

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 23.05.2003

RA No.01/2003 (OA No.28/1998)

with MA No.05/2003

Arjun Das s/o Jhaman Dass, aged 63 years, Ex-Sr. Message
Checker r/o Plot No. 111, Vivekanand Colony, Ajay Nagar,
Ajmer.

.. Applicant

Versus

1. Union of India through the General Manager,
North-West Railway, Jaipur.
2. Divisional Railway Manager, North-West Railway,
Ajmer.

.. Respondents

Mr.N.K.Gautam, counsel for the applicant

Mr. Madhukar Sharma, proxy counsel to Mr. S.S.Hasan,
counsel for the respondents

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

O R D E R

Per Hon'ble Mr. M.L.Chauhan

This Review Application has been filed by the original applicant against the order dated 12.9.2000 passed in OA No.28/98. Alongwith this Review Application, the applicant has also filed a Misc. Application No.5/03 for condonation of delay in filing the Review Application.

2. Notices of the Misc. Application as well as the Review Application were given to the respondents. The respondents have filed reply to the Misc. Application No.5/03. The reason given by the applicant for condonation

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of delay in filing the Review Application is that he was pursuing remedy before this Tribunal by filing CP No.75/01 in OA No. 28/98 which was decided on 12.9.2001 then OA No. 509/01 decided on 14.12.01, CP No. 40/02 decided on 24.9.02 and lastly OA No.546/02 decided on 12.11.02. It is further averred that the applicant was in bonafide belief that the apparent error in the order dated 12.9.2000 can be rectified by filing CPS/OAs. Therefore, the applicant did not file the Review Application. The respondents have controverted the submissions made on behalf of the applicant by filing reply. It has been stated that the cause of action arose from the date of decision i.e. 12.9.2000 and hence from 12.9.2000, the Review Application must be filed within 30 days from the date of receipt of the order. The applicant has not filed this Review Application within the time limit but after the decision dated 12.9.2000, he has filed various OAs/CPS. The Review Application has to be filed on the basis of the error apparent on the face of record within the time limit but the present Review Application has been filed against the order dated 12.9.2000 passed in OA No.28/98 after a lapse of 2½ years. Thus, the Review Application is not maintainable. It is further submitted that the order dated 12.9.2000 nowhere stated that the applicant is to be paid all retiral benefit at the rate of pay of Rs. 1530/- but the said order stated that any amount recovered by the respondents from the applicant as per Ann.Al should be refunded to the applicant. The respondents have already refunded the same to the applicant.

3. I have heard the learned counsel for the parties

and gone through the material on record.

3.1 The main contention of the learned counsel for the applicant for reviewing the order dated 12.9.2000 is that the applicant was paid all the retiral dues on the basic pay of Rs. 1530/- and this Tribunal has already quashed the impugned order dated 27.6.97 in OA No. 28/98 which was allowed. Therefore, the order of the respondents dated 26.7.2002 (Ann.RA/4) passed on the quashed order is liable to be quashed and the applicant is entitled to pensionary benefits on the basic pay of Rs. 1530/- instead of Rs. 1470/-. Thus, according to the learned counsel for the applicant, the order dated 12.9.2000 is required to be recalled and clarified with further directions to the respondents to revise the amount paid towards retiral benefits taking into account the basic pay of the applicant as Rs. 1530/- as against Rs. 1470/- in terms of the prayer made by him in the Original Application.

4. I have considered the submissions of the learned counsel for the applicant and is of the view that the applicant has not made any case for reviewing the order dated 12.9.2000 passed in OA No.28/98 for the reasons recorded hereinafter.

4.1 It has been settled judicially by a number of judgments of the Apex Court that power of review available to the Tribunal is the same as has been given to a Court under Section 114 read with Order 47 of the CPC. Reference in this behalf may be made to the decision of the Apex Court in the case of Ajit Kumar Rath vs. State of Orissa, AIR 2000 SC 85. Viewing the matter on the basis of the ratio laid down by the Apex Court, now let me examine whether the applicant has made out any case for reviewing

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the order dated 12.9.2000 passed in OA No.28/98. As can be seen from Para 1 of the order dated 12.9.2000 which has been annexed with this review application at Ann.RA/2, the applicant has filed the OA praying for the following reliefs:-

- i) to quash the set-aside the impugned order dated 27.6.97 (Ann.Al)
- ii) to direct respondent No.2 to refund Rs. 22271/- retained from the applicant's retiral benefits/salary with interest;
- iii) to direct respondent No.2 to correctly compute the amount payable towards gratuity, in terms of Railway Board's instructions dated 8.8.95 and
- iv) to direct respondent No.2 to revise the amount paid towards retiral benefits taking into account the basic pay of the applicant as Rs. 1530 as against Rs. 1470/-.

4.2 During the course of arguments, the learned counsel for the applicant confined his arguments only regarding prayer No.2 i.e. the recovery made from the applicant in pursuance of the impugned order dated 27.6.97 (Ann.Al) and not with regard to other prayers as can be seen from para 5 of the order which is quoted herein below:-

"5. The learned counsel for the applicant has vehemently argued that the respondent has reopened the fixation made before 23 years ago and issued show cause notice on the same line against which the applicant has already filed O.A., therefore, the recovery made from the applicant in pursuance of order Ann.Al is altogether arbitrary and illegal and liable to be

quashed. On the other hand the learned counsel for the respondents has argued that the respondents department was competent to correct the erroneous fixation made to the applicant and if any over payment has been made, the respondents department was entitled to recover the same."

Based on the arguments so raised by the parties, this Tribunal in operative para of the order held as under:-

"15. On the basis of foregoing discussion, I am of the considered view that the respondents department is not entitled to recover the amount from the applicant on account of wrong fixation made before 23 years.

16. I, therefore, allow the OA and quash the impugned order Ann.Al and direct the respondents not to recover any amount in pursuance of order Ann.Al and refund the amount if any recovered in pursuance of order Ann.Al with interest @ 12% per annum from the date of recovery till the amount is refunded to the applicant, within a period of 3 months from the date of receipt of a copy of this order"

Thus, from the portion as quoted above, it is quite evident that the applicant has argued the matter regarding the recovery (Rs.22271) made from the applicant in pursuance of the impugned order dated 27.6.97 and this Tribunal accepted the prayer of the applicant and directed the respondents not to recover any amount as per order Ann.Al and to refund the amount if any recovered in pursuance to Ann.Al with interest @ 12% per annum. The

respondents have refunded the amount alongwith interest and there is no dispute on this aspect. It is not the case of the applicant in the Review Application that he had also advanced arguments regarding prayer No.4 as quoted above viz. to direct the respondent No.2 to revise the amount paid towards retiral benefits taking into account basic pay of the applicant as Rs. 1530/- as against Rs. 1470/- and the Tribunal has not noticed this argument and failed to give finding on this point. Had this been the case of the applicant in the Review Application, the matter may required reconsideration by this Tribunal as to whether the aforesaid fact constitute error apparent on the face of the record so as to review this matter. This being not the case of the applicant, I am of the view that the applicant has not made out any case for reviewing the order dated 12.9.2000 passed in OA No. 28/98.

5. Accordingly, this Review Application as well as Misc. Application No.5/03 are dismissed with no order as to costs.



(M.L.CHAUHAN)

Member (J)