

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH

JODHPUR

DATE OF ORDER : 15.01.1999.

O.A.NO. 5/1998.

C.S.Mirani S/o Shri S.J.Mirani, R/o 7, Saket Colony, Near Panch Batti, Residency Road, Jodhpur, Retired Dy.Chief Engineer (Construction), Planning, Northern Railway, Jodhpur.

.....APPLICANT.

VERSUS

1. Union of India through General Manager, Headquarters Office, Northern Railway, Baroda House, New Delhi.
2. Chief Administrative Officer (Construction), Headquarters Office, Kashmiri Gate, Delhi.
3. Dy.Chief Engineer (Construction) I, Northern Railway, Jodhpur.
4. Dy.Chief Personnel Officer (Construction), Headquarters Office, Kashmiri Gate, Delhi.
5. Financial Adviser and Chief Accounts Officer, Headquarters Office, Northern Railway, Baroda House, New Delhi.

.....RESPONDENTS.

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CORAM

HON'BLE MR. A.K.MISRA, JUDICIAL MEMBER

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For the Applicant

Mr. N.K.Khandelwal, Advocate

For the Respondents

Mr. V.D.Vyas, Advocate

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O R D E R

BY THE COURT

The applicant who is a retired Dy.Chief Engineer (C), Planning, Northern Railway, Jodhpur, has filed this

Application praying that the respondents be directed to finalise the pension and make the payment of arrears w.e.f. 1.6.97 together with interest @ 24% p.a., that the respondents be directed to finalise and make the payment of gratuity along with interest w.e.f. 1.6.97, that the respondents be directed to finalise the commutation amount and to make the payment of the same along with arrears with interest @ 24% p.a., that the respondents be directed not to recover any amount from pension, gratuity and commutation payment due to the applicant and any other appropriate relief along with the cost of the O.A.

2. Notice of the O.A. was given to the respondents who have filed their reply in which they have stated that the payment of retiral benefits has been made to the applicant after verification of service record and out of gratuity a sum of Rs. 40,000/- was detained against the dues which were found outstanding against the applicant. After finalisation of accounts the payment of detained amount would be made to the applicant. In the additional affidavit, the respondents have stated that a sum of Rs. 2243/- was payable by the applicant to the respondents on account of rent of Government Bunglow which he continued to occupy after retirement for some time. A sum of Rs. 3509/- was payable by the applicant to the respondents on account of electricity consumption of the official bungalow. It is also stated that in the year 1979 pay of the applicant was wrongly fixed and all through over payment was made. At the time of finalisation of the pensionary benefits a sum of Rs. 17899/- was found to have been paid in excess to the applicant due to wrong fixation of his pay. Thus a sum of Rs. 23651/-was due from the applicant which has been adjusted out of the 40,000/- rupees detained and a sum of Rs. 16,349/- was paid to the applicant in October 1998. The respondents have further stated that the payment of pensionary benefits to the applicant was made soon after the finalisation of verification of service record and accounts matter, therefore, the applicant is not entitled to

any interest whatsoever. The O.A. deserves to be dismissed.

3. The applicant had also filed rejoinder which was not taken on record because rejoinder only elaborated the facts in support of the O.A.

4. I have heard the learned counsel for the parties and gone through the record.

5. The applicant superannuated on 30.4.1997 after rendering 34 years of service. As per the extent rules all the pensionary benefits should have been paid to the applicant soon after his retirement. From the pleadings of the applicant it appears that applicant had filed his pension papers on 13.3.1997 i.e. a little more than one and a half months prior to his retirement. The payment of retiral benefits was delayed by the respondents on account of verification of service record of the applicant in respect of fixation of pay etc. But in my opinion the verification of service record of the applicant including verification in respect of fixation of pay was required to be done by the respondents much before the date of superannuation of the applicant. As per the extent rules, pension papers ought to have been prepared by the respondents well in time so that on the date of superannuation or on the next day, pensionary benefits are available to the applicant. Even if service record was required to be verified there was sufficient time with the respondents. From the record it appears that the matter relating to pensionary benefits of the applicant was not finalised inspite of reminders of the applicant to the respondents and the same continued to be tossed from one authority to another authority on the ground of removal of objections etc. which in my opinion was not justified. As is well known that any amount which is subsequently discovered to be due against the retired Government servant can be realised

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from his pension, therefore, pending finalisation of accounts and in anticipation of some amount being found due, the retiral benefits of a retiring Government servant cannot be detained much less the amount of gratuity. In this case, the applicant had become entitled to all his pensionary benefits i.e. gratuity, commutation etc. on 1.5.1997 as per his option for commutation. The applicant had also become entitled to his pension on 1.6.97 after accounting for commutation part of his pension but the amount of gratuity was paid to the applicant on 18.3.98 and the commutation of his pension was paid on 20.3.98. Part of D.C., R.G. was paid to the applicant on 14.10.98 after adjusting the outstanding amount of Rs. 23,651/-. In my opinion, the amount of gratuity and commutation to which the applicant was entitled to get on 1.5.97 was un-reasonably detained for such a long time. Therefore, the applicant is entitled to get interest on the amount so detained unreasonably because the applicant has been deprived of the interest on the amount which reamined with the Government. The rate of interest as claimed by the applicant is 24% but this seems to be too much excessive in view of interest payable on Fixed Deposits. The applicant is entitled to get interest at the simple rate of 12% per annum on the then due gratuity amount and commutation amount.

6. Due to implementation of Vth Pay Commission Report the fixation of applicant's salary was done in the month of November 1997 as is clear from Annex.A-11. Thereafter, the payment was made to the applicant in March 1998. In my opinion a period of one month was enough to finalise the account of gratuity and commutation on account of re-fixation of pay as per the Vth Pay Commission. Therefore, the applicant is entitled to interest also on the enhanced amount of gratuity and commutation calculated as per fixation of pay as per Vth Pay Commission from 1.1.98 till the date of payment at the simple rate of 12% p.a.

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7. The respondents have deducted Rs. 23,651/- out of the amount of gratuity on account of arrears of rent, electricity charges and excess payment due to ^{wrong} fixation. The respondents have not given any notice to the applicant for payment of this amount neither the applicant had any occasion to know that he is required to pay that much amount under these heads, therefore, deduction of the amount was unreasonable on the part of respondents. The respondents could have given notice to the applicant for these outstanding and if the applicant had failed to pay then of course they were free to realise the amount not from gratuity but from his pension. In my opinion, the amount of 40,000/- had also been detained illegally by the respondents a part of which was paid to the applicant on 14.10.98. In my opinion, no part of gratuity ought to have been detained by the respondents, Therefore, the applicant is also entitled to refund of amount so deducted ^{was made} illegally alongwith interest on 40,000/- from 1.1.98 till payment/

8. The ~~pension~~ pension of the applicant which was due to him on 1.6.97 was not paid for a pretty long time. On fixation of pension etc. the arrears of pension was paid to the applicant in the month of March 1998 thus applicant's pension was with-held by the respondents for almost 9 months. Therefore, it would be reasonable to award interest to the applicant on the arrears of pension also at the same rate of 12% simple interest.

9. From the foregoing discussion, I come to the conclusion that applicant is entitled to refund of 23,651/- rupees which was detained by the respondents and also interest on the delayed payment of pensionary benefits. The O.A. deserves to be accepted.

7/11/98

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10. The O.A. is, therefore, accepted and following directions are given to the respondents for compliance within a period of three months from the date of receipt of a copy of this order :-

(i) Interest at the simple rate of 12% p.a. be paid to the applicant on the amount of Gratuity and Commuted amount of Pension, as was due on 1.5.97 on the basis of the pay he was drawing just prior to retirement upto the date of actual payment ;

(ii) Interest at the simple rate of 12% on the amount of arrears of Pension upto the date of payment ;

(iii) Interest at the simple rate of 12% p.a. on the enhanced amount of Gratuity and Pension as per the pay fixation on the basis of V&P Pay Commission w.e.f. 1.1.98 till the date of payment ;

(iv) Interest at the simple rate of 12% on the with-held amount of Gratuity upto the date of actual payment and

(v) The amount deducted on account of House Rent, Electricity charges and Overpayment of pay as per fixation/ should be refunded to the applicant.

from the applicant, The respondents shall, however, be free to realise the amount of House Rent and Electricity Charges as per rules and over-payment to the applicant due to wrong fixation of pay, after giving Notice to the applicant and providing due opportunity of hearing.

11. There is no order as to costs.

31/12/1999
(A.K.MISRA)
Judicial Member

Elaine
Bob
Mike
John

Copy recd.

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Ckh:
21/11/99