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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 962/93

~~Transfer Application No:~~

DATE OF DECISION: 5-9-1994

F. Ardeshir Petitioner

Shri G.S. Walia Advocate for the Petitioners

Versus

Union of India and others Respondent

Shri S.C. Dhawan. Advocate for the Respondent(s)

CORAM :

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

The 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 ?

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

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 962/93

F. Ardeshir

... Applicant.

V/s.

Union of India, through
General Manager
Central Railway
Bombay VT, Bombay.

Divisional Railway Manager
Central Railway
Bhusawal Division
Bhusawal

... Respondents.

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

Appearance:

Shri G.S. Walia, counsel
for the applicant.

Shri S.C. Dhawan, counsel
for the respondents.

JUDGEMENT

Dated: 5-9-1994

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

The applicant joined the Railway service on 5.11.56 and has rendered a total service of 31 years, 6 months and 19 days. The applicant was under suspension in connection with a Railway accident and he has thus rendered 23 years, 10 months and 6 days of qualifying service. The applicant was removed from service and in O.A. 233/89 the same was set aside by the Tribunal, but in the S.L.P. against Tribunal's judgement, the Hon'ble Supreme Court ordered that the monetary benefits may not be paid to the applicant which may accrue to the applicant as a result of reinstatement. The applicant superannuated on 31.3.89. He has received his retirement dues including the Provident Fund amounting to Rs. 48,107/-. The only issue involved for determination is:

1. Whether the applicant is entitled to any interest on the Provident Fund amount which he received later than the due date

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2. Whether the applicant is entitled to complimentary passes and if so to what number.

2. Regarding the first issue, the applicant states that there has been a delay on the part of the respondents in paying the Provident Fund amount to him and he is entitled to interest at the rate of 18% from the date of superannuation namely 13.1.90. According to the respondents, however an amount of Rs. 5643/- being Government dues was required to be paid by the applicant before his Provident Fund could be paid and the applicant had also failed to fill up the requisite form. The respondents had sent a letter on 25.7.91 to the applicant on his last known address namely " Parsi Dharmashala, Bhusaval", in which he was asked to make payment of outstanding Government dues, but the letter was returned stating that now the addressee does not stay at the above address. It was only when the applicant wrote to the respondents on 8.5.93 giving his correct address, " A-9 Gita Society, 10 Synagogue Street, Poona " that it was possible to make progress. The Railways, therefore are not responsible for the delay. The question of payment of interest on delayed payment does not arise.

3. So far as Provident fund is concerned, it is the part of what are called the retirement benefits, irrespective of whether the applicant is eligible for pension. According to Rule 945 of Indian Railway Establishment Code, the amount standing at the credit of a subscriber, or the balance thereof after any deduction under Rule 944 shall ordinarily be tendered for payment within two months of the date when it becomes payable under Rule 942 unless in the case of death of the

subscriber, satisfactory proof of title of the claimants has not been received by the Accounts Officer. If the Accounts Officer has received notice of any assignment, attachment or encumbrance affecting a subscriber's assets in the fund or any portion thereof, he shall make payment only of that portion which is not affected by the assignment, attachment or encumbrance, and obtain the orders of the Government of India regarding the disposal of the balance. It is, therefore, clear that the Department is bound to make the payment of Provident Fund to the applicant within two months. It is seen from the letter of the Department dated 25.7.91 that his case has been closed provisionally by Sr. DAO BSL on 14.5.90 for the reasons that the case is in CAT Court New Bombay and the recovery is not permissible from NCSRPF. This letter was returned undelivered. The applicant, however sent a letter on 30.12.91. There may be some preliminary doubt as to whether the applicant is entitled to payment of interest from 1.6.90 (2 months from the date of retirement) upto 30.12.91 when the applicant wrote to the department conveying his address. We note however that the applicant had filed OA 233/89 on 27.3.89 i.e. well before the date of retirement and the case was decided on 8.10.91. It is therefore, difficult to believe that the respondents did not know the correct address of the applicant when they were fighting the case in CAT from May 89. We, therefore, hold that the respondents were aware of the correct address, and when they knew the correct address they should have linked up the papers of retirement benefits of the applicant and therefore there was no justification for the respondents to close the case of the applicant and to delay the payment of

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Provident Fund to the applicant. The very fact that no recovery from the NCSRPF is permissible shows that the whole of the amount of Provident Fund dues is payable and the Government is bound to tender the amount within 2 months. However, by a ^a ~~grity~~ ^{grity} of reasoning with gratuity we can see that it would be open to the department to keep back an amount equivalent to the outstanding Government dues from the Provident Fund. We, therefore hold that the applicant is entitled to receive the payment of interest on the Provident Fund dues as ^{from} ~~on~~ 1.6.90 minus Government dues till they were actually paid, and the rate of interest should be ^{the} ~~be~~ same as would have accrued to the Provident Fund balance i.e. to say prevailing rate of interest on the Provident Fund in the Railways.

4. So far as the complimentary passes are concerned, the respondents rely upon the Rule 422 which indicates the period not qualifying as service for pensionary benefits. The applicant however, contends that the period of non-qualifying service may not count for the pension but it will still qualify for complimentary passes. A copy of Railway Board circular dated 1.7.61 relied upon by the applicant is reproduced below:

" The Board have decided that the qualifying limit to Class III staff for eligibility to the post-retirement complimentary passes would be as under.

No of qualifying service	No of sets of passes admissible
20 years service	one set.
30 years service	two sets.

According to the applicant the term "qualifying service" is different from the term "qualifying limit" and therefore the applicant should be paid 2 sets of passes as the applicant has put in 31 years of service. It is difficult to accept this contention. No doubt even the Railway employee who is removed from service is entitled to complimentary passes. This entitlement however will have to be quantified by reference to the qualifying service and not in relation to overall service. We, therefore hold that the applicant is entitled to one set of pass^{es} as he has rendered less than 30 years of service. We^{therefore} dispose of this O.A. by passing the following order.

ORDER:

The applicant is entitled to the interest as on Provident Fund balance minus outstanding Government dues from 1.6.90 till actual date of payment, the rate of interest being the same as for Railway Provident Fund. *Respondents should pay the same to him within three months of communication of order.*

One set of complimentary pass should be issued to the applicant on the footing that he has rendered 23 years, 10 months and 6 days of qualifying service. No order as to costs.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)