

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 857 of 1998

Jabalpur, this the 25th day of July 2003.

Hon'ble Mr. J.K. Kaushik, Judicial Member
Hon'ble Mr. Anand Kumar Bhatt, Administrative Member

N.N. Khan, S/o Shri Digambar Khan,
aged about 57 years, retired
Sr. Clerk in the Office of Sr. DPO,
South Eastern Railway, Bilaspur.
C/o Sri Shankar Dutta,
Shanker Nagar, Neargudakhoo Factory,
Bilaspur-Rs (MP)

APPLICANT

(By Advocate - Shri V.Tripathi holding brief of Shri S.Paul)

VERSUS

1. Union of India, represented through
the General Manager, S.E. Railway,
Garden Reach, Calcutta-43.
2. Senior Divisional Personnel
Officer, S.E.Rly.
Bilaspur-Rs(MP)
3. Senior Divisional Accounts Officer
S.E.Rly, Bilaspur-Rs(MP).

RESPONDENTS

(By Advocate - Shri H.B. Shrivastava)

O R D E R (ORAL)

By J.K. Kaushik, Judicial Member -

Shri N.N. Khan has filed this Original Application
under Section 19 of the Administrative Tribunals Act and has
sought the following reliefs :-

- (i) The respondents may be directed to fix the full
pension and DCRG of the applicant in accordance with
his entitlement and pay him the same without any further
delay.
- (ii) The respondents may be directed to pay interest on
the delayed payment of pension and DCRG from the date
these become due upto the date of actual payment at the
rate of 18% per annum.
- (iii) The cost of this suit may be allowed to the applicant.
- (iv) Any other relief which the Hon'ble Tribunal deem
just and equitable in the circumstances of the case,
may be granted.

2. The material facts leading to filing of this Original
Application are at a ^{very} narrow compass. The applicant was

working on the post of Senior Clerk in the

He was retired from service on medical grounds w.e.f. 29.9.95, therefore he is entitled to full pension, DCRG etc. He had served the Railway for the period 29.6.61 to 29.9.95 for about 34 years. At last, he was drawing the pay of Rs 1560/- He was entitled for full pension of Rs. 780/- per month and DCRG amount of Rs. 58,647/-, but the applicant has been sanctioned Rs. 560/- as only full pension and Rs. 37,647/- as DCRG. Therefore, the applicant has been paid less amount than the amount for which he was entitled. The Railway Board has also regularised his period of absence from 12.5.76 to 25.12.85 but his DCRG amount remained unpaid. Then the applicant sent a notice for demand of justice through his counsel but no response was given by the respondents. The applicant has been denied his legal dues for more than three years.

3. The respondents have filed a detailed reply to the Original Application and submitted that the applicant absented for a period of 9 years, 6 months and 11 days and this period has been regularised as leave without pay. He has been sanctioned correctly the pensionary benefits. The amount of DCRG could not be released since the regularisation of period of absence being of more than five years was beyond the power of the General Manager and it was sent to the Railway Board. Since no favourable action was taken in the matter the applicant could not be paid the amount of DCRG.

4. Additional return has also been filed on behalf of the respondents mentioning the details of the various amounts paid to the applicant. It has been submitted that an amount of Rs. 28,420/- has been released after deducting the outstanding dues of the Railway i.e. 9,227/-. Now all the settlements have been made to the applicant and therefore the Original

Application has become infructuous.




5. A short rejoinder has also been filed to the additional reply by the applicant. His prayer is that the period of absence was not regularised correctly and the regularisation of such period was required to be ~~reassessed~~/modified, and recalculated taking into account the earlier period of absence. Amount of the gratuity has been paid after reducing the period of 9 years, 6 months and 19 days which was subsequently regularised. Therefore, such period should also be counted for total qualifying service for all practical purposes including that of retiral dues.
6. We have heard the learned counsel for the parties and have carefully perused the records of this case.
7. The learned counsel for applicant has stressed hard on the point that all the period of absence had been regularised and the same should be counted for qualifying service. Further he has submitted that the amount of Rs. 9,227/- has been deducted surprisingly without giving any information inasmuch as no detail of the same has been put forth. He has also stressed hard on the pleading and prayed that the prayer made in Original Application should be accepted in toto.
8. On the other hand learned counsel for the respondents has reiterated his arguments and submitted that the period of absence has been regularised as leave without pay and it is not leave without pay on medical ground/certificate and that is the only reason the same had not been counted towards the qualifying service. The total service is less than the required qualifying service. ^{for full pension} There is absolutely no calculation mistake in the same. He has been sanctioned the proportionate pension on the basis of actual qualifying service and so is the case of retirement benefits.
9. As for as the deduction of Rs. 9,227/- is concerned.

that ^{there} were certain railway dues against applicant and the same have been deducted from his DCRG as per rules in vogue.

10. We have considered the rival contentions and submission made on behalf of the parties. As far the question regarding length of service is concerned, period of absence has been regularised as leave without pay and not as leave without pay on medical certificate. The question of counting the said period of absence as qualifying service does not arise since rules do not allow the same. It is not the case of the applicant that leave in question was sanctioned as leave without pay on medical certificate. In the circumstances, the inescapable conclusion is that ~~the~~ the applicant has been granted the proportionate pension in accordance with the rule and the contention of learned counsel for the applicant stands repelled. As far ^{as} the question of deduction of Rs. 9,227/- is concerned, there is no explanation for the same and no details are forthcoming. The contention of learned counsel for the respondents is that the same has been determined in accordance with rule 15 of the Railway Servant Pension Rules, 1973 is not supported by any evidence and we are unable to accept the same. We understand that the process of retirement of an employee starts about two years prior but there is nothing on the record so as to suggest that even upto the period of three months from date of retirement any such amount has been determined. We find unable to agree with the views of the learned counsel for the respondents. On the other hand the contention of learned counsel for the applicant is well founded ~~known~~ since no one can be taken ^{by} surprise.

11. In view of what has been discussed above the Original Application is partly allowed and the respondents are directed to refund the amount of Rs. 9,227/- to the applicant which was deducted as an outstanding due from his gratuity, within a period of 3 months along with interest at the rate of 8% per annum.

 However, it shall be scarcely necessary to mention here that

J.K. Kaushik
(J.K. Kaushik)
Judicial Member

उप रजिस्ट्रार 5/8/03

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