

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO: 352/98

DATE OF DECISION: 1<sup>st</sup> Feb., 2000

Shri Mahabal .P.. Applicant.

Shri R.Ramamurthy

-----Advocate for  
Applicant.

Versus

Union of India & 4 Ors.

-----Respondents.

Shri V.S.Masurkar

-----Advocate for  
Respondents.

**CORAM:**

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

1. To be referred to the Reporter or not? *no*
2. Whether it needs to be circulated to other Benches of the Tribunal? *no.*
3. Library. *yes.*

*S.L.Jain*  
(S.L.JAIN)  
MEMBER(J)

**CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH  
ORIGINAL APPLICATION NO.352/98.  
DATED THE 1<sup>st</sup> DAY OF FEBRUARY, 2000.**

CORAM; HON'BLE SHRI S.L.JAIN, MEMBER (J)

Mr. Mahabal Padmashali,  
Retired Chief Catering Inspector,  
Western Railway,  
Residing at Railway Quarter,  
No.157/2, Santacruz (East),  
Mumbai-400 055.

... Applicant.

By Advocate Shri Ramamurthy

v/s.

1. Union of India,  
through the General Manager,  
Western Railway,  
Churchgate,  
Mumbai - 400 020.
2. Chief Personnel Officer,  
Western Railway,  
Churchgate,  
Mumbai - 400 020.
3. Chief Catering Services Manager,  
Western Railway,  
Churchgate,  
Mumbai - 400 020.
4. Financial Adviser & Chief  
Accounts Officer (Pension),  
Western Railway,  
Churchgate Railway Station  
Building, Churchgate,  
Mumbai - 400 020.
5. Assistant Accounts Officer,  
(Pension), Western Railway,  
Churchgate, Mumbai - 400 020.

... Respondents.

By Advocate Shri V.S.Masurkar

(ORDER)

Per Shri S.L.Jain, Member (J).

This is an application under section 19 of the  
Administrative Tribunals Act 1985 for a direction to the

...2/-

respondents to take into account the service rendered by the applicant as bearer on pay cum-commission basis with effect from 1/10/1965 to 1991 as qualifying service for Pension and other retiral benefits, recalculate the pension and other retiral benefits accordingly in new scales w.e.f. 1/1/1996, to pay interest @ 18% per annum on the amount due, to allow the applicant to occupy the Railway Quarter No.157/2, Santacruz (East), Mumbai - 400 055 for further period till payment is made on normal rent/licence fee along with costs.

2. The applicant was initially appointed as Bearer on monthly pay-cum-commission system in the year 1965. The Commission Bearers working in the different mobile units of the Catering Department were allowed to exercise options in terms of Railway Boards letter dated 7/9/1965 to come under the revised system. Accordingly, applicant exercised the option and he was appointed as bearer on monthly pay commission system in the terms and conditions as mentioned in memorandum dated 22/12/1965. He was appointed against temporary posts under Office Memorandum dated 6/12/1965 as mentioned in Memorandum dated 22/12/1965 on the terms and conditions mentioned therein. After earning future promotions, he retired from Railway Service in the afternoon of 31/10/1997 as Chief Catering Inspector, Provision Store, Bombay, Central Western Railway at a basic pay of Rs.7500/-, having put up 32years and 30 days service. The final settlement dues were worked out on the basis of service counted from 1971 and not on the basis of service counted from 1/10/1965. Hence, this OA for the aforesaid relief.

P. Ghosh

3. The respondents have resisted the claim of the applicant though admitted the fact of his entering in service, the date of Superannuation and the calculation of the Pension and retiral benefits from 22/2/1972 to 31/10/97. The ground of resistance is that the said circular is not available. It is alleged that as the applicant is in possession of the allotted accommodation, gratuity has not been released.

4. The learned counsel for the applicant has drawn my attention to para(ix) of the Circular, dated 22/12/1965 which is as under:-

"They will be considered as temporary employees on the regular establishment for all purposes including disciplinary rules."

5. On perusal of the same, I am of the considered opinion that the applicant was to be considered as temporary employee on the regular establishment for all purposes including disciplinary rules. On perusal of Ex-C letter dated 10/12/1997 issued by the General Manager(E) it is clear that "It is advised that case of counting of service w.e.f. 1/10/1965 to 1971 has been considered by the Competent Authority, revised settlement case is sponsored to F.A. & C.A.O. (pm) on 9/12/1997 it is mentioned that

"it is advised that the service rendered by Shri Mahabal P., Retd.CTRI D/Car BCT as fixed Pay Cash Commission Bearer with effect from 1/10/1965 has been counted for his pensionary benefits in terms of Railway Board's letter No.E(G)III/97/AMS/22 dated 5/11/1997. It has also been revised due to refixation of Fifth Central Pay

J.S. / ...4/-

Commission S/Sheet alongwith revised Service Sheet and Form 30 RII are enclosed for certification and payment.

His last pay is Rs.7,500/-p.m. Earlier Rs.2,450/- towards Reliefs total now Rs.5,050/- towards Reliefs.

This may please be treated as most urgent."

6. In view of the above terms, sanction by the Competent Authority and order accordidngly, the applicant is entitled and respondents are bound to count his service from 1/10/1965 till superannuation i.e. 31/10/1997 for pension and other retiral benefits. The defence as raised in written statement is of no consequence.

7. The learned Advocate for the respondents fairly stated that the respondents have considered the facts and circumstances of the case and ordered for payment of pension and retiral dues accordingly keeping in view of the service of the applicant w.e.f. 1/10/1965 to 31/10/1997 in new scales effective from 1/1/1996 but the mistake is in mentioning the period of service period only, in fact the amount is paid according to the applicant's entitlement and a revised P.P.O has already been issued on 9/9/99.

8. The learned counsel for the applicant has drawn my attention to the orders passed by this Tribunal in the present OA itself as interim orders dated 4/3/99, 15/7/99, 1/10/99 and stated that payment has not been made accordingly, but paid on the basis of service rendered for 25 1/2 years only while it ought to have been paid on the basis of service rendered from 1/10/1965 to 31/10/1997.

Agm? /

:5:

9. Relief regarding allowing the applicant to occupy the Railway Quarter No.157/2 Santacruz(E) Mumbai - 55 as mentioned in 8(d) of the OA is not pressed during the course of the arguments.

10. Thus the ground of agitation is only in respect of incorrect calculation of services.

In the result OA is allowed partly as under:-

- (a) The applicant is entitled and respondents are bound to count his service from 1/10/1965 to 31/10/1997 for pension and retiral benefits.
- (b) The respondents to recalculate the same (pension and retiral benefits) within a period of one month from the date of receipt of the copy of the order. If any amount is payable to the applicant it be paid within a further period of 15days except the Gratuity alongwith interest as per instructions at the prevalent rate from the date 1/2/98 till actual payment is made. The difference of the Gratuity amount if any is payable, the interest shall be payable after one month from the date of vacation of quarter at the prevalent rate.
- (c) The respondents shall pay the costs of this petition amounting to Rs.650/- (Rs.500/- as legal practitioner's fee and Rs.150/- as other expenses) to the applicant within 45days of the receipt of the order.

*S.L.Jain*  
(S.L.JAIN)  
MEMBER(J)

abp.

③ AA (C) / SS (MA)  
18.6.2001

Non compliance of an order passed on <sup>1st</sup> 14th February, 2000 in OA 352/98 is the basis for the present Contempt Petition. By the said order following directions were issued.

- (a) The applicant is entitled and respondents are bound to count his service from 1.10.1965 to 31.10.1997 for pension and retiral benefits.
- (b) The respondents to recalculate the same (pension and retiral benefits) within a period of one month from the date of receipt of the copy of the order. If any amount is payable to the applicant it be paid within a further period of 15 days except the Gratuity along with interest as per instructions at the prevalent rate from the date 1.2.98 till actual payment is made. The difference of the Gratuity amount if any is payable, the interest shall be payable after one month from the date of vacation of quarter at the prevalent rate.
- (c) The respondents shall pay the costs of this petition amounting to Rs. 650/- (Rs. 500/- as legal practitioner's fee and Rs. 150/- as other expenses) to the applicant within 45 days of the receipt of the order.

Though belatedly pension and retiral benefits have been paid to the applicant, interest and costs as directed have not been paid. Applicant by his letter of 20th December, 2000 called upon the respondents to make payment of the aforesaid amount. Respondents have failed to favourably respond to the said demand. Hence, the present Contempt Petition.

Issue notices

List the case on 30th July, 2001.

*hau...*  
MEMBER (A)

*net*  
CHAIRMAN

pcr  
Notices  
order/management despatched  
to Applicant/Respondent (s)  
on 12/7/2001

Ⓟ  
12/7/2001

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

CONTEMPT PETITION NO. 29 OF 2001

IN

ORIGINAL APPLICATION NO.352 OF 1998

Mahabal P. ).. Applicant

V/S

Union of India & Ors. ).. Respondents

A N D

1. Shri V. D. Gupta, )  
General Manager, )  
Western Railway, )  
Churchgate, )  
MUMBAI 400 020. )  
2. ~~Shri~~ <sup>Smt</sup> Swita Awasthi, )  
Financial Advisor & Chief )  
Accounts Officer (Pension), )  
Western Railway, )  
Churchgate, )  
MUMBAI 400 020. ).. Contemners

MAY IT PLEASE THIS HON'BLE TRIBUNAL

The Applicant abovenamed wishes to state and  
~~xxxxx~~ submit as under;

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1. The Applicant had filed the above O.A. claiming reliefs inter alia that his service as Commission Vendor be counted as qualifying service for post retirement benefits and his pensionary benefits be revised accordingly. The O.A. was heard and disposed of by this Bench of this Tribunal vide its Judgment dated 1.2.2000 and the Hon'ble Tribunal was pleased to allow the claim of the Applicant for counting of the said service as Commission Vendor as qualifying service for retirement benefits. In the said Judgment in Paragraph 10, the Hon'ble Tribunal had further directed that interest be paid on the amount due and payable from 1.2.1998 till actual payment. On the gratuity payment, the Tribunal had ordered that interest be paid on the said amount after one month from the date of vacation of official quarters by the Applicant. The Tribunal was also pleased to award costs of Rs.650/- to the Applicant. A copy of the said Judgment dated 1.2.2000 is annexed hereto and marked Exhibit 'A'.

EX 'A'

2. The Applicant states that after the Judgment of the Tribunal, he was paid the enhanced retiral dues in instalments including gratuity amount after deducting of damage ment. However, the Respondents/Contemners have not paid interest on the said dues as directed by the Tribunal so far. A legal Notice dated 20.12.2000 was given on behalf of the Applicant and the Respondents/Contemners were called upon to make payment of interest and costs awarded by the

Ex B

Tribunal. Copy of the said legal Notice dated 20.12.2000 is annexed hereto and marked Exhibit 'B'. The said amounts are still outstanding.

3. The Applicant states that the Respondents/Contemners are deliberately not paying him the interest and costs awarded by the Tribunal even after the said legal notice. The said non-payment of interest and costs as ordered by the Tribunal is deliberate and wilful and amounts to violating the directions of the Tribunal given in its Judgment dated 1.2.2000 and the Contemners are liable to be punished for the contempt committed by them. Hence this Contempt Petition.

4. The Applicant therefore prays for the grant of the following orders:

- (a) that this Hon'ble Tribunal be pleased to initiate action in contempt against the Contemners herein for their wilful and deliberate disobedience of the directions given in Judgment dated 1.2.2000 in not paying interest and costs granted by the Tribunal.

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(b) that such other and further order or orders be passed as the facts and circumstances of the case may require.

(c) that costs of this Contempt Petition be provided for.

Mumbai, dated this <sup>4<sup>th</sup></sup> day of <sup>April</sup> ~~February~~ 2001.

*Madam P.*  
( Mahabal P. )  
Applicant

VERIFICATION

I, Mahabal P., the Applicant abovenamed do hereby verify that the contents of the foregoing Contempt Petition are true and correct to the best of my knowledge and belief and I believe the same to be true.

So verified at Mumbai, this the <sup>4<sup>th</sup></sup> day of <sup>April</sup> ~~February~~ 2001.

*Madam P.*  
( Mahabal P. )  
Applicant/ Deponent

*Sai Kumar*  
Advocate for the Applicant