the respondents in their counter affidavit categorically, which means in law he has accepted the averments made by the respondents. Since applicant has already taken the benefit of 97% as stated by the circular issued by Railways, the present O.A. has to be dismissed with no order as to costs.



J.M.

shukla/-