

28/11

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 251/96/199

Date of Decision: 30-12-96

Keshav Pundalik Shanbhag

Petitioner/s

K.M.Notani for Shri N.C.Saini

Advocate for the
Petitioner/s

V/s.

U.O.I. & Ors

Respondent/s

V.S.Masurkar

Advocate for the
Respondent/s

CORAM:

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

Hon'ble Shri

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

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

M

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

O.A.251/96

Pronounced this the 30th day of Dec 1996

CORAM:

HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

Keshav Pundalik Shanbhag,
Flat No.C/18/Ist Floor,
Shiv Darshan Co.op.Hsg.Scty.,
Pandit Madan Mohan Malavia Road,
Mulund (West)
Mumbai - 400 080

By Advocate Shri K.M.Notani for
Shri N.C.Saini

.. Applicant

-versus-

1. Union of India
through
The General Manager,
Central Railway,
Mumbai - 400 001.
2. The Chief Personnel Officer,
Central Railway,
Mumbai V.T. - 400 001.
3. The Financial Adviser &
Chief Accounts Officer,
Central Railway,
Opp.Times of India,
V.T.Mumbai - 400 001.

By advocate Shri V.S.Masurkar

.. Respondents

- : O R D E R :-

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

In this O.A. the applicant prays for
refixation of pension of the applicant on the
basis of last drawn pay of Rs.2825/- and to pay all
pensionary benefits on the basis of the same and to
refund the amount of Rs.15,792/- which was deducted
from the retirement/settlement dues of the applicant
as overdrawn wages, by order dt. 27-7-1993 just prior
to retirement.

2. Applicant retired as Senior Stenographer from the O/O Controller of Stores, Central Railway, Mumbai V.T. on 31-7-1993. He was a promotee in the grade of Rs.2000-3200(RPS) as per the office order dt. 1-1-1991. Applicant contends that the respondents have deducted illegally an amount of Rs.15,792/- as overdrawn wages from the retiral benefits of the applicant, vide Annexure-3 dt. 27-7-1993. Respondents had also asked the applicant to exercise an option a few days prior to his retirement. The applicant made representations and took up his case with Pension Adalat and he received the reply dt. 4-12-1995 at Annexure-1 which reads as below :

"With reference to the above, it is advised that your pension has been revised to Rs.1300/- vide FA & CAO's letter No.CR/10116/242306 dt. 22-11-95.

As regards counting of broken periods of officiating for the purpose of increments, it is seen that the aggregate period of 365 days of the broken period of officiating includes 109 days,

1. From 1-9-1989 to 30-9-1989 = 30 days
2. From 1-10-1989 to 31-10-1989 = 31 days
3. From 1-11-1989 to 30-11-1989 = 30 days
4. From 1-12-1989 to 18-12-1989 = 18 days

It is advised that the said period has already been taken into account in the fixation of your pay in Gr.Rs.2000-3200(RPS). Hence the same cannot be considered for purpose of increment.

Under the circumstances, the aggregate broken period of officiating works out to less than 365 days. As such your request for considering the same period for the purpose of increment cannot be agreed to."

It is contended by the applicant that the action taken by the respondents is not in consonance with the Railway Board's instructions dt. 20-10-1986 which are at Annexure-17 to the O.A. and in particular the following para:

"(iv) To the extent posts in scale Rs.550-900/ Rs.1640-2900 attached to S.A. Grade Officers are at present filled on adhoc basis, the same may be upgraded to the new scale Rs.2000-3200 only after selections therefore are held as per normal rules and selected persons are available to fill them. "

3. Respondents have opposed the O.A. They have stated that the last pay drawn was Rs.2600/- and not Rs.2825/-, that his pension has been fixed correctly and that the circumstances for deduction of an amount of Rs.15,792/- towards overdrawn wages were as below: His promotion in Grade of Rs.1640-2900 was incorrectly done in the year 1989 when this grade was non-existent. Due to this incorrect fixation in 1989 he has been given additional three ^{annual} increments to which he was not entitled. The cases of the stenographers who were in the grade of Rs.1640-2900 were considered including the applicant and an office order No.31/94 dt. 8-2-94 was issued by which they were given adhoc promotion to work in Gr.2000-3200. Applicant was deemed to have been promoted in this grade w.e.f. 1-9-89. This order is enclosed by the applicant along with O.A. at Annexure-15 and in terms of the order an amount of Rs.2619/- was paid to him towards arrears on refixation of pay. for the period 1-9-89 to 31-12-90. *N*vide page 23/(order dt. 22-8-1994).

4. Applicant has contended that the respondents have not taken note of the broken period of 256 days in which he had worked in higher grade viz. from 2-2-1988 to 28-2-1988, 2-5-1988 to 31-5-1988, 19-9-1988 to 14-10-1988, 1-2-1989 to 31-7-1989. Respondents however contend that it is only the period of continuous officiation which was taken into account ^{and} since the applicant had continuously officiated only from 1-9-89 orders of his promotion were issued accordingly. The pay fixation was done as below :

Pay as on 1-9-89 was fixed at Rs.2375/-

Subsequently it was fixed on 1-7-90 at Rs.2450/-

w.e.f. 1-9-1991 at Rs. 2525/-

w.e.f. 1-9-92 at Rs. 2600/-

5. The counsel for the applicant contends that no notice was given to the applicant before deducting overdrawn wages and before reducing pension. He also relies on Judgment of Cuttack Bench of CAT in Kunu Prusty vs. Union of India & Ors. 1996(1)ATJ 306 in which it is held that an official who works in a particular post will be entitled to the pay scale of that post carry. The contention of the applicant is that he therefore should be given benefit of officiation in the said broken period and the said broken period should be taken into account while fixing the pay of the applicant.

6. On consideration of facts and circumstances of the case it appears to me that so far as the issue of deduction of ^{overdrawn wages of} Rs.15,792/- is concerned the same was

deducted on 27-7-1993 and the applicant did not make the issue of this deduction in his successive representation to the department/Pension Adalat. He could have challenged the same within the limitation as laid down in the Administrative Tribunals Act but he did not do so and he filed the O.A. on 19-2-1996 in which he has basically impugned the order dt. 4-12-1995 which deals with reduction of pension and with broken period. So far as contention regarding counting of broken period for his promotion is concerned I am of the view that respondents have satisfactorily explained the position in this regard and the applicant does not deserve any relief nor does the reliance on Cuttack Bench placed by the applicant is of any help to him.

So far as fixation of pension is concerned the same is based on the last pay drawn by the applicant viz. Rs.2600/- in respect of which pay sheet has been filed by the respondents. The applicant was aware of the circumstances under which he was being paid Rs.2600/- in the last month which is clear from the fact that he was informed at his residence about exercise of option. It is therefore difficult to hold that the applicant had no notice about exercise of option, and basis of fixation of pension.

7. Considering all the facts and circumstances of the case I am of the view that the applicant has not made out any case for interference by this Tribunal. O.A. is therefore dismissed with no order as to costs.