

2/17

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

Original Application No. 252/2002  
Date of Decision : this the 27 th day of August, 2004.

**Hon'ble Mr. G.R. Patwardhan, Administrative Member**

Mahaveer Raj Bhansali S/o Late Sh.Kanak Raj  
Bhansali, aged about 61 years, Retired Dy.S.S.  
(Commercial), Bareilly (UP), at present resident  
of 215/C 2<sup>nd</sup> Polo Ground, Jodhpur.

.....Applicant.

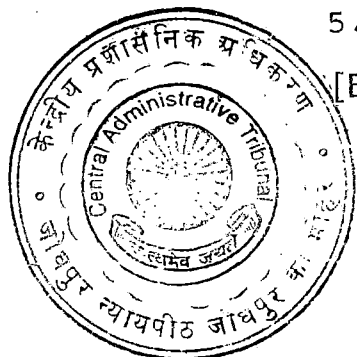
[By Mr.S.K.Malik, Advocate, for applicant]

Versus

1. Union of India through General Manager  
Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway,  
Muradabad (UP)
3. Sr. Divisional personnel Officer, Northern Railway  
Muradabad.
4. Sr. Divisional Commercial Manager  
Northern Railway, Muradabad.
5. Divisional Railway Manager, N.Rly. ....Respondents  
Jodhpur

[By Mr. Kamal Dave, Advocate for respondents]

**ORDER  
[BY THE COURT]**



This is an O.A. by Mahaveer Raj Bhandari against Union of India through the General Manager, Northern Railway, Divisional Railway Manager, Muradabad, Senior Divisional Personnel Officer, Muradabad and Senior Divisional Commercial Manager, Jodhpur and Divisional Railway Manager, Jodhpur. No specific order has been challenged but, the prayer is for settlement of all retrial benefits as he retired from the post of Dy. S.S. on 31.12.2001.

2. Paragraph 8 of the OA indicates in five sub heads, the reliefs that are sought and they can be summarized below :-

9/8

- (i) To refix the pay correctly which he would have drawn at the time of retirement by adding all due intervening increments which were not accounted for on account of suspension and sick leave.
- (ii) To make payment of wages for the suspension period w.e.f. 2.12.1998 to 15.3.1999.
- (iii) To make payment of wages for the period April 1999 to 24<sup>th</sup> July, 2000.
- (iv) To make payment of suspension allowance, gratuity, commutation and leave encashment.
- (v) To make all outstanding payments like Bonus, T.A., Night Duty Allowance and Transfer Allowance.

3. Detailed reply has been filed on behalf of respondents on 21.3.2003. Some of the important dates which are no more in dispute need to be noted for easy appreciation of the case.



Applicant suspended	-	02.12.1998
Suspension revoked	-	18.03.1999
Applicant transferred to Muradabad and relieved from Nagaur	-	17.03.1999
Remained under treatment of a Homeopath	-	18.03.1999 to 24.07.2000

All certificates of ill health submitted to D.P.O., Jodhpur, who returned it for being sent to Muradabad Office. 19.05.1999

Joined Muradabad (taken on duty)	25.07.2000
Transferred to Barreilly and joined	04.08.2000
Issued Chargesheet	- 14/15.08.2000

Inquiry report submitted-exonerated 09.06.2001

Disciplinary Authority disagreed  
with inquiry report - 24.12.2001

Applicant superannuated 31.12.2001

CAT directs for early decision in  
Two months (In OA 160/2002) 10.07.2002

Disciplinary Authority exonerates  
Vide A/2 of O.A. 26.07.2002



4. The matter has been heard in detail on 28.3.2003, 3.7.2003, 24.2.2004, 23.3.2004, 11.5.2004 and 18.5.2004. This became necessary due to persistent denial by the applicant of not having received the payment alleged to have been made by the respondent Railways and the time taken in verification of the same by both the parties.

5. The learned counsel for applicant Mr. Malik, submitted on 11.5.2004 that an amount of Rs. 5,96,063/- has been credited to the account of his client after payment of bank charges and whereafter, only the following amounts remained outstanding :

(i) Pay and Allowances for the period 18.3.99 to 24.7.2000 during which applicant was on medical leave.

(ii) Increments due on 1<sup>st</sup> November 1999, 2000 and 2001 and

(iii) Leave on Half Average Pay of 74 days.

— SP —

6. Mr. Malik, learned advocate also submitted that whatever payments have been received are after considerable delay and, therefore, applicant is entitled to payment of interest.

7. Shri Dave, learned advocate for respondents replied to the three issues pointed out on 11.5.2004. The main submissions are as follows :-

(i) This is leave without pay – it is being raised for the first time and this cannot be allowed.



(ii)+ These points have been raised for the first time. In  
(iii) case these are allowed – it will mean quashing of an order which is not challenged.

It is submitted by him that at every hearing, some new points are being agitated and the Hon'ble S.C. is very clear that the other party cannot be taken by surprise.

Shri Dave, learned counsel for respondents thereafter, disputed the position raised by the applicant on the following grounds :

(1) The issue of shifting of increment has not been challenged earlier – it cannot be done now.

(2) Delay in payment is there – but it is due to administrative reasons.

(3) 18.3.1999 to 24.07.2000 period is treated as leave without pay – this decision has been communicated to applicant – but it has not been challenged – the date of increment also has been shifted and this cannot be challenged nor as there is no prayer to regularize this period.

— *Signature* —

- (4) Generally pensionary benefits are paid at place of last posting - it is a bit unusual that Railways have agreed to pay it at Jodhpur in order to be liberal though and not at Bareilly, it would have been easier for applicant to accept payments at Bareilly.

He also submitted that since the departmental inquiry was completed only in July 2002 - there was no question of paying interest for the period the applicant was facing the inquiry. In particular he drew attention to a Apex Court ruling on the issue that in a case of corrupt practices - the person cannot be given any interest.



8. It may be seen from the rejoinder filed by the applicant especially Annex. A/3 that on the very next date he was relieved from Nagaur (Rajasthan) on 17.3.99, he seems to have fallen sick and wrote a letter to the Divisional Railway Manager, Jodhpur, intimating about his health and that he was getting treatment of a Homeopathic Practitioner and submitted medical certificates for the period from 18.3.1999 to 31.5.99. In the same letter, he also informed the Divisional Railway Manager that apart from the sickness, the matter was pending with the CAT for judicial pronouncement about the justification of transfer.

In reply all that has been averred is that this period has been treated as absence and accordingly the dates of increments have been shifted. It is not clear if any reply for treating the period in this manner has been given to the applicant. Rather, it

is maintained by the applicant in the rejoinder that this particular issue is still pending decision by the respondents. Once this position as of today is accepted it becomes obvious that the issue of increments will also have to be decided concurrently. In the absence of anything on record to show which way the respondents have viewed this particular period and for which there is nothing except the averment that a Homeopath has certified the leave, it will not be appropriate to give any opinion on the admissibility of the leave. The respondents are, therefore, directed to treat this particular issue as a representation by the applicant and pass a reasoned and speaking order within ninety days of receipt of the copy of this order and intimate the same within another thirty days. The applicant would be at liberty to agitate it again if so advised.



9. Admittedly, payment of retrial benefits like PF, GIS, Leave Encashment, Pension Commutation, DCRG and Transfer Allowance has been made after considerable delay. This is the admitted position and all that has been said in defence is that it was due to administrative reasons. While some delay is definitely inescapable especially when the applicant was facing a departmental proceeding which concluded much after his superannuation on 31.12.2001, it does not stand to reason that even after he was exonerated from the charges on 26.7.2002 there should have been delay of as much as eight months in case of DCRG and four months in case of Pension Commutation. The applicant has appended a chart showing variety of items of

which only first five relate to retrial benefits wherefrom, delay in payment can be easily ascertained. Considering that these payments had to be authorised and issued from Muradabad Division of Railway, it may be reasonable to give a margin of thirty days for normal mode of transmission of papers. After taking into account this margin, the respondents are directed to work out the exact delay that has taken place in payment of PF, GIS, Leave Encashment, Pension Commutation, DCRG and Transfer Allowance and pay an interest @ 18% Per Annum for the period so arrived at. This should be done within ninety days of the receipt of this order with a calculation sheet showing the amount so arrived at.



10. The applicant has also raised issues of payment of Bonus, T.A., Night Duty Allowance and Transfer Allowance. But, it is found that he has been paid Rs. 5,840/- towards that on 31<sup>st</sup> December, 2001. This leaves only Bonus, Night Duty Allowance and T.A. Much will depend on how the respondents treat the period April 1999 – July 2000 as that will affect payment of bonus. Therefore, no orders can be passed till the respondents complete the exercise as directed in para 8 above. The applicant would be at liberty to agitate it again if so advised.

Application accordingly disposed of. No order as to costs.

GR  
22/01/02

[ G.R. Patwardhan ]  
Administrative Member

jrm

R/C  
on 29/9/04  
S.M. DAYARAM  
[Signature]

[Signature]  
[Signature]

Part II and III destroyed  
in my presence on 29/10/13  
under the supervision of  
section officer [Signature] as per  
order dated 18/10/2013

[Signature]  
Section officer (Record) 29.10.2013