

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH.

No. O.A. 675 of 1996.

Present : Hon'ble Mr. D.Purkayastha, Member (J)

ABANI KUMAR MAJUMDER

Vs.

1. Union of India, through the General Manager, S.E.Rly., Garden Reach, Calcutta - 43.

2. Financial Advisor and Chief Accounts Officer (FA&CAO), S.E.Rly. Garden Reach, Calcutta - 43.

..... Respondents.

For applicant : Mr. S.P.Bhattacharjee, Counsel.

For respondents : Mr. S.Chowdhury, Counsel.

Heard on : 8.5.97 :: Ordered on : 8.5.97.

O R D E R

The question for decision in this case is about the refixation of the pay of the applicant at Rs.2600/- after taking into account the average pay of ten months lastly drawn by him in the month of May, 1994 and for cancellation of the order of deduction of Rs.27,340.50 from the DCRG amount without any notice whatsoever and for a direction to refund the amount of Rs.27,340.50 with interest till the date of payment.

2. The case of the applicant, in short, is that he was granted a special pay of Rs.35/- as Sr. Clerk by the decision of the Railway Board. Subsequently, said special pay of Rs.35/- was not taken into account for the purpose of fixation of pay after retirement of the applicant on superannuation. The applicant retired from service on superannuation on 31.7.94. According to the applicant, similar dispute has been cropped up and settled by this Bench of Tribunal in O.A.1121 of 1993 (T.P.Mukhopadhyay Vs. U.O.I.) and O.A. 1264 of 1994 (Haridas Kundu Vs. UOI & Ors.).

According to the applicant, as per the judgement of the Tribunal, he is entitled to same benefit as were decided and granted to the applicants of those cases.

3. The ld. counsel Mr. S. Chowdhury, appearing on behalf of the respondents submitted a reply today denying the claim of the applicant. Mr. Chowdhury submitted that after considering the judgement passed by this Tribunal and the judgement of the Hon'ble Apex Court dismissing the SLP filed by the railway respondents, railway authority had issued a letter dated 24.7.96 inviting the attention of the Railway Board to re-examine the issue brought out in the judgement and to issue necessary directives to deal with the identical cases pending before the Tribunal for adjudication.


4. I have considered the submissions of both the parties and perused records. It remains undisputed that special pay of Rs.35/- was not taken into account for the purpose of fixation of pay of the applicant after his retirement and the alleged excess amount of Rs.27 thousand and odd was deducted from the DCRG amount payable to the applicant. Ld. Counsel Mr. Chowdhury fairly submitted that no opportunity of showing cause was given to the applicant before deducting the said amount from the DCRG of the applicant. Mr. Chowdhury, ld. counsel, submitted that the case of the applicant may be finalised after receiving necessary directives from the Railway Board as sought for by the letter dated 24.7.95 (annexure-RII). I have gone through the judgement passed by this Bench of this Tribunal. After careful perusal of the judgement, I find that similar question of fact and law has been considered by the Hon'ble ~~Supreme Court~~ ^{Division Bench of this Tribunal} and specifically held that the railways or government have the right to correct the mistake, but they cannot be permitted to chose their own time to make the said

correction and hence, any correction of mistake after a long lapse of eleven years cannot be sustained in the eye of law and has to be quashed. It was also decided by the Hon'ble Supreme Court in a judgement reported in AIR 1983 SC 1310 that pensionary benefits are not a bounty and it was also a settled law that no order detrimental to the citizen or government employee shall be issued by any authority without giving any opportunity of being heard. In the instant case, admittedly no opportunity of showing cause for deduction of the said amount of Rs.27 thousand and odd was given to the applicant and said deduction had been made after a lapse of more than eleven years. From the above cited judgements it is clear that the applicant is entitled to the benefit of special pay of Rs.35/- and that should be taken into account for the purpose of fixation of pay. I have also gone through the letter dated 24.7.96 (annexure-RII) and I find that the SLP filed by the railways against the judgement of the Madras Bench of this Tribunal has been dismissed and the said judgement of the Madras Bench was relied on by this Bench of the Tribunal. In view of the circumstances stated above, there is no confusion in my mind that the applicant is entitled to get the same benefit as was granted by the Tribunal to other applicants.

5. In view of the above discussion, the application is allowed. I quash the impugned order of deduction from the DCRG of the applicant. The overpayment of pay and allowances amounting to Rs.24,532.50, as it appears from annexure A1 to the application, shall be refunded to the applicant with interest at the rate of 15 per cent per annum with effect from 7.10.94 till the date of payment. It may be mentioned that RELHS amounting to Rs.2480/- and HRA amounting to Rs.328/- need not be refunded to the applicant by the respondents. Pay of the applicant shall be fixed accordingly keeping in view the observation made hereinbefore within a period of three months from the date of communication of this order. Considering the circumstances of the case, I award Rs.500/- costs to be paid to the applicant by

the respondents.

6. Mr. S.Chowdhury, ld. counsel, argued that rate of interest should be 10 per cent per annum instead of 15 per cent. I have considered the submission, but I find no reasonable ground to accept his contention in view of the fact that authority came to know about the fixation of pay of the applicant under similar circumstances from the judgement mentioned above and all the judgements were pronounced ^{before} in February, 1996. Even after the judgement the respondents did not take any action. Therefore, I find that award of interest at the rate of 15 per cent per annum is fully justified in this case.


(D. Purkayastha)

MEMBER (J)