

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.177 of 1992

Friday this the 26th day of November, 1993

CORAM

THE HON'BLE MR.JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

G.Kuttappan Nair
Retired Y.M/QLN
Ushas, Vengulam,
Edava PO, Trivandrum Dist. ...Applicant
(By Advocate Mr. P.Sivan Pillai)

Vs.

1. Union of India through the
General Manager, Southern Railway,
Madras.3. X
 2. The Divisional Personnel Officer,
Southern Railway, Trivandrum-14. X
 3. The Divisional Accounts Officer,
Southern Railway, Trivandrum-14. X
 4. D.P.O. S.Rly, Madurai Divn. Madurai X
(By Advocate Mrs. Sumati Dandapani) X
- ... Respondents

O R D E R

Applicant a retired Yard Master in the Southern Railway, seeks to quash Annexures A1 to A4 orders by which part of his gratuity and leave salary were withheld, and pay revised. After long years of service, on 30.11.91 applicant retired. Last pay drawn by him was Rs.2300/- and on that basis his pension was fixed at Rs.1102/- After his retirement by Annexure A4 respondents concluded that applicant had received an unearned increment on 28.6.77. On this basis they found that excess payments had been received by applicant. According to them salary was wrongly fixed as Rs.2300/- while it should have been only Rs.2100/-.

2. Learned counsel for applicant relied on several decisions of this Tribunal and submitted that gratuity is property within the meaning of Article 300-A of the Constitution and that except in accordance with law, such property cannot be taken away. The same principles should apply to leave salary and salary, submits applicant.

3. In answer, learned counsel for respondents, who argued her case vehemently, submitted that applicant knew of the unearned increment and that he should not be allowed to enjoy that benefit. Decisions of this Tribunal cited by applicant including the one Swapan Kumar Saha and others Vs. Union of India and others, (1993) 23 ATC 902 takes the view that payments like those in the instant case, would be property within the meaning of Article 300-A of the Constitution. Such property cannot be taken away except in accordance with law. It is admitted that not even a show cause notice preceded the impugned orders. Recovery cannot therefore be sustained. That apart, if the Railways with its various departments could not discover an alleged wrong payment in 14 years it, does not lie in their mouth to say that applicant should have known of it, and should not have received the payment. Equity and principle of fairplay stand in the way of Railways from recovering the alleged excess payment (even

assuming it was an excess payment) at this distance of time. It follows that Annexures A1 to A4 cannot be sustained and have to be quashed. Accordingly Annexures A1 to A4 are quashed. It follows that pension will have to be determined on the basis of last pay drawn by applicant ie., Rs.2300/-. The amounts withheld will be paid to applicant within three months from today. If the payment is not effected within that period respondents will be liable to pay interest on that amount at 18 percent from a date after three months of today, till the date of payment.

4. Application is allowed. Parties will suffer their costs.

Dated 26th November, 1993.

Kankarannair
CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

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