

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Original Application No.476/2006

Reserved on: 27.7.2012

Pronounced on: 29.8.2012

Hon'ble Dr. K.B.S. Rajan, Member (J).

Hon'ble Mr. S.P. Singh, Member (A)

Suraj Bali, aged about 56 years, S/o Shri Kallu Ram,
R/o 1/429, Lucknow, Vinay Khand-I,
Gomti Nagar, Lucknow.

...Applicant.

By Advocate: Sri Pankaj Kumar Awasthi

Versus.

1. Union of India through the General Manager, North Eastern Railway, Headquarters Office, Gorakhpur.
2. Chief Personnel Officer, North Eastern Railway, Headquarters Office, Gorakhpur.
3. Divisional Railway Manager, North Eastern Railway, Lucknow Division, Lucknow.
4. Senior Divisional Personnel Officer, North Eastern Railway, Lucknow Division, Lucknow.

.... Respondents.

By Advocate: Sri Narendra Nath

(Reserved on 27.7.2012)

ORDER

By Hon'ble Dr. K.B.S. Rajan, Member (J).

While working as Office Supt Grade 1 in the pay scale of Rs.2000 - 3200 (revised pay scale of Rs.6500 - 10,500) the applicant submitted his papers for voluntary retirement on 27-11-1996 effective from 28 - 02-

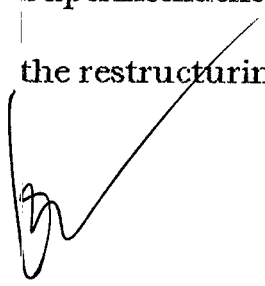
1997. However, this application was later on sought to be withdrawn vide representation dated 21-2-1997. This representation for withdrawal of voluntary retirement was not taken into consideration and the applicant was retired effective from 28th of February 1997. The applicant moved OA No. 685 of 1997 which was decided on 6th September 2002. The operative portion reads as under: -

"In the present case, though the offer of voluntary retirement was accepted on 6-2- 1997, but the effective date was 28-02-1997 and till that day it reached, the relationship of master and servant continued and the applicant was fully entitled to withdraw his offer before the relationship came to an end. In view of the aforesaid, impugned order cannot be sustained.

Shri A.K. Gaur, learned counsel for the respondents submitted that the applicant was facing a major penalty and to avoid that, he had offered voluntary retirement. It is also submitted that several other complaints were made against the applicant. However in the present case we are not concerned with the alleged fact. If there are charges against the applicant, it shall be open for the respondents to initiate the disciplinary proceedings.

For the reasons stated above, this OA is allowed and the order dated 6-2-97 is quashed. The applicant shall be reinstated on the post. However, applicant shall be entitled for 50% of the back wages during which he was out of service."

2. By the time the above order was passed, the applicant who stood retired was in receipt of pension as per rules. In pursuance of the above order of this Tribunal, the applicant was reinstated and he resumed his duties on 21-03-2003. He was also promoted to the post of Chief Office Superintendent in the scale of Rs 7450 - 11500 w.e.f. 01-11-2003 under the restructuring scheme, vide order dated 03-08-2004.



3. As a part of compliance of the above order, respondents have paid 50% of the wages for the period the applicant was kept out of service and the amount of 50% of wages was constituted by 50% of basic pay and allowances and 50% of house rent allowance and city compensatory allowance. In view of the fact that the applicant was paid a salary (though 50% of the wages), recovery of pension paid to the applicants till then on the basis of his earlier retirement from 28 - 02 - 1997 was sought to be made.

4. The applicant claims that by the order^{of} this Tribunal, he is entitled to retain the pension paid to him in addition to 50% of the back wages and further there should have been no truncation in the quantum of house rent allowance and city compensatory allowance which shall be hundred percent even if the pay is 50% as per the court's order. The applicant further claims that during the interregnum period as one of his juniors Shri R.K.S. Chauhan had been promoted to the post of Chief of the Supt w.e.f. 20 - 06 - 2003, his promotion to this post should also be advanced accordingly. Hence this O.A. claiming the following reliefs:-

- (i) To set aside the order dated 20.1.2003, modified through order dated 25.3.2003 and 22.7.2004 (Annexure No.1, 2 & 3 respectively to this Original Application) as far as it relates to the recovery of pension paid w.e.f. 1.3.1997 to 31.12.2002 from 50% of back wages payable from 1.3.1997 to 20.1.2003 and payment of only half of House Rent Allowance and City Compensatory Allowance for the period from 1.3.1997 to 20.1.2003 instead payment of full House Rent Allowance and City Compensatory Allowance for the period from 1.3.1997 to 20.1.2003.

- (ii) To issue an appropriate order or direction directing the respondents not to recover the pension paid w.e.f.

- 1.3.1997 to 31.12.2002 from 50% of the backwages payable from 1.3.1997 to 20.1.2003 and to pay the pension w.e.f. 1.1.2003 to 21.1.2003.
- (iii) To issue appropriate order or direction to the respondents to pay full House Rent Allowance and City Compensatory Allowance for the period from 1.3.1997 to 20.1.2003 instead of half of the House Rent Allowance and half of the City Compensatory Allowance for the said period.
 - (iv) To issue appropriate order or direction to the respondents to refund the amount recovered from the applicant in pursuance of the order dated 20.1.2003, read with the orders dated 25.3.2003 and 22.7.2004 (Annexure No.1, 2 & 3 respectively to this Original Application).
 - (v) To issue appropriate order or direction to the respondents. To promote the applicant as Chief Office Superintendent, pay scale Rs.7450-11500 from 10.5.1998 instead of 1.11.2003 with all consequential benefits of difference of salary i.e. 50% from 10.5.1998 to 20.1.2003 and full w.e.f. 20.1.2003 seniority etc.
 - (vi) To issue an appropriate order or direction to the respondents to credit earned leave and leave at half average pay on medical ground to the applicant's account for the period from 1.3.1997 to 20.1.2003.
 - (vii) To issue any other order or direction deemed fit and proper by this Hon'ble Tribunal in the facts and circumstances of the present case.
 - (viii) To allow the Original Application with cost."

4. Respondents have contested the OA. They have stated that the applicant was granted 50% of pay and allowances including 50% house rent allowance etc., as per the direction of this Tribunal. He is not entitled to hundred percent of the house rent allowance etc. Further, for the same period he cannot be allowed to receive the pension. As such, recovery of pension was ordered. As regards advancing the date of promotion, respondents stated that the same would amount to multiple relief sought in one application which cannot be granted.

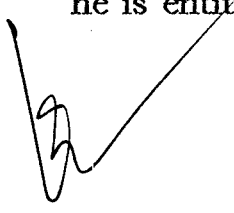


6. The applicant filed his rejoinder in which he has reiterated the contentions made in the OA.

7. Counsel for the parties argued on the basis of the pleadings.

8. Arguments were heard and documents perused. In so far as advancing the date of promotion of the applicant is concerned, respondents are right when they contended that the matter is to be agitated separately as it cannot be taken as a consequential relief to the main prayer of grant of pay and allowances and non-recovery of pension drawn. So far as promotion is concerned, the applicant has to satisfy the documentary evidence that he is senior to the other individual and in addition, he has to implead the other individual as, promotion cannot be granted to two persons simultaneously, against one post. As such this part of the prayer has to be kept aside without being considered. However, liberty to the applicant to take recourse to legal remedies as admissible under the law is granted.

9. Coming to the matter relating to grant of simultaneous pension and pay (although 50% thereof), for one and the same period, it is to be clarified that a person is not entitled to receive salary and pension for the self same period. If he received pension, it means that he was not a serving employee and if he is in receipt of salary, he cannot be a pensioner. As such, the applicant is under the mistaken impression that he is entitled to both pension as well as salary. If the applicant meant

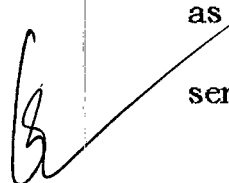


that it was the intention of the Tribunal that along with pension, the wages granted to the extent of 50% would constitute full pay, it is to be held that the same too is a misunderstanding. Had the Tribunal wanted to direct full pay and allowances, it would have ordered accordingly and would have directed that the extent of pension paid to the applicant would be adjusted against the amount due to him. This is not the case here.

10. Thus, what is left is only whether the applicant is entitled to full House Rent Allowance and City Compensatory Allowance. When 50% of wages is ordered, it is to be understood that the applicant is entitled to pay and allowances as if he is on leave on half the average pay. When a person is on leave on half the average pay, he is entitled to full House Rent Allowance and City Compensatory Allowance. May be, there could be some restriction on total number of days, but in the instant case, the applicant is entitled to 50% of the basic pay plus 100% House Rent Allowances for the period he is granted 50% of the wages.

11. Thus, the implication of the order in OA No. 685 of 1997 is as under:-

(a) There is no question of retention of pension during the period the applicant was kept away from service as this period is treated as duty and the applicant cannot claim pension when he was still serving.



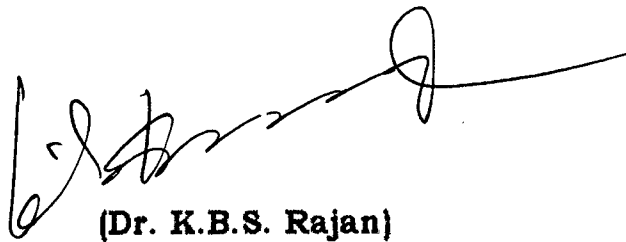
(b) The extent of entitlement of pay and allowance during the period the applicant was kept out of service is 50% of pay (basic pay) and dearness allowances, but the extent of House Rent allowance and CCA would be full and not restricted to 50%.

(c) The applicant, if he so desired may claim for advancing his promotion, which should be through a separate OA and his entitlement for the same has to be tested if he files a fresh OA.

12. The OA is **disposed of** on the above terms. No orders as to cost.



(S.P. Singh)
Member(A)



(Dr. K.B.S. Rajan)
Member (J)