

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

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Original Application No: 226/93

Transfer Application No: ....

DATE OF DECISION: 8-11-1995

S.N.Ratnaparkhi

Petitioner

Mr.V.P.Vaidya

Advocate for the Petitioners

Versus

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GM Central Rly. and two Ors.

Respondent

Mr.Ravi Shetty

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri N.K.Verma, Member(A)

The Hon'ble Shri

1. To be referred to the Reporter or not ? no
2. Whether it needs to be circulated to other Benches of the Tribunal ? no

M

  
(N.K.VERMA)  
Member(A)

(8)  
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A.226/93

WEDNESDAY the 8th day of NOVEMBER, 1995

Hon'ble Shri N.K.Verma, Member(A)

S.N.Ratnaparkhi,  
Shri Aaji Pmasad,  
Opp.Krishna Society,  
Juhu, Bombay- 400 049.

.. Applicant

(By Advocate  
Shri V.P.Vaidya)

-versus-

General Manager,  
Central Railway  
Bombay and two Ors.

.. Respondents

(By Advocate  
Shri Ravi Shetty)

O R D E R

(Per N.K.Verma, Member(A))

In this case the applicant has claimed the fixation of his pension at a level of Rs.640/- on the basis of pay drawn by him during the last ten months before his retirement as Claims Inspector from the Railways.

2. The applicant was working as Claims Inspector in the scale of Rs.425-640 and was promoted to officiate in the higher scale of Rs.455-700 w.e.f. 10-4-78. He continued in this higher scale for a limited period because of the leave vacancy caused by one of the official who went on leave. He was reverted to his substantive post on 4-7-1978, however, the applicant was allowed to draw higher scale of pay fixed in the senior level of the post which he continued to draw till he superannuated on 30-6-1979. While fixing the pension settlement of the applicant the clerical error in allowing him to draw higher scale beyond 3-7-1978 came to notice and overpayment of Rs.591/- made to him during the

*N.K.V.*

period was recovered from his outstanding pay and allowance and his pension was fixed at Rs.590/-p.m. on the basis of the actual pay which would have been due and admissible to him in the substantive grade of Commercial Inspector of Rs.425-640. The applicant made several representations in the matter and he also tried to have the matter looked into by the Regional Labour Commissioner for which an application was made by him on 3-11-89. However, the respondents rejected his application on 11-11-1992 saying that he was not a workman under the provision of ID Act. Thereafter the applicant has come to the Tribunal for adjudication in April,1993, after nearly 14 years of the settlement of his pensionary dues.

3. Learned counsel for the applicant based his claim solely on the fact that the applicant was paid higher scale of pay by the respondents themselves and he continued to officiate in the higher grade till the date of his superannuation. He also brought to my notice that there was no official order supporting his claim but there were certain other documentary evidence like a certificate from a Chief Claims Officer issued after the date of his so called reversion which would indicate that he continued to work in the higher scale of pay as claimed by him. He also reiterated that it was for the respondents to produce documentary evidence that he was ever reverted to his substantive post.

*W.H.K.*

He also further referred to the matter regarding referring of his case to the Regional Labour Commissioner which was illegally stopped by the respondents and they have taken up themselves by the role of Regional Labour Commissioner.

4.

Learned counsel for the respondents have brought to my notice the service book which clearly stated that the applicant stood reverted as Claims Inspector in the scale of Rs.425-640 w.e.f. 4-7-1978. The question of excess payment was only because of clerical error which got rectified within a year of his reversion and excess payment made to him was also adjusted. Hence the question of wrong fixation of pension does not arise and the applicant was being paid admissible pension. Learned counsel for the respondents also brought to my notice the grossly delayed claim in this matter. The cause of action arose in June '79 when the applicant superannuated. The O.A. has been filed only in April '93. On this count alone the matter needed to be dismissed.

5. I have given careful consideration to arguments of both the sides, and gone through the service book. There is enough documentary proof that the applicant officiated only in a leave vacancy in the higher grade of Rs.455-700 for a short period and he got reverted immediately when the other man resumed duty. The question of reversion as per any <sup>departmental</sup> ~~documentary~~ order does not arise as this was not a reversion under the principles of administrative law and natural justice.

*N. K. W.*

The applicant by his own admission had reverted and it was just by mistake that he continued to draw a higher scale of pay. If rectification is carried out by administration well within time there was no question of any injury being caused to the applicant thereby. The respondents were within their right to deduct the excess amount paid and it does not require any intervention by this court at this stage.

6. The question of the applicant being a workman is far fetched submission by the learned counsel for the applicant. He is a railway employee. The question of his being covered under ID Act does not arise. There are catena of judgments of the Hon'ble Supreme Court wherein it has been laid down that ~~service~~ which are governed by separate rules such as Article 310 and 311 should be excluded from the sphere of industry. The ~~subject~~ ~~Speaker~~ excludes the applicability of the general" as ruled in B.N.Nagarajan v. State of Mysore, AIR 1966 SC 1942.

7. Lastly I also feel that this case is grossly delayed and it suffers from unexplained delays and laches.

8. In view of the above reasons I find no merit in this O.A. and the same is dismissed with no order as to costs.

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*N.K.Verma*  
(N.K.VERMA)  
Member(A)