

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

ORDER DATED 22-11-2000.

In this case, learned Additional Standing Counsel Mr.S. Ray, wanted an adjournment for obtaining instruction on the rejoinder filed by the applicant, copy of which has been served on him on 6-11-2000. This relates to personal claim of an employee, who has retired almost three years ago. Copy of the rejoinder has also been served on the counsel for the Respondents more than twenty days ago. In view of this, prayer for time is rejected and the Original Application is taken up for consideration. We have heard Mr.B.K. Mallā, learned counsel for the applicant and Mr.S. Ray, learned Additional Standing Counsel appearing for the Respondents and have also perused the records.

In this Original Application, the applicant has prayed for disbursement of all his arrear increments and other allowances from 30-9-1977 to 31-12-1997 alongwith interest @ 18% per annum.

Applicant's case is that he retired on superannuation as Chief Controller, Operating, SE Railway, Khurda Road on 31-12-1997. At the time of fixation of his pension, it was known that his increments have not been correctly worked out during his service career from 30.9.1977 to 31.12.1997 i.e. till the date of superannuation. He made several representations for getting the arrears but without any result and that is why, he has come up in this Original Application with prayers referred to above.

S. Ray.

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Respondents in their counter have admitted that while the service sheet of the applicant was reviewed by the Finance Branch, less drawal of the increment for the period from 30.9.1977 on-wards was detected. They have further stated that thereafter, this was corrected and his **less pay** drawn was correctly fixed and his pension was correctly allowed to him. It was noted that in the present petition, the applicant has no grievance with regard to the quantum of pension which has been fixed.

As regards arrears, the Respondents have stated that arrear incremental dues from 1.1.1934 to 31.12.1995 amounting to Rs.16073/- has been paid to the applicant and this is also agreed to by the learned counsel for the applicant. It is further stated that increment from 1.1.1996 to 31.12.1997, amount to Rs.5736/- has also been paid to him. Thus, the present controversy is only relating to the claim arising out of wrong fixation of increments for the period from 30.9.1977 to 31.12.1997. It is the admitted position that the amount comes to Rs.3111/-. From the counter it appears that bill for this amount has been prepared and sent for drawal but this amount has been rejected by the Finance Branch on the ground that paid vouchers are not available after passage of more than twenty years because the normal period of preservation of such record is over. It is submitted by Mr. Malla learned counsel for the applicant that for non-drawal of increments, the applicant is no way responsible and because the paid vouchers have been destroyed, the legitimate claim of the applicant should not be denied. It is

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submitted by learned counsel for the Applicant and this has been mentioned in Para-4 of the Rejoinder that while paying the D.C.R.G. of the applicant, an amount of Rs.1993/- was recovered as arrears of House rent and Electricity charges for the period from 1-2-1969 to 15-11-1997 .It has been submitted by learned counsel for the applicant and to our mind, very correctly as this amount has been deducted at the time of payment of the D.C.R.G. ,it obviously shows that this deduction of the amount has been made with regard to the actual house rent and electricity charges deducted from the applicant during the aforesaid period from 1-2-1969 to 15-11-1997.In view of this, it is submitted by learned counsel for the applicant that the contention of Respondents that paid vouchers are not available for the period from 30.9.1977 to 31.12.1983 should not be accepted because this period falls within the aforesaid period from 1-2-1969 to 15-11-1997.We find considerable force in the submission of learned counsel for the petitioner; firstly it is entirely the fault of the administration that the increments of the applicant havenot been correctly fixed over a long period of more than 20 years and thereby the applicant has been unjustifiedly kept away from his legitmate dues.In view of this, it is not open for the Departmental Authorities to urge that the arrear incremental dues for the period from 30.9.77 to 31.12.1983 has not been paid because of absence of paid vouchers.As we have already noted pay bills of applicant, atleast the deduction made from the applicant's payable

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Pay Bills
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during this period was available at the time of payment of DCRG to the applicant because arrear house rent and electricity charges for this period and some more has been deducted from his DCRG to the extent of Rs.1993/-. Secondly in case the paid vouchers are not available due to the circumstances beyond the control of the Departmental Authorities it is open for the Departmental Authorities to furnish a non-drawal certificate with regard to the drawal records of the relevant period and make payment with reference to the nondrawal/non-disbursement certificate.

In consideration of the above, we hold that the applicant is entitled to get payment of Rs.3111/-. This amount should be paid to the applicant within a period of thirty days from the date of receipt of a copy of this order.

Learned counsel for the applicant has prayed for payment of interest at the rate of 18% per annum on the amounts due to be paid to the applicant. We find that in this case less drawal and less payment to the applicant have been made apparently because of bona fide and official mistake. We do not think that for this the Respondents should be burdened with interest but we find that the applicant's payment of Rs.3111/- has been withheld on the ground which is ^{held} by us to be not sustainable. In view of this, we order that the Respondents should pay interest to the applicant on this amount of Rs.3111/- @ 12% per annum from the date of expiry of the above period of thirty days fixed by us till the date of payment.

J. J. M.

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Order dt. 22-11-2000

Copy of order
may be given to both
the counsels

12/2000

S.O. (J)

In the result, with the observations and
directions made above, the Original Application is
allowed. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN