

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH  
-----

Original Application No: 630/93

~~Transfer Application No:~~

DATE OF DECISION: 22/3/94

Shri V.P. Kolhe Petitioner

Shri G.S. Walia Advocate for the Petitioners

Versus  
-----

Union of India and others Respondent

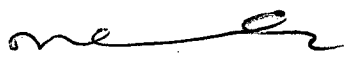
Shri J.G. Sawant. Advocate for the Respondent(s)

CORAM :  
-----

The Hon'ble Shri Justice M.S. Deshpande, Vice Chairman

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

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

  
(R. Rangarajan.)  
Member (A)

NS

(16)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 630/93

Shri V.P. Kolhe

... Applicant.

V/s.

Union of India through  
General Manager,  
Central Railway  
Bombay V.T.  
Bombay.

Divisional Railway Manager  
Bhusawal, Central Railway  
Bhusawal

Sr. Accounts Officer  
Central Railway  
Bhusawal.

... Respondents.

CORAM: Hon'ble Shri Justice M.S. Deshpande, Vice Chairman.

Hon'ble Shri R. Rangarajan, Member (A).

Appearance

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

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

JUDGEMENT

Dated: 22/3/94

¶ Per Shri R. Rangarajan, Member (A) ¶

Applicant, in this OA was an H.T.C. in Bhusawal Division of Central Railway and retired from service on 31.1.87. He was in the scale of Rs. 425-640 and his pay fixation on the 4th pay commission scale is not done though 4th pay commission scale had come into force with effect from 1.1.86. The applicant states that in the year 1985 a special case No. 52 of 1985 had been filed against him which is pending, though recoveries in respect of the debits have been made from his pay.

2. His pension and pensionary benefits have been paid to him on the basis of his pay in the grade of Rs. 425 - 640 of the 3rd pay commission but not in the scale as per 4th pay commission. He represented for payment of his pension and other pensionary benefits

of pay. No rule or instruction has been brought to our notice by respondents that pay fixation as per 4th pay commission and fixing of the applicant's provisional pension as per his last pay drawn on the basis of the 4th pay commission scales of pay is prohibited when a criminal case is pending against him. Certainly rule 2308 does not prohibit the above. In view of this it is obligatory on the part of the respondents to fix his pay with effect from 1.1.86 on the basis of the 4th pay commission scales of pay and draw the pay fixation arrears if not already done. On the basis of this, his provisional pension from 1.2.87 has to be fixed.

6. Though rule 2308 prohibits payment of DCRG, in this case when he had already been paid the DCRG as per the old scale there may not be any bar to pay DCRG now as per revised pay fixation. However the respondents are at liberty to keep back sufficient amount which in their opinion is necessary to be kept back to make good any recovery to be made from the applicant on the finalisation of the criminal case.

7. As the pension is only provisional the applicant is not entitled for commutation, though wrongly commuted amount was paid to him at the old scale of pension as admitted by the respondents. We do not insist on the payment of commutation now in view of the fact that the pension is only provisional.

8. Though there is no mention regarding the leave salary to be paid to the applicant the respondents should also pay the leave salary as per fixation of pay on the basis of the 4th pay commission scale if he is entitled for payment of leave salary or arrears of leave salary if part payment had already been done as per



of pay. No rule or instruction has been brought to our notice by respondents that pay fixation as per 4th pay commission and fixing of the applicant's provisional pension as per his last pay drawn on the basis of the 4th pay commission scales of pay is prohibited when a criminal case is pending against him. Certainly rule 2308 does not prohibit the above. In view of this it is obligatory on the part of the respondents to fix his pay with effect from 1.1.86 on the basis of the 4th pay commission scales of pay and draw the pay fixation arrears if not already done. On the basis of this, his provisional pension from 1.2.87 has to be fixed.

6. Though rule 2308 prohibits payment of DCRG, in this case when he had already been paid the DCRG as per the old scale there may not be any bar to pay DCRG now as per revised pay fixation. However the respondents are at liberty to keep back sufficient amount which in their opinion is necessary to be kept back to make good any recovery to be made from the applicant on the finalisation of the criminal case.

7. As the pension is only provisional the applicant is not entitled for commutation, though wrongly commuted amount was paid to him at the old scale of pension as admitted by the respondents. We do not insist on the payment of commutation now in view of the fact that the pension is only provisional.

8. Though there is no mention regarding the leave salary to be paid to the applicant the respondents should also pay the leave salary as per fixation of pay on the basis of the 4th pay commission scale if he is entitled for payment of leave salary or arrears of leave salary if part payment had already been done as per

his revised scale of pay. There is no rule which was brought to our notice prohibiting the same.

9. Respondents cannot be held fully responsible for not fixing the applicant's pay as per 4th pay commission pay scale and payment of pension and other pensionary benefits as the applicant is involved in a criminal case. Hence we do not consider it a fit case to award any interest for the delayed payment.

10. In the result the following directions are given:

- (i) His pay should be fixed as per scales of pay of the 4th pay commission as accepted by the Government if it had not been done already. Pay fixation arrears should be calculated and drawn.
- (ii) Amount of DCRG to be paid as per fixation of his pay as above has to be calculated and if had already been paid some amount of gratuity the remaining amount as per calculation should be drawn.
- (iii) His leave salary entitlement as per his pay fixation as indicated in para (i) above if partly paid already, the remaining amount has to be calculated and drawn.
- (iv) The total sum of arrears as computed as per (i), (ii) and (iii) above shall be paid to him keeping back the amount which in the opinion of the respondents is necessary to be kept back to make good any recovery to be made from the applicant on the finalisation of the criminal case.

(v) Provisional pension as per the pay fixation as indicated in para (i) above has to be fixed and the applicant be paid provisional pension at that rate.

(vi) There shall be no payment of commutation till the finalisation of the criminal case and fixation of final pension.


(viii) No interest need be paid as prayed for.

(ix) no recovery for the commutation amount already drawn. But the principal pension will be less than the by the amount the commutation already drawn and paid him.

The above directions will be complied

within a period of four months from the date of receipt of this order.

The O.A. is ordered accordingly. No costs.

  
(R. Rangarajan)  
Member (A)

  
(M.S. Deshpande)  
Vice Chairman

NS