

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH, LUCKNOW

**Original Application No.256/2009
This the 11th Day of November 2011**

Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

A.P. Dixit aged about 67 years S/o Late D.S. Dixit R/o 557/27 Cha
Omnaagar, Alambagh, Lucknow.

...Applicant.

By Advocate: Sri A. Moin.

Versus.

1. The Union of India through General Manager, Northern Railway,
Baroda House, New Delhi.
2. Deputy Chief Engineer (Construction) Northern Railway,
Charbagh, Lucknow.
3. Financial Advisor and Chief Accounts Officer, Northern Railway,
Baroda House, New Delhi.
4. Senior Accounts Officer (Constructions), Northern Railway,
Charbagh, Lucknow.

.... Respondents.

By Advocate: Sri S. Verma.

ORDER (Dictated in open Court)

By Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

This O.A. has been filed for the following relief's:-

"a). to quash the impugned order dated 28/30.5.09
passed by the Respondent No.2 as contained in
Annexure A-1 to the O.A.

b). to direct the respondents to calculate the entire
retiral dues of the applicant by taking his basic pay at
Rs.12,600/- and for payment of recalculated and
enhanced dues to the applicant within a specified
time with interest @ 18% p.a. from the date of his
superannuation i.e. 31.7.02 till the date of actual
payment.

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c). to direct the respondents to refund amount of Rs.102289/- wrongly deducted from the leave encashment of the applicant with interest @ 18% p.a. w.e.f. 31.07.2002 till the date of actual payment.

d). to pay interest on the late payment of gratuity of Rs.1209798/- w.e.f. 31.07.2002 till the date of actual payment i.e. 30.08.2002.

e). to pay interest @ 18% p.a. on the late payment of partial leave encashment amounting to Rs.205568/- from the date , the same become due i.e. 31.07.02 till the date of actual payment i.e. 17.5.2003."

2. The applicant's case is that he was appointed in Indian Railways as Assistant Inspector of Works (Construction) in the Northern Railway in the year 1963. He retired from the post of Senior Civil Engineer (Construction), Northern Railway on 31.07.2002. At the time of his retirement, he was drawing his basis pay at Rs.12,600/-. But out of total amount of his leave encashment of Rs.307857/-, he was paid only some of Rs.205568/- after making recovery of Rs.102289/-. Initially no reason was assigned for this recovery but subsequently, vide order dated 28/30.5.2009 (Annexure-A-1), it was informed that this recovery was done on account of wrong fixation of pay. It has also come to the notice of the applicant that the pay of the applicant was calculated by taking his basic pay at Rs.12,275/- instead of Rs.12,600/-, which was fixed at the time of his promotion, which he continued to draw till the date of his superannuation. Similarly, less gratuity of Rs.102289/- was also paid. It is said that the aforesaid correct details were filled up on the eve of his retirement (Annexure-A-4) and those particulars were verified by putting a signature of controlling officer at the bottom of both the pages. Therefore being aggrieved the applicant preferred

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O.A.No.81/2009, which was decided on 06.03.2009, directing the respondents to consider and dispose of the pending representation dated 20.11.2008, within a stipulated period. In furtherance thereof, the impugned order dated 28/30.05.2009 (Annexure-A-1) has been passed saying that in the case of the applicant his basic pay as per cadre position was 12,275/- only whereas, due to inadvertence, it was calculated on the basic pay of Rs.12,600/-, which he was drawing at the time of his retirement while working in construction division.

3. The respondents have contested the O.A. by reiterating what has been said above in the aforesaid order dated 28/30.05.2009 (Annexure-A-1). It has been further clarified that on account of this, recovery and adjustment were made in the retiral dues.

4. The applicant has also filed Rejoinder Affidavit, mainly reiterating the averments made in the O.A.

5. Heard the learned counsel for the parties and perused the material on record.

6. At the outset, the learned counsel for the applicant places reliance on the Division Bench order of this Tribunal dated 16.03.2009, rendered in O.A.No.128/2004 in an identical matter. He says that this order squarely applies in the present case.

7. I have carefully gone through the aforesaid order. It has been observed in this order that as the law is settled on the point that if no fraud or misrepresentation is attributed to a retiree, no recovery of arrears due to alleged wrong fixation can be made. Similar principle has been laid down by Hon'ble Apex Court in the case of **Babulal Jain Vs. State of M.P. (2007) 6 SCC-180**, which has been

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reiterated in **Col. B.J. Akkara (Retd.) Vs. Government of India, 2007 (1) SCC (L&S) -529**. In the aforesaid O.A.No.128/2004 also reduction of his pay fixation was made vide order dated 11.02.2003, without affording an opportunity and also on that ground his pay has not been fixed on the last pay drawn at Rs.8475/-. The respondent's case was that the pay was wrongly fixed without considering his lien in the parent organization while working in Construction Department. This Tribunal therefore, observed that firstly, the applicant was deprived from reasonable opportunity before correcting his pay that too after his retirement. Moreover, wrong fixation has not been attributed to the applicant for any fraud or misrepresentation. Therefore, any recovery made cannot be sustained in law as well as on the principle as opined in the above two cases decided by the Hon'ble Apex Court. It was further clarified that pensionary benefits are to be fixed as per last pay drawn and all other ancillary benefits are to be worked out accordingly. Therefore, with this observation, the O.A. was allowed setting aside the recovery made against the applicant and the respondents were directed to refund the amount already recovered. In respect of fixation of retiral dues, it was directed that the same may be fixed on the basis of last pay drawn and the pensionary benefits may be re-calculated accordingly. A simple interest of 9 % from the date it is due till it is actually paid was also awarded. Concededly, writ petition filed against the order of this Tribunal in the aforesaid O.A.No.128/2004 has been dismissed and as such, this order has attained finality.

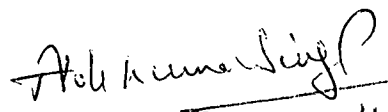
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8. The facts and circumstances of the present case are identical and the preposition of law laid down in the aforesaid cases of **Babulal Jain (Supra)** and **Col. B.J. Akkara (Supra)** of Hon'ble Apex Court squarely applies to this case. Similarly, the aforesaid observations made in the order dated 16.03.2009 passed by Division Bench of this Tribunal in O.A.No.128/2004 also gives support to the case of present applicant. There is no quarrel on the point that in the case of the applicant the last pay drawn was Rs.12,600/- and recovery has been made on account of alleged wrong calculation. But neither any fraud nor any misrepresentation has been attributed to the applicant. The deducted amount of gratuity was paid within a month of the retirement to the applicant. Under the rules no specific period has been stipulated for payment of retiral dues such as leave encashment etc. But, as per practice and procedure, which is normally followed, time of three months is supposed to be reasonable time within which such payments ought to have been made. In the present case, in respect of partial payment of leave encashment, it was made after about nine months. Thus there is apparent delay of at least six months.

9. Consequently, the O.A. is partly allowed. The impugned order dated 28/30.05.2009 (Annexure-A-1) is hereby set-aside. The respondents are directed to refund the recovered amount of leave encashment amounting to Rs.102289/- alongwith 9% simple interest within a period of three months from today.

10. In respect of fixation of retiral dues, it is directed that the same shall be calculated on the basis of last pay drawn i.e. Rs.12,600/- and the pensionary benefits may be re-calculated

accordingly. The consequential difference of arrears shall also be paid within three months alongwith simple interest of 9% from the date it is due till the date of actual payment. The applicant shall also be entitled to get simple interest of 9% for six months on the delayed payment of leave encashment. No order as to costs.


(Justice Alok Kumar Singh) 11.11.11
Member (J)

Amit/-