

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 1189/96

23-2-98  
Date of Decision:

T.D.Chandna

Applicant.

Shri K.B.Talreja

Advocate for  
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri S.C.Dhawan

Advocate for  
Respondent(s)

CORAM:

Hon'ble Shri. D.S.Baweja, Member (A)

Hon'ble Shri.

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to other Benches of the Tribunal?

*D.S.Baweja*  
(D.S.BAWEJA)  
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

OA NO. 1189/96

pronounced this the 23<sup>rd</sup> day of July 1998

CORAM: Hon'ble Shri D.S.Baweja, Member (A)

T.D.Chandna,  
Ex-AEE/EMU/Matunga,  
under C.W.M/Matunga(C.Rly).

By Advocate Shri K.B.Talreja

... Applicant

V/S.

1. The Union of India  
through the General Manager,  
Central Railway, Mumbai CST,  
Mumbai.
2. The Chief Electrical Engineer,  
Central Railway, Mumbai CST,  
Mumbai.

By Advocate Shri S.C.Dhawan

... Respondents

ORDER

(Per: Shri D.S.Baweja, Member (A))

The applicant was appointed in the Railway service on Central Railway as Assistant Driver (Electrical) on 16.11.1959. He got various promotions from time to time and while working in Group 'B' post as Assistant Works Manager (EMU)Matunga , he sought voluntary retirement from 11.7.1996 giving three months notice of voluntary retirement on 12.4.1996. Subsequently, he sought curtailment of notice period as per his application dated 8.6.1996 on account of sickness of his son. The applicant did not get any reply for his request for curtailment of his notice period and therefore he retired from service on 11.7.1996.

His normal date of retirement on superannuation is 31.10.1996. The applicant has been not paid any settlement dues at the time of retirement or thereafter. The applicant represented on 23.11.1996 for early payment of his retiral benefits but did not get any response. The present OA. has been filed on 2.12.1996 seeking the following reliefs :-

(a) to direct the respondents to pay all the retiral benefits, viz. P.F., Gratuity, Group Insurance, Leave Encashment and Leave Salary for the period from July, 1996 to October, 1996, (b) to direct the respondents to pay the commutation value of the pension, pension and arrears of pension till date, (c) to direct the respondents to pay interest of 18% p.a. for the delayed payment of the settlement dues, and (d) cost of the application.

2. The main thrust of the arguments of the applicant is that the respondents have failed to follow rules to arrange payment of the settlement dues as per the due dates as per Railway Service Pension Rules, 1993. The delay is on account of the administration and therefore the applicant is entitled for payment of the interest for the delayed period.

3. The respondents in the written reply have made a strong plea that the applicant has suppressed the material facts and has not come to the Tribunal with clean hands, and, therefore, the application is bad in law. The respondents have brought out that the request for voluntary retirement was regretted by the competent authority and the same was conveyed as per letter dated 5.7.1996. The applicant was also reverted

(6)

from the Group 'B' post to Group 'C' as per the order dated 17.6.1996. The applicant has retired on 31.10.1996 on attaining the age of 58 years and not voluntarily on 11.7.1996 as claimed by the applicant. The respondents have further stated that applicant reported to the Office of Deputy Chief Electrical Engineer (EMU) Matunga and he was directed to report to the Office of Senior Divisional Electrical Engineer (TRS), Kalyan where he was posted in Group 'C' after being reverted. The applicant was placed under suspension on 31.10.1996 in view of the disciplinary action proposed to be taken against him on account of misusing of First Class Pass Book . The applicant was served with a letter dated 31.10.1996 informing him that he is retiring from Railway service on attaining the age of superannuation while under suspension. In view of this, the applicant is not entitled for the payments of all the settlement dues. The payment of the dues which are admissible to the retired Railway employee against whom the disciplinary action is in progress at the time of retirement has been delayed <sup>due</sup> to the applicant on account of delay in submission of pension papers. The applicant submitted the pension papers only on 20.5.1997 wherein also the applicant purposely indicated his designation in Group 'B' inspite of the fact that he had already been reverted and posted to in Group 'C' post. The applicant was called upon to carryout the changes with regard to the designation but he did not response and therefore the office has to take steps to carryout the corrections in the pension papers.

In view of these facts, the respondents' plea is that there is no delay in settlement dues attributable to the respondents and therefore the applicant is not entitled to interest on the alleged delay in payment.

4. The applicant has filed rejoinder reply refuting the averments of the respondents in the written reply. The applicant submits that he has not suppressed any material facts as he had no knowledge of the letter dated 5.7.1996 as per which his voluntary retirement was regretted and letter dated 17.6.1996 as per which he was reverted to Group 'C' post. The applicant also submits that he was on the sanctioned leave from 12.6.1996 to 27.6.1996 and thereafter he was sick from 28.6.1996 to 29.10.1996 and with the required medical certificate he reported to the office of Deputy Chief Electrical Engineer (EMU) Matunga on 30.10.1996. He never worked in Group 'C' post under Senior Divisional Electrical Engineer (TRS), Kalyan. When he enquired about his payment of settlement dues at the Matunga office, he was directed to contact the office of Senior Divisional Electrical Engineer (TRS) Kalyan. When he went to the Kalyan office after the office hours at 16.45 hrs., the letter with regard to placing the applicant under suspension was handed over to him after the applicant had already superannuated. The applicant further contends that he had filled up the pension papers on 10.6.1996 which were duly witnessed by another officer and the same were submitted to the office of the Deputy Chief Electrical Engineer (EMU), Matunga before proceeding on leave w.e.f. 12.6.1996.

In view of this, the applicant strongly refutes the contention of the respondents that there was a delay on the part of the applicant in submitting the pension papers. In view of these facts, the applicant pleads that he has retired on 31.10.1996 without being under suspension and therefore he is entitled for all the settlement dues.

5. Heard the arguments of Shri K.B.Talreja, learned counsel for the applicant and Shri S.C.Dhawan, learned counsel for the respondents. From the averments made by the respondents in the written reply, it is noted that the applicant has not come out with the material facts in the original application. The applicant has claimed that he retired from service on 11.7.1996 on expiry of the notice period of three months. The applicant has nowhere stated in the original application that he retired on 31.10.1996 on attaining the age of superannuation. Inspite of the applicant not disclosing his date of retirement as 31.10.1996, of salary he has put in a claim for a period from July, 1996 to October, 1996 as one of the reliefs. In case, the applicant had treated himself retired from service on 11.7.1996, it is not clear as to how he continued to be on sick list and also claiming the payment of sick leave from July to October, 1996. It is obvious that the applicant has tried to make out a case that he has therefore retired voluntarily on 11.7.1996. I have no hesitation to endorse the statement of the respondents that the applicant has not come out with the material facts in the original application.

6. From the facts brought out by the respondents and the documentary evidence placed on the record, there is no doubt that the applicant has retired from service on 31.10.1996. The respondents have further brought out that the applicant was put under suspension on 31.10.1996, i.e. on the date of retirement and therefore he has retired while under suspension. The applicant, as indicated earlier, has not disclosed this fact in the original application but has admitted in the rejoinder reply that he was served with a letter dated 31.10.1996 with regard to his suspension but he has sought to repel the contention of the respondents stating that suspension order was served on him only after when the applicant had retired from service. Since the applicant had denied receipt of any order with regard to his suspension, the respondents were asked to produce the relevant letter. This was brought out during the hearing and on perusal of the same, it is noted that the letter has been received by the applicant though he has marked that received after the office hours. These facts established that the competent authority had passed an order of suspension of the applicant and the applicant was informed of the suspension order on 31.10.1996. The applicant has claimed that since the order was served on him after the office hours, the suspension order is not valid and therefore the applicant had retired in the normal course without being under suspension. The applicant, however, has not challenged the suspension order as being illegal and not valid. No amendment has been carried out in the OA. after this fact was disclosed by the respondents in the written reply though it was earlier also.

 in the knowledge of the applicant. Since the issue

of suspension is not under challenge, therefore, I refrain to express any views on the same on merits with regard to the legality of the suspension order. However, it is admitted fact that the applicant was put under suspension on 31.10.1996 and he was informed of the same. In view of these facts, the present case has to be gone into merits accepting the contention of the respondents that the applicant has retired from service on 31.10.1996 while being under suspension.

7. Keeping in view the findings recorded above, the claim of the applicant with regard to the payment of settlement dues and the interest thereon for the delay will be gone into. The respondents have submitted that since the applicant has retired under suspension, he is not entitled to for all the settlement dues. The respondents have brought out that the payments of provisional pension and P.F. contribution have been made. The respondents have attributed the delay in payment of admissible dues to the delay in submission of forms by the applicant. The applicant has controverted this submission of the respondents stating that the necessary pension forms were filled up by him on 10.6.1996 and were submitted to the concerned officer before proceeding on leave on 12.6.1996. In view of this controversy, the respondents were asked to produce the original pension papers based on which the payment of settlement dues as admissible had been processed. The original pension papers have been made available and on going through the same, it is noted that the applicant had filled up the forms on 10.6.1996 treating him self retired voluntarily on 11.6.1996 as per his earlier request for permitting voluntary

retirement with curtailment in the notice period. earlier, However, as brought out there have been subsequent developments. The applicant's request for voluntary retirement was regretted and he was also reverted to Group 'C' post from Group 'B' post. The applicant finally retired on 31.10.1996 on the due date of retirement in Group 'C'. In view of these developments, it is obvious that the pension papers which had been signed by the applicant on 10.6.1996 while working in Group 'B' required changes. The applicant has not come out as to when the pension papers necessary corrections with regard to date of retirement and the designation had been submitted by him. The respondents have brought out that the pension papers were submitted only on 20.5.1997 and that too with the applicant indicating his designation in Group 'B' post. It is noted from averments and it appears that there was a reluctance on the part of the applicant to correct the pension forms as the applicant was maintaining his date of retirement based on his notice for voluntary retirement. In fact, the plea of the applicant that he had submitted his pension forms on 10.6.1996 is controverted as he submitted the form for the payment of P.F. on 4.11.1996. It is noted that this form which is brought on record submitted was also without going through the controlling officer. It is noted from the pension papers that the applicant had also filled the P.F. application and therefore it is not known as to why he made another application for withdrawal or payment of P.F. on 4.11.1996. It can not be ruled out that there was some dispute going on with regard to the date of retirement and the designation of the applicant which perhaps resulted in

delay in submission of proper papers and processing of the payment of the settlement dues as admissible. Keeping in view these facts, I am inclined to accept the contention of the respondents that the pension papers were received duly completed on 20.5.1997. Taking this as a reference, it is to be seen whether there is any delay in payment of settlement dues as admissible as per the extant rules.

8. The respondents during hearing brought out that payment of the provident fund has been made to the applicant on 4.8.1997. Pension Pay Order has also been released on 17.4.98. These facts were not controverted by the applicant. Keeping in view the observations with regard to the late submission of completed pension forms, it is my considered view that applicant is not entitled for any payment of interest for delay in payment of P.F. As regards the payment of pension, obviously there is delay and the explanation given by the respondents for delay in Pension Payment Order is not convincing. Even allowing the period of processing of two months for arranging the pension, there is considerable delay in issue of the Pension Pay Order and the applicant deserves to be compensated by way of interest on the delayed payment.

9. The applicant is, therefore, entitled for interest for the delay in payment of pension at the rate of 12% p.a. from 19.7.1997 onwards. The interest would be worked out month by month for the amount of the pension which become due at the end till the date of issue of Pension Payment Order. This shall be complied with within three months from the date of this order.

10. As regards the claim for payment of to October 96, pay for July, it is noted that no facts have been brought out to support this relief in the OA. In fact, the applicant has not brought out as to why the payment has not been made for this period. Only in the rejoinder reply the applicant has given details that he was under sickness, during that period. The payment for this period will ~~have~~ be governed by as to how the sickness period is accepted by the competent authority. For this period, the competent authority is <sup>directed</sup> to pass necessary order ~~for~~ sanction of the leave for which the applicant submits that he had submitted the requisite medical certificate. The payment of this period shall be arranged based on the orders passed by the competent authority <sup>as</sup> becomes due within 3 months from the date of this order.

11. In the light of the above, the OA. is partly allowed with the direction with regard to the payment of interest as detailed in Para 9 and the payment of the salary for the period from July to October, 1996 as detailed in Para 10. No orders as to costs.

*D.S. Baweja*  
(D.S. BAWEJA)  
MEMBER (A)

mrj.