

(Reserved)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 11 DAY OF FEBUARY, 2010)

PRESENT :

HON'BLE MRS. MANJULIKA GAUTAM, MEMBER-A

ORIGINAL APPLICATION NO. 113 OF 2006

(U/s, 19 Administrative Tribunal Act.1985)

Sudarshan Rai s/o late Sri A.N. Rai r/o D-59/362, G-2, KH-M,
Jai Prakash Nagar, Varanasi District Varanasi, U.P.

..... Applicant

By Advocate: Shri S. K. Mishra.

Versus

1. The Union of India through the General Manager, N.E. Railway, Gorakhpur, U.P.
2. The Chief Personnel Officer, N.E. Railway Gorakhpur, U.P.
3. The Divisional Railway Manager (P) N.E. Railway, Varanasi, U.P.
4. The Chairman, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.

..... Respondents

By Advocate: Smt. S. Singh.

O R D E R

(DELIVERED BY: MRS. MANJULIKA GAUTAM - MEMBER-A)

The Applicant was initially appointed as Trade Apprentice on 11.08.1958. He was promoted as Train Examiner in 1968 and confirmed on the post w.e.f. 10.06.1970. The Applicant made a representation dated 17.06.1983 regarding Seniority list of Trade Examiner's issued on 24.03.1983. The Applicant made a subsequent representation dated 15.06.1994 which was allowed and vide orders dated 09.02.1995 his Seniority was corrected vide letter dated 23.05.1996. It was made clear that the Applicant is



not liable for any arrears of salary and that his salary as on 01.01.1997 was Rs. 3050/- . The Applicant represented against this vide letter dated 10.09.1997 requesting for arrears of salary and promotion as Senior Section Engineer. There was no response to his representation and he ultimately retired on 31.01.1998 after which he filed OA No. 656 of 1998. Wherein he sought the following relief:-

- "(i) to issue a writ, order or direction in the nature of mandamus commanding the respondents to actually promote the petitioner to the post of Head Train Examiner w.e.f. 3.9.83, Chief Train Examiner w.e.f. 1.1.84 and Senior Section Engineer w.e.f. 27.7.94 and pay the arrears of salary alongwith all the permissible allowances and retirement benefits.
- (ii) to issue a writ, order or direction in the nature of mandamus commanding the respondents to pay the interest to the petitioner 17% per annum on the entire arrears of salary from the date it was admissible to the petitioner.
- (iii) to issue any other suitable writ, order or directing which may deem fit and proper under the circumstances of the present case.
- (iv) to allow this petition and award the costs to the petitioner, against the respondents."

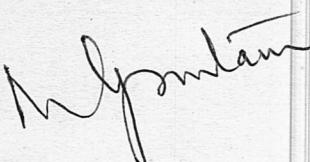
2. The OA was decided vide order dated 12.01.2004 by which it was held that the Applicant was not entitled to arrears of salary on the principles of "no work no pay".

3. During the pendency of the OA the Applicant had made a representation before pension Adalat held on 19.12.2001 and vide order dated 26.12.2001 (Annexure-6 to Compilation-II) direction

was to given to their revise his P.P.O. But to date the Respondents have not revised the pension of the Applicant. The Applicant made representations dated 12.02.2004, 16.03.2004, 21.03.2004 and 20.05.2005 for implementation of the order of the pension Adalat dated 26.12.2001. His case was that the last salary drawn by him in January, 2000, 1998 was Rs. 9,500 but his service certificate wrongly shows the last salary of Rs. 8,500. The Applicant has filed MA No. 4878 of 2009 which he has enclosed a document showing the salary paid to him in November, 1997, December, 1997 and January, 1998 as well as the service certificate which shows his pay before retirement as Rs. 8,700/- (Annexure M.A-I).

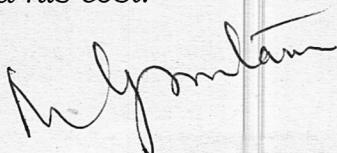
4. The Applicant continued to send representation dated 20.05.2004 but without deciding the representation Respondent No. 3 issued order dated 18.08.2004 (Annexure A-I), according to which due to orders of CAT dated 27.01.2000, the orders of the pension Adalat cannot be given affect to. The Applicant made another representation dated 30.08.2004 in response to which the impugned orders dated 3/7.09.2004 have been issued (Annexure A-2). The Applicant made another representation dated 10.09.2004 (Annexure A-II) and reminder dated 03.09.2004. The Applicant made a last representation dated 16/17.11.2004 which is still pending.

5. The Applicant had already been issued major charge-sheet Under Section-5 and was given the punishment of reversion to one great below just one day before his Superannuation. The appeal of

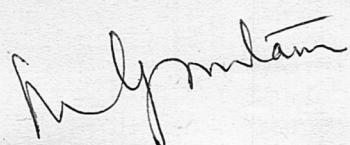
A handwritten signature in black ink, appearing to read "M. Jayaraman".

the Applicant was allowed vide order dated 15.03.1998 and he was exempted from his punishment. The Applicant made a representation after exoneration seeking payment of pensionary benefits and revision of his pension. He also requested for notional promotion from the date he became due for such promotion and revision of pensionary benefits as per Railway circular No. 3101 No. E (D-A 97 RG 6-27 dated 01.10.1997). The present OA has been filed by the Applicant seeking the following relief:-

- "(i) To issue a direction in the nature of certiorari quashing the orders dated 18.8.04 (Ann-A-1 with Comp no. 1) and 3/7.9.2004 (Ann-2 with Comp. no. 1) and further direct to respondents to pass a fresh order in the light of order dt. 26.12.2001 passed by pension Adalat and revised P.P.O. of applicant accordingly.
- (ii) To issue a direction to respondents to rectify the last pay Rs. 8700/- of applicant as shown in his service certificate dt. 4.6.98 and mention there as Rs. 9300/- as given in pay slip of month of Nov. 1997 and applicant was also paid Rs. 9500/- in month of Jan. 1998 at the time of retirement and therefore directed to respondents to pay the all pensionary benefits accordingly with 18% interest.
- (iii) To issue a direction to respondents for implementing to order dt. 5/6-7-2000 passed by C.P.O./G.M. (P) Gorakhpur (An A-3 vide comp no. 2) and fix the pension of applicant in pay scale of Rs. 7450-11500 on the basis of proforma basis as decided by respondent no. 1 and pay all pensionary benefit accordingly.
- (iv) To grant any other relief or reliefs to which he is entitled as this Hon'ble Tribunal may deem fit and proper.
- (v) To award his cost."

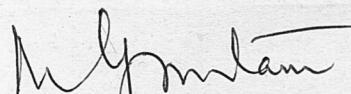


6. I have heard both the counsel and perused the record on file. The stand taken by the Respondents is that since the Tribunal passed adverse order in OA No. 656 of 98, the orders of pension Adalat became worthless and cannot be complied. OA No. 656 of 98 was filed seeking the relief of promotion and arrears of salary whereas the order of the pension Adalat were regarding pension revision and payment of pension. The two matters are separate and should have been looked at separately on the basis of records. It is apparent that the applicant had become eligible for notional promotion prior to superannuation as his appeal against punishment had been allowed. It was for the Respondents to look into the matter of notional promotion as per rules, and if found fit he should have been given notional promotion without any payment of arrears as he had already retired. As far as the matter of revision of pension is concerned the stand taken in the counter affidavit of the respondents that the value of the order of the pension Adalat had gone down in view of the Tribunal order dated 12.01.2004 is not corrected or valid. The issue be decided on the basis of the last pay drawn by the Railway Servant. On the basis of Annexure MA No. 1 filed by the Applicant, it is clear that the salary drawn by the Applicant for the month of November 1997, December 1997 and January 1998 was Rs. 9,300/-, Rs. 9,300/- and Rs. 9,500/-. Therefore, it is very clear that the pay scale of Rs. 8,700/- shown in the service certificate is obviously not correct. In para 34 of the counter affidavit the Respondents have stated that due to disturbance of the computer centre from November 1997, to October 1998 pay bills were prepared by hand and not by the



computer and therefore, due to human error pay scale of Rs. 9,500/- had been shown in place of pay scale of Rs. 8,500/-. The explanation given in the counter affidavit talks about mistake in the pay bills whereas according to Annexure M A-I filed by the Applicant the last pay drawn by the Applicant in January 1998 was in the scale of Rs. 9,300/- plus one increment which made it Rs. 9,500/-.

7. In view of the above, the OA is allowed with direction to the Respondents to consider the notional promotion of the Applicant prior to his superannuation and revision of his pension on the basis of the notional promotion, if any, and the last salary drawn by him on January 1998. No costs.


A.M.

/S.V./-