

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 339/95

Transfer Application No.

Date of Decision 13.8.1997

M.C.Chandan

Petitioner/s

Shri P.N.Kanphade

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Mrs. Indira Bodade

Advocate for
the Respondents

CORAM :

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

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)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI
CAMP : NAGPUR

OA.NO. 339/95

Dated this the 13th day of August, 1997

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

Motiram Chivhaji Chandan
R/o Pushkraj, Professors Colony,
Ranipise Nagar,
Akola (Maharashtra).

By Advocate Shri P.N.Kanphade

... Applicant

V/S.

Union of India, represented by

- i) The General Manager,
Central Railway,
Bombay V.T.
- ii) The Divisional Railway Manager
(Personnel), Central Railway,
Bhusaval (M.S.).

By Advocate Mrs. Indira Bodade
C.G.S.C.

... Respondents

ORDER

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

In this OA, the applicant has sought the relief of directing the respondents to draw and disburse the pensionary benefits with interest for delayed payment. He has further sought the relief of counting of his service under the State Government from 24.12.1960 to 30.11.1964 for the purpose of fixation of his pension.

2. It is not disputed that the applicant retired on 30.6.1994 as Chief Inspector of Works, Central Railway. It is further not disputed that provisional pension is paid to him and other pensionary benefits have also been paid to him except the amount of Rs.63,720/- on account of Death-cum-retirement Gratuity and commutation value of Rs.66,526/-. It is stated that provisional pension

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cannot be converted into final pension and the commutation amount cannot be released since the applicant has not complied with certain formalities and since the applicant was not cooperative with the Railway administration in intimating the stock verification of Bhopal Division for the period 1989-90 which involves heavy amount as excess and deficiencies ~~running~~ into lakhs of rupees as shown in the written statement at page 2. It is stated that the enquiry in this regard is in progress. The latest position is that the applicant had attended the enquiry at DRM(W)'s Office, Bhopal and submitted his explanation regarding stock verification. However, DRM (W) Bhopal has informed that the issue stands referred to Senior DAO BSL for his comments. It is contended that in accordance with Rule 8 (b) of Railway Services (Pension) Rules, 1993, "The appointing authority may, by order in writing, withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct."

Rule 9 provides that :-

" The President reserves to himself the right of withholding or withdrawing a pension or gratuity, or both, either in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Railway, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement."

In my view, these rules ~~are~~ not applicable to the present case because it is not established that any pecuniary loss ^{was} caused to the Railway and he ^{has} not ~~been~~ found guilty of misconduct.

3. Next, reliance is placed on Rule 15 which deals with Recovery and adjustment of Government or railway dues from pensionary benefits. The Rule provides that :-

"15 (1) It shall be the duty of the Head of office to ascertain and assess Government or railway dues payable by a railway servant due for retirement.

(2) The railway or Government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of the railway servant, shall be adjusted against the amount of the retirement gratuity or death gratuity or terminal gratuity and recovery of the dues against the retiring railway servant shall be regulated in accordance with the provisions of sub-rule (4).

Sub-rule (4) (ii) reads as below :-

" Recovery of losses specified in sub-clause (a) of clause (i) of this sub-rule shall be made subject to the conditions laid down in rule 8 being satisfied from recruiting pensions and also commuted value thereof, which are governed by the Pensions Act, 1871 (23 of 1871). A recovery on account of item (a) of sub-para (i) which cannot be made in terms of rule 8, and any recovery on account of sub-clauses items (b) and (c) of clause (i) that cannot be made from these even with the consent of the railway servant, the same shall be recovered from retirement, death, terminal or service gratuity which are not subject to the Pensions Act, 1871 (23 of 1871). It is permissible to make recovery of Government dues from the retirement, death, terminal or service gratuity even without obtaining his consent, or without obtaining the consent of the members of his family in the case of a deceased railway servant."

From this it is clear that the Railway administration has clearly failed in its duty to ascertain and assess the railway dues at the time of retirement and it was not correct for them to arbitrarily withhold the gratuity and the commutation value because as mentioned in Rule 15 (4) (iii), a suitable cash deposit is to be taken or alternatively the retiring railway servant is to be asked to furnish a surety of a suitable permanent railway servant.

The action taken by the railway administration is clearly not authorised by the rules. The contention of the counsel for the respondents, however, is that the process of ascertaining and assessing of the railway dues was delayed by the non-cooperative attitude of the applicant. It is only when the applicant attended the enquiry that the railway administration ~~was~~ in a position to finalise the matter. In my view, the Tribunal had issued certain directions in its order dated 24.1.1997 and railway administration ought to have finalised the matter within a reasonable time of three months from that date. Taking account of the present status of the case, I, hereby, direct the respondents to finalise the matter within a month from the date of the order under any circumstances. It is open to the respondents to deduct any loss caused to the railways in terms of the rules quoted above but the ~~balance~~ should be paid to the applicant along with the interest at 12% within a fortnight of the final assessment of the loss if any.

4. So far as counting of the past service is concerned, the contention of the applicant is that the communication dated 21.6.1995 from DRM's office, Bhusawal deals with this matter ~~comprehensive~~ and therefore keeping in view the provisions of the letter and provisions of Railway Services (Pension) Rule 28 dealing with the subject of "Counting of temporary service under the State and Central Government and allocation of pensionary liability", his pension may be refixed. The respondents, however, contend that they have ~~enter~~ ^{ed} into correspondence with various departments of the ~~State~~ Government and they have enclosed copies of the ~~same~~ ~~with~~ ~~the~~ ~~departments~~ that gist of the correspondence ~~is~~ the departments is ~~as~~ the matter is very old and the record is not traceable, it is

not possible to give a certificate regarding service rendered by the applicant. It appears that the railway administration has followed the advice of Sr.DAO BSL, which is to be seen at Annexure 'R-3' to the original written statement of the respondents dated Nil but filed on 14.7.1995. The same reads as below :-

" The case is in complete and silent about the pay particulars and pensionary liabilities. There is no valid document from the State Govt. authorities in support of his claim for having been worked as overseas. It appears that the employee had worked in different places under different SDC B&W, as a temporary measure as a stop gap arrangements without any lien on a working post. This case, therefore, not be considered for counting the State Service for pensionary benefits. In case the same is allowed the copy of the State authority with service particulars duly verified by accounts officer Maharashtra State, should be called for and furnished."

The difficulty of the State Government departments regarding non-availability of the documents appears to be genuine, but at the same time the particulars given in the Sr.DAO's letter are the same particulars which were given by the applicant in original application in 1964. The letter dated 21.6.1995 viz. Annexure 'R-II' reads as below :-

" Prior to the appointment in Railway, the applicant was working as Overseer under Executive Engineer, Minor Irrigation Division, Chandrapur. The Service particulars of the a/n rendered in your Department prior to the Railway are as under :-

Design.of post held or descri- ption of work.	Period From To	Full address of the office firm or institution.
Overseer W/C	12.5.60-31.8.60	SDO B&C Sub Divn. B &C Deptt. Akola
- do -	24.12.60-13.7.61	SDO RP Sub Divn. II B&C Deptt. Nagpur
Overseer	14.7.61-14.8.61	SDO I/S Sub. Divn. Vardha I&P Deptt.
- do -	upto 30.11.64	SDO I/S Sub. Divn. B&C Deptt. Chanda.

While applying for the post of IOW in Rly. he submitted application through proper channel as could be seen from relieving letter No. EC/9869 of 64 dt. 30.11.64 (Copy enclosed for ready reference).

Deputy Engineer Officer soil Dist. Chanda has issued a certificate to the effect that, the a/n was not paid any gratuity, pensionary benefits while leaving service except P.F. on 30.9.64. The liability and pension if any can be accepted. The certificate to the effect is required to be issued by the concern Accounts department."

From this letter, it is clear that the last officer under whom the applicant worked had given service various particulars of the applicant rendered in ~~various~~ departments prior to ~~this joining Railways~~. On going through the service record, it is seen that the service for the period from 12.5.60 to 30.11.64 is not continuous. After having worked at Akola, the applicant appears to have been employed at B&C Deptt. Nagpur from 24.12.60 to 13.7.61. I am, therefore, of the view that broken periods of service under ~~may be left out of account & service~~ State Government/which is a continuous service and in respect of which it is certified that he ~~was~~ ~~may be treated~~ not paid any gratuity etc./as the service under the State Government which would qualify for pension under the Railways. On this Point Rule 29 of the Railway Services (Pension) Rules, 1993 is very clear, which reads as under :-

" The liability for pension including gratuity shall be borne in full by the Department to which the Government servant permanently belongs at the time of retirement and no recovery of proportionate pension shall be made from another Department of the Central Government under whom he had served."

In other words, the procedure of recovery of proportionate pension is no longer to be invoked in terms of Railway Services (Pension) Rules, 1993.

5. I, therefore, direct the respondents to treat the service under the State Government for the period from 24.12.60 to 30.11.64 as qualifying service for the purpose of calculation of pension under the Railways and re-calculate the pension immediately. Action in this regard should be taken within three months from the date of communication of this order. OA. is, therefore, allowed vide directions in Para 3 and present para with no orders as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A)

mrj.