

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.85/2004

Tuesday, this 9th November 2004

C O R A M:

HON'BLE Mr.K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE Mr.H.P.DAS, ADMINISTRATIVE MEMBER

P.M.Devassia, S/o Mathai,
Retired Confidential Stenographer
O/o the Chief Personnel Officer,
North Frontier Railway, R/o Kalathipparambil
Nalukody P.O, Changanassery, Kottayam.

(By Advocate Mr.Martin G Thottan)

Applicant.

Vs.

1. Union of India, represented by its Secretary
Ministry of Railways, Rail Bhavan, New Delhi.
2. The General Manager(Personnel)
North Frontier Railway, Headquarters Office
Malignon, Guwahati.

Respondents

(By Advocate Mr.P.Haridas)

The application having been heard on 28.10.04 and the
Tribunal on 9th November 2004 delivered the following:

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

O R D E R

The applicant entered the Railway service on 9.7.1962
and promoted from time to time and was working as Confidential
Steno in scale Rs.1400-2600. He was placed under suspension
w.e.f.29.8.93 on a C.B.I case under trial. While so he
superannuated from service on 30.9.1993. The judicial
proceedings were pending in the Court of the Special Judge,
Assam, Guwahati. No retiral benefits were granted to the
applicant but as per the directions of this Tribunal in O.A
No.243/97 he was granted provisional pension w.e.f. 1.10.93.
The judicial proceedings finally ended the applicant's acquittal
on merit (Annex.A1). He filed a representation Annex.A2 seeking
the benefits and since no reply was received he approached this
Tribunal by O.A No.586/02. By Annex.A3 this Tribunal directed to



grant him the entitled benefits. He also produced the Railway Board's circular Annx.A4 which entitle him for the benefits. The period of suspension was treated as duty vide Annx.A5 but the difference between the subsistence allowance and salary so also other benefit was not paid to him. Finally regular pension Rs.1115/- per month was sanctioned and received the commutation and gratuity. According to the applicant, the retiral benefits were fixed at a lower rate since it has been worked out on the basis of Annx.A6. The applicant further claims that he is also entitled to interest on the delayed payment of gratuity. It is also stated that he was not considered for promotion on account of the pendency of the criminal proceedings whereas his immediate juniors namely S.C.Sarkar and P.K.Roy had been promoted on 7.5.91. It is submitted that he had 31 years of qualifying service and on his retirement he is entitled to get two sets of complementary retirement pass. He made representation Annx.A8 to which there is no response. The applicant is presently 69 years of age, a heart patient and bed ridden. After retirement he settled at Kottayam. Aggrieved by the in action the applicant prayed for the following reliefs:

- i) "Call for the records leading to the issue of Annx.A6 and quash the same to the extent it postpones the applicant's due date of increment.
- ii) Declare that the applicant is entitled to have his pay fixed at Rs.2420/- w.e.f. 1.9.92 and Rs.2480/- with effect from 1.9.93 in scale Rs.1400-2000 and to have his retiral and terminal benefits accordingly.
- iii) Direct the respondents to consider the applicant for promotion as Confidential Assistant in scale Rs.1640-2900 with effect from 7.5.1991, which was denied on account of the pendency of the investigation/judicial proceedings, on par with his juniors and persons identically situated and to grant the consequential benefits.
- iv) Direct the respondents to recalculate and refix the applicants pension and other terminal benefits accordingly with effect from 1.9.93 and to grant the arrears thereof.



- v) Direct the respondents to grant interest at the rate of 12% per annum w.e.f. 1.1.94 for the delayed payment of gratuity and commutation.
- vi) Direct the respondent to grant the applicant post retirement complimentary passes as per his eligibility.
- vii) Direct the respondents to grant arrears of pay
- viii) and leave salary consequent upon the regularisation of sick period and period of suspension.
- ix) Award costs of and incidental to this applicant.
- x) Grant such other relief, which this honourable Tribunal may deem fit and proper in the circumstances of the case."

2. The respondents have filed a detailed reply statement contending that his representation as directed by this Tribunal has been duly considered and all his legitimate demands have been paid. As claimed by the applicant his suspension period has been regularised as LAP/LHAP and Extra Ordinary Leave and leave salary has also been paid (Annex.R2). His DCRG was regularised on 15.5.03 and was paid an amount of Rs.39,503/after recovering Railway dues Rs.6625/- (Annex.R3). Commutation value of pension has been paid vide Annex.R4. He could not be considered for promotion to the post of C.A due to the pendency of SPE/Vigilance case against him. Since he had not shouldered higher responsibilities and had already retired, his claim for promotion and consequent higher pay has not been acceded to by the competent authority (Annex.R5). Vide Annex.R6, his pension has been refixed and all legitimate claims have been paid and his claim for post retirement complementary pass will be issued as and when applied for in the proper format. Since there was a case pending against the applicant for alleged possession of disproportionate asset his final settlement dues were not released but provisional pension was granted to the applicant as per order in OA 243/97. Since the applicant was in sick list from 28.10.91 to 28.8.93, he was granted annual increment notionally from his due date of increment i.e. on 1.9.92 as claimed by him but monetary benefit has been given only after

his resumption on duty from leave. The pension is calculated on the last ten months pay. The contentions of applicant that his pay might have been Rs.2420/- w.e.f. 1.9.92. It is averred that at the relevant period he was on sick and resumed his duty on 29.8.93 only, therefore, the said pay was admissible only on that date (Annx.R6). The contention that pension and other final settlement benefits were fixed at a lower rate is not correct. The matter of interest on delayed payment of gratuity is under examination of the competent authority. The promotion was not granted due to court case pending against him and when the cases were over he superannuated. Since he did not shoulder higher responsibility higher pay could not be granted to him retrospectively. Monetary benefit has been granted from 29.8.93. The arrears of pay and leave salary has already been paid. There is no merit in this case and the same is to be dismissed.

3. We have heard Mr.Martin G Thottan counsel for the applicant and Mr.P.Haridas, counsel for the respondents. The learned counsel for the applicant submitted that the applicant is entitled to get the benefits as per the orders of the Tribunal in OA 586/02 as also the benefit declared by the Railway Board circular. The respondents on the other hand persuasively argued that the orders of the Tribunal has been fully complied with and the applicant is not entitled for any further benefit.

4. We have perused the pleadings, evidences and materials placed on record and gave due consideration to the arguments advanced by the learned counsel. The crux point to be considered in this case is whether the benefit that has been



ordered in OA 586/02 was granted to the applicant or not. It is profitable to quote the operative portion of the said judgment which is as follows:

"We dispose of this application with a direction to the second respondent to consider Annx.A2 representation of the applicant taking into account Annx.A1 judgment by which the applicant was acquitted and in the light of Annx.A3 Railway Board Circular and to take an appropriate decision as expeditiously as possible. We also direct that if on such consideration the applicant is found entitled to the benefits and interest as claimed, to make available to him the same as expeditiously as possible at any rate within a period of three months from the date of receipt of a copy of this order. No costs."

5. Admittedly, the applicant was not granted the benefits since a criminal case was pending against him which was disposed of by judgment of the Special Judge Assam, Guwahati, dated 16.11.01 acquitting him of the offences with which he was charge sheeted under Sec.13(2) read with Sec.13(1)(e) of the Prevention of Corruption Act, 1988. Admittedly, there was no departmental proceedings against the applicant at any point of time. The entire denial of the benefits was due to the pendency of the criminal trial. The learned counsel for the applicant has brought our notice the circular of the Railway Board, Annx.A4 dated 15.4.91, stipulates that the judicial proceedings pending at the time of retirement and subsequently one is exonerated of all charges such an employee 'the payment of gratuity has been authorised after three months from the date of his retirement interest may be allowed beyond the period of three months from the date of retirement'. In the light of the said rule this Court has directed to grant all benefits arising out of such situation vide Annx.A3 order.



6. The counsel for the applicant also took our notice to the decision reported in Union of India & Ors. Vs. K.V.Jankiraman & Ors., 1993 SCC(L&S) 387 and para 23 reads as follows:

"23. There is no doubt that when an employee is completely exonerated and is not visited with the penalty even of censure, indicating thereby that he was not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post. It was urged on behalf of the appellant authorities in all these cases that a person is not entitled to the salary of the post unless he assumes charge of the same. They relied on F.R 17(1) of the Fundamental Rules and Supplementary Rules which reads as follows:

"Fr.17(1) Subject to any exceptions specifically made in these rules and to the provision of sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties.

Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence."

7. In the light of the said citation we have to evaluate whether the applicant was granted the admissible benefit and Annx.A6 is faulted.

8. The grievances of the applicant in short are that: (i) treating the period of suspension as duty; (ii) regularisation of the applicant's suspension period as LAP/LHAP; (iii) promotion denied to the applicant as CA in scale Rs.1640-2900 on account of the pendency of judicial proceedings; (iv) DCRG, commutation of pension, etc on the basis of total service, (v) recalculation and re-fixation of pension and grant of regular pension from 1.9.93, (vi) interest on delayed payment retiral benefits and (vii) post retirement complimentary pass according to applicant's eligibility.



9. Our attention is drawn to Rule 1320 of Indian Railway Establishment Code, Vol.II akin to FR 26 reckoning service for increments which stipulates that 'for the purpose of arriving at the date of the next increment in that time scale, the total of all such periods as do not count for increment in that time scale shall be added to the normal date of increment.' Admittedly in Anxx.A6, it is clear that the periods from 28.10.91 to 2.7.92, 3.7.92 to 18.9.92 and 19.9.92 to 28.8.93 the applicant has been granted LAP, LHAP and EOL respectively and from 29.8.93 to 30.9.93 has been treated as on duty. As per Anxx.A6 calculation, we find that his next increment is due as 1.9.92 for which period he was on leave. Therefore, his pay was fixed on 29.8.93 when he was made available his increment was fixed Rs.2360 on 1.9.91 and next increment Rs.2420 could not have been granted on 1.9.92 as he was on EOL (without pay) and it was fixed on 29.8.93 (date of rejoining duty). The very next month i.e. on 1.9.93 on a schedule time the next increment was granted as Rs.2480. It is clear from rule position that the period of EOL (without pay) is not counted for increment. Therefore, we are of the view that the increment that has been granted vide Anxx.A6 cannot be faulted and has been correctly done. So also the claim for considering the suspension period as duty has already been done in Anxx.A6 order and therefore does not require a further consideration at our hands. If this is accepted, the DCRG, Commutation, pension, etc. has been correctly calculated and paid to the applicant.

10. However, we find that the promotion of the applicant has been withheld because of the proceedings and by virtue of Janakiraman case (supra) he should have been promoted when his junior was promoted which has not been done in this case. The dictum laid down by the Hon'ble Supreme Court in Janakiraman case (supra) we are of the view that the applicant is entitled



for notional promotion when his juniors were promoted as CA in the scale 1640-2900 w.e.f. 7.5.91. Since it is not a selection post but a post of seniority cum fitness, we declare that the applicant is entitled to get promotion when his immediate junior was promoted. However, since the applicant had not shouldered the higher responsibility, he will not be eligible to get monetary benefits but will be entitled for notional fixation till his date of retirement and arrears will be paid to him from 1.10.1993 onwards. Accordingly his pay should be re-fixed from 7.5.91 (junior promoted) notionally till his date of retirement. With regard to other claims such as complementary pass, interest, etc, the respondents have submitted that they are under process which may be expedited. This does not require adjudication. The respondents shall expedite the process of granting interest and complementary pass as assured in the reply statement as per rules.

11. In the conspectus of above facts and circumstances, we are of the considered view that the applicant is entitled to get his promotion as discussed above and his pensionary benefit may be revised/refixed and actual arrears should be paid from the date of retirement i.e. from 1.10.93 till the amount is paid to him. The entire exercise of refixing his pay and grant of other benefits on such promotion and decision on interest and complementary pass should be finalised within four months from the date of receipt of a copy of this order. Since the applicant is aged 69 years and reported to be sick the time schedule should be strictly adhered to. In the circumstances we allow the O.A to that extent with no order as to costs.

(Dated, 9th November, 2004)

H.P.28

(H.P.Das)
Administrative Member



(K.V.Sachidanandan)
Judicial Member.