

Central Administrative Tribunal, Lucknow Bench, Lucknow  
Original Application No.131/2011

This the 1st day of May, 2013

Hon'ble Sri Justice Alok Kumar Singh, Member (J)  
Hon'ble Sri D.C. Lakha, Member (A)

M.C. Joshi aged about 70 years son of late Sri N.D. Joshi, resident of 548/309, Mohani Sadan, Surya Nagar, Rajajipuram, Lucknow-226017.

Applicant

By Advocate: Applicant present in person

Versus

1. Union of India through the General Manager, northern Railway, Head Quarters Office, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. The Financial Adviser and Chief Accounts Officer, Northern Railway, Head Quarters Office, Baroda House, New Delhi.

Respondents

By Advocate: Sri S.Verma

(Reserved on 22.4.2013)

ORDER

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

The reliefs have been sought in this O.A. in the following manner:-

i. That the Hon'ble Tribunal may kindly issue an order or direction in the nature of MANDAMUS thereby directing the respondents to arrange immediate fixation of pay @ Rs. 9700/- w.e.f. December, 1998 and onwards correcting the wrong done.

ii. Arrear of pay w.e.f. 15.2.99 till the date of payment calculating enhanced D.A. from time to time and thereafter fixing the pay further as per VIth Pay Commission report. A copy of such calculation be made available to the applicant for information and verification by his Chartered Accountant.

iii. Difference of commuted amount.

iv. Interest on delayed payment @ 18%.

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v. Issue of Supersessional PPO as per direction of Hon'ble Tribunal dated 2.9.08 indicating issued as per directives of Hon'ble CAT.

vi. issue of corrected service certificate correcting the designation as Divisional Chief Commercial Inspector instead of CMI/LKO only.

vii. Cost of the case.

viii. Cost of harassment to the applicant, his wife and family members compelling the applicant to commit suicide.

2. Briefly stated the case of the applicant is that after putting in a service of 33 years 7 months and 14 days, the applicant took voluntary retirement w.e.f. 15.2.99. At the relevant time, his basic pay was Rs. 9700/- which he was getting from December, 1998 itself. But the official respondents, on the pretext of wrong fixation of pay due to mistake of Clerk, had issued a PPO for lesser amount. He therefore, filed earlier O.A. No.456/2007 which was allowed by this Tribunal on 2.9.2008 directing the respondents to refix the pay of the applicant as Rs. 9700/- as on 28.2.99 and thereafter, to recalculate the retirement dues and to pay the same with all arrears.

This order was challenged by the official respondents by filing writ petition which was dismissed. But even then the respondents did not comply with the order. Therefore, a CCP No. 73/09 was filed. But on the basis of statement/ information given by the learned counsel for the official respondents that on 24.2.11, the required revised Pension Payment Advise has already been issued, the contempt petition was struck off in full and final satisfaction on 16.3.2011. But when the applicant received it, he found that this PPO has not been prepared in accordance with the directions contained in the aforesaid order/ judgment of this Tribunal. Rather, it has been prepared in accordance with some general instructions contained in some O.M. and Railway Board's letter as mentioned in the note

appended at the foot of the PPO. In the PPO, though, the last pay has been shown to be 9700/- as on 15.2.99 (date of compulsory retirement) but the last 10 months basic pay has been wrongly calculated without adding increment of Rs. 225/- from the month of December, 1998. The total of 10 months basic pay ought to have been Rs. 95313/. If this amount is divided by 10 to work out average pay, it would come to Rs. 9531.3/- i.e. in round figure Rs. 9531/. Therefore, the pension ought to have been fixed at Rs. 9531 divided by two i.e. Rs. 4765.5. The round figure would come to Rs. 4766/. But without adding the increment in the month of December, 1998, they have wrongly calculated the final pension amount to be Rs. 4654/- which is short by Rs. 112/. In support of the averment, a calculation chart prepared by a private chartered Accountant has also been placed at Annexure-4. The contention of the applicant is that the respondents have thus thrown chilly in the eyes of the applicant and have also misguided this Tribunal. Hence this O.A.

3. The respondents have contested the O.A. by filing a Counter Affidavit admitting that under RTI, the applicant was informed that his basic pay in the month of December, 1998 was 9700/- but it was on account of a clerical error on the part of pay clerk. Regarding pay sheet for the month of Feb, 1999, it was informed that the same was unavailable. Further, it has been pleaded that the burden of proving the applicant's pay as on 1.12.98 was 9700/- per month is on the applicant himself. (But it has already been decided in the aforesaid previous O.A.). It has been admitted that earlier O.A. No. 456/2007 filed in this regard by the applicant was allowed in his favour with a direction to the respondents to refix the pay of the applicant as Rs. 9700/- as on 28.2.99 and to re-calculate the retirement dues and to pay the arrears within a period of 3 months. It has been also admitted that the respondents had preferred Writ

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Petition No. 1940 (SB) of 2009 before Lucknow Bench of Hon'ble High Court which has been dismissed on 22.12.2009 in limine. But according to respondents a review application No. 87/2010 had been filed which is still pending. It has also been admitted that in the meanwhile, the applicant preferred CCP No. 73/2009 which was disposed of finally in full and final satisfaction. The contention of the applicant has been denied that the respondents have either thrown chilies in the eyes of the applicant or misguided the Tribunal. In respect of chart prepared by the Chartered Accountant of the applicant, it has been said that it is against the applicant's service record. (But no such service record has been produced).

4. The applicant has filed a rejoinder affidavit enclosing therewith 8 pay slips pertaining to the period from November, 1996 to Feb., 1999 (Annexure RA-3 to RA-10). The applicant has denied the contents of the Counter Affidavit and has reiterated his averments made in his O.A. Regarding the plea taken by the respondents that the O.A. is barred by principle of res-judicata, it has been said that the Hon'ble Tribunal was misguided and closed the contempt petition in good faith.

5. Written arguments have also been filed on behalf of the applicant in support of above averments. No written arguments have been filed from the side of the respondents.

6. We have heard the learned counsel for the parties at length and carefully perused the entire material on record.

7. According to the respondents, this O.A. is barred by principle of res-judicata as the matter pertaining to issuance of new PPO has already been decided by earlier O.A. No. 456/2007 vide judgment and order dated 2.9.2008 and the CCP No. 73/2009 which has also been disposed of in full and final satisfaction. From the other side, it is said that in the earlier O.A., after observing that the pay of the applicant on 1.12.98 was Rs.9700/- finally the

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Hon'ble Tribunal directed the respondents to refix the pay of the applicant accordingly on 28.2.99. As the respondents were not complying with the order, the aforesaid contempt petition was filed. During the pendency of the contempt petition, the learned counsel for the respondents informed that on 24.2.2011, revised Pension Payment advise has been issued. The applicant on the other hand said that he has not received such communication. Then the learned counsel for the respondents handed over an electro-stat copy of the same and believing the learned counsel for the respondents, the applicant in good faith, conceded that his grievance has been redressed. Under these circumstances, the contempt petition was struck of on 16.3.2011. But there is an uncontroverted averment in the present O.A. that the respondents have misguided the applicant as well as the Tribunal and the revised PPO dated 24.2.2011 is nothing else but an eye wash, in which though last pay has been shown to be Rs. 9700/- on 28.2.99 but while calculating his pension on the basis of last 10 months basic pay, the respondents have done it without adding increment of Rs. 225/- from the month of December, 1998. In other words, though basic pay of December, 1998 and January, 1999 was also Rs. 9700/- as already observed in the order/judgment of earlier O.A., but the respondents have wrongly treated his pay to be Rs. 9475/- in both the months. Consequently, on the basis of calculation of average of last 10 months basic pay and then working out the final pension, a shortage of Rs. 112/- has occurred. There is also an uncontroverted averment that in fact this PPO has been prepared in accordance with O.M. and letters of the Railway Board etc. as mentioned under the heading note appended at the foot of the PPO. It was not prepared in compliance of this Tribunal's direction. For this reason, no where in this PPO it has been mentioned that the PPO is being prepared in compliance of this Tribunal's

direction. Since the last pay as on 15.2.99 or 28.2.99 was shown to be Rs. 9700/- as was mentioned in the operative order of this Tribunal, the applicant and this Tribunal had a first hand impression that the actual compliance has been made. For this reason, the contempt was struck of. In these circumstances, the applicant did not have any other option but to file this O.A. for adjudicating and clarifying certain minute details which could not have been possible in the contempt or execution jurisdiction. Moreover, in the earlier OA., the basic contention was that the last pay of the applicant at the time of voluntary retirement was Rs. 9700/. But, this Tribunal has made a discussion in para 2 to the effect that according to RTI information furnished by the respondents themselves, the pay of the applicant on restructuring was fixed as Rs. 9475/- w.e.f. 1.12.97 and with the addition of an increment of Rs.225/- on 1.12.98 , the pay has risen to Rs. 9700/- on 1.12.98 and at the time of retirement in February, 99, the same pay existed. However, in the operative portion , the only direction was to refix the pay of the applicant as Rs. 9700/- as on 28.2.99 whereas in the present O.A., a slightly different relief has been sought for fixation of pay @ Rs. 9700/- w.e.f. December, 1998 and onwards. Besides, the aforesaid relief, in the same sequence, few other reliefs have also been sought in respect of fixation of pay as per VI pay Commission and payment of interest on account of delay etc. Therefore, in view of the aforesaid peculiar facts and circumstances, this OA. Cannot be said to be barred by principle of res-judicata.

8. As already said above, in the earlier O.A. No. 456/2007, it has been already observed that the pay of the applicant would be Rs.9700/- on 15.2.99 in the scale of Rs. 7660-11,500/. It was further observed in para 2 of the judgment /order in the previous O.A. that on restructuring the pay of the applicant was fixed at Rs. 9475/- w.e.f. 1.12.97 and an increment of Rs. 225/- on 1.12.98

raises the pay to the tune of Rs. 9700/- as on 1.12.98. In response to this, there is only a bald contention on behalf of the respondents that it was on account of an error committed by the bill clerk. But neither any material or any details could be given by the respondents nor this pleading could be substantiated by them.

9. From the side of the applicant, a calculation chart prepared by a private Chartered Accountant or the above lines has also been filed which is placed at Annexure -4. The respondents have neither filed any chart along with Counter Affidavit to controvert it nor they could specify any thing wrong in this chart. They have simply said that it is against the record but in fact it is based on their own information given under RTI. Moreover, the respondents have not filed any contrary record, if any, of which none other than the respondents themselves are custodian. Thus they have suppressed the best possible evidence due to which an un rebuttable presumption has also to be drawn against them that since the record was in favour of the applicant instead of respondents it has not been produced by the respondents. The applicant on the other hand has also brought on record 8 pay slips pertaining to the period November, 1996 to February, 1999 (Annexure RA-3 to RA-10) in support of his contention. But again the respondents could neither controvert it by filing any Supplementary CA nor they could file any contrary revised pay slips for the relevant period. The respondents have only pleaded that the burden of proving that the applicant's pay as on 1.12.98 was Rs. 9700/- p.m. is on the applicant himself. But in fact, it has already been found proved as was observed in favour of the applicant by this Tribunal in para 2 of the judgment /order of the previous O.A. as mentioned herein above. Moreover, from the aforesaid discussion also, this Tribunal has reached the same conclusion and therefore reiterate it. The above finding has also attained finality because the W.P.No.

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1940/2009 filed by the respondents has been admittedly dismissed on 22.12.2009 and that too in limine. Mere pendency of review application against that order does not help the respondents as there is no stay order. The pay of the applicant in December, 1998 was Rs. 9700. Therefore, on the basis of calculation of last 10 months basic pay as already discussed in para 7 of this order, the final pension would come to Rs. 4766/- + admissible D.A. and not Rs. 4654/- as has been wrongly worked out in the pension payment advise dated 24.2.2011. Accordingly, commuted pension , if any has also to be worked out.

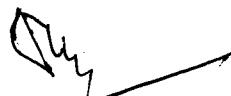
10. A relief has also been sought for arrears of pay w.e.f. 15.2.99 and for fixing the pay as per VI Pay Commission . There cannot be any objection in respect of fixation of pay in accordance with VI th Pay Commission. Similarly, the arrears of pay if any w.e.f.15.2.99 has to be worked out which would be a natural consequence of the rectification exercise regarding which direction is also being accorded in the concluding paragraph herein below. The applicant has also sought interest @ 18% on delayed payment. But he has not disclosed the relevant period. However, in view of the aforesaid facts and circumstances, in our view the applicant is entitled to get interest @ 9% on delayed payment of arrears/ retiral dues at least from the date of filing of this O.A. i.e. 25.3.2011 till the date of actual payment.

11. The applicant has also sought a relief for issuance of correct service certificate mentioning his designation as Divisional Chief Commercial Inspector instead of CMI/Lucknow. But there is uncontroverted averment from the side of the respondents that there is no such post . Though a Commercial Inspector attached or posted in Divisional Office are colloquially referred as Divisional Commercial Inspector. Therefore, this relief cannot be granted.

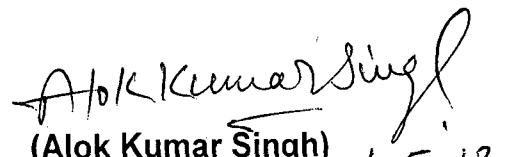
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12. Lastly, a request has also been made that after issuing correct PPO, it may be sent at his residential address i.e. 548/309, Mohani Sadan, Surya Nagar, Manak Nagar, Lucknow-226011 and not at Almora address as was allegedly done on the last occasion as was wrongly told on 16.3.2011 during contempt proceedings. It has also been said that he is a senior citizen aged about 70 years and his retiral dues after revised calculation may be sent by means of a cheque at the aforesaid address. We believe that needful would be done by the respondents in this respect.

13. In view of the above, the O.A. is partly allowed. The respondents are directed to fix his pay at the rate of Rs. 9700/- w.e.f. December, 1998 and then issue revised PPO in the light of the discussions made herein above in this order. The respondents are also directed to further fix the pay of the applicant as per VI th Pay Commission report in accordance with rules and also to work out and pay the entire arrears of pay/ retiral benefits, if any along with interest at the rate of 9% per annum on delayed payment w.e.f. 25.3.2011 (the date of filing this O.A.) till the date of actual payment.. The entire exercise may be completed positively within 3 months from the date of this order. No order as to costs.

  
(D.C. Lakha)  
Member (A)

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(Alok Kumar Singh)  
Member (A)  
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