

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 416 1990
~~XXXXXX~~

DATE OF DECISION 17-4-1991

The Divisional Personnel Officer Applicant (s)
Southern Railway, Trivandrum

Mrs. Sumathi Dandapani Advocate for the Applicant (s)

Versus

C.Sreekumar & Another Respondent (s)

Mr.P.Sivan Pillai (for R.1) Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V.Krishnan - Administrative Member
and

The Hon'ble Mr. A.V.Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

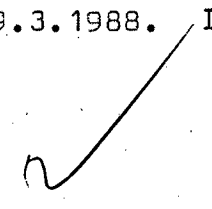
(Mr.A.V.Haridasan, Judicial Member)

In this application filed under Section 19 of the Administrative Tribunals Act, the applicant, the Divisional Personnel Officer, Southern Railway, Trivandrum has challenged the correctness of the order of the Central Labour Court, Quilon (the second respondent) in claim petition No.4/87 to the extent it has allowed the first respondent to recover from the applicant Rs.1480/- as difference in DA and Rs.500/- as difference in bonus with interest. The facts of the case are as follows.

2. The first respondent was working as General Clerk in the pay scale of Rs.260-400 in the Trivandrum Division

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of the Southern Railways at Chirayinkil station from 15.7.1981 to 18.4.1985. On 18.7.1985, he was relieved to join the Madurai Division on selection as Traffic Apprentice. As per order dated 18.12.1984, 64 Commercial Clerks were promoted to the scale of Rs.330-560 with effect from 1.1.1984. By order dated 15.11.85, another set of Commercial Clerks were thus promoted with retrospective effect. They were juniors to the first respondent. But the department did not give the benefit of the retrospective promotion to the first respondent though he had brought the fact to the notice of the authorities. Therefore, the applicant filed CP 4/87 claiming the difference between the pay in the scale of Rs.330-560 and 260-400 from 1.1.1984 till 18.7.1985. He amended the claim petition with leave of the court incorporating a claim for the difference in TA, DA and Bonus. As the payment was delayed to him the respondent had claimed interest also. The first respondent claimed Rs.2876/- as difference in pay and allowances. Rs.1480/- as difference of T.A. and Rs.500/- as arrears of bonus and interest thereon at 12%. On receipt of the claim petition the applicant after verification of the records promoted the first respondent as Senior Clerk in the of Rs.330-560 retrospectively with effect from 1.1.1984 to 18.7.1985 and disbursed to him Rs.2876/- as arrears of pay and allowances including Provident Fund on 19.3.1988. It was after
...3/-



the order of retrospective promotion and payment of Rs.2876/-, that the first respondent amended the claim petition claiming difference in T.A. and bonus. The applicant in the objection filed before the Labour Court, the second respondent contended that, T.A. once paid would not be re-opened and difference, if any paid on account of a retrospective promotion, and that there is no provision for re-opening and reassessing the bonus paid. The second respondent rejected this contention and allowed the claim petition directing the applicant to pay to the first respondent Rs.1480/- as difference in T.A. and Rs.500/- as difference in bonus and interest there on totally amounting to Rs.2,858/-, Annexure-II is a copy of the order of the second respondent. The applicant has filed this application challenging the validity, propriety and correctness of the order Annexure-II on the ground that the above order was passed on an erroneous interpretation of the provision of paragraph 1602(2) of Indian Railway Establishment Code and has prayed that the impugned order may be quashed and it may be declared that the first respondent is not entitled to receive any amount of difference in T.A. or difference in bonus. The first respondent has in the reply statement contended that, there is no error in the impugned order of the second respondent requiring interference that paragraph 1602(2) of the I.R.E.C. applied only to a

case of retrospective promotion which was not occasioned reason of by any latches on the part of the employer, and that on retrospective promotion the first respondent was entitled to get the difference in T.A. and bonus. Therefore, the first respondent prays that the application may be dismissed.

3. We have heard the arguments of the learned counsel on either side and have also carefully gone through the documents produced.

4. The second respondent in its order in claim petition No.CP 4/87 at Annexure-II has found that, on retrospective promotion, the applicant was entitled to T.A. at the enhanced rate and therefore, the applicant was bound to pay the first respondent the difference of the T.A, and that the difference in bonus amounting to Rs.500/- was also due to him ~~respondent~~. It has also held that, as the promotion and consequent payment of difference in pay was delayed by the applicant inspite of the several representations made by the first respondent, the first respondent was entitled to get interest on the arrears of pay, difference in T.A and the bonus at 6% per annum. On that basis, taking into account the payment of Rs.2876/- to the first respondent on 19.3.1988 by the applicant, the second respondent ordered the applicant to pay to the first respondent a sum of Rs.2858/- with a condition that, if the amount was not paid within one month from the date of the order the applicant would pay interest on the principal amount

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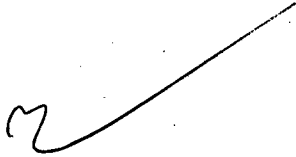
of Rs.1980/-. The learned counsel for the first respondent contended that in an application under Section 19 of the Administrative Tribunals Act, it is not open for the applicant to challenge the correctness of the calculations made by the first respondent since that would necessitate reception of evidence, and that as there was ^{real} no dispute regarding the quantum, in the proceedings of this nature, it is not open for this Tribunal to embark upon a further enquiry into the correctness of the computation of the benefits made by the Labour Court under Section 32-C2 of the Industrial Disputes Act. The learned counsel further argued that as paragraph 1602(2) of the Indian Railway Establishment Code does not apply to a case where a retrospective promotion was necessitated on account of the laches of the department to issue orders of promotion in time, there is no error in law in the order of the Labour Court calling for interference by this Tribunal. We shall ^{refer} ~~at once~~ to paragraph 1602(2) of the Indian Railway Establishment Code, which has statutory force. The paragraph 1602(2) of the Railway Establishment Code reads as follows:

"Where a railway servant is promoted or reverted or is granted an increased rate of pay with retrospective effect, no revision of claims for travelling allowance is permissible, in respect of the period intervening between the date of promotion or reversion or grant of increased rate of pay, and that on which it is notified, unless it is clear that there has been an actual change of duties.

NOTE- In the case of late authorisation /drawal of increments with retrospective effect, other than those where increments were withheld or where the increments take an officer above the stage of efficiency bar, there is no objection to the supplementary claims relating to Travelling Allowance, if any, being admitted, on the basis of the enhanced pay including the increments."

It is clear from the above extracted provision that unless there has been a change of duties, the mere fact of retrospective provision would not entitle a Government servant to claim difference in Travelling Allowance. The ^{first} respondent had during the period in question acted as rest giving General Clerk (Commercial Clerk) and the T.A. due to him ^{clerks} pertains to his duties, in giving rest to the ^{at} Kaniampuram. The retrospective promotion did not bring ⁱⁿ any change in the duties, but was only as a consequence of restructuring. Hence, in view of the provisions contained in paragraph 1602(2) of the Indian Railway Establishment Code, the applicant was not entitled to claim the difference in T.A. on the basis of the retrospective promotion. So we are convinced that the second respondent, Central Labour Court has overlooked this ^{statutory} provision which has ^{force} while allowing the claim for difference in T.A. as claimed by the petitioner in C.P.No.4/87, the first respondent herein. So to that extent the order being against the provisions of Indian Railway Establishment Code has to be interfered with. Bonus payable to an employees is to be

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based on the ~~total~~ emoluments earned by the employee during the year in question. As there has been a change in the total emoluments of the applicant during the period between 1.1.1984 and 15.11.1985 consequent on the retrospective promotion, the applicant is entitled to get difference in bonus. No provision in the ^{Indian} ~~the~~ Railway Establishment Code is brought to our notice to substantiate the contention of the applicant that on retrospective promotion an employee is not entitled to claim the difference in bonus. Therefore the contention of the applicant that the order to pay bonus is erroneous cannot be accepted. There is no dispute regarding the quantum ^{additional} of ~~of~~ bonus. ^{additional} Therefore, the ~~of~~ bonus payable for the period in question has to be taken as Rs.500/-. For the delayed payment of Rs.2876/-, arrears of salary, the first respondent was entitled to get interest at 6% per annum as found by the second respondent, Labour Court from 18.7.1985 to 19.3.1988, similarly for the non-payment of Rs.500/- as bonus, the first respondent is entitled to interest at the rate of 6% per annum. Therefore, we are convinced that the order of the second respondent, at Annexure-II has to be modified in as much as it had wrongly allowed the applicant therein to recover the difference in T.A. and interest thereon.

5. In the result, the order of the second respondent in Claim Petition No.4/87 is modified to the extent of

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disallowing the claim of the applicant therein to the
difference in T.A. in ~~allowance~~ and interest thereon
and allowing the applicant therein to recover ^{only the} interest
of Rs.2876/- at 6% per annum from 18.7.1985 to 19.3.1988
and Rs.500/- with interest at the rate of 6% per annum from
18.7.1985 till the date of realisation. There is no
order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(NV. KRISHNAN)
ADME. MEMBER

17-4-1991