

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No.

412/92

Transfer Application No.

Date of Decision 8.12.95

Henry D'sa.

Petitioner/s

Shri M.S.Ramamurthy.

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri V.S.Masurkar.

Advocate for
the Respondents

CORAM :

Hon'ble Shri. B.S.Hegde, Member(J),

Hon'ble Shri. P.P.Srivastava, Member(A).

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


(B.S. HEGDE)
MEMBER (J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESOCOT ROAD, BOMBAY-1.

ORIGINAL APPLICATION NO. 412/1992

8th, this the day of Decmly, 1995

Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri P.P.Srivastava, Member(A).

Henry D'sa,
4, Windcliff,
Ist Road, TPS IV,
Bandra(W),
BOMBAY - 400 050. ... Applicant.
By Advocate Shri M.S.Ramamurthy.
V/s.

1. Union of India
through the General
Manager, Central Railway,
Bombay VT,
Bombay - 400 001.
2. Chief Administrative Officer
(Construction), Central
Railway, Bombay V.I.
Bombay - 400 001.
3. Chief Personnel Officer,
Central Railway, Bombay VT
Bombay - 400 001.
4. Deputy Chief Engineer
(Construction), Central
Railway, Dadasaheb Phalke
Road, Dadar,
Bombay - 400 014.
5. Senior Accounts Officer
(Construction), Central Railway,
Bombay VT, Bombay - 400 001.
6. Mr.Garkhedkar
Protocol Inspector, Chief
Administrative Officer(C)
Central Railway,
Bombay V.I. ... Respondents.
By Advocate Shri V.S.Masurkar.

O R D E R

(Per Shri B.S.Hegde, Member(J))

In this application, the grievance of the
applicant is denial of promotion and the final
settlement done in the lower grade than the correct

grade from which the applicant voluntarily retired and interest on delayed disbursement of final settlement dues and denial of passes and kit pass.

2. The applicant had submitted his notice for voluntary retirement on 5.12.1989 and based on the said notice the applicant was retired w.e.f. 31.12.1989 vide the respondents order dt. 29.11.1991 and the pension was to be paid w.e.f. 1.1.1990. Since his voluntary retirement had not been communicated till the end of 1991, he continued to occupy the Quarters allotted to him till 14.7.1991 and the final settlement was done in December, 1991. In the application, the applicant has prayed the following reliefs:

"(a) that the Official Respondents be directed to treat the Applicant as having been promoted to the post P.A. to Secretary to CAO(C) in the grade of Rs.550-750 with effect from February 1983, if not from 31.3.1984 and consequent fixation and arrears be directed to be given.

(b) that the Official Respondents be directed to treat the Applicant as having been promoted to the post of P.A. to the Secretary to the CAO(C) in the grade of Rs.2000-3200 with effect from 1.10.1988 and consequent fixation and arrears be ordered to be given.

(c) In the alternative to prayer (b) above, it be declared that the selection held in December 1988 for the post of P.A. Scale Rs.2000-3200 in which junior in the lower grade Mr.Garkhedkar was declared selected be declared bad in law and the Respondents be directed to conduct a review selection and promote the applicant, if selected, to the said grade Rs.2000-3200 from the date the said Garkhedkar was declared selected be declared bad in law and the Respondents be directed to conduct a review selection and promote the applicant, if selected, to the said grade of Rs.2000-3200 from the date the said Garkhedkar was posted and consequent fixation and arrears be ordered to be given.

grade from which the applicant voluntarily retired and interest on delayed disbursement of final settlement dues and denial of passes and kit pass.

2. The applicant had submitted his notice for voluntary retirement on 5.12.1989 and based on the said notice the applicant was retired w.e.f. 31.12.1989 vide the respondents order dt. 29.11.1991 and the pension was to be paid w.e.f. 1.1.1990. Since his voluntary retirement had not been communicated till the end of 1991, he continued to occupy the Quarters allotted to him till 14.7.1991 and the final settlement was done in December, 1991. In the application, the applicant has prayed the following reliefs:

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- (d) that the Official Respondents be directed to recalculate the pension and other retiral dues on the basis of correct basic pay in the grade of Rs.2000-3200 or in any case in the grade of Rs.1600-2660 which would be Rs.1750/- and the differential amounts on account of pension, gratuity, provident fund etc.
- (e) that it be declared that the undisclosed reversion of the Applicant from the grade of Rs.1600-2660 to the grade of Rs.1400-2300 and the calculation of pension and other retiral dues on that basis, after the applicant reported sick from or about 26.5.1989, is illegal and bad in law.
- (f) that the deductions effected on account of penal rent and on account of the value of passes be declared illegal and bad in law.
- (g) that the non-issue of Kit Pass and post retirement passes be declared illegal and bad in law.
- (h) that the Official Respondents be directed to pay interest on the delayed payment of pension and retiral dues at 12% per annum from 1.1.1990 or from such other date till they were paid.
- (i) that the Official Respondents be directed to pay interest on the differential amounts of pension and other retiral dues at 12% p.a. from the date they were due and payable, till actual payment.
- (j) that the official Respondents be directed to regularise the period from 26.5.1989 to 31.12.1989 on the basis of medical certificates already submitted, against the leave due and admissible including commutation of half pay leave and pay the amount due and payable and interest at 12% be directed to be paid thereon.
- (k) that such further and other relief or reliefs be granted as may be just and proper in facts and circumstances of the case.
- (l) that the cost of this application and the orders to be made thereon be ordered to be paid to the applicant.

2. Heard Shri M.S.Ramamurthy, counsel for the applicant and Shri V.S.Masurkar, counsel for the respondents and perused the records. However, during

the course of hearing it was clarified by the parties that except non-refund of the penal rent for the alleged over-stay in the quarters by the applicant and arrears of non-fixation of proper pension, because according to the applicant for the purpose of pension they have taken the salary as Rs.1600/-, whereas, the Respondents vide their letter dt. 1.9.1986 (Ex. 'R') ^{Protocol} it is stated that the applicant who was officiating as Inspector-cum-Janitor Grade Rs.550-750(RS) on ad hoc basis was made regular w.e.f. 10.3.1986 as the post of Janitor Grade Rs.550-750 (RS) has been classified as 'Non-Selection' vide Railway Board's letter No.E(NG)I/80. p.m. 1-300 of 2.6.1982. The contention of the applicant is that at the time of submitting notice of voluntary retirement he was drawing the basic pay of Rs.1750 from March, 1989 to June, 1989 and if we are to take ~~the~~ 10 months average pay the same should be counted from June to September, 1988 ^{Rs.1700/-} which means prior to 1989, whereas, the respondents have taken into consideration Rs.1,600/- for the purpose of pension which is contrary to the rules. The ^{have} respondents in their reply stated that for the purpose of calculating the retirement benefits the employee's wages has been considered from September, 1988 to June, 1989 in the grade of Rs.1600/- as the applicant was on Extraordinary Leave without pay from 1st June, 1989 to 31st December, 1989 i.e. the last day in service. Due and drawn documents for settlement dues based on the corrected Basic Pay are being submitted to Accounts Office for release of the balance amount

due now towards Gratuity, Leave Encashment, Commutation of Pension etc. and shall be paid shortly. As stated earlier, during the course of hearing the learned counsel for the applicant submitted that the balance based on the refixation the payment has been made by the respondents. However, if any, arrears is required to be paid, the same may be paid within a period of two months from the date of receipt of this order. Similarly, regarding the deduction made towards the recovery of passes Rs.5,734/- has already been refunded to the applicant, likewise, a sum of Rs.1000/- withheld on account of future debits have also been refunded.

3. Insofar as the penal rent is concerned, as stated earlier though the applicant has submitted his notice for voluntary retirement by the End of December, 1989 which is accepted only on 29.11.1991 till that time he was continued to occupy the quarters, therefore, it cannot be treated as unauthorised occupation. He vacated the quarter on 14.7.1991. It is not the fault of the applicant, and he was perforced to continue in the quarter since the department did not intimate the acceptance of the retirement till late 1991 and therefore, it cannot be treated as unauthorised. Besides, that the respondents have not followed the provisions of Public Premises Act in recovering the penal rent and hence the recovery made by the respondents is not sustainable and the same is liable to be repaid to the applicant within a period of two months from the date of this order.

4. Regarding promotion it is a well known principle that it is not a matter of right. He was working on an ex-cadre post and he went on deputation to outside India. It is not necessary that the same post should be kept vacant for him. Therefore, the contention is not accepted, the same is rejected. Regarding the reversion to a lower grade, legally, such reversion is not permissible in view of the order dt. 1.9.1986 wherein they have treated him on regular basis w.e.f. 10.3.1986 and he was actually drawing the higher pay at the time of his voluntary retirement. Therefore, the question of reverting him to a lower grade does not arise.

5. The learned counsel for the applicant, during the course of hearing vehemently urged that the pensionary benefits have been given to him belatedly and as per the provisions he should be paid interest on the delayed payments. However, on a perusal of the documents we find that the applicant has signed the pension papers on 21.6.1991 and there was a delay of four months in making the payments and the applicant himself is not sure as to what payment he received and on what date he received the pensionary benefits. A delay of four months cannot be treated as delay on the part of the respondents and in the circumstances, we decline to grant any interest on the delayed payment of pensionary benefits to the applicant. The learned counsel for the applicant draws our attention to the decision of the Full Bench in B.K.Anand V/s. Union of India & Ors. (1991-1993)A.T.F.B.J.

However, on a perusal of the facts of this case, we do not feel that the payment is unduly delayed and the pensionary benefits have been given to the applicant from time to time on six occasions which is not disputed by the applicant, thereby, we are of the view, that the ratio of the Full Bench decision will not apply to the facts of this case. In the result, we hereby direct the respondents to make payment of the penal rent recovery of Rs.4,547/- within a period of two months and arrears, if any, regarding re-fixation of the pensionary benefits if not paid the same also be paid within a period of two months from the date of receipt of this order. As stated above, no interest on delayed payment is granted.

6. The Original Application is disposed of with the above directions. There will be no order as to costs.



(P.P.SRIVASTAVA)
MEMBER(A)



(B.S.HEGDE)
MEMBER(J).

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PREScot ROAD, BOMBAY-1

R.P. No. 28/96

in

O.A. No. 412/92

DATED: 14, FEBRUARY, 1996

Coram: Hon-Shri B.S. Hegde, Member (J)
Hon. Shri P.P. Srivastava, Member (A)

Henry D'Sa

..Applicant

V/s.

Union of India & 5 ors.

..Respondents

ORDER (By circulation)

(Per: B.S. Hegde, Member (J))

The applicant has filed Review Petition No. 28/96 against our order and judgment dated 8.12.1995 in O.A. No. 412/92.

2. The only claim made in the O.A. 412/92 is that the respondents have not paid the pensionary benefits within the prescribed time and there is considerable delay in paying the pensionary and other benefits and therefore sought a direction from the Tribunal to the respondents directing them to pay interest on the delayed payment. After hearing both the counsel, the Tribunal concluded that there was not intentional delay on the part of the respondents in making the pensionary benefits and as a matter of fact the respondents had paid to the applicant the pensionary benefits on different occasions and this fact has not been disputed by the applicant. Though the applicant had cited a Full Bench decision of the Tribunal during

the course of hearing, the Tribunal was of the view that the ratio laid down in the Full Bench decision would not apply to the facts of this case. The only relief granted to the applicant was refund of the penal rent recovered by the respondents from the applicant and the respondents were directed to make the payment within a period of two months. Request of the applicant for payment of interest was denied.

3. In this Review Petition the applicant is again seeking payment of interest on the delayed payments, stating that the Tribunal has denied interest on the delayed payment and the same is justified.

4. The law is very clear on the point that the review Petition lies on discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made, or on the ground that some mistake or error apparent on the face of the record is found. No such lacuna appeared in the judgment. It is not open to the applicant to re-argue the case once the matter has already been decided by the Tribunal. The scope of Review is limited and we see no merit in this Review Petition and the same is dismissed.

(P.P. Srivastava)
M(A)

(B.S. Hegde)
M(J)

I undertake to serve the respondent / claimant.
Ramesh R
Adv for Applicant
9/9/92

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY

CONTEMPT PETITION NO. 162 OF 1992

IN

ORIGINAL APPLICATION NO. 412 OF 1992

Henry D'Sa .. Applicant

V/S.

Union of India & Ors. Respondents

AND

P.N. Kalra,
Dy. Chief Engineer (Const.),
Central Railway,
Dadar,
BOMBAY. .. Contemner

MAY IT PLEASE THIS HON'BLE TRIBUNAL:

The applicant abovenamed most respectfully
begs to state and submit as under:

1. The above O.A. was admitted on 2.6.1992 and certain directions for filing reply, rejoinder, etc. were given. In regard to interim relief, the Hon'ble Tribunal passed the following directions:

"A prayer for interim relief has been made that official Respondents be directed to issue a Kit Pass to the applicant as well as issue Post Retirement Passes to him. It is submitted by Mr. Sawant that the applicant may not have applied for the Kit Pass and for that reason

the same may not have been given.

The applicant is directed to make an application and the Respondents should issue the Kit Pass, if otherwise, admissible. The Post Retirement Passes may be issued to him according to rules."

A xerox copy of the Order dated 2.6.1992 passed by the Hon'ble Tribunal is annexed hereto and marked Exhibit 'A'.

EX. 'A'

2. The applicant by his application dated 17.6.1992 addressed to the Deputy Chief Engineer (Construction), requested for issue of Kit Pass and Post Retirement Complimentary Pass. To the said application dated 17.6.1992, the applicant attached a copy of the earlier application dated 21.8.1991 made by him to the same authority for issue of Kit Pass. The said application was duly received and acknowledged by the Contemner's Office on 17.6.1992. Neither the passes were issued nor was there any reply to the said application dated 17.6.1992. The applicant sent a reminder dated 8.7.1992 addressed to the Contemner and renewed the request for the issue of the said passes. The said reminder was also duly received and acknowledged by the Contemner's Office on 8.7.1992, by the Executive Engineer. Xerox copies of the application dated 17.6.1992, application dated 21.8.1991 and reminder dated 8.7.1992 all bearing the acknowledgements over official stamps