

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 584/95

Date of Decision: 24-7-1997

S.D.Jeswani

.. Applicant

Shri K.B.Talreja

.. Advocate for  
Applicant

-versus-

U.O.I. & Ors.

.. Respondent(s)

Shri S.C.Dhavan

.. Advocate for  
Respondent(s)

CORAM:

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

The Hon'ble

(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)  
M(A)

M

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

O.A.584/95

THURSDAY, this the 24th day of JULY,1997

CORAM:

HON'BLE SHRI M.R. KOLHATKAR, MEMBER(A)

S.D.Jeswani,  
71-B, Sindhurwadi,  
M.G.Road, Ghatkopar(East)  
Mumbai - 400 077.

By Advocate Shri K.B.Talreja .. Applicant

-versus-

1. Union of India  
through  
The General Manager,  
Central Railway,  
Mumbai V.T.  
Mumbai - 400 001.

2. The Divisional Railway Manager,  
Central Railway,  
Mumbai - 400 001.

3. The F.A. & C.A.O  
Central Railway,  
Mumbai V.T.  
Mumbai - 400 001.

By counsel Shri S.C.Dhavan .. Respondents

The application having been heard on 24th July,1997  
the Tribunal on the same day delivered the following:

O R D E R

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

The applicant in this O.A. is seeking the  
relief of grant of actual pension and not provisional  
pension on the basis of revised scales of pay taking  
into consideration the notional pay he would have  
drawn on the date of his voluntary retirement on  
1-7-91. Earlier this Tribunal by its order in  
O.A.630/91 passed on 5-1-93 had disposed of the  
O.A. and the operative portion of the judgment  
reads as below :

"We, therefore, direct that the applicant  
may be treated as having voluntarily retired  
from the respondents service with effect  
from 1-7-1991 and his pensionary benefits  
and other dues should be settled on that basis.

It is also directed that while finalising the settlement dues, whatever type of leave is due to the applicant may be adjusted against his absence from 21-10-1982 till the date of retirement after obtaining, if necessary, the required leave application from the applicant. The medical certificates attached to the application may be accepted for this purpose without insisting on a fresh medical certificate. His qualifying service for pension may be calculated after taking into account such adjusted leave in accordance with the rules. The payment including pensionary benefits may be made within a period of three months from the date of receipt of this order. There will be no order as to costs."

2. The grievance of the applicant is that at present he is receiving provisional pension which has been related by the administration to the last pay drawn by him in 1982 and not in terms of Tribunal's order. Counsel for respondents states that the matter stands referred to Railway Board vide letter dt. 31-3-95 and reply of the Railway Board is still awaited. Counsel for applicant submits that in terms of Chief Personnel Officer(Engg.) letter dt. 21-7-93, at page 27, no such reference was required to be made.

3. The Tribunal's order, however, was to take action as per rules viz. first of all to regulate the absence by grant of various kinds of leave and thereafter to calculate pensionary benefits and then to pay the same. The railway administration has however, not been able to produce any order regulating the absence between 1982 - 1991 and obviously awaiting that is ~~because~~ because they are ~~the~~ the orders

from the Railway Board. The contention of the counsel for the applicant that no such orders are necessary cannot be accepted because the Tribunal had directed the railways to regulate the leave as per rules and if rules provide that grant of leave beyond 5 years requires Railway Board's approval the same has to be obtained. Whether the applicant will get benefit of the revision of pay scale as on 1.1.1986 will depend on the way the leave is regulated and especially the mix between medical leave and EOL when finally granted. This is a matter for the respondents to decide after obtaining Railway Board's sanction and after issuing an order regulating the leave. Because C.P. 59/94 was dismissed on 11.11.1994 the applicant has been driven to file this O.A. although the orders of the Tribunal in O.A. 630/91 dt. 5.1.1993 expected the railway administration to complete the whole process within three months. The failure of the railway administration to pursue the matter and bring it to an early conclusion is highly deplorable. I expect the administration of the Central Railway to pursue the matter vigorously if necessary by fax and other such methods and see that orders of the Railway Board are obtained expeditiously and thereafter orders granting leave are issued and in terms of those orders the pension of the applicant is refixed and on such refixation if any arrears are to be paid the same should be paid to the applicant. Action in this regard should be completed within six months from the date of communication of the order. O.A disposed of in these terms

4. There will be no order as to costs.

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

**CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI**

C.P. 45/98 in  
ORIGINAL APPLICATION NO:584/95

CORAM: Hon'ble Shri D.S.Baweja, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

S.D.Jeswani ...Applicant.

By Advocate Shri K.B.Talreja.

...Applicant.

V/S

**Union of India and others. . . . . Respondents**

By Advocate Shri S.C.Dhawan.

### ... Respondents

### **Tribunal's Order**

Dated: 24.12.1999

This C.P. has been filed in OA 584/95 for non-compliance of the order dated 24.7.1997. Following directions were given to the respondents.

"The administration of the Central Railway to pursue the matter vigorously if necessary by fax and other such methods and see that orders of the Railway Board are obtained expeditiously and thereafter orders granting leave are issued and in terms of those orders the pension of the applicant is refixed and on such refixation if any arrears are to be paid the same should be paid to the applicant. Action in this regard should be completed within six months from the date of communication of the order."

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2. As per the direction, the respondents have refixed the pay of the applicant and it has been brought out in para 3 of the reply to CP that revised PPO No.CR 20218-106793 dated 2.3.1998 has been issued refixing the pension of the applicant at Rs. 428/-instead of Rs. 375/. The respondents were directed to produce copy of the revised pension pay order and calculations for revision of the pension. The same were furnished during the hearing. The counsel for the applicant however contested this and stated that correct fixation of pay and refixation of pension has not been done.

3. In a Contempt application we have to see whether there is any wilful dis-obedience on the part of the respondents or not? We are satisfied that there is substantial compliance of the order of the Tribunal. We are therefore of the view that there is no case for contempt <sup>of Court</sup> against the respondents. In case the applicant is aggrieved with the implementation of the order, he is at liberty to seek legal remedy <sup>for the same</sup> ~~relief~~ as a fresh cause of action but not through a Contempt Application.

4. In view of the above, Contempt Application does have any merit and the same is dismissed accordingly. No order as to costs.

*Jain*  
(S.L.Jain)  
Member (A)

*Bawali*  
(D.S.Bawali)  
Member (J)

order/Judgement despatched  
to Applicant/Respondent (s)  
on 24/11/2000

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24/11/2000