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Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

C.P. No. 29/91

in

O.A. No. 307/87.

T.A. No.-

Date of Decision :

26/7/91

Shaik Ali

Petitioner.

Shri G. Ramachandra Rao

Advocate for the
petitioner (s)

Versus

Shri Madan M.L. Sharma,

Respondent.

General Manager, South Central Railway,

Rail Nilayam, Secunderabad & another

Shri N.R. Devaraj,

Advocate for the
Respondent (s)

SC for Railways

CORAM :

THE HON'BLE MR. J. Narasimha Murthy : Member (Judl)

THE HON'BLE MR. R. Balasubramanian : Member (Admn)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

HJNM
M(J)

HRBS
M(A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

C.P.No.29/91
in
O.A.No.307/87.

Date of Judgment 26.7.1991

Shaik Ali .. Petitioner/Applicant

Vs.

1. Shri Madan M.L.Sharma,
General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad.

2. Shri S.R.Gupta,
Divisional Railway
Manager(BG),
South Central Railway,
Rail Nilayam,
Secunderabad.

.. Respondents/Respondents

...

Counsel for the Applicant : Shri G.Ramachandra Rao

Counsel for the Respondents: Shri N.R.Devaraj,
SC for Railways

...

CORAM:

Hon'ble Shri J.Narasimha Murthy : Member(Judl)

Hon'ble Shri R.Balasubramanian : Member(Admn)

[Judgment as per Hon'ble Shri R.Balasubramanian,
Member(Admn)]

...

This contempt petition has been filed by Shri Shaik Al
under section 17 of the Administrative Tribunals Act, 1985
read with sections 10 to 12 of the Contempt of Courts Act
against Shri Madan M.L.Sharma, General Manager, South Central
Railway, Rail Nilayam, Secunderabad and another.

2. The applicant was prematurely retired by an order
dated 25.4.86. He filed O.A.No.307/87 and by an order
dated 3.10.88 this Tribunal set aside the order of compulsion.

retirement on the ground that it was not passed by the competent authority. The Tribunal also gave the respondents the liberty to take action in accordance with the rules if they chose to do so. The respondents took the matter to the Hon'ble Supreme Court which finally gave a judgment in favour of the applicant. The applicant was accordingly reinstated in service on 10.1.90. Finally, the applicant retired from service on 31.1.91 on attaining the age of superannuation. While so, the grievance of the applicant arose when the respondents levied interest on the amounts recoverable from the applicant. It is the claim of the applicant that no interest should be charged on amounts recovered from him and he has prayed that:

- (a) the respondents be punished under the Contempt of Courts Act, and
- (b) the amount of Rs.66,797=75 recovered from him unauthorisedly be refunded to him.

3. The application is contested by the respondents. It is their case that interest is chargeable on D.C.R.G., commuted pension and pension recoverable from the applicant. It is also their case that being under the obligation under the Incometax Act they have to recover the incometax also.

4. We have examined the case and heard the learned counsels for the applicant and the respondents. The short question before us is whether interest can be charged by the respondents on the amounts recovered from the applicant.

It is admitted by the respondents that by way of arrears the wages consequent to the reinstatement in the light of the Hon'ble Supreme Court order, an amount of Rs.1,30,146/- is due to the applicant. However, when they made the final payment in March, 1991 after the applicant had retired in the normal course, they had made the following adjustments:

Total Incometax (after calculating the income yearwise and fixing the tax yearwise). Rs.2,884=00

Pension (as advised by the Bank initially). " 53,346=80

Interest on pension. " 7,807=70

Interest on D.C.R.G. " 7,727=95

Interest on commuted pension. " 9,987=10

5. In the course of hearing, the learned counsel for the respondents argued that according to the Railway Board orders interest is chargeable on the amounts to be recovered. In support, they had quoted the Railway Board's letter No.F(E)/III 77 PN 1/4 dated 2.6.78. We shall now examine the recoveries item by item.

Total Incometax (after calculating the income yearwise and fixing the tax yearwise) - Rs.2,884=00

The disbursing officer is under obligation to deduct incometax and, therefore, the adjustment of the incometax amount is quite in order. If there is any ~~variation~~ ^{discrepancy} in the calculations, the applicant can make a representation to the respondents and settle it or he can attempt to get the amount paid in excess refunded from the incometax authorities.

Pension (as advised by the Bank initially) - Rs.53,346=80
Interest on pension - Rs.7,807=70

When the respondents have to pay the full salary and

allowances thereof for the period from 26.4.86 to 9.1.90 (he was prematurely retired on 25.4.86 and was reinstated on 10.1.90) they are within their right to deduct the amount paid to the applicant by way of pension. The question is whether they can charge interest on this. According to sub-para (ii) of the Railway Board's letter dated 2.6.78 where the intervening period between premature retirement and date of reinstatement is treated as duty, the amount of pension drawn by the individual should be adjusted against the salary payable. This applies to the present case where by a court order the applicant was reinstated and the entire period is to be treated ~~only~~ as duty. Only the pension amount is to be adjusted and there is no mention whatsoever in the Railway Board's letter about the interest. It also stands to reasoning that when the respondents do not pay interest on the pay and allowances due to the applicant they should not also charge interest on the pension amount adjusted. Therefore, we hold that there should be no interest charged on the pension amount recovered. Therefore, the interest amount on pension of Rs.7,807=70 is irregular and must be refunded to the applicant.

Interest on D.C.R.G. - Rs.7,727=95

According to sub-para (i) of the Railway Board's letter dated 2.6.78 the amount of D.C.R.G. received may be allowed to be retained by the Railway servant concerned on payment of simple interest for the corresponding period.

In this case, the applicant was prematurely retired on 25.4.86. The respondents are stated to have addressed

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a letter dated 16.10.90 calling upon the applicant to communicate his acceptance for recovering a sum of Rs.1,29,011/- towards the D.C.R.G. amount and the commutation of pension and monthly pension paid from 26.4.86 to 31.8.90. It can therefore be inferred from this that the D.C.R.G. amount had been paid to him after the compulsory retirement. The D.C.R.G. amount had been enjoyed by the applicant and interest is chargeable in terms of the Railway Board's letter dated 2.6.78. The respondents would therefore be well within their right to charge interest on the D.C.R.G. amount for the period from the date of payment of the D.C.R.G. amount till 31.1.91. From 1.2.91 in any case he was entitled to the payment of D.C.R.G. amount and there is no question of payment of interest after this ~~period~~^{date}. The Railways may therefore work out interest at the prescribed rates from the date of actual payment till 31.1.91 and adjust this amount.

Interest on commuted pension - Rs.9,987=10

According to para (v) of the Railway Board's letter dated 2.6.78 where part of the pension has been commuted, the commuted amount may not be recovered from the Railway servant concerned. There is no mention in this rule about the interest chargeable. Therefore, no interest shall be charged on the commutation amount. However, if a higher amount of commutation had been paid to the applicant by virtue of using a higher multiplication factor corresponding to his age in April, 1986 the excess amount of commutation can be recovered

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from the applicant. The difference in the commutation amount between what was paid based on his age in April, 1986 and the age of 58 years when he actually retired on 31.1.91 can be worked out and adjusted by the respondents. We again wish to make it clear here that no interest whatsoever either way is permissible.

6. We do not find that the respondents have committed any contempt. There is a dispute only over a point of interest and it is not the case of the applicant that they have not reinstated him and paid him anything at all. We, therefore, ~~disposed~~^{dismiss} of the contempt petition with the directions given in para 5 above.

7. The amounts due to the applicant, ~~if any~~, in the light of the directions given above shall be paid by the respondents within a period of three months from the date of receipt of this order. There is no order as to costs.

(J. Narasimha Murthy)
Member (Jud1).

(R. Balasubramanian)
Member (Admn)

Dated

26th July 91

830/79
Deputy Registrar (J).

- To
- 1). Shri Madan M.L. Sharma, General Manager,
S.C. Ply. Railways, Secunderabad.
 - 2). Shri S.R. Gupta, Divisional Railway Manager (BG),
S.C. Ply. Railways, Secunderabad.
 - 3). One copy to Mr. G. Ramachandra Rao, Advocate, C.A.T., Hyd.
 - 4). One copy to Mr. N.R. Devraj, S.C. Bar Ply. C.A.T., Hyd.
 - 5). One copy to Hon'ble Mr. J. Narasimha Murthy, M(S) C.A.T., Hyd.
 - 6). One spare copy.