

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 979/980

DATE OF DECISION: 18/9/2000

Shri Ganpat Keshav Kulkarni

Applicant.

Shri S.V.Marne

-----Advocate for
Applicant.

Versus

Union of India & 2 Ors.

-----Respondents.

Shri S.C.Dhawan

-----Advocate for
Respondents.

CORAM:

Hon'ble Shri B.N.Bahadur, Member(A)
Hon'ble Shri S.L.Jain, Member(J)

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?
3. Library.

} No



(B.N.BAHADUR)
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO: 979/98
DATED THE 18TH DAY OF SEPT, 2000

CORAM: HON'BLE SHRI B.N. BAHADUR, MEMBER(A)
HON'BLE SHRI S.L. JAIN, MEMBER(J)

Shri Ganpat Keshav Kulkarni,
retired Head Signaller,
Grade II, Central Railway,
Bhusawal, now residing at
11B, Shikshak Nagar,
Panel Road, Kothrud,
Pune - 411 038.

... Applicant

By Advocate Shri S.V. Marne for
Shri D.v. Gangal.

V/s.

1. The Union of India,
through the Secretary,
Railway Board,
Ministry of Railway,
New Delhi.
2. The Union of India,
through the General Manager,
Central Railway, Mumbai C.S.T.,
Mumbai - 400 001.
3. The Divisional Railway Manager,
Central Railway,
Bhusawal.

... Respondents

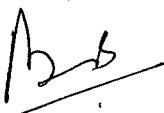
By Advocate Shri S.C. Dhawan.

(ORDER) (ORAL)

Per Shri B.N. Bahadur, Member(A)

This is an application made by Shri Ganpat Keshav Kulkarni who retired as Head Signaller from the Railways in 1988. He seeks the relief, in substance, for refixation of his pension/pensionary benefits, after considering the Special pay actually drawn by him at the time of retirement. Specifically, he prays that special pay of Rs.15/- should be taken into

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consideration for deciding the quantum of pension. It is this amount of Rs.15/- that is in dispute, as we shall see ahead. The Applicant also seeks refund of the interest on the amount of Rs.3865/- which was deducted from his pensionary benefits as a result of re-fixation made by deducting the aforesaid Rs.15/-.

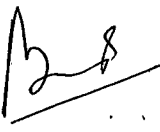
2. As a limited point is involved in this case, it was heard and decided at the stage of admission itself. We have heard the Learned Counsels on both sides, Shri S.V.Marne for Applicant and Shri S.C.Dhawan for Respondents. We have perused the papers in the case, and considered the case law and rules cited.

3. The facts of the case are that the Applicant, who was working as Signaller with the Respondents was posted as Teleprinter Operator (TPR) after being given special training w.e.f. 1974. He was promoted in the higher grade in 1984 w.e.f. 1/1/84 that is to the post of Head Signaller which admittedly carried a distinctly higher payscale.

4. Pay fixation in the higher grade was done after taking into consideration the said Rs.15/- which was given to him as Special pay. It was this pay which was later discounted for consideration while fixing pay at the time of retirement. This is the grievance of the applicant, who comes up seeking the reliefs as described.

5. The Learned Counsel for the Applicant, Shri S.V.Marne, argued the case in some detail, stating that the defence taken by the Respondents in citing the Railway Board letter dated 21/7/1965 at Exhibit R-1 is not correct and it cannot be said

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that special pay can only be given for arduous nature of work. There is no document on record, he argued, where this was stated and hence the plea of arduous nature of work and dependence on circular was wrong. Shri S.V.Marne also argued that recovery made was bad and that his argument in this respect is supported by the judgement in the case of Shri K.S.Sreedharan made by Madras Bench of this Tribunal (Copy of the order annexed at Annexure A-7).

6. The point of limitation was first taken up in the arguments made by the Learned Counsel for Respondents, Shri S.C.Dhawan. He argued that the applicant had retired in 1988 on voluntary basis and now comes up to the Tribunal after 10 years. It was argued that the case was hit badly by limitation, delay and laches. He also made a point that the Applicant was orally informed of this. On the point of limitation, Shri Marne stated that this was a case of pay fixation and hence sought to draw support from the case of M.R.Gupta. He also raised the facts of the representations made and took support from the case of Sualal Yadav V.s. State of Rajasthan reported at AIR 1977 SC 2050. It was argued that the final decision was taken only in 1997.

7. The main contention on merits taken by Shri S.C.Dhawan in his arguments rested, as stated above, on the Railway Board's order dated 21/7/1965 annexed to his written statement as Exhibit R-1. The point made at para-4 therein reads as follows:-

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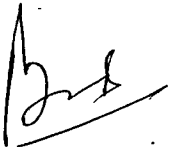
4. The following types of special pay will not be taken into account for purposes of fixation on protection under these orders:-

- (i) special pay drawn in a tenure post.
- (ii) special pay granted for service in particular localities on account of remoteness, unhealthiness, severity climate, etc.
- (iii) deputation (duty) allowance or special pay drawn in lieu thereof.
- (iv) special pay granted for specific addition to duty or for arduous nature of duties.

8. Shri S.C.Dhawan argued that it is clearly stated the special pay granted for specific addition to duty or for arduous nature of duties would not be taken into account for purposes of fixation of pay. He also reiterated the points made in the written statement. He argued that the case decided by Madras Bench does not help the Applicant in the matter of recovery in view of this enormous lapse of time.

9. We take up the issue relating to limitation first. On the point of fixation of pay in strict isolation, the applicant is indeed protected by the ratio of M.R.Gupta's case. We draw distinction here however on his prayer relating to refund of amount of Rs.3865/- deducted from his pensionary benefits. Here he stands on a different footing and is hit badly by limitation, delay and laches. In the circumstances, barring the case of refund, we will examine the matter on merits.

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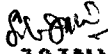
10. There is no specific document to show that the special pay was granted for any other reason except of the special circumstances that came about, plausibly because of the development of use of Teleprinter in the Railways. Learned Counsel for Applicant has produced number of communications at the time of arguments. We have seen these in the interest of justice and to enable us to get more facts in this issue. We do find a number of clarifications, but cannot find anything which helps his case.


11. We are not impressed by the arguments advanced by Respondents, that Applicant was orally informed as such arguments cannot be made in Government system. However, unless anything to the contrary is shown to be true by the Applicant (who has come up to the Tribunal), we will have to decide this case in the light of para-4 reproduced above from Railway Board's letter dated 21/7/65. These instructions which are instructions of the Board will need to form the basis and the basic material for a decision in this case. A reading of the instructions shows that it is specifically stated that such type of special pay cannot be taken into consideration for purposes of fixation or protection in these orders. The instances where it can happen have also been mentioned.

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12. In these circumstances, we are unable to reach a conclusion that the Applicant has made out a case which would merit our interference for provision of relief sought. In consequence, this application deserves to be dismissed and is hereby dismissed with no orders as to costs.

MP-708/1998 stands disposed of accordingly.


(S.L.JAIN)
MEMBER(J)


(B.N.BAHADOR)
MEMBER(A)

abp