

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. 686 of 96

Present : Hon'ble Mr. D. Purkayastha, Judicial Member.

Nimai Chand Banerjee, son of late Kanti Bhusan Banerjee, Retired Booking Supervisor, E. Rly., Howrah, residing at 32, Ram Krishna Ashram Road, P.O. Panihati, Dist. 24 Parganas (North).

...Applicant

- v e r s u s -

1. Union of India through General Manager, Eastern Railway, Fairlie Place, Calcutta.
2. General Manager, Eastern Railway, Fairlie Place, Calcutta.
3. Divisional Railway Manager, Eastern Railway, Howrah.
4. Senior Divisional Personnel Officer,

For the applicant : Mr. B.P. Roy, counsel.

For the respondents : Ms. U. Sanyal, counsel.

Heard on 20.4.98

Order on 20.4.98

O R D E R

D. Purkayastha, JM

The applicant sought for direction upon the respondents by filing this application to make payment of Rs.7,500/- by way of D.C.R.G. money which is withheld arbitrarily, illegally without assigning any reason, with 18% interest p.a. from 1.4.95 i.e. from the due date of retirement of the applicant till the payment is made. The applicant also sought for direction upon the respondents to recompute the gratuity/D.C.R.G. of the applicant in terms of the decision of the President of India as contained in O.M. No.7/1/95-P&P.W.(F) dated 14.7.95 issued by the Deputy Secretary to the Govt. of India and to pay Rs.4,760/- on account of Central Govt. Employees Insurance Scheme, 1980 together with interest at the rate of 18% p.a. The case of the applicant is that he went on retirement on 1.4.95. But the respondents illegally withheld the D.C.R.G. money without assigning any reason whatsoever and accordingly the applicant is entitled to get aforesaid benefit of retirement on superannuation from the Railway Department.

2. The case of the applicant is resisted by the respondents by filing a written reply. It is admitted by the respondents that the applicant

went on retirement from 1.4.95. So he is entitled to get D.C.R.G. money amounting to Rs.7,500/- but that was retained for want of accounts clearance from CAO/TA, Eastern Railway, Calcutta. It is also stated in the reply that after getting AC-59 the debit in question raised by CAO/TA was verified from the concerned department and then necessary instruction was given to release the retained amount of DCRG on 12.8.96. It is further stated in the reply that a Railway Servant who retires or dies on or after 1st April, 1995 his DCRG will be calculated by adding of 97% D.A. on the basic pay (in case of basic pay upto Rs.3500/-) as per Railway Board's letter No.PC-V/95/DCRG dated 8.8.95. Since the applicant has retired from service on 31.3.95 i.e. after completion of 58 years of age of superannuation, he is not entitled to get benefit of such scheme. Hence he was denied. It is also stated that the applicant is not entitled to get the benefit of the Railway Insurance Scheme since he expressed his desire not to come under Group Insurance Scheme w.e.f. 1.1.82 and once option is exercised it is final. Thereby he is not entitled to get back money under Group Insurance Scheme.

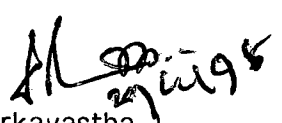
3. Mr. Roy, Id. counsel for the applicant submits that no document could be produced before this Tribunal to show that the applicant has exercised any option for getting benefit of the Group Insurance Scheme at any time. In other way, he stated that he never exercised any option under the Group Insurance Scheme w.e.f. 1.1.82. It is further submitted by the Id. counsel Mr. Roy that the applicant has filed this O.A. on 7.6.96. The respondents sent a draft of Rs.7,500/- in respect of D.C.R.G. money to the applicant on 12.8.96 and that was received by the applicant on 20.8.96. According to Mr. Roy, Id. counsel for the applicant, since the Department did not act promptly in accordance with the law and the payment of D.C.R.G. money was delayed by the respondents arbitrarily without disclosing any reason thereby he is not entitled to get interest on the D.C.R.G. money at the rate of 18% w.e.f. 1.4.95 till the date on which draft was sent to the applicant i.e. on 12.8.96 and the respondents be directed to make payment of D.C.R.G. of Rs.7,700/- with interest.

4. I have considered the submission of the Id. counsel for both the parties. Regarding submission of the Id. counsel in respect of payment

of D.C.R.G., it is found that the applicant has retired on 1.4.95 but before 1.4.95 no action has been taken by the respondents in respect of any dues of the applicant. It is found that after retirement, the respondents withheld the D.C.R.G. money only on the ground that the applicant did not get accounts clearance from the concerned department which has been sent by the respondents to the concerned department for necessary action. I have also gone through the reply of the respondents on this score. It is found in the reply that such demand was sent to the concerned department for intimation in respect of accounts clearance from CAO/TA before his retirement, but no steps has been taken by the respondents for finalising the same before his date of retirement. It is not understood why the respondents did not take any action for settlement of pensionary benefits even after two months from the date of retirement of the applicant.

5. Regarding the claim of Gr. Insurance Scheme there is a dispute between the applicant and the respondents as to whether the applicant exercised any option under Gr. Insurance Scheme w.e.f. 1.1.82. According to the applicant he did not exercise any option. But according to the respondents the applicant exercised option and that has been treated as final. But I find that no scrap of paper could be produced from the side of the respondents to show that the applicant had exercised option under the scheme of Gr. Insurance Scheme to keep him outside that scheme. I find the burden lies with the Deptt. to show that the applicant exercised option and that burden has not been discharged by the respondents by producing scrap of paper to show that the applicant had exercised option to keep him outside the scheme as stated by the respondents. So in the absence of any authentic documents in this regard the presumption would be that the applicant did not exercise any option. Thereby the applicant is entitled to get benefit of the money under the said scheme. The applicant is also entitled to get interest at the rate of 10% on that amount from the date of payment till the payment is made by the respondents. Regarding claim of the enhancement of D.C.R.G. to the extent of 97% of D.A. as claimed by the applicant, I find that the respondents have made categorical statement that the circular is applicable to the employees who retired from the Railway service on or after 1.4.95 provided the

basic pay upto Rs.3500/-. In the instant case, the applicant has retired from the railway service from 31.3.95 i.e. before 1.4.95. The applicant also could not produce any document before me to show that he is entitled to get benefit of that scheme inspite of the fact that he retired on 31.3.95. But on looking into the representation (Annexure-D) made by the application it is found that the applicant himself made a statement that he had superannuated on 31.3.95. Thereby the claim of the applicant in this respect cannot be accepted. In view of the circumstances, I allow the application with <sup>above</sup> the observation, <sup>and</sup> ~~that~~ I direct the respondents to make payment of D.C.R.G. money with interest at the rate of 10% from 1.4.95. The respondents are also directed to make payment of Gr. Insurance Scheme with the interest at the rate of 10% from the due date of payment i.e. from 1.4.95 till the payment is made. Accordingly the application is allowed in part awarding no costs.

  
( D. Purkayastha )  
Judicial Member