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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

27.05.2011

OA No. 471/2008

Mr. C.B. Sharma, Counsel for applicant.
Mr. V.S. Gurjar, Counsel for respondents.

Put up for hearing on 26.07.2011.

Anil Kumar

(ANIL KUMAR)
MEMBER (A)

K. S. Rathore

(Justice K.S. Rathore)
MEMBER (J)

AHQ

26/7/2011

CASE NOT REACHED
PUT UP FOR HEARING
ON *16/08/2011*

Q18(16)10
COURT OFFICER

16/8/2011

CASE NOT REACHED
PUT UP FOR HEARING
ON *09/09/2011*

Q18(10)10
COURT OFFICER

9.9.2011

Mr. C.B. Sharma, Counsel for applicant

Mr. V.S. Gurjar, Counsel for respondents

Heard. The OA is disposed of by
a separate order.

Anil Kumar

(Anil Kumar)
M (A)

K. S. Rathore
(Justice K.S. Rathore)

M (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 9th day of September, 2011

Original Application No.471/2008

CORAM:

**HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)**

Layak Singh
s/o Late Shri Moti Lal,
r/o Near Kali Mata Ka Mandir,
c/o Rajesh Kumar, Kota Junction,
Retired as Passenger Driver,
Western Railway now
West Central Railway,
Kota Division, Kota.

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India
through General Manager,
West Central Zone,
West Central Railway,
Jabalpur.
2. Union of India
Through General Manager,
Western Railway,
Churchgate, Mumbai.
3. Divisional Railway Manager,
West Central Railway,
Kota Division,
Kota.

4. Senior Divisional Electrical Engineer (TRO)
West Central Railway,
Kota Division, Kota.

.. Respondents

(By Advocate: Shri V.S.Gurjar)

O R D E R (ORAL)

The present OA is filed by the applicant seeking writ, order or direction directing the respondents to allow pension and pensionary benefit after due fixation at the stage of Rs. 1850/- plus allowances w.e.f. 1.4.1995 by revising pension of the applicant with all consequential benefits. Further prayed for payment of difference of pension and pensionary benefits w.e.f. 1.4.1995 alongwith interest at the rate of 12% p.a.

2. It is not disputed that the applicant retired on superannuation on 31.3.1995. According to the applicant, his pay was fixed on 30.3.1995 as Rs. 1800/- instead Rs. 1850/-. It is also not disputed that pensionary benefits have already been given to the applicant. As per the applicant, the only controversy remains with regard to correct fixation of pay as instead of Rs. 1800/- the pay should be fixed as Rs. 1850/- plus allowances and after fixation of pay at Rs. 1850/- the pension is required to be revised accordingly and difference of amount be paid with interest.



3. The learned counsel appearing for the respondents has raised preliminary objection regarding maintainability of this OA, firstly, with regard to territorial jurisdiction of this Tribunal by demonstrating that as per Annexure A/1 the applicant is shown resident of Kota whereas as per Ann.A/6 the permanent residence is shown after retirement as Gram Nangla Rati, Post Office Tundla District Firozabad. We are not impressed with this preliminary objection regarding territorial jurisdiction raised by the respondents as the applicant served the respondents and retired from Kota. Therefore, this Tribunal has jurisdiction to entertain this OA and the objection regarding territorial jurisdiction is not sustainable. Further, the second preliminary objection is with regard to limitation stating that the applicant retired in the year 1995 and prayed for pay fixation w.e.f. 1.4.1995 whereas the present OA has been filed in the year 2008, i.e. after a lapse of more than 13 years, as such, the OA deserves to be dismissed on this ground alone.

On merits, the respondents have submitted that vide Ann.A/4, pension of the applicant has been revised in view of the fact that his name was kept on panel for promotion to the post of Passenger Driver and he was accorded promotion w.e.f. 30.3.1995 in the pay scale of Rs. 1600-2660 after conclusion of the case under the Disciplinary and Appeal Rules on 22.01.1996. The applicant was informed in response to

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his representation Ann.A/5 that the pay fixation of the applicant was carried out w.e.f. 10.11.1994 on proforma basis in view of the promotion of his junior Shri Hira Lal J. in the pay scale of Rs. 1600-2660 and difference of pay was also paid as stated at Bar by the respondents. Thus, the statement made by the applicant to the effect that pay of the applicant was fixed at the stage of Rs. 1800/- on 30.3.1995 is absolutely false and contrary to the record. The respondents have further submitted that the applicant was accorded promotion to the post of Passenger Driver in the pay scale of Rs. 1600-2660 w.e.f. 10.11.1994 on proforma basis and given details of pay fixation carried out in view of promotion as under:-

Pay scale	Date of effect	Pay fixed at
1350-2200	01.03.1994	Rs. 1680/-
1600-2660		Rs. 1680 + 40 (Notional increment)
Pay Fixed		Rs. 1720/- FR 1313 1(a)a
Higher stage	10.11.1994	Rs.1750/- FR 1313 1(a) 2 on proforma basis and actual payment payable w.e.f. 30.03.1995

The pay fixation of the applicant has been arrived at the stage of Rs. 1750/- on proforma basis w.e.f. 10.11.1994 and Rs. 1750/- in view of superannuation w.e.f. 31.3.1995 and accordingly, all the retiral benefits in accordance with



relevant provisions have been extended in favour of the applicant. Further asking for fixing the pay at the stage of Rs. 1850/- after a belated stage is not only contrary to provisions of Section 21 of the Administrative Tribunal Act, 1985 but also contrary to the ratio decided by the Hon'ble Supreme Court in the case of D.C.S.Negi vs. Union of India and ors., in SLP (Civil) No.7956/2011 dated 7.3.2011 wherein the Hon'ble Supreme Court observed as under:-

"..... A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3).

In the present case, the Tribunal entertained and decided the application without even adverting to the issue of limitation. Learned counsel for the petitioner tried to explain this omission by pointing out that in the reply filed on behalf of the respondents, no such objection was raised but we have not felt impressed. In our view, the Tribunal cannot abdicate its duty to act in accordance with the statute under which it is established and the fact that an objection of limitation is not raised by the respondent/non-applicant is not at all relevant....."



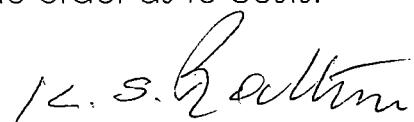
4. Having considered the rival submissions of the respective parties and upon perusal of the material available on record as well as the relevant provisions of law, the respondents have rightly fixed the pay at Rs. 1750/- and granted retiral benefits. Thus, this OA is not only deserves to be dismissed on the ground of delay and latches in view of the ratio decided by the Supreme Court in the case of D.C.S. Negi (supra) but also on merit.

5. Consequently, we find no illegality in the fixation of pay, as observed hereinabove, and the pensionary benefits have been granted on account of his proforma fixation. The difference has been paid to the applicant and his pay has rightly been fixed at the stage of Rs. 1750/- on proforma basis w.e.f. 10.11.1994.

6. Accordingly, the OA being bereft of merit deserves to be dismissed and is hereby dismissed with no order as to costs.



(ANIL KUMAR)
Admv. Member



(JUSTICE K.S.RATHORE)
Judl. Member

R/