

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.328/09

Wednesday this the 17th day of March 2010

C O R A M :

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

N.Sahadevan,
S/o.K.N.Neelakandan,
Retired Telecommunication Inspector Gr.I, Bilaspur.
Presently South East Central Railway).
Residing at Suja Bhavan, Vrindavan Nagar – 37,
Kadappakkada, Kollam – 681 008.

...Applicant

(By Advocate Mr.T.C.Govindaswamy)

V e r s u s

1. Union of India represented by the General Manager,
South East Central Railway, Bilaspur, Chattisgarh.

2. The Divisional Railway Manager, Bilaspur
Railway Division, South East Central Railway,
Bilaspur, Chattisgarh.

3. The Senior Divisional Accounts Officer,
South East Central Railway,
Bilaspur, Chattisgarh.

4. The Senior Divisional Personnel Officer,
South East Central Railway,
Bilaspur, Chattisgarh.

...Respondents

(By Advocate Ms.P.K.Nandini [R1-4])

This application having been heard on 17th March 2010 the Tribunal
on the same day delivered the following :-

O R D E R

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant has served South East Central Railway for the period
from 30.11.1956 to 30.10.1986. He retired voluntarily from the service of



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the said Railways with effect from 1.11.1986 to take up an appointment as an Assistant Manager (S&T), RITES. As per the rules then prevailing, he was paid pension with effect from 1.11.1986 vide pension payment order No.Pen.BSP/3455/L120-99/BK/OA/P/36/117 dated 29.3.1988 issued by the 3rd respondent, namely, the Senior Divisional Accounts Officer, South East Central Railway, Bilaspur. Thereafter, he commuted the entire pension (100%) and the same was sanctioned and paid to him, vide order dated 17.2.1989. According to the applicant, since there were no rules regarding restoration of pension in respect of those who have commuted the full value of the pension at the time of their retirement, he was not expecting any further payment of pension. However, pursuant to the judgment of the Hon'ble Supreme Court dated 15.12.1995 in Writ Petition (C) No.11855/85 Ministry of Personnel, Public Grievances & Pensions, Department of Pension & Pensioners' Welfare, Government of India, issued the Annexure A-3 O.M No.4/3/86-P&PW (D) dated 13.1.1998 restoring the one-third commuted portion of pension in respect of Government servants who had drawn lumpsum payment on absorption in a Public Sector Undertaking/Autonomous Body. The Railway Board also issued the Annexure A-4 R.B.E.No.25/98 stating that the aforesaid O.M of the DOP&PW will apply mutatis mustandis to the Railways servants. The applicant has thus become entitled for restoration of one-third commuted portion of pension after 15 years of the receipt of the commuted portion of pension. Since he has not been given any order restoring his one-third commuted portion of pension, he has approached the 2nd respondent vide series of representations dated 25.6.2007, 11.2.2008 and 2.10.2008



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(Annexure A-4, Annexure A-5 and Annexure A-6 in the OA). Since there was no response from the respondents, he approached this Tribunal by this OA seeking a direction to the respondents to restore the commuted value of pension in the manner and to the extent mentioned in Annexure A-3 O.M dated 13.1.1998 and to pay the interest at the rate of 12% per annum on the arrears of pension and allowances calculated from the date from which the arrears fell due month after month, up to the date of full and final settlement of the same.

2. The 2nd respondent, had during the pendency of this OA finally issued the letter No.SR.DFM/PEN/BSP/Revised/1/3/comm dated 16.11.2009 restoring the one-third commuted portion of pension and family pension of the applicant and issued the authorisation to the Branch Manager, State Bank of India (Link Br.), Main Branch, Kollam, Kerala to pay the revised one-third commuted portion of pension with effect from 17.5.2004 to 31.12.2005 at the rate of Rs.2628 + DP + DR (DR on Rs.3371 ie. consolidated full pension) as admissible from time to time and thereafter ie. with effect from 1.1.2006 (as per 6th Pay Commission) at the rate of Rs.5371 + DR (on Rs.7620 ie. consolidated full pension) as admissible from time to time. The family pension has also been fixed as per 6th Pay Commission at the rate of Rs.3500 + DR as admissible from time to time. Arrears for the period from 17.5.2004 to till date due to restoration of one-third commuted portion of pension was also to be worked out and paid to the applicant by the Bank. Now, only his 2nd prayer regarding payment of 12% interest on the delayed payment of pension survives. Counsel for the



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applicant has submitted that in terms of the Annexure A-3 O.M dated 13.1.1998 the respondent Railways ought to have issued instructions on their own to restore his one-third commuted portion of pension and to pay the same from due date ie. from 17.5.2004 or by a nearby date. However, they have not done so. Even after repeated reminders also they have not taken any action in the matter. He was, therefore, forced to approach this Tribunal against the inaction on the part of the respondents. Finally, it was only on 16.11.2009 that they have restored his pension. He has, therefore, submitted that the respondents are liable to pay interest at 12% p.m for the delayed restoration of one-third commuted portion of pension.

3. Counsel for the respondents, on the other hand, submitted that the applicant has never approached the respondent Railways nor his Bank at the right time ie. on or before 17.5.2004 with the request to restore the one-third commuted portion of pension as admissible to him in terms of the Annexure A-3 O.M. Since the first representation of the applicant in this regard was admittedly only on 25.6.2007, there was no inordinate delay on the part of the respondents in restoring the one-third commuted portion of pension and arrears.

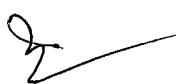
4. We have heard learned counsel Shri.Mohanakumar for the applicant and learned counsel Ms.P.K.Nandini for the respondents. We have also considered the rival contentions. It is a fact that before the issuance of Annexure A-3 O.M dated 13.1.1998, there was no provision to restore the one-third commuted portion of pension to the applicant. The decision to



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restore the one-third commuted portion of pension was taken by the Government on the directions of the Supreme Court contained in its judgment dated 15.12.1995 in Writ Petition (C) No.11855/85. In terms of the aforesaid judgment, when the Government of India has issued instructions to all its Ministries and Departments to restore the one-third commuted portion of pension, the Railway Board has also extended the said facility to its employees mutatis mustandis. Then, it was the bounden duty of the respondents to extent the benefits of the aforesaid O.M to the applicant also on time. But they did not take any action in the matter. The applicant had to make several representations requesting the respondents to restore his pension. Finally, it was only on 16.11.2009 ie. after a lapse of more than 5 years the respondents have issued the letter No.SR.DFM/PEN/BSP/Revised 1/3 comm dated 16.11.2009 restoring the one-third commuted portion of pension of the applicant, that too, after he has approached this Tribunal by this OA and notice was issued to the respondents.

5. In our considered opinion, there is definitely a lapse on the part of the respondents in restoring the commuted portion of pension of the applicant on time or within a reasonable time. Therefore, the respondents cannot escape from their liability to pay the interest on the delayed payment of pension to the applicant. However, in our opinion, 12% interest sought by the applicant is quite high compared to the prevalent rate at which the Banks are paying now. We, therefore, direct the respondents to pay interest at the rate of 9% to the applicant for his restored one-third



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commuted portion of pension from 17.5.2004 till the same was paid within a period of three months from the date of receipt of a copy of this order. In default, the rate of interest will be 12% per annum. There shall be no order as to costs.

(Dated this the 17th day of March 2010)



K.NOORJEHAN
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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