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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 234/93

DATE OF DECISION: 24.6.94

Shri Hindupur Vasantrao Pratap Simha Petitioner

Smt. N.N. Murthy

Advocate for the Petitioners

Versus

General Manager, Central Rly
and others

Respondent

Shri J.G. Sawant.

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)

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 234/93

Shri Hindupur Vasantrao Pratap Simha ... Applicant.
V/s.

General Manager
Central Railway Headquarters
Victoria Terminus,
Bombay.

The Secretary,
Department of Public Grievances,
Ministry of Pension and Personnel
Affairs, Sardar Patel Bhavan,
Sansad Marg, New Delhi. ... Respondents.

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

Appearance:

(Smt.) N.N. Murthy, counsel
for the applicant.

Shri J.G. Sawant, counsel
for the respondents.

ORAL JUDGEMENT

Dated: 24.6.94

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

1. The applicant was working as Divisional Signal and Telecommunication Engineer(Construction), Jhansi and relinquished his charge on 9.12.1985 on account of eye injury caused by Bhopal gas leak on 2.12.1984. The applicant has been sanctioned a pension of Rs. 1612/- plus personal pension of Rs. 40/-

After deducting commuted pension his pension was fixed at Rs. 1197/- . The claim of the applicant is to sanction pension of Rs. 1796/- as against Rs. 1612/- on the footing that the pension revision in terms of orders following the recommendation of IVth Pay Commission effective from 1.1.86 should apply to him. The second relief claimed by the applicant is that the quantum of gratuity should also be enhanced in accordance with IVth Pay commission. The applicant claims arrears of pension and gratuity with 16% interest. The third relief claimed by the applicant

is of leave salary at the new rates to the tune of Rs. 21,288/- as against the existing leave salary of Rs. 16250/-. The applicant has also claimed that his rate of pension be further enhanced by addition of stagnation increment to which he became entitled as on 1.11.85 i.e. prior to the relinquishing of the charge. It is the case of the applicant that although he has relinquished the charge on 9.12.85 he should be deemed to have been retired only after availing of 5 months' leave to his credit. Another ground made out by the applicant for claiming revised pension is that he should be deemed to have retired from service on 1.1.86 because persons who superannuated between 2.12.85 and 31.12.85 have been deemed under the rules to have retired on 31.12.85 and settlement of dues for pension and other monetary benefits are also to be given as on 31.12.85.

2. The claims of the applicant have been contested by the respondents. It is contended that the applicant had given the notice of voluntary retirement as on 2.9.85 and this notice was accepted on 5.12.85 and the applicant stood retired on 9.12.85. It is stated that under relevant orders, in the case of voluntary retirement actually the date of relinquishing the charge has to be taken for the purposes of pensionary benefit and since the applicant is deemed to have voluntarily retired with effect from 9.12.85, hence application of IVth Pay Commission and revision of pension as per instructions of O.M. No. 2/1/87-PIC-1 dated 16.4.87 does not arise. Para 5 of the instructions reads as below:

" In the case of existing pensioners, whose pension was calculated under the slab formula, the pension will be recalculated at 50% of average emoluments. There will be no upper ceiling on the amount of pension so worked out. The reckonable emoluments and the

reckonable qualifying service in their case will however remain unchanged. The additional pension becoming due under these provisions will not however be taken into account for computation of additional relief sanctioned in the preceding paragraph nor will it qualify for additional commutation."

3. Regarding stagnation increment it is stated that the same was allowed to the applicant and arrears of stagnation increment amounting to Rs. 800/- were paid to the applicant on or about January 1994. As far as complete quantum of stagnation pension our attention was invited to instructions dated 25.9.90 in which it has been stated that stagnation increment should be taken into account for all purposes including retirement benefits effected from 1.1.86. Since applicant retired prior to 1.1.86, the same cannot be included in pension.

4. The basic case of the applicant is that of determining the date of retirement. Applicant has voluntarily retired by notice on 2.9.85 and his request has been accepted and he retired from Railway service from 9.12.85, the slight delay beyond 3 months being explained by the communication gap. No material has been placed before us nor any orders have been cited before us so that the applicant can be said to have continued in service beyond 9/12.85. So far as 5 months' leave is concerned the contention that he should be deemed to have proceeded on leave from 5.12.85 cannot be accepted. We are therefore unable to accept the request of the applicant to treat him as having retired on 1.1.86 and to consider him eligible for pension as a post - 1.1.86 retiree.

5. However during the course of argument our attention was drawn to letter No. C.Rly. Pension/JHS/CNW/GAZTT/50 dated 25.11.88 at page 19 of the application. In which it is stated as below:

" It is regretted that previous pension authority which was issued in favour of the above named was calculated wrong. The mistake occurred in D.R.M's office and the same was repeated by this office. Now the case into the hand of present SO, the case has been reviewed and his pension has been revised from Rs. 1005 to Rs. 1364 + Rs. 40 pp."

6. Learned counsel for the respondents has invited our attention to R VI letter of Senior Divisional Accounts Officer, Jhansi dated 12.12.89 purporting to state that there was no mistake and that there was actually a revision as per 568 Index Level. We feel that it is a matter which needs to be looked into by the Railway Administration whether there was a mistake in calculation of pension or whether there was a revision and whether there was a delay in making the payment of pension to the applicant at the revised rates and whether he is entitled to interest. This is a matter which can be looked into by the Railway Administration which can settle the dues if any expeditiously. The ends of justice would be served by giving a direction to the Railway Administration to look into the matter and issue a speaking order within a period of two months from the communication of this order. We therefore dispose of this case by passing the following order:

ORDER

The application is rejected except for the direction referred to above. No order as to costs.

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

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,

BOMBAY BENCH, BOMBAY.

Review Petition No.106/94

in

Original Application No.234/93.

Shri Hindupur Vasantrao Pratap Simha. ... Applicant.

V/s.

Union of India & Anr.

... Respondents.

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

ORDER ON REVIEW PETITION NO.106/94

BY CIRCULATION

(P.V)
[Per Shri M.R.Kolhatkar, Member(A)] Dated: /3 .9.1994

This application for review against the Judgment dt. 24.6.1994 is on the grounds which were urged in the Original Application. Effectively, therefore, this is an application not for review, but for rehearing. The main point emphasised by the applicant is that the sanctity of the orders of the General Manager ~~should~~ be upheld directing that the voluntary retirement should be from the date of relief. We had considered the matter and held that the applicant retired on 9.12.1985 and we had observed after noting the relevant rules that the applicant has to be treated as an existing pensioner who is not entitled to the benefits of the pension as per post 1.1.1986 retiree. The relief sought by the applicant is to make pension payment for the period 10.12.1985 to 31.12.1985 and interim relief of Rs.10,000/-. The application has not pointed out any error apparent on the face of the record of our order nor has he referred to the directions given by us in terms of which he could represent to the Railway Administration regarding any delay etc. in making the payment of pension and whether he is entitled to any interest.

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2. In view of the above, we find no substance in this Review Application, which is accordingly dismissed.

M.R.Kolhatkar

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

B.