

⑤

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH
CAMP AT NAGPUR

O.A. NO: 624/88

199

~~XXXXXX~~

DATE OF DECISION 9.3.1992

Ram Sobhraj Khilnani

Petitioner

Mr. P.C.Madkholkar

Advocate for the Petitioners

Versus

Divnl. Railway Manager, Nagpur Respondent

Mr. P.S. Lambat

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice U.C.Srivastava, V/C

The Hon'ble Mr. M.Y.Priolkar, M (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *n*
2. To be referred to the Reporter or not ? *N*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *N*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *n*

mbm*

U.C.
(U.C.Srivastava)
V/C

(16)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY
CAMP AT NAGPUR
* * * *

Original Application No.624/88

Ram Sobhraj Khilnani ... Applicant

V/s

Divisional Railway Manager, CR,
Nagpur. ... Respondent

CORAM : Hon'ble Vice-Chairman, Shri Justice U.C.Srivastava
Hon'ble Member (A), Shri M.Y.Priolkar,

Appearances:

Mr. P.C.Madkholkar, Advocate
for the applicant and
Mr. P.S.Lambat, Counsel
for the respondent.

ORAL JUDGMENT:
(Per. U.C.Srivastava, Vice-Chairman)

Dated : 9.3.1992

The applicant now dead and represented by legal representatives was promoted as Driver 'A' Special Grade Rs.550-750 with effect from 1.5.1986. The applicant took voluntary retirement and retired from 1.9.1987 because of his eye injury. The applicant was placed in the pay scale of Rs.1600-2660 prior to his retirement and his salary was fixed at Rs.2540/- which he was drawing till the date of his retirement. It appears, after his retirement, according to the department his pay was wrongly fixed and he was entitled to get the pay of Rs.2360/- instead of Rs.2540/-. A recovery of Rs.3000/- was made from the applicant and his pensionary benefits including the gratuity were calculated with that pay. Feeling aggrieved with the same the applicant after giving notice to the respondents approached the Tribunal. The respondents in their reply to the notice informed the applicant that since the grades were merged together

... 2/-

(2)

- 2 -

and his pay was correctly fixed initially as on 1.1.1986, the question of fixation of his pay again from 1.5.1986 in one and the same revised scales of pay Rs.1600-2660 did not arise. But in the written statement which has now been filed by the respondents it has been stated that the applicant's pay was correctly fixed at Rs.2300/- as on 1.1.1986 and on Rs.2360/- as on 1.4.1986 (pay advanced being the date of his increment) and Rs.2420/- from 1.4.87 being the next date of increment but this pay of Rs.2420/- was not effective as he was on sick ^{leave} from 17.1.1987 to 31.8.87. So far as this particular plea is concerned, this plea was not taken by the department later-on. Even if the applicant was on sick leave the applicant could not have been deprived of the increment. The person who is on sick leave and who is entitled to a particular increment earns that increment and that increment cannot be taken away from him only on the ground that he was on sick leave. Consequently the calculation of pension and the pensionary benefits which have been made keeping out the entire deduction is not correct. As a matter of fact the applicant was entitled to a salary of Rs.2420/- during the period from 17.1.1987 to 31.8.1987 and the applicant's pensionary benefits, etc. including gratuity were to be calculated with the same but the same was not done. As far as the recovery is concerned, the applicant's salary was not properly calculated. Further, the department themselves placed him on a particular grade and the applicant worked on that grade and if any mistake was committed it was the mistake ^{which was} committed by the respondent and no one is to suffer because of the mistake and lapses on the part of the Government. As

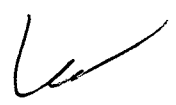
. . . . 3/-

8

- 3 -

such the recovery) should not have been made. In these circumstances the application deserves to be allowed in part. The respondents ~~are~~ directed to refund the sum of Rs.3000/- which they have recovered from the applicant and recalculate his pensionary benefits including the gratuity etc. taking into consideration ~~that~~ the applicant's salary as Rs.2420/- with effect from 1.1.1987 ^{of} ~~with~~ which he was wrongly deprived on the ground that he was on sick leave. Let it be done within a period of three months and thereafter the benefits may be given to the applicant. No order as to costs.


(M.Y. Priolkar)
Member(A)


(U.C. Srivastava)
Vice-Chairman

v/-