

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.163/04

Thursday this the 16th day of December 2004

C O R A M :

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

P.V.Gopalakrishnan Nair,
(Retired Deputy Station Superintendent,
Khanapur Railway Station,
South Central Railway,
now South Western Railway)
Residing at 803, Vasantham,
Kaimanom P.O., Thiruvananthapuram.

Applicant

(By Advocate Mr.M.P.Varkey)

Versus

1. Union of India represented by
General Manager, South Western Railway,
Hubli, Karnataka - 580 040.
2. The Senior Divisional Finance Manager,
Hubli Division, South Western Railway,
Hubli, Karnataka - 580 040.
3. The Senior Divisional Personnel Officer,
Hubli Division, South Western Railway,
Hubli, Karnataka - 580 040.

Respondents

(By Advocate Mr.P.Haridas)

This application having been heard on 16th December 2004
the Tribunal on the same day delivered the following :

O R D E R

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

The applicant a railway pensioner is aggrieved that in the Pension Payment Order (Annexure A-4) his pension has not been fixed duly taking into account the average emoluments received by him in terms of Rules 49 & 50 of the Railway Service Pension Rules 1993 and that a sum of Rs.20,000/- has been recovered from his gratuity unjustifiably. The applicant has therefore filed this application seeking the following reliefs :-

- a. quash the memorandum dated 7.11.2002 and Annexure A-4 PPO, holding that Annexure A-1, Annexure A-2 and Annexure A-3 have abated due to default of the respondents.

b. declare that the applicant is entitled to get his pay, retiral/terminal benefits, as if Annexure A-1, Annexure A-2 and Annexure A-3 were not issued, including resultant arrears/refund thereunder, and direct the respondents accordingly.

c. or in the alternatively, declare that the applicant is entitled to retain the pay actually drawn by him during the last ten months of his service and to have his retiral/terminal benefits computed accordingly, including consequential arrears/refunds thereunder.

d. direct the respondents to issue a revised PPO in favour of the applicant corresponding to item (b) or (c) above, as the case may be.

e. direct the respondents to release Rs.20,000/- recovered/withheld as per Annexure A-4 and grant overtime allowance for the periods ending 9.3.2002, 6.4.2002 and 4.5.2002.

2. The material facts of the case as stated in the application are as follows :- While working as Deputy Station Superintendent in scale Rs.6500-10500/- at Khanapur Railway Station in Hubli Division of South Central Railway the applicant participated in an agitation on 10/11.8.1997. The applicant was issued with major penalty charge memorandum on 23.10.1997 alleging detention of train on 11.8.1997. After holding an inquiry by Annexure A-1 order dated 24.2.2000 of the Senior Divisional Operation Manager, Hubli the applicant was awarded a minor penalty of withholding his increment due as on 1.3.2000 raising his pay from Rs.8700 to Rs.8900 in scale Rs.6500-10500 for 24 months (NR). The applicant submitted an appeal. However the appeal was rejected by Annexure A-2 order dated 12.10.2001 of the Additional Divisional Railway Manager. The applicant was granted his annual increments due on 1.3.2000 raising his pay to Rs.8900 and on 1.3.2001 raising his pay to Rs.9100. However all of a sudden the applicant's pay was reduced to Rs.8700/- with effect from October 2001, but after a period of five months his pay was raised to Rs.9300 with effect from 1.3.2002 i.e. after the expiry of the term of reduction in terms of Annexure A-1

order. The applicant sought voluntary retirement from service and he was permitted to retire from service with effect from 31.5.2002. He had filed a revision against Annexure A-2 order, rejecting his appeal which was by Annexure A-3 order dated 20.8.2002, after his retirement, closed confirming the penalty. The applicant received on 3.1.2003 a cheque for Rs.4,31,887/towards terminal benefits without showing any details. However his PPO was not till then issued. Ultimately the impugned PPO was issued on 14.1.2003 wrongly calculating his pension and terminal benefits basing on the pay of Rs.8700/- while as a matter of fact the applicant had been receiving pay at the rate of Rs.9300 p.m. Aggrieved by the alleged wrong fixation of pension and terminal benefits the applicant submitted a representation in reply to which he received Annexure A-5 copy of letter addressed to the 3rd respondent by the 2nd respondent directing him to send a reply to the representation. Aggrieved by the recovery of Rs.20,000/- and non payment of over time allowance and the wrong fixation of pension the applicant has filed this application seeking the aforesaid reliefs.

3. Respondents in their reply statement contend that the PPO was issued taking into account the average emolument drawn by the applicant, that the contention of the applicant that he drew normal annual increment from 1.3.1999 onwards is not true to facts, that his pay at Rs.8700 with effect from 1.3.1999 was continued up to 20.2.2002 on account of the imposition of the penalty of withholding of increment for a period of 24 months, that Rs.9900 was recovered on account of over payment on the basis of revision of increment drawn in favour of the applicant by order dated 7.11.2002 (Annexure R-1), that the withheld sum of



Rs.20000 was released after adjusting over payment of Rs.9900 and that the over time allowances due to the applicant had already been paid. The respondents contend that the applicant is not entitled to any of the reliefs now sought.

4. The applicant has filed a rejoinder in which the contention of the respondents that the withholding of increment with effect from 1.3.2000 continued and the applicant got the increment on expiry of the period of penalty has been refuted and to establish this the applicant produced Annexure A-7 series pay slips from August 2001 to May 2002. It has also been contended that Annexure R-1 refixing the applicant's pay revising increments from 1965 is unauthorised, incompetent and vitiated and contrary to Rule 47 of the Railway Service Pension Rules.

5. When the application came up for hearing learned counsel of the applicant states that the applicant is not now pressing the claim for over time allowances but is limiting the claim for refund of Rs.9900 recovered from the applicant's gratuity only and for fixation of pension reckoning his pay at Rs.9300 as if Annexure A-1 to Annexure A-3 were not implemented in full but only for a period of five months.

6. I have carefully perused the pleadings and other materials placed on record. In view of the statement made by the learned counsel of the applicant the controversy in this case now is limited to the recovery of Rs.9900 from the DCRG and correctness of fixation of pension and other terminal benefits due to the applicant. The recovery become necessary according to the respondents because of revision of increments drawn in favour of



the applicant from 1965 onwards as was made in Annexure R-1 memorandum dated 7.11.2002. According to the respondents since the applicant was suffering the penalty of withholding of increments due on 1.6.2000 (as per memo dated 7.11.2002) raising his pay from Rs.8700 to Rs.8900 for a period of 24 months restoration of his pay to Rs.9300 was to be made on 1.6.2002 on which date the applicant voluntarily retired the pay drawn by the applicant for the preceding ten months was reckoned as Rs.8700 and this is perfectly in order. It is the contention of the respondents in the reply statement that the applicant was drawing pay at Rs.8700 with effect from 1.3.1999 which was continued up to 20.2.2002 and that the contention of the applicant that his pay was reduced to Rs.8700 from October 2001 to February 2002 is not correct. From Annexure A-7 series the pay slips of the applicant from August 2001 to May 2002 it is seen that in August and September 2001 the applicant was getting pay at Rs.9100, that his pay was reduced to Rs.8700 in October 2001 and that it was raised to Rs.9300 in May 2002 which continued till his retirement. It is therefore seen that the contention of the respondents in Para 9 of the reply statement that the applicant's pay from 1.3.1999 till 20.2.2002 remained at Rs.8700 on account of the penalty of withholding of increment is not true to fact. The action on the part of the respondents in reviewing the increments drawn by the applicant from 1965 onwards by an order dated 7.11.2002 (Annexure R-1) long after his retirement on 1.6.2002 is without jurisdiction and unsustainable in law. Although Annexure A-1 order of the disciplinary authority imposing on the applicant a penalty of withholding increment due on 1.3.2000 was upheld by appellate order Annexure A-2 as also the revisional order Annexure A-3, in spite of the fact that

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there was no order of stay it is seen that the penalty was omitted to be implemented for a long time and it was in effect implemented only during the period October 2001 till February 2002. The non implementation of the penalty was not on account of any omission by the applicant or on the basis of any order of stay. The pension and other terminal benefits are to be computed strictly taking into the average emoluments actually received by the railway servant during the last ten months of his service in terms of the provisions contained in Rules 49 & 50 of the Railway Service Pension Rules. In terms of Rule 47 of the Railway Service Pension Rules the service record of a railway servant who has completed 25 years of service or who has only 5 years of service to retire have to be verified and communicated to the incumbents concerned and once that is done the particulars and details should be taken as final unless there is a change in the rule or orders. In this case the applicant completed 25 years of service in 1990 and therefore according to Rule 47 of the Railway Service Pension Rules the respondents had no authority at all to reopen the records of his service and vary the entries regarding drawal of increments etc. on 7.11.2002 after his retirement to his detriment. Thus it is seen that Annexure R-1 dated 7.11.2002 is illegal and unjustified and the PPO (Annexure A-4) to the extent it reduce the terminal benefits is defective and unsustainable to that extent. The penalty of withholding of increment for a period of 24 months awarded by Annexure A-1 order and confirmed by Annexure A-2 and Annexure A-3 orders can be taken to have been effective only during October 2001 till February 2002 and the respondents are bound to recompute the terminal benefits accordingly and to refund to the applicant the withheld amount.

7. In the result the impugned PPO (Annexure A-4 order) is set aside to the extent it wrongly fixes the applicant's terminal benefits and make recovery therefrom and Annexure R-1 as it is incompetent and the respondents are directed to refund the applicant a sum of Rs.9900/- now withheld from his gratuity, to compute the terminal benefits of the applicant taking into account the pay actually drawn by the applicant ignoring Annexure R-1 and deeming that the effect of Annexure A-1 to Annexure A-3 was only reduction of pay by two stages from October 2001 to February 2002 and to make available to the applicant monetary benefits including arrears resultant therefrom within a period of two months from the date of receipt of a copy of this order. Revised PPO also shall be issued. There is no order as to costs.

(Dated the 16th day of December 2004)



A.V. HARIDASAN
VICE CHAIRMAN

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