

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO.132/2009

Dated this the 6th day of July, 2010

C O R A M

**HON'BLE MR.JUSTICE K. THANKAPPAN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

**A. Aloysious S/o late Antony D'Cruz
Retired Station Superintendent Grade-I
Kumhari Railway Station, South Eastern Railway
resident of Yesuvilasom Banglow,
Padappakara PO Padappakara,
Kundara, Dist. Quilon
Kerala State.**

.. Applicant

Vs

- 1 Union of India represented through the
General Manager, South East Central Railway
District & PO Bilaspur,
Chhattisgarh**
- 2 Chief Personnel Officer
South East Central Railway
District & PO Bilaspur,
Chhattisgarh**
- 3 Senior Divisional Personnel Officer
South East Central Railway
W.R.S. Colony, Dist. Raipur
Chhattisgarh**
- 4 Assistant General Manager,
Regional Officer, Dena Bank
Raipur, Chhattisgarh**

5 Manager, Dena Bank
 Tatibandh Raipur
 Chhattisgarh.

Respondents

By Advocate Mr. Thomas Mathew Nellimoottil for R 1 to 3
Advocate Mr. C. Ajithkumar for R-5

The Application having been heard on 17.6.2010 the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

This Application is filed by a retired Railway employee, for disbursement of pension arrears w.e.f. 1.1.1996 to 31.10.2006 and payment of interest for the delay in disbursing the arrears.

2 The facts in brief are that the applicant retired on 31st August, 1994 while working as Station Superintendent at Kumhari Railway Station under the South East Central Railway. While so, in 1978 he filed O.A. 732/1998 before the Jabalpur Bench of the Central Administrative Tribunal seeking for a direction to consider his case for promotion to the post of Station Superintendent and Station Superintendent (SS) at par with his next junior one Shri N. Gopalan, with all benefits including the fixation of pay and revision of pension, etc. The Tribunal allowed the Application. But the respondents moved a Review Petition, which was dismissed. Upon dismissal of the Review Application, the respondents Railways challenged the order of the Tribunal before the the High Court of Chhattisgarh which upheld the order of the Tribunal. The applicant filed SLP before the Apex Court challenging the judgment of the High Court which according to him

74

partially allowed the Writ Petition. However, the Apex Court confirmed the judgment of the High Court. The applicant has filed this O.A. Challenging the affidavit filed before the Apex Court to the effect that they had paid to the applicant Rs. 4238/- pension from January, 1996 to 31st March, 2004 and Rs. 6357/- from April 2004 to 31st August, 2004 and that as undertaken before the Apex Court payment was not paid to him even after three years. Therefore, he has filed this Application for disbursement of pension arrears from 1.1.1996 to 31.10.2006 and also interest at 10% per annum till actual payment is made.

3 The respondents 1-3 and the respondent-5, have filed reply statements separately.

4 The respondents 1 to 3 prima facie opposed the jurisdiction of the Ernakulam Bench of the Tribunal to adjudicate on the matter and the O.A is barred by the principle of Res judicata. They submitted that the applicant is still residing at Tatibandh, Raipur and he has to produce evidence that he is having permanent residence in Kerala. They further stated that the applicant had raised the very same issue before the Jabalpur Bench of the Tribunal through O.A. 732/98, which was heard and orders pronounced. That order was affirmed by the judgment of the High Court Chhattisgarh and Apex Court. Therefore, they contended that the Application is hit by the principle of Res judicata.

5 The respondents produced the modified PPO order dated 15.9.2006 and the pay revision orders and calculation statement prepared in pursuance of order of the Jabalpur Bench of the Tribunal. They further stated that while calculating the arrears, the Bank

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inadvertently deposited Rs. 3,42,541/- on 21.11.2006 in the account of the applicant which was recovered immediately. They stated that there was an amount of Rs. 44,370/- which was to be recovered. Aggrieved with the recovery process, the applicant filed W.P. 566/2008 before the High Court of Chhattisgarh which was dismissed on 14.11.2008. They submitted that the applicant has already been paid revised pay, pension and retiral benefits flowing from the orders of the Jabalpur Bench of the Tribunal.

6 In the reply statement filed by the 5th respondent, they have submitted that an error was committed by the Bank in calculating the pension arrears since 1.1.1996. Though they have credited Rs. 3,42,541/- in the account of the applicant, the Bank withdrew Rs. 3,12,000/- only as sufficient amount was not available in the account to recover the entire amount wrongly credited. The actual arrears due to the applicant was calculated by the Bank in consultation with respondents 1 to 3 and an amount of Rs. 58,901/- for the period from September, 2004 to October, 2006 was credited on 28.11.2006 and the residuary recovery of Rs. 30,541/- was effected simultaneously.

7 The applicant filed rejoinder contesting the averments in the reply statements.

8 We have heard the party in person, the learned counsel appearing for the contesting respondents and perused the records produced before us.

9 We notice that the applicant moved the Jabalpur Bench of the

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Tribunal seeking for a direction for promotion to the post of Station Superintendent and Station Superintendent (SS) at par with his next junior one Shri N. Gopalan, with all benefits including the fixation of pay and revision of pension, etc. That O.A was allowed by the Tribunal. The operative portion of the order dated 23.7.2003 is extracted below:

"13 The upshot of the aforesaid discussions is that the Original Application has much force and substance and it stands allowed. The applicant shall be entitled for promotion in the scale of Rs. 550-750(RS) as Dy. Station Superintendent and in scale Rs. 700-900(RS) as Station Superintendent Grade-II w.e.f. 18.82/18.83 and also as Station Superintendent in grade-I in the scale of Rs. 2375-3500(RPS) w.e.f. 1.3.93, with all the consequential benefits at par with his next junior Shri N. Gopalan (Respondent NO. 5). The retiral benefits as also the Pension shall also be revised accordingly. The official respondents are directed to comply with these orders and extend due benefits to the applicant within a period of three months from the date of receipt of a certified copy of this order."

It is clear from the above order that the Application was allowed. The applicant was entitled to be promoted to the post of Dy. Station Superintendent/Station Superintendent Grade-II/ Station Superintendent Grade-I w.e.f. 18.82, 1.8.83 and 1.3.1993 respectively. Therefore, he is entitled to pay fixation on each promotion and consequential revision of pension and retiral benefits within three months' period.

10 The review petition filed by the respondents against the above order was rejected by the Tribunal.

11 The order of the Tribunal was implemented by the DPO in the following manner:

In obedience to Hon' CAT/JBPL's judgment delivered on 23.7.2003 in O.A. 732/98 in the matter of A. Alloyis Vs. UOI & Others, Shri A. Alloyis, Retd. SS-II/Kumhari is promoted as



Dy. SS(Scale 550-750) IIIrd PC w.e.f.18.82/18.83

Station Supdt.-II(Scale 700-900) IIIrd PC w.e.f. 18.82/18.83

Station Supdt.-I Scale 2375-3500/- w.e.f. 13.93 IVP.C.

With all consequential benefits at par with his most junior Shri M. Gopalan. He is also entitled for retiral benefits.

12 However, the respondents moved the High Court of Chhattisgarh, Bilaspur challenging the order of the Tribunal on the O.A. as well as on the R.A. Through WP NO. 450/2004 which was disposed by judgment dated 12.5.2005. The operative portion is extracted below:

"7. Respondent NO. 1 has retired from service way back on 31.8.1994 and it will not be proper for this court to reopen the case of respondent NO. 1 to promotion after his retirement at this stage. The matter should be closed and respondent NO. 1 should be given all his financial benefits as per the judgment of the Tribunal in O.A. 732 of 1998 dated 25.7.2003 and in accordance with the order dated 31.10.2003 passed by the Divisional Personnel Officer, South East Central Railway, Raipur quoted above. The amount of Rs. 1,18,635/- (Rupees one lakh eighteen thousand six hundred and thirty five only) deposited with the Registry of this Court towards the said financial benefits together with interest if any, accrued on the said deposit may be withdrawn by respondent No. 1. We make it clear that the case of respondent NO. 1 will not be treated as a precedent while deciding the claims of all other officers who may be placed in the same position as respondent No. 1."

From the above judgment it is clear that the High Court affirmed the order of the Tribunal but observed that it will not be treated as a precedent.

13 The applicant filed SLP NO. 20745/2005 before the Hon'ble Supreme Court for directing the respondents to pay interest on current market rate. The Apex Court disposed of the SLP as follows:

"We find no reason to interfere with the impugned judgment. However, the learned Additional Solicitor General appearing for the Union of India submits that all the benefits accrued to the petitioner pursuant to the order passed by the Central Administrative Tribunal, Jabalpur Bench, Jabalpur, as confirmed by the High court will be made available to the petitioner within a period of three months from today. The statement of the learned Additional Solicitor General is recorded.

The Special Leave Petition is disposed of accordingly."



14 In this view of the matter, the dispute regarding promotion and pay fixation at par with Shri Gopalan, his junior, is settled with the order of the Jabalpur Bench of the Tribunal affirmed by the judgments of the High Court and Apex Court. There is no direction in the order of the Tribunal on the payment of interest. Accordingly, the DPO issued orders promoting the applicant as directed in the CAT order and consequently fixed pay on each promotion and revised the pension and arrears paid. The matter has attained finality.

15 Since the applicant argued vociferously that he is denied payment of pension arrears in full as ordered by the High Court and the Apex Court, an officer from South Eastern Railway, Raipur was summoned who produced copies of PPO issued in 1996 and the revised PPO issued in 2006, refixing his pension. The applicant was not satisfied and he filed Annexure A-42, the calculation sheet showing the amount due to him. Therefore, the disbursing bank viz. Dena Bank, Tatibandh Branch, Raipur (the 5th respondent) was asked to file a statement showing the particulars of payment made by the Bank. Accordingly, Annexure R-5(a) to (d) were filed showing payment particulars from September, 1994 to January, 2009. On comparison of A-42 filed by the applicant and R-5(a) to (d) produced by the Bank, it is seen that the applicant claims Rs. 29,24,870/- as due to him, while bank has disbursed Rs. 11,89,959/- which includes Rs 42147/- paid in excess. Out of Rs. 29,24,870/- claimed by the applicant, the pension arrears from 1.1.1996 to 31.10.2006 is Rs. 3,05,792/-, DR is Rs. 14,40,961/- and interest for the period from 1.1.1996 to 15.1.2010 is Rs. 11,78,117/- . A perusal of the calculation sheet submitted by the applicant shows that he has accounted for the full amount of pension without deducting the


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commuted value and the dearness relief granted for 6 months is availed of for 12 months. The undisputed fact is that the applicant has accepted vide A-46 the pension due as calculated by the respondents. The Apex Court has not granted interest. The applicant has made mistakes in calculation of DR, in not deducting commuted value of pension and adding interest till 2010 which was not allowed. Therefore, respondent cannot be faulted for not acceding to his demands.

16 In view of the above, the O.A has become infructuous. If the applicant had any dispute regarding the revision of pay, pension and calculation of arrears, he should have specifically represented pin pointing the error. He has not chosen to do so. The order of the Jabalpur Bench of the Tribunal became final with the confirmation of the order by the Apex Court in 2005. The respondents required reasonable time for fixation of the pay, calculation of the pay arrears, fixation of the pension, calculation of the retiral benefits and arrears of pension. The applicant who retired on 31st August, 1994 had moved the Tribunal for promotion at par with his junior only in 1998 after four years of his retirement.

13 In this view of the matter, there is no merit in the O.A. Accordingly, it is dismissed. No costs.

Dated 6th July, 2010


K. NOORJEHAN
ADMINISTRATIVE MEMBER
kmn


JUSTICE K. THANKAPPAN
JUDICIAL MEMBER