

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 792 /1996

Date of Decision: 15/4/97

Shripad Narayan Joshi

Petitioner/s

Shri R.D. Deharia

Advocate for the
Petitioner/s

V/s.

Union of India & Anr.

Respondent/s

Shri R.R. Shetty

Advocate for the
Respondent/s

ORIGINAL APPLICATION NO. 792 /1996
CORAM:

Hon'ble Shri M. R. Kolhatkar, Member (A).

Hon'ble Shri

Petitioner/s

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?

abp.

M.R. Kolhatkar
(M. R. KOLHATKAR)
MEMBER (A)

Date of Decision:

Hour, P.M., S.M.T.

(1) To be referred to the Reporter of Act 5
BENEFICIARY

(2) Member if necessary to be addressed to the
object, penance of this information

Response\

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI
Responsible\

ORIGINATING APPLICATION NO. 199
CORAM: CORAM:
Hour, P.M. S.M.T.
Date of Decision:

(1) To be referred to the Reporter of Act 5
BENEFICIARY
(2) Member if necessary to be addressed to the
object, penance of this information

Response\

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI
Responsible\

ORIGINATING APPLICATION NO. 199
CORAM: CORAM:
Hour, P.M. S.M.T.
Date of Decision:

(1) To be referred to the Reporter of Act 5
BENEFICIARY

(2) Member if necessary to be addressed to the
object, penance of this information

Response\

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULE STAN BLDG. NO. 6, PRESCOT RD, 4TH FLR,

MUMBAI - 400 001.

ORIGINAL APPLICATION NO: 792/96.

DATED THIS 15th DAY OF APRIL, 1997.

CORAM : Hon'ble Shri M.R. Kolhatkar, Member (A).

Shripad Narayan Joshi,
Ex-Chief Booking Supervisor,
8, Rudraprayag,
Bhagwant Nagar,
in front of Hotel Durgesh,
New Bombay-Agra Road,
Nasik - 422 001.

...Applicant.

By Advocate Shri R.D. Debaria.

V/s.

1. Union of India through the
General Manager,
Central Railway Mumbai C.S.T.
Pin - 400 001.

2. The Divisional Railway
Manager Divisional Office,
Central Railway,
Bhusawal - 425 201.

... Respondents.

By Advocate Shri R.R. Shetty.

I O R D E R I

¶ Per Shri M.R. Kolhatkar, Member (A) ¶

In this OA, the applicant retired on superanuation on 31/8/92 while working as Chief Booking Supervisor under the control of respondent No.2, and has impugned the communication dated 16/2/96 at page-9 (Annexure-A-1) and dated 2/11/96 at page-10 (Annexure-A-2).

2. The specific reliefs sought by the applicant are as below:-

"8(a) Hold and declare that the applicant has right to receive refund of Future Debit amount of Rs.3000/- and Productivity Linked Bonus of the year 1991-92 and 1992-93 and pass the order of Decree for Payment of Interest @ 18% p.a. from 1/9/92 to till the date of Payment.

8(b) Hold and declare that the impugned orders dated 16/2/96 and 2/11/95 for recovery alleged Amount of Rs.11,101/- plus Rs.1,298/- from Monthly

Pension of the Applicant is unauthorised and illegal and these aforesaid orders be quashed and/or set aside."

3. There is some confusion regarding the actual amount due from the applicant and their nature and therefore it will be necessary to deal with these various amounts at the outset. The commercial debit ^{was} ~~raised~~ against the applicant first by the letter dated 10/12/93 at page-13 (Annexure A-5). It states, that a debit of Rs.10,041/- has been raised by FA&CAO vide his error sheet dated 18/9/91 and arrears on account of revision of rent is also to be recovered. Secondly, the debit relates to undercharging by the applicant of a consignment from Salem which was stated to be classified wrongly as class CPI ^{instead of} GPA. In other words, the applicant is stated to have given/concession to a consignment which was artificial Silk-yarn not belonging to the category of handspun as mentioned at page-20 ~~xxxxxx~~ to OA vide communication of written Statement dated 30/11/94.

4. The commercial debit however is shown to the tune of Rs.11,101/- because it also includes/amounts of Rs.1060/- on account of loss of second class mail/express tickets from Manmad to Sangli. Thus the commercial debit totals upto an amount of Rs.11,101/- (10,041/- + 1,060/-).

5. At the argument stage however, the learned counsel for respondents stated under instructions that no documents relating to acknowledgement of the tickets by the applicant are forthcoming and therefore the commercial debit ~~xxx~~ which the applicant is liable to pay ~~is~~ only to the tune of Rs.10,041/- and not to the tune of Rs.11,101/-.

6. Secondly, there is an amount of Rs.1,298/- which is shown as due against applicant that being the amount on account of revision of rent about which again the respondents have intimated the applicant by their communication dated 10/12/93 at page-13. This was in connection with rent for the period 1/7/90 to 21/4/92 for which period the applicant

occupied the quarters and it was arrears on account of revision of rent which were communicated by Railway Board ~~later~~
after and there~~for~~ fell due for recovery.

as regards prayer for
7. Thirdly, the applicant's outstanding bonds for the
which year 1991-92 and 1992-93 has been withheld by respondents
illegally and the same should also be released. Respondents
in their reply have stated that so far as payment of
Productivity Linked Bonus is concerned, the applicant is only
entitled to a sum of Rs.644/- for the year 1991-92 being
Productivity Linked Bonus for the first three months. Thereafter,
the applicant crossed the limit of Rs.3,500/- and thereafter
he was not entitled to Productivity Linked Bonus and there
is no question of Productivity Linked Bonus for the year
1992-93 for the above reasons. As to the question, whether
the amount of Rs.644/- has been paid or not, counsel for
respondents states under instruction that the amount has been
paid and counsel for applicant states that amount has not
been paid. However, he has not stated anything relating to
non payment of bonus ~~in his rejoinder~~ where
respondents have
/committed contempt of Court by recovering Rs.9,399/- inspite
of the Interim Relief.

8. In the circumstances, I hold that the amount of
Productivity Linked Bonus of Rs.644/- for the year 1991-92 has
been paid and that the applicant is not entitled to payment
of Productivity Linked Bonus for the year 1992-93.

9. On the basis of the above discussions, I therefore
arrive at the final figure ~~to be~~ recovered from applicant as
below:-

Rs.10,041/- being commercial debit on account of
undercharging.

Rs.1,298/- being the amount of arrears of rent.

10. If the respondents are right then they would be
entitled to ~~Rs.~~ Rs.10,041/- * 1,298/- (after adjusting the
held up amount of Rs.3,000/- on account of furture debit)

through the Dearness Relief on Pension interms of Railway Board instructions dated 15/10/85 vide page-15 to the written statement which states as below:-

" Clarification have been sought by certain Railways whether Government dues can be recovered from the relief admissible on pension. The matter has been examined in consultation with Ministry of Finance and it is clarified that the relief payable on pension is not covered by the pension act and there may be no objection to the recovery of Government dues being made from the pensioner's relief without the consent of the pensioner."

11. The Counsel for the applicant contends that the commercial debit was never admitted by him. Infact, his department itself had taken up the matter on 8/12/94 and 7/9/95 (page-16 and 17) of written statement to waive the objection because there was no undercharging. The decision in this regard was however taken on 2/11/95, page-10 of OA when non-admitted debit was converted into admitted debit and decision was taken to recover the same from the applicant first from the held up amount on account of future debit and thereafter from Dearness Relief of the applicant. According to the counsel for applicant, under the Railway Servants Pension Rules, 1993 such dues on account of commercial debit are required to be assessed and adjusted within a period of three months from the date of retirement of the railway servant concerned. In this case, initial assessment was made on 10/12/93 (page-13) and the final assessment was made on 2/11/95 (page-10). Therefore, the assessment and adjustment are well beyond the period of three months laid down by statutory rules and therefore he is entitled to refund.

12. It is noted however that the Railway Servants Pension Rules 1993 came into force from 2/12/93 on which date they were notified and the applicant retired on 31/8/92 and those rules do not apply to him, if so the counsel for applicant would rely on Pension Manual para-323(iv)(b) which reads as below:-

"Efforts should be made to asses and adjust the recoverable dues within a period of 3 months from the date of retirement of the Railway servant concerned. In any case, it should be presumed that there is no claim against a Railway Servant if none is made after his retirement within the period indicated below:-

15 months, if commercial debits are involved;
& 6 months, if commercial debits are not involved."

13. In the instant case, Rs.10,041/- commercial debit is involved and the applicant was first informed regarding the assesment of commercial debit on 10/12/93 which is beyond the period of 15 months, because, it is not disputed that the 15 months expired on 30/11/93. The Counsel for fespondents contends that applicant was well aware that the commercial debit was pending against him and correspondence was going on in this regard since 13/9/91 i.e. well prior to the retirement of the applicant and that the department had reason to believe that the undercharging was deliberate but after consulting with the financial advisor, etc and the initial assesment could be made on 10/12/93 only.

14. The applicant relies on the following judgement of Patna Bench of CAT.

OA No. 603/93 Srist Dhar Patra v/s. Union of India decided on 8/12/94 -

In that case reliance was placed on rule 323 clause (iv) sub-clause (b) and it was noted that the debit was raised after about 17 months and 28 days of his retirement and no enquiry was proceeding against the applicant while in service as regards the debit raised and no show cause was ever issued to the applicant prior to his retirement, the question of deducting from his pension in equal instalments appears to be quite illegal and unjustified in as much as the claim is also barred by limitation.

15. The applicant also relies on the judgement of the Calcutta Bench of Tribunal in OA.940/94 decided on 6/5/96 and reported at 1996(2) ATJ-8, Gurubachan Singh v/s. Union of India.

Here again the Railway Pension Rules were not applicable because the applicant retired on 31/7/93 and the notice stated to be a communication listing the outstanding debits against the applicant was sent to the applicant on 14/7/94. Apparently, this debit memo was issued within the 15 months period which in the case of that applicant expired on 31/10/94 whereas the memo was issued on 11/7/94. The Tribunal however held that the communication dated 14/7/94 was vague and it cannot be held to fall within ambit of para-323(iv)(b) of Pension Manual regarding assessment and adjustment of Government dues. To quote, the Tribunal observed in para-20 of the judgement as below:-

"From the afore-quoted provisions of Rule 323(iv)(b) it is clear that the official respondents should not take undue time to assess recoverable dues from a retired employee and that all efforts should be made to assess and adjust the recoverable dues within a period of 3 months from the date of retirement. However, when commercial debits are involved, maximum time admissible to prefer such claim is 15 months from the date of retirement. In the instant case, only through communication dated 14/7/94 certain vague claim has been communicated to the petitioner which I have no other alternative than to hold that the respondents have failed to assess any recoverable dues from the petitioner within 15 months from the date of his retirement."

16. In my view the applicant in the present case is on a better footing than the applicant in Calcutta Bench case because the applicant has retired on 31/8/92 and the initial assessment itself was made after lapse of a period of 15 months, and clearly is not in accordance with para 323(iv)(b) referred to above. I am therefore of the view that keeping in view the ratio both of Patra case as well as the ratio⁷ of Gurubachan Singh case the respondents are not entitled to recover the commercial debit amounting to Rs.10,041/- from the Dearness Relief of the applicant.

17. So far as the amount of Rs.1,298/- in relation to arrears of rent however is concerned, the same are Government dues and the Dearness Relief is not Pension for the purpose of definition of Pension and the said amount could have been recovered from the applicant's Dearness Relief. I am therefore of the view that no relief in regard to recovery of Rs.1,298/- can be given to the applicant.

18. I next come to the question of actual amount recovered from the applicant. The counsel for applicant states under instructions that Rs.8,101/- after adjusting Rs.3,000/- on account of Future Debit has been recovered from him and he states that this recovery was made after the Interim relief by the Tribunal.

19. Counsel for the respondents states that a communication was addressed to the bank that the recovery should not be effected but he is not in a position to state whether the bank has complied with the instructions or not but he states that the bank has not intimated anything to the respondents.

20. The OA is therefore allowed. The respondents are held to be at liberty to adjust Rs.1,298/- from the amount of Future Debit but release the rest of the amount to the applicant with 12% interest. Respondents are further directed to release all the amount on account of commercial debit of Rs.10,041/- recovered from applicant's dearness relief. The respondents are also directed to pay interest @ 12% from 22/8/96 on the amount recovered. OA is disposed of with the above directions. There will be no orders as to costs. Action in terms of the order should be completed within a period of two months from the date of receipt of copy of this order.

M.R.Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A)

abp.