

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 973/96

THIS, THE 21ST DAY, OF MARCH, 2002

CORAM: HON'BLE SMT. SHANTA SHASTRY. ... MEMBER (A)

T.S. Ahuja, formerly employed
as Head Luggage Clerk
in Central Railway,
Chhatrapati Shivaji Terminus,
Mumbai. applicant

By Advocate Shri M.S. Ramamurthy.

Versus

1. Union of India,
through General manager,
Central Railway,
Chhatrapati Shivaji Maharaj Terminus,
Mumbai-400 001.
2. The Senior Divisional Commercial
Manager, Central Railway,
Mumbai Division, Chhatrapati
Shivaji Maharaj Terminus,
Mumbai-400 001.
3. The Divisional Commercial Manager,
Central Railway, Mumbai Division,
C.S.M.T., Mumbai-400 001.
4. The Divisional Railway Manager (P),
Central Railway, divisional
Office, Personnel Branch, Mumbai,
C.S.M.T. Mumbai-400 001. .. Respondents

By Advocate Shri S.C. Dhawan.

O R D E R (ORAL)

The applicant has made the following prayers:

- (a) that the respondents be directed to forthwith pay the applicant the monthly pension on the basis that the applicant had been compulsorily retired from service as Head Luggage Clerk scale Rs.425-640 and on the basis of rate of pay of Rs.515/- p.m. and corresponding rate of pay in the corresponding scale of pay as from

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1.1.1986 subject to adjustment on the outcome of Original Application No.350 of 1993 and Original Application No.880 of 1984;

- (b) without prejudice to prayer (a) above, the Respondents be directed to calculate and pay the monthly pension on the basis of the purported reversion to the grade of Rs.330-560 as per Order dated 11.2.1986 subject to adjustment on the final outcome of OA No.350 of 1993 and O.A. No.880 of 1994;
- (c) that the Respondents be directed to arrange to pay the arrears of monthly pension from 14.2.1986 upto date on the basis of grant of pension in terms of prayers (a) or (b) above, subject to adjustment on the outcome of O.A. No.350 of 1993 and O.A. No.880 of 1994;
- (d) that the Respondents be directed to pay to the applicant the following retiral dues:
 - (i) the amount standing to the credit of the applicant on his Provident Fund account together with interest accrued thereon;
 - (ii) the amount of gratuity payable to the applicant for his service commencing from 25.3.1955;
 - (iii) leave encashment benefit;
 - (iv) Group Insurance Scheme amount;
 - (v) Annual Bonus for the years 1985 onwards;
 - (vi) Refund of Security Deposit together with interest accrued thereon upto date amounting to approximately Rs.45,000/- till date.

2. These prayers were also subject to adjustment on the outcome of OA No.350/93 and 880/94. This OA was filed on 05th September, 1996. While the OA was pending finalisation, the two OAs namely 350/93 and 880/94 came to be decided. OA No.350/93 was decided on 20.6.2000. This OA was for quashing and setting aside the order of purported reversion. The OA was dismissed by the Tribunal. Thereafter, the applicant filed W.P. No.849/2001 in the High Court of Bombay. The High Court

dismissed the writ petition in limine with the observation that the respondents had submitted that the challenge to the petitioner's reversion would be infructuous as the order was never served upon him, because of his compulsory retirement. In short, the reversion order had not become effective and therefore, the High Court held that the grievance made by the petitioner in challenging the reversion order was wholly misconceived and premature. However, the High Court granted liberty to the petitioner to challenge the same in case the reversion order was served upon the applicant.

3. The OA No.880/94 in which the order dated 29.3.94 of compulsory retirement of the applicant was challenged, was allowed by order dated 19th July, 2001 by this Tribunal by quashing and setting aside the impugned orders dated 12.02.1986 and 29.3.1994 and holding that the applicant shall be entitled to pay and allowances and other retiral benefits in accordance with law and rules. However, this order of the Tribunal has been carried over to the High Court by the respondents and it is submitted by the learned counsel for the applicant that the High Court had granted stay in this respect. The learned counsel could not produce a copy of the order of the High Court in this connection as it has not been made available by the office of the High Court. However, it is not denied that the stay has been granted.

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4. The applicant has now filed MP No.876/2001 on 18th October, 2001 for amendment of the OA. There is a schedule attached to the MP. The applicant wants to bring on record the two judgments in OA No.350/93 and OA No. 880/94 and the further order of the High Court. The applicant also wants to add that though the respondents started paying pension to him the rate at which it is being paid is wrong. So also the arrears paid on the basis of the aforesaid rate. He has also stated that he has not been paid the amount of Rs.40,915/- towards DCRG etc., and even adjusting the amount of Rs. 19,665/- towards future debit is also illegal. The applicant has further pressed that in view of the High Court order in Writ Petition No.849/2001, he has to be treated as having retired as Head Luggage Clerk in the scale of Rs.425-840 on the basic pay of Rs.515/- per month. It has to be treated as if he was never reverted. The further prayer is that since the order of compulsory retirement has been set aside, he would be entitled to all the retiral dues by treating him as having superannuated on the normal date of superannuation i.e. June, 1994 and to re-calculate all the due on that basis.

5. I have given careful consideration to the rival pleadings in this matter. In my considered view the prayers in the OA have become infructuous as the reliefs were granted in OA No.350/93 and OA No.880/94. Although

OA No.350/93 was dismissed by the Tribunal, the High Court observed that there was no reversion at all in the case of the applicant and therefore, there is no question of granting any relief on the basis of an order which did not exist and as far as the Tribunal is concerned, the Tribunal had already dismissed the OA No.350/93. The applicant would not have been entitled to any relief on that count. Even considering that the High Court granted the relief, if there is any grievance, the matter could be taken up with the High Court.

6. The applicant had also prayed that even assuming that the order of compulsory retirement was confirmed, he was entitled to the dues as on compulsory retirement and since he was never reverted his pension should have been fixed on the basis of his pay drawn in the post of Head Luggage Clerk i.e. at the rate of Rs.515/- per month in the scale of Rs.425-640. The respondents have already submitted in their reply that the applicant was granted pension at the rate of Rs.612/- which is in fact higher than the pay that the applicant was drawing at the time he was retired compulsorily, by the Pension Payment Order dated 16.01.1997. Further retiral dues were paid to the applicant, except for with-holding of an amount of Rs.19,000/- from the gratuity of the applicant. Further, in reply to the MP, the respondents have

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confirmed the various payments made to the applicant as in para 9 of the MP. Thus, the OA has become infructuous.

7. The learned counsel for the applicant, however, urges that his pension should have been fixed on the basis of the pay drawn by the applicant in the post of Head Luggage Clerk and that does not appear to have been done as there is no specific reference to this in the PPO. The learned counsel for the respondents, however, has drawn my attention to a letter dated 17.01.1997 from the Divisional office, Personnel Branch, Mumbai CST addressed to the applicant. In this letter, the applicant's designation is shown as HBC i.e. Head Booking Clerk under the heading - subject. Thus, the learned counsel submits that the respondents have fixed the pension of the applicant on the basis of his pay in the pay of Ex Head Luggage Clerk. Therefore, nothing survives and the MP for amendment of the OA as well as the OA deserve to be rejected. On perusal of the various documents relied upon, I hold that the OA has become infructuous in view of the judgments in OA No.350/93 and 880/94 and also in view of subsequent relief granted by the respondents. The applicant has also admitted that he has started receiving pension but at the wrong rate, but he did not challenge the PPO separately.

8. Be that as it may, it has been established that the applicant has been paid pension in the post of Ex Head Luggage Clerk. Nothing therefore, survives in this OA and accordingly the OA is dismissed as having become infructuous. The MP also therefore for amendment of the OA is not maintainable and is accordingly dismissed. No costs.

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(SMT. SHANTA SHASTRY)

MEMBER (A)

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