

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR.

....

Original Application No. 676 of 2000.
this the 27th day of February '2003.

HON'BLE MR. R.K. UPADHYAYA, MEMBER (A)
HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

K.K. Dubey, aged about 59 years, Dy. Station Manager Commercial
Central Railway, Jabalpur, H.No. 872 Indira Gandhi Ward,
Garah, Jabalpur.

Applicant.

By Advocate : Sri M.R. Chandra.

Versus.

1. Union of India through General Manager, Central Railway, Mumbai.
2. D.R.M., Central Railway, Jabalpur.

Respondents.

By Advocate : Sri S.P. Sinha.

ORDER

BY MRS. MEERA CHHIBBER, MEMBER (J)

By this O.A., applicant has claimed the following
relief(s):

"The respondents be directed to make immediate payment of regular pension, DCRG and encashment amount of leave on the average of last 10 months' basic pay drawn by the Railway just before granting voluntary retirement on 21.11.1999 after furnishing account and calculation sheet of such benefits.

(ii) Pending finalisation of regular pension, a further interim direction be given to make payment of provisional pension and DCRG as per extant rules.

(iii) To be further directed to pay due interest for the delayed period of payment.

(iv) -----"



2. It is submitted by the applicant that he was initially appointed in the Central Railway on 26.10.63 and he was subsequently given promotion and while working in the post of Dy. Station Manager (Commercial) (in short DSM (C), Jabalpur in the scale of Rs.6500-10500/-, he was allowed voluntary retirement w.e.f. 21.11.1999 when he was drawing the basic pay at Rs.7100/- per month. He has submitted that from 12.8.1997 onwards till the date of voluntary retirement on 21.11.1999 he had continuously been drawing his basic pay at Rs.7100/- per month, even though he was entitled to one increment on 12.8.1998 in the scale of Rs.6500-10500/-, but for the reasons best known to the respondents, the said increment was not given to him. In support of his contention, the applicant has attached the pay slip for the month of September'99, which shows that he was drawing at Rs.7100/- as basic pay (Annexure A-2). He has further submitted that since the applicant had given three months' notice before voluntary retirement, the respondents ought to have prepared his pension and gratuity etc. on the basis of the last 10 months pay drawn by him and there is no justification to delay or ~~for~~ non-payment of retiral benefits, but since neither the DCRG, nor pension was paid to him, therefore, he gave a representation on 6.3.2000 (Annexure A-3). It has further ^{been} ~~been~~ submitted by him that since the applicant had filed another O.A. bearing no. 707 of 1998 before the Tribunal, so it was due to annoyance and revenge that the applicant was being harassed, therefore, finding no other remedy, he had to file the present O.A. seeking atleast payment of provisional pension be given immediately.

3. The respondents have filed their reply stating therein that the applicant had been paid the DCRG, Commutation Value, Provident Fund, General Insurance Scheme and Leave Salary and have also issued PPO for pension, therefore, they have submitted that the present O.A. has become infructuous. They have further submitted that the post of DSM(C) is a selection post and the

applicant was promoted on 5.8.1997 to the said post only on ad hoc basis. Thereafter, he was called for the regular promotion in which he appeared in the positive act of selection, but could not qualify, therefore, he was not promoted on regular basis. However, since the posts were available, he was allowed to continue on ad hoc basis. Thereafter, another selection was held in which he was asked to appear in the selection, but he did not appear, hence by order dated 14.6.99 he was reverted on the substantive post in the scale of Rs.5500-9000/-. They have, thus, submitted that the applicant's pay was fixed at Rs.6900 on his ad hoc promotion in the scale of Rs.6500-10500/- and since he failed to qualify in the selection for the post of DCM(C), he was not allowed to continue on ad hoc basis on the said post w.e.f. 1.1.1998. Therefore, he was entitled to draw salary in the lower grade of Rs.5500-9000/- from 1.1.1998 as he was entitled to draw Rs.6725/- as such his normal increment became due on 1.1.1999 raising his pay as 6900/- and since his reversion was effected by order dated 14.6.99, his pay was fixed at Rs.6900/- from 14.6.1999, but from 13.3.1999 the applicant was in the sick list and during his illness, he submitted an application for voluntary retirement on 30.7.99, which was accepted on 21.11.1999. Therefore, in view of his reversion w.e.f. 14.6.1999, he was entitled to pay in the reverted grade at Rs.6900/- per month instead of Rs.7100/- but in spite of his reversion, by mistake, his pay was drawn in the promotional grade at Rs.7100/- ~~as such the excess payment was made on ad hoc promotional post which has since been recovered from his settlement dues as they have been prepared as per reversion order.~~ They have, thus, submitted that the O.A. may be dismissed as having become infructuous.

4. The applicant, ^{has} however, specifically stated in his Rejoinder that he was never reverted to the lower grade of Rs.5500-9000, his pay was fixed at Rs. 6900 from 14.6.99,

therefore, recovery said to have been made on account of excess payment from the settlement dues of the applicant are illegal, malafide and arbitrary, therefore, the respondents should be directed to return the same. He has further submitted that since he had been drawing at Rs.7100/- till the date of his voluntary retirement, therefore, his Commutation value of Pension, DCRG, Leave encashment and other benefits have to be calculated as per his basic pay at Rs.7100/- per month and not Rs.6900/-.

5. We have heard both the counsel and perused the pleadings as well.

6. We had directed the respondents' counsel to make a specific statement as to whether the order of reversion was served on the applicant or not. The counsel for the respondents after perusal of the record made a statement in the Court that the order of reversion was not served on the applicant, meaning ^{it then after} thereby from the date the applicant was given ad hoc promotion as DSM(C) he continued to draw his salary at the basic pay of Rs.7100/- per month, ^{as is evident from records.} Therefore, naturally when his voluntary retirement was accepted, his pensionary benefits had to be calculated on the basis of last 10 months pay drawn by him, which was, admittedly, at Rs.7100/-. It was only after the retirement of the applicant that the respondents reduced his pay from Rs.7100/- to Rs.6900/- that too without giving him any show-cause notice, therefore, the said action of the respondents is not sustainable in law as the law is well settled that incase any pay is fixed by the respondents themselves without giving any mis-representation by the applicant and even though it was found to be fixed wrongly lateron the same cannot be changed to the dis-advantage of the employee concerned without putting him on notice. In the instant case, admittedly, as per the statement made by the respondents' counsel in the Court ~~that~~ no show-cause

notice was given to the applicant, nor reversion order was served upon the applicant, therefore, it is clear that he continued to draw at Rs.7100/- as basic pay till the date of his voluntary retirement and since the pensionary benefits had to be calculated on the basis of the last 10 months' pay, the respondents could not have either reduced his pay arbitrarily, or recovered the said amount from the settlement dues of the applicant. Accordingly, the action of the respondents in recovering the amount from the settlement dues of the applicant is held to be illegal. Therefore, the respondents are directed already to refund the amount/recovered from the settlement dues of the applicant on account of having paid excess payment to the applicant and calculate the amounts at Rs 7100/- basic pay and pay the arrears if due to him after calculation within a period of 3 months from the date of receipt of copy.

7. With the above direction, the O.A. stands disposed off with no order as to costs.

(Mrs. Meera Chhibber)
MEMBER (J)

Centrif. 2.03

(R.K. Upadhyaya)
MEMBER (A)

GIRISH/-

प्रैष्ठाकल सं ओ/न्या..... ज्वलपुर, दि.....
 एवं जिमि अजे शिरा.....
 (1) -
 (2) दाना..... ज्वलपुर
 (3) दाना..... ज्वलपुर
 (4) दाना..... ज्वलपुर
 रायना एवं शाल्यरक्त दाना.....

जप चंद्रस्त्रांग अंगलामा २१८/०३