

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD**

C.P.No.89/96 in O.A.No.416/91

Ahmedabad this the 28th day of June, 2000

Hon'ble Mr. V.Ramakrishnan, Vice Chairman
Hon'ble Mr. A.S. Sanghavi, Judicial Member

Shri K.D. Desai
Retd. Head Clerk
Residing at 6, Punya Apartment
Lad Society Road,
Nehru Park, Vastrapur,
Ahmedabad - 15.

Applicant

By Advocate: Mr. K.K. Shah

VERSUS

1. Union of India to be served through
Shri N. Ravindran, or his successor
General Manager, Headquarter office
Western Railway, Churchgate,
Mumbai.

2. Shri Zingrol or his successor
Area Manager, Western Railway,
Ahmedabad.

Respondents

By Advocate: Mr. N.S. Shevde

ORDER (Oral)

Hon'ble Mr. V. Ramakrishnan, Vice Chairman

Heard Mr. K.K. Shah for the complainant and Mr. Shevde for the respondents and have also gone through the materials on record. While

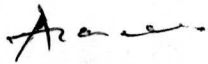
disposing of OA 416/91 on 1.3.96 the Tribunal had directed the respondents to accept the option exercised by the Railway servant and his case for inclusion in the pension scheme after obtaining the necessary refund of the provident fund amount as per the rules. The respondents have said that they have since complied with the orders and pension has been sanctioned. Initially provisional pension was sanctioned and subsequently regular pension was given. The respondents have also said that the arrears as admissible are also given to the applicant. On 15.2.2000 Mr. Shah for the complainant had submitted that while the revised pension has been sanctioned and the percentage of dearness relief granted to him is not in accordance with the revised rules flowing from the recommendation of the Fifth Pay Commission. Mr. Shevde says that even that has been revised and action taken as per the Government decision on the recommendation of the Fifth Pay Commission.

In any case, we note that the recommendation of the Fifth Pay Commission were received only in 1997 and orders of the Government was issued in 1997 and 1998 and any alleged failure to follow such recommendation can not form part of the contempt petition alleging non-compliance of the orders of 1.3.96. We however ^{expect} ~~except~~ that the Railways to grant dearness relief to the applicant both from 1.1.96 onwards and also earlier at the rates as fix^{ed} in the relevant rules and instructions.

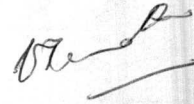
2. Mr.K.K.Shah says that in view of the delayed compliance interest to the complainant may be granted. We find that the complainant had opted for provident fund scheme and as per the direction of the Tribunal he was allowed to come over to the pension. In the facts and circumstances of the

case, we do not find any justification for grant of interest while disposing of the present contempt petition.

3. In the light of the position brought out above, we hold that the contempt petition does not survive. The contempt petition is dismissed and the alleged contemnners are discharged.



(A.S. Sanghavi)
Member(J)



(V. Ramakrishnan)
Vice Chairman

Vtc.

DATE

C.A.89/96
OFFICE REPORT.

in O.A.416/91 ORDER

17/7/98

This case unfortunately has a long history. This relates to non-implementation of the judgment of this Bench dated 1-3-96 where the respondents were directed to accept the option exercised by the applicant for inclusion in the pension scheme after obtaining the necessary refund of the P.F. amount as per Rules. This exercise was to be completed within a period of 12 weeks from the date of receipt of a copy of the judgment i.e. by 1-6-96. However, the respondents have not implemented the judgment on the one pretext or another. The Tribunal has passed the interim order on 31-7-97 ~~as~~ given the provisional minimum pension to the applicant and again on 20-10-97, directed the respondents to finalise the provisional pension of the applicant on the basis of the last pay drawn by him., after obtaining the affidavit from the applicant regarding his service particulars. After this order, the respondents have fixed the provisional pension of the applicant. As no further action was taken to fix the pension of the applicant as per the order, another order had been issued on 10-10-97 to the respondents to re-fix the pension of the applicant on the basis of the last pay drawn by him and affidavit to be given as provided for in the pension rules.

DATE

OFFICE REPORT.

O R D E R

After obtaining the affidavit from the applicant, the respondents have refixed the provisional pension of the applicant on the basis of the last pay drawn by the applicant. However, no action has been taken by the respondents to pay the arrears of the pension from April 1977 the date on which the applicant retired, for the reasons best known to them. At the time of hearing of the Contempt Petition, Mr. Shevde learned counsel for the respondents argued that as per the judgment, the applicant should have refunded the P.F. contribution along with the interest thereon. Mr. Shevde referred to Annexure R-1, which is a copy of the Railway Board's letter dated 18-6-85, which related to exercise of fresh option to railway employees governed by SRPF Rules for coming over to pension scheme. Para-3 of which reads as follows:-

* As per Railway Board's above orders arrears are payable from 1-2-75 but Shri K.D.Desai, Retd . Head Clerk(Claims) ADI is eligible for proforma fixation as above and the arrears as under:-

- i) From 27.9.75 to 31.5.77 during which period he has physically worked as Head Clerk, scale Rs.425-700(R) ;
- ii) from 1-2-75 to 26-9-75 in scale Rs.330-560(R) "

Accordingly, he argued that the applicant should have refunded the amount

DATE

Office Report.

O R D E R

contd...

of provident fund along with the interest thereon, till the date of refund of the same.

Mr. Shah for the applicant argued that firstly this order is not applicable as the applicant retired in 1977 and secondly the the judgment does not mention anything about the refund of interest.

We have heard both the parties and we find that the judgment talks only about the refund of the P F amount received by the applicant and nowhere mentions anything regarding refund of interest. The clause in the judgment is "as per Rules." It relates to sanction of pension to the applicant. Moreover it is seen that a large amount of arrears of pension is due to the applicant from 1977. If the applicant is to pay interest on refund of P F contribution, he is liable to pay interest on the arrears of pension, the Railways which will be much higher. We are firmly of the view that the respondents should forthwith disburse the ~~arrears~~ arrears of pension due to the applicant. The respondents are accordingly directed to calculate the arrears and make the payment to the applicant with any further delay. Arrears as stated

DATE

Office Report.

ORDER

above shall be paid to the applicant as early as possible in any case not later than 5 weeks from today.

In case the above directions shall not be complied with, the concerned senior officer shall remain personally present before the Tribunal to explain the reasons as to why this could not be done.

A copy of this order may be given to the respondents.

Call on 28-8-98.

LJH
(Laxman Jha)
Member (J)

V.R.
(V. Radhakrishnan)
Member (A)

*SSN...

Copy is given to Mr. Shevde as per the directions.

Shalini
22/7/98
CL A/BRC at AD/
for & on behalf of
Sh. N. S. Shinde
RA/ADP

Out

SERIAL NUMBER OF THE APPLICATION

CA 89 / 96 in
012/416/91

I N D E X

SERIAL NO.	DATE OF PAPER OR DATE OF FILING	DESCRIPTION OF PAPER	PART TO WHICH THE PAPER BELONGS		REMARKS
			PART	PAGE NOS	
1	30/7/96	— CCP —	A B	12 12	
2	12/3/97	MA/ 236/97	A B	13 to 20 13 to 20	
3	17.7.97	Repl	A B	21 to 22	
4		Affidavit in Reply	A B	23 to 29 23 to 29	Payment done by me
5	26/8/97	MA/673/97	A B	30 to 32 30 to 32	
(A) 9/9/97		Reply	A B	33 to 38 33 to 38	
6	22/10/97	MA/ 197	A B	39 to 44 39 to 44	
7	2/11	Affidavit	A B	45 to 47 45 to 47	
	6-8-99	MA/ 490 /99	A B	48 to 50 48 to 50	Payment not done as earlier payment is complete 10/8