

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: **860/93**

Transfer Application No:

DATE OF DECISION:

9-12-84

Shri. T.B. Tolani Petitioner

Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri. Subodh Joshi 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 ? **X**
2. Whether it needs to be circulated to other Benches of the Tribunal ? **X**

M.R.Kolhatkar

(M.R.Kolhatkar)
M(A)

J*

(P)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A 860/93

Shri. T.B. Tolani .. Applicant

Vs.

Union of India & Ors. .. Respondents

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

APPEARANCES

1. --

2. Shri. Subodh Joshi, Counsel
for respondents

JUDGMENT

DATED : 9-12-87

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

This O.A is an off-shoot of the earlier
order of the Tribunal vide O.A 223/87 decided
on 20.6.91. In that O.A the Tribunal directed
that the respondent Railways are liable to pay
interest on following payments which were withheld
beyond three months from the date of Z retirement,
namely :

- 1) P.F [REDACTED]
- 2) Other payments such as transfer grant,
leave salary etc.
- 3) DCRG after deducting Rs.10,000 keeping
in view the charge in departmental
proceedings

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2. In para 8, the respondents were directed to sanction within 4 months, the commutation value of pension in accordance with rules provided, a complete application in this regard is made by the applicant. The applicant had filed an R.P vide RP No. 67/91 and the same was decided on 30/12/1991. The first ground for R.P was that the amount of Rs.10,000 directed to be withhold was much in excess of Rs.1,200 which was ~~the~~ value of excess amount for procuring material and may therefore be reviewed. That prayer was rejected. So far as commutation of pension is concerned, the order in review petition states as follows :

"As regards the commutation of pension it was admitted, as recorded in the judgment, that the applicant had already been sanctioned provisional pension to the extent of maximum pension admissible from the date of retirement and we had also directed payment of interest for delay in payment of arrears of pension. Evidently the payment of provisional pension will continue every month till the commutation of pension is sanctioned.

Payment of interest on the commutation value of pension has not been directed by us, not because of factual error based on misconception as alleged in the review petition, but because it would have been an additional compensation for the delay in payment of the commuted value, which in our view was not justified."

3. The applicant had thereafter filed a C.P (76/92) which again came to be decided on 11/8/93. In that C.P, it was observed as follows :

"But the applicant has still the grievance that recoveries have been made towards certain dues for which full reasons have not been given. The learned counsel for the respondents explained that the recoveries are made to meet Audit objections and are in accordance with relevant Railway Rules. The applicant, however, disputes

this and claims that this recovery is not in conformity with the rules and that no recovery should have been enforced after the retirement. If so, this is a fresh cause of action. If the applicant so chooses, he can agitate the same by filing a fresh application in accordance with law."

4. This O.A is appears to have been filed in view of the above. The first contention of the applicant is that Rs. 4,184 have been paid less on account of DCRG being the amount withheld as the applicant is reported to have availed of free pass for a longer route than the admissible one. According to the applicant the audit para on the basis of which recovery is based, was available in 1990 i.e. four years after his retirement and unless responsibility is fixed and other formalities are over, it is not open to the Railways to make this recovery.

5. We have considered the matter. We have already noted that the Tribunal in O.A. 223/87 permitted withholding an amount of Rs.10,000 assessed broadly as the maximum amount adequate to cover the dues. That assumption was based on the departmental proceedings pending against the applicant. The to Tribunal refused/review the quantum and the applicant stated that Rs.10,000 was more than adequate to cover the likely loss to the Railways. Keeping this background in view, it appears to us that withholding an additional amount of Rs.4,184 is not justified especially because, it is now well settled that DCRG is a pensionery benefit and as such a private property of the employee and therefore he is entitled to immediate payment thereof on superannuation, unless ^{been} formal orders have/passed withholding any amount on account of grave misconduct. The applicant is

therefore entitled to relief of Rs. 4,184 being the withheld amount from DCRG and he is also entitled to payment of 12% ^{of interest} as was allowed to him earlier till the date of payment.

6. The second prayer of the applicant is ~~that~~ he has been paid Rs.12,818 less on account of commuted value of pension because his application dated 27.1.86 was not considered when the case was decided on the ~~basis~~ of application dated 18.6.92. The Tribunal had earlier directed payment of commuted value of pension in accordance with the rules subject only to the condition that a complete application in this regard is made by the applicant. The respondent states that they have complied with the judgment of the Tribunal. The commuted value of pension has been calculated according to age failing due attaining the next date of birth of the petitioner (date of birth being 20.1.28) and date of submission being 18.6.92. The age for calculating commuted value of pension at 65 years of age falls due at Rs.102 and as Sri.Tolani commuted Rs.545 being 1/3rd of revised basis pension, the commuted value of pension works out to Rs.55,590. The case of the applicant is that he superannuated on 31.1.86 and applied for commutation well before the date of superannuation. He is therefore entitled to higher value of commutation. This would ofcourse reduce his provisional pension and might involve refund of certain amount by the applicant to the respondent. In our view it is only ~~to~~ be proper for the respondents to allow commutation to the applicant

on the basis that he applied on 21.7.1986 provided that the applicant is prepared to make refund of the excess provisional pension received by him.

7. The applicant has thirdly contended that he is entitled to various items like interest on transportation, transfer and packing allowance etc. The respondents, however state that according to their calculations, an amount of Rs.134/- stands recoverable from him on account of overpayment on account of provisional pension. In our view, this matter is no longer res integra having been settled by our orders in O.A. 223/87. We are not inclined to go into the contentions of the applicant in this regard.

8. We therefore dispose of this application partly allowing the same as appears in the earlier paragraphs of the order. Respondents are directed to comply with directions in paras 5 and 6 within four months of the communication of the order. No order as to costs.

M.R.Kolhatkar

(M.R.Kolhatkar)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Review Petition No. 22/95 in
Original Application No. 860/93
Transfer Application No.

Date of Decision : 15-2-95

Shri. T.B. Tolani

Petitioner

Advocate for the
Petitioners

Versus

Union of India & Ors.

Respondents

Advocate for the
respondents

C O R A M :

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)

J*

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

R.P.No. 22/95 IN O.A 860/93

Shri. T.B. Tolani .. Applicant
Vs.

Union of India & Ors. .. Respondents

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

ORDER ON R.P BY CIRCULATION
(Per : Shri.M.R.Kolhatkar, M(A))

Dt. 15-2-95

In this R.P which is extremely rambling, the applicant appears to have raised the same arguments as in the Original Application. No error apparent on the face of the record or other sufficient cause has been shown in terms of Order 47, Rule 1 of C.P.C to warrant a review of our order in the O.A dated 09/12/1994. The R.P therefore is dismissed.

M.R.Kolhatkar
(M.R.KOIHATKAR)
MEMBER (A)

J*