

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 1021/93

Date of Decision 29-3-96

Manoharlal Grover

Petitioner

Mr.G.S.Walia

Advocate for the Petitioner.

Versus

U.O.I. & Ors.

Respondent

Mr.A.L.Kasturey

Advocate for the Respondents.

Coram:

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

The Hon'ble Mr.

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

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

M

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH  
BOMBAY

O.A.1021/93

\_\_\_\_\_ this the 29<sup>th</sup> day of MARCH 1996

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

Manoharlal Grover

609-C Wing, E-5,

Highway Park,

Thakur Complex,

Kandivili(E)

Bombay.

(By counsel Shri G.S.Walia)

.. Applicant

-versus-

1. Union of India

through

The General Manager,

Western Railway,

Churchgate,

Bombay - 400 020.

2. Divisional Railway Manager,

Kota Junction,

Western Railway,

Rajasthan

(By counsel Shri A.L.kasturey)

.. Respondents

ORDER

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

When the applicant was working as Station Superintendent, Bharatpur, Kota Division of Western Railway, in the pay scale of Rs.700-900 he was proceeded against in a departmental inquiry for some alleged irregularities on 22-5-1980 and was removed from service w.e.f. 11-10-1985. He challenged the said order of removal before the C.A.T. Jodhpur Bench by way of O.A. No.27/87. While deciding the said O.A. on 23-5-1988 the applicant was granted the relief of quashing the impugnd order

and the respondents were directed to proceed in accordance with law and thereafter to make fresh order in accordance with law. Accordingly by order dt. 5-10-1988 it was decided to hold a fresh enquiry <sup>but</sup> against the applicant in terms of Rule No.5(4) of R.S. (D&A) Rules, 1968 he was deemed to have been suspended w.e.f. the date of removal from service i.e. 11-10-1985 and it was directed that he shall remain under suspension until further orders. The said suspension dt. 5-10-88 is under challenge in O.A.694/89 before Jodhpur Bench. Since the said O.A. has been transferred to Jaipur Bench of the C.A.T. it has been renumbered as 294/91. The applicant has superannuated on 31-8-90. Subsequently by order dt. 12-10-92, Ex. 'C', the President has imposed upon the applicant the penalty of withholding of fifty percent of the monthly pension otherwise admissible to the applicant for a period of five years. Further <sup>by</sup> order dt. 21-9-94 the period of suspension from 11-10-1985 to 31-8-90 has been treated as dies-non. The applicant states that he is challenging the suspension separately before Jaipur bench and challenged the final <sup>by</sup> penalty in another O.A. But in the present O.A. the reliefs claimed by him are distinct and they are as below:

- "a) This Hon'ble Tribunal will be pleased to call for the records and proceedings which led to the issuance of the impugnd order and after going through its validity, propriety, constitutionality quash and set aside the order dt. 11-11-92, Ex. 'D' hereto by which the recovery is sought to be made from DCRG.

- b) This Hon'ble Tribunal will be pleased to hold and declare that the applicant is entitled to have his pay fixed in accordance with the recommendations of the 4th Pay Commission, w.e.f. 1-1-1986 in the pay-scale of Rs.2000-3200/-
- c) This Hon'ble Tribunal will be pleased to hold and declare that the applicant is entitled to subsistence allowance from 12-1-1986 on the basis of the recommendations of the 4th Pay Commission and accordingly he is entitled for the arrears thereto with interest of 18% per annum till its actual payment.
- d) Applicant is also entitled to all the pensionary benefits to be calculated on the basis of the recommendations of the 4th Pay Commission and pay arrived and accordingly the arrears be paid to the applicant with 18% interest therein.
- e) This Hon'ble Tribunal will be pleased to hold and declare that the respondents did not have any legal right to withhold the gratuity of the applicant on account of alleged non vacation of the Railway Quarter and the applicant is entitled to such gratuity with 18% interest therein. The applicant is also entitled to be paid a sum of Rs.841/- which the respondents withheld.
- f) This Hon'ble Tribunal will be pleased to hold and declare that the applicant is entitled for post retirement passes and post retirement medical facilities."

2.

So far as the question regarding entitlement of the applicant to the subsistence allowance in terms of revised pay with effect from 1-1-86 is concerned

the applicant has cited a number of ruling whose ratio is that the subsistence allowance is required to be paid in terms of revised pay. These judgments are contrary to Railway Board instructions dt.

30-11-1993 at Annexure R-1 which in turn relied on Railway Services (Revised Pay) Rules, 1986, proviso (2) to Rule-6. In another case dealt with by this Tribunal in O.A. 1389/95/ (Nagpur), the division bench of this Tribunal has decided <sup>on 22-3-96</sup> to refer the issue to a Full Bench consisting of three or more members.

I, therefore, direct that so far as the relief claimed by the applicant in the present O.A. relating to arrears of calculation of subsistence allowance i.e. whether <sup>the</sup> pre-revised pay or <sup>revised</sup> pay should await and abide by the decision of the Full Bench. This would also apply to the recalculation of the pensionary benefits.

3. So far as the question of gratuity is concerned it is not in dispute that the DCRG amount has been paid to the applicant after deducting amount of Rs.38,747/- on account of recovery of rent etc. for occupation of the quarter of which the applicant was stated to be in unauthorised occupation till 15-7-93. It is well settled that the gratuity is a personal property of the applicant and the penal rent cannot be deducted from <sup>same</sup> ~~the~~ for which the department is expected to resort to the procedures open ~~to it~~ under the law including proceedings under P.P. Act. The applicant is therefore entitled to the

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payment of  
relief of gratuity to which he is entitled after  
of  
deductions therefrom the dues on account of electricity  
charges, water charges and the normal rent. The  
applicant is also entitled to 12% interest on the  
delayed payment of gratuity beyond three months  
of  
from the date 12-10-92 on which the penalty was  
imposed on the applicant. In other words the  
applicant is entitled to interest from 12-1-1993  
till the date of payment. The applicant is also  
entitled to post retirement passes ~~as per rules~~ *for the year 1996 and onwards*  
after taking into account the date of vacation of *V 12.15-7-93*  
quarter by him ~~and making necessary adjustments.~~ *vide order in RP 62/96 in OA 1021/93*  
He is also entitled to post retirement medical  
benefits as per the rules.

4. It would be open to the either  
party to move this Tribunal for a decision  
in the matter so far as other reliefs especially  
relating to pay fixation and pension fixation  
are concerned as ~~the~~ and when the decision of  
Full Bench is available.

5. There will be no order as to costs.

*M.R. Kolhatkar*

(M.R. KOLHATKAR)  
Member(A)

M

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GULESTAN BLDG.NO.6,PRESOT RD,4th FLOOR.,  
MUMBAI BENCH

REVIEW PETITION NO.62/96 in O.A.No.1021/93

DATED THE FIRST DAY OF AUGUST,1996.

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

Manoharlal Grover ... Applicant  
By Advocate Shri G.S.Walia (Review Petitioner)

v/s.

Union of India & Ors. ... Respondents  
By Advocate Shri A.L.Kasturey

X ORDER X ( ORAL )

Heard Shri G.S.Walia for the applicant/review petitioner and Shri A.L.Kasturey for the respondents.

Shri Walia has sought review of my order dated 29/3/96 so far as it relates to "grant of post retirement passes as per rules, after taking into account the date of vacation of quarter by him and making necessary adjustment." The counsel for the applicant contends that reference to the clause "after making necessary adjustment" is capable of interpretation by respondents in such a manner that the applicant will not be entitled to passes for 18 year from the date of retirement. According to him, such an interpretation would be against the binding law laid down in Full Bench judgement in Wazirchand v/s. Union of India vide Bahri Brothers Full Bench judgement Vol.II page-287 in which it is held that disallowing a set of post retirement passes for every month of unauthorised retention of the railway quarter is unwarranted.

Shri Kasturey for the respondents, contends that the review petition does not satisfy conditions in order 47 of CPC. He takes me to the prayer in the OA and the relief granted and argues that the order of the Tribunal is quite clear and if the applicant is aggrieved, he should

be directed to file a fresh OA.

I have considered the matter. The Review petition is essentially in the nature of seeking clarification of my order. I am persuaded that the clarification as prayed for by the applicant is necessary to avoid the consequences apprehended by the applicant. I therefore review the order dated 29/3/96 to the extent indicated below:-

I O R D E R

The last but one sentence in para-3 of the order in OA-1021/93 dated 29/3/96 should read as below:-

"The applicant is also entitled to post retirement passes for the year 1996<sup>and</sup>/onwards after taking into account the date of vacation of quarter by him viz. 15/7/93."

Review petition is disposed of in above terms. The original order in OA-1021/93 dated 29/3/96 should be corrected in red ink as above and should be deemed to have been corrected abinitio"

abp.

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

order/Judgment despatched  
to APP. 21/8/96  
on 22/8/96