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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :::: GUWAHATI-5.

O.A. NO. 86/94
T.A. NO.

DATE OF DECISION 23-1-96

Shri Bidhubhusan Roy

(PETITIONER(S))

Mr. M. Chanda and Mr. A. Deb Roy

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India & Ors.

RESPONDENT (S)

Mr. B. K. Sharma

ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI, VICE-CHAIRMAN
THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

{ Yes
No


Judgment delivered by Hon'ble VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 86/94

Date of Order: This the 23rd Day of January 1996.

JUSTICE SHRI M.G.CHAUDHARI, VICE-CHAIRMAN

1. Shri Bidhubhusan Roy,
Son of Late Bipin Chandra Roy,
Resident of Old Colony,
Post Office & Distt. Bongaigaon. Applicant.

By Advocate Mr.M.Chanda and Mr.A.Deb Roy.

- Vs -

1. Union of India,
Represented by the General Manager,
N.F.Railway, Maligaon,
Guwahati-11.
2. The Chief Engineer(P),
N.F.Railway. Maligaon.
Guwahati-11.
3. The Divisional Railway Manager,
N.F.Railway, Alipurduar Junction,
P.O.Alipurduar Junction,
West Bengal. Respondents.

By Advocate Mr.B.K.Sharma.

O R D E R.

CHAUDHARI J(VC):

1. The applicant retired on superannuation from the service of N.F.Rly as a permanent Way Inspector Grade -1 on 30-6-87. The pensionary benefits were provisionally fixed with reference to that date. A Charge Sheet had been issued against the applicant in September 1984 and a disciplinary proceeding was initiated. A second Charge Sheet was issued in December 1986 and another DRA proceeding was initiated. These proceedings were finalised in August 1990 and June 1991 respectively. The 1st proceeding was

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dropped and the applicant was exonerated in the second proceeding. Due to the pendency of these proceedings in 1987 the DCRG amount payable to the applicant was withheld and as soon as the proceedings were finalised the entire amount of DCRG was released. The pension of the applicant was finalised at Rs.1045/-p.m. which was the provisional pension. In respect of the commutation value the respondents worked out the same on the basis of the date of retirement and the excess payment of pension made from July 1987 till the finalisation of the pension was recovered from him. Consistently therewith he was paid the commutation amount of Rs. 22,453.00 on 1-9-92.

✓ 2. The grievance of the applicant is ^{two} fold. First, he claims that his pension should be fixed @ Rs.1225 p.m. and not ^{at} Rs. 1045/- w.e.f. 1-7-87. Second, he claims that the amount of Rs. 21.228 recovered from him towards commutation money out of his pension be refunded to him. Consistently with this grievance he prays for interest at the rate of Rs. 18% on the delayed payment of DCRG amount of Rs. 36,395.00 and on the entire amount of commutation value of pension of Rs. 43681.00 from 1-7-1987 to 1-9-1992.

✓ 3. In paragraph 649) of the O.A. the applicant has stated that his basic pay at the time of retirement was Rs. 2450.00. The work sheet of calculation of pension etc. produced at Annexure R-2 by the respondents shows that that has been treated as the last basic pay drawn for the purpose of calculation. The applicant has averred that as per rules the pension has to be fixed at ^{50%} ~~15%~~ of basic pay plus other allowances and therefore he is entitled to get pension of Rs. 1422.00. The respondents have stated in that connection that as per the relevant provisions pension is

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calculated on the basis of employees' last 10 months' pay drawn and the factor of length of qualifying service. By applying that formula they have arrived at Rs.1045 p.m.

4. Mr.M.Chanda, learned counsel for the applicant, maintains that the Rule of 50% basic pay should be applied for calculating the amount of pension and the formula applied by the respondents is wrong. The formula applicable however was as prescribed under the Manual of Railway Pension Rules 1950 which has been followed. Mr.Chanda bases his argument on Rule 69 of Railway Services(Pension) Rules, 1993. That Rule however has no application as it came into force from 3-12-93 much after the retirement of the applicant. No other error is pointed out in the Calculation under the 1950 Rules. Hence the claim of the applicant for pension at the rate of Rs. 1225 p.m. must be rejected.

5. Although the applicant has prayed that the amount of Rs. 21,228.00 recovered from commuted money of pension be refunded with interest @ 18% p.m. there is absolutely no averment made in the application to justify the claim and thus the relief is being sought without laying any foundation for the same. The respondents in this connection have explained that since the applicant had applied for commuted value of $\frac{1}{3}$ of his pension at the time of his retirement admissible in July 1987 the amount of Rs.348.00p.m. paid was in excess and is being recovered.

6. The applicant cannot claim double advantage. Having applied for commutation on $\frac{1}{3}$ pension he was entitled to be paid commutation value and there is no dispute that he has been paid that amount in the sum of Rs.4453. He could not at the same time retain the benefit of the amount that was paid in excess without deducting the amount of com-

commutation. In short he got the commutation value of $\frac{1}{3}$ pension as per his own volition and was entitled to get actual amount after reduction of $\frac{1}{3}$ amount from the amount of full amount. The bald claim made by the applicant for refund of the amount of Rs. 212.28 therefore is difficult to be accepted. This is the position if date of commutation is treated in 1987. That however seems wrong as discussed below.

7. Mr. Chanda however sought to argue that since the commutation value was finalised and paid to the applicant on 1-9-92, the same should have been worked out as on 1-9-92 and not from July 1987. In that way the amount recovered from the applicant should be restored to him. The respondents have worked out the commutation value with reference to the date of retirement in pursuance of the application given at the time by the applicant for commutation. At no stage the applicant had withdrawn that application or had intimated the respondents that the commutation should be made effective only from 1-9-92. No rule has been pointed out to show that the commutation has to be worked out with reference to the date of actual payment. The test to be applied would be the position as if the commutation amount was paid in full in July 1987 itself. No question of postponement can arise. The only other way to understand the grievance in this respect is that the applicant seems to suggest ~~is~~ that he is entitled to retain the excess amount recovered from him by way of compensation for delay in release of the amount. This suggestion is however unacceptable. The aspect of correct date is however discussed below.

8. That leads to the question of delay in payment and entitlement of interest. The respondents have stated

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that the delay in disposal of the DAR proceedings was due to the non-cooperation of the applicant and not owing to their fault. Whatever that might be, in so far as the pension is concerned since the amount of final pension is also the same as provisional pension no prejudice has been suffered by the applicant so as to justify the claim for interest. Mr.B.K.Sharma for the respondents draws our attention to Rule 10(c) of Railway Pension Rules 1993. That provision lays down that no gratuity shall be paid until the conclusion of the departmental proceeding and Sub Rule 2 of that para provides that provisional pension shall be adjusted against final retirement benefits upon conclusion of the disciplinary proceeding but no recovery shall be made where the pension finally sanctioned is less than the provisional pension. Such not being the case the question of loss on account of pension does not arise. The Rule applicable at the material time under the old Rules was also the same.

9. As far as the amount of DCRG is concerned Mr.Sarma refers to the circular No.F(E) III-78-1/11 dated 17-5-78 and NR 7008 issued under the pension rules which lays down that no gratuity or DCRG will be paid till final orders in departmental proceedings are passed. The entire amount of DCRG was released after the conclusion of the DAR proceedings. That payment during the pendency of disciplinary proceeding thus not being permissible the applicant cannot claim interest on that account.

10. Turning back to the question of commutation the second proviso to para 2903 of the Railway Establishment

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Code Vol.II provided that the Railway servant against whom a departmental proceeding has been instituted shall not be permitted to commute any part of his pension during the pendency of such proceeding. The respondents have acted consistently with this provision and paid the applicant full amount calculated on the basis of Rs. 1045/- p.m. The commutation was given effect to on 1-9-92. However as stated in the written statement the respondents have made the commutation effective from July 1987 and have applied the rate as was applicable at that time. That has led to the recovery of Rs. 21,228.00. The action of the respondents in treating the commutation effective from a retrospective date does not appear to be consistent with the 2nd proviso to Rule 2903 of the Code. ~~That and Proviso~~ mentioned above. That is because the disciplinary proceedings were already instituted and pending on the date of retirement of the applicant. The commutation therefore, with reference to 1987 was itself not permissible having regard to the 2nd proviso mentioned above as on 1-9-92. If that be the true position then the correctness of recovery of the amount of Rs 21,228/- may have to be reexamined by reference to the position as on 1-9-92. I am not inclined to make a final decision on that point at this stage for want of adequate material. It would therefore be necessary to direct the respondents to examine the above aspect and take suitable steps consistently therewith. In that process it will be desirable to give a personal hearing to the applicant. This exercise should be completed within a period of two months from the date of receipt of copy of this order.

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In the result the following order is passed:

i) The respondents are directed to re-examine the correct date of making the commutation effective in the light of the reasons discussed above within a period of two months from the date of receipt of copy of this order and pass such consequential orders as may be necessary consistently therewith. The respondents will be at liberty to re-determine the amount of other pensionary benefits if so necessary consistently with the decision on the above point.

The O.A. is partly allowed. No order as to costs.

M.G.CHAUDHARI

(M.G.CHAUDHARI)
VICE-CHAIRMAN

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