CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 753, 752 & 754 of 1994

Transfar Application No:

DATE OF DECISION: 1.12.1994

S.A.Kulkarni
M.G. Patil
B M Shinde ____ Petitioner

Mr. G.S. Walia ____ Advocate for the Petitioners

Versus

U.O.I. & Ors. ____ Respondent

Mr. Subodh Joshi ____ Advocate for the Respondent(s)

CORAM :

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

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.

Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY 1

O.A. Nos. 753/94; 754/94 and 752/94

S.A.Kulkarni ..Applicant in O.A. No.753/94

Mr. B.M. Shinde ..Applicant in O.A.No.754/94

Mr.M.G.Patil ..Applicant in O.A.No.752/94

V/s

Union of India & Ors. ..Respondents

Coram: Hon.Shri Justice M.S.Deshpande, V.C.

Appearance:

Mr. G.S.Walia
Counsel for the applicants

Mr. Subodh Joshi
Counsel for the respondents

ORAL JUDGMENT: DATED: 1.12.1994
(Per: M.S.Deshpande, Vice Chairman)

The applicant (O.A. No.753/94) who retired as a Goods Clerk from the Railways on 31.3.93 came to be prosecuted before a Criminal Court in the year 1981 in respect of a transaction of the year 1979-80 in which debits had been raised against 11 booking clerks of which the applicant is one. The amount of Rs.1,337.05 which was assessed to be the loss according to the respondents was deducted from the salaries of the said employees. According to the applicant the total full pension was Rs.1488/- without commutation and though he had applied for commutation the commutation was not allowed in view of the CBI case and he ought to have been paid full pension and Dearness Allowance, but he was paid only Rs.992/- per month as reduced pension. According to the applicant two other employees viz., Shinde and Patil were allowed full pension as provisional pension in accordance with the rules and therefore hostile discrimination was made in this respect. The applicant's contention is that he was also not paid

the leave salary. The grievance of the applicant is that it will take a long time to finalise the criminal case as the charges have not yet been framed despite its long pending and in the circumstances his pensionary benefits should be paid to him because the rule enabling the respondents to withhold the pensionary benefits would be unconstitutional.

The Ld. Counsel for the respondents opposed the prayers. He stated that the orders regarding payment of the leave salary are under issue and the leave salary would be paid to the applicant soon. With regard to the other reliefs claimed it was urged that the rules do not permit the payment of those amounts.

The matter is no longer res-integra in view of the decision of the Division Bench in OA No.429/89 JAWAHARLAL ROSHANLAL KHANNA V. U.O.I. & ORS. decided on 18.7.1991 in which certain reliefs were granted to the applicant therein including commutation and this was followed by a decision of the Ld. Single Member in O.A. No. 486/93 D. CHANDRASEKARAN V. U.O.I. & ORS., decided on 19.7.93. The matter came to be reconsidered in O.A.No.743/88 P.R. DAS V. U.O.I. & ORS., decided on 27.9.94. It is not necessary to re-state the reasons which led to those decisions because the Division Bench decision binds me.

Mr. Walia, Ld. counsel for the applicant did not press the question of constitutional validity of the rules.

O.A.NO. 754/94

In O.A. No. 754/94 B.M. Shinde belongs to the same group of 11 persons and the facts are identical. In view of the reasons given above a similar direction will have to be issued in this case.

O.A. NO.752/94

In O.A. No.752/94 is taken on board at the request of Mr. Walia, Ld. Counsel for the applicant and Mr.

Subodh Joshi, Ld. counsel for the respondents has no objection. As the points involved in this case are similar to O.A. Nos. 753 and 754 of 1994 and the facts are identical a similar direction will have to be issued in this case.

ORDER

O.A. NO.753 OF 94 S.A. KULKARNI

The respondents are directed to

i) pay the entire amount of pension which would be the full provisional pension to the applicant from the date of his retirement without any deduction as no commutation so for has been granted.

ii) The respondents shall pay to the applicant at least one half of the gratuity normally admissible, subject to his executing a bond of indemnity with two sureties to the effect that he will refund the amount to the Government in case the final verdict of court goes against him. The payment shall be made within two months from the date of receipt of indemnity bond.

iii) The applicant will be allowed to commute at least one-half of one-third of the pension which a government servant is entitled to commute under the Railway Pension Rules, subject to the condition that the applicant will execute a bond of indemnity together with two sureties as referred above.

iv) The amount of commuted pension / gratuity shall be released to the applicant within a period of three months from the date of receipt of necessary applications along with the indemnity bond.

v) The question of payment of interest on the amount of retiral benefits is left open depending on the result of the criminal case.

vi) The respondents shall pay to the applicant leave salary within the above specified period with interest @ 10% per annum up to the date of payment.

vii) No order as to costs.

O.A. NO. 754/94 B.M. SHINDE:

The respondents are directed to:

i) pay to the applicant at least one half of the gratuity normally admissible subject to his executing a bond of indemnity with two sureties to the effect that he will refund the amount to the Government in case the final verdict of court goes against him. The payment shall be made within two months from the date of receipt of indemnity bond.

ii) The applicant will be allowed to commute at least one-half of one-third of the pension which a government servant is entitled to commute under the Railway Pension Rules subject to the condition that the applicant will execute a bond of indemnity together with two sureties as referred above.

iii) The amount of commuted pension shall be released to the applicant within a period of three months from the date of receipt of necessary application along with the indemnity bond.

iv) The question of interest on the amount of retiral benefits is left open depending on the result of the criminal case.

v) The respondents shall pay to the applicant leave salary with the above specified period with interest @ 10% per annum up to the date of payment.

vi) No order as to costs.

O.A. NO. 752/94 M.G. PATIL:

The respondents are directed to:

i) pay the applicant at least one half of the gratuity normally admissible, subject to his executing a bond of indemnity with two sureties to the effect that he will refund the amount to the Government in case the final verdict of court goes against him. The payment shall be made within two months from the date of receipt of indemnity bond.

ii) The applicant will be allowed to commute at least one-half of one-third of the pension which a government servant is entitled to commute under the Railway Pension Rules subject to the condition that the applicant will execute a bond of indemnity together with two sureties as referred above.

iii) The amount of commuted pension shall be released to the applicant within a period of three months from the date of receipt of necessary applications along with the indemnity bond.

iv) The question of payment of interest on the retiral benefits is left open depending on the result of the criminal case.

v) The respondents shall pay to be applicant the leave salary within the said period with interest @ 10 per cent per annum up to the date of payment.

vi) No order as to costs.

All the three applications are disposed of finally with the above directions.

(M.S.Deshpande)
Vice Chairman