

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

✓ O.A/T.A No. 251195

R.A/C.P No.

E.P/M.A No.

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SECTION OFFICER (Judl.)

Gabit
22/18

CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH : GUWAHATI

ORIGINAL APPLN.NO. 251 OF 1995
 TRANSFER APPLN.NO. OF 1995
 CONTEMPT APPLN.NO. OF 1995 (IN NO.)
 REVIEW APPLN.NO. OF 1995 (IN NO.)
 MISC.PETITION NO. OF 1995 (IN NO.)

H. P. Barman APPLICANT(S)

-vs-
 M. O. I. ... Respondent(S)

For the Applicant(s) ... Mr. for person

For the Respondent(s) ... Mr. B.K. Sharma, Rly. ad

OFFICE NOTE	DATE	ORDER
<p>This application is in form and within time. C. F. of Rs. 50/- deposited vide IPO/BD No. 344046 Dated 9.11.95</p> <p>Dr. Registrar (d)</p>	17.11.95	<p>Mr H.P. Barman appears in person and prays for admission. List for consideration of admission in presence of the learned Railway Counse, Mr B.K. Sharma on 24.11.95.</p> <p>Member</p>
	24.11.95	<p>Applicant in person. Mr B.K.Sharma for the respondent Perused the statements of grievances and reliefs sought for in this application. Application is admitted. Issue notice on the respondents by Registered Post. Written statement after 6 weeks as requested by learned Railway counsel Mr B.K.Sharma. List on 12.1.1996 for written statement and further orders.</p> <p>Member</p>

Order d. 24.11.95
 asking to submit requirements
 issued vide 5/88
 d. 6/12/95
 5/12

OFFICE NOTE

DATE

ORDER

'X' is received from 12.1.96
 the applicant and
 states that the court
 of Rly has received
 the copy of application
 for issuing a before
 admission. So, he will
 not additionally submit
 for issuing 2 notices. pg

1m
 13/12
 16-2-96

W/ statement has not
 been filed
 1m
 14/12

W/ statement has not
 been filed
 1m
 15/12

W/ statement has
 not been filed
 1m
 17/6

W/ statement has not
 been filed
 1m
 17/7

None is present. Written statement
 has not been submitted. Adjourned to
 16.2.96 for written statement and further
 orders.

Member

None is present. Written statement
 has not been submitted. Adjourned to
 15-3-96 for written statement and further
 orders.

Member

1m

15-3-96

Counter has not been filed.
 List on 1-5-96 for counter and further
 orders.

Member

1.5.96

Mr B.K. Sharma, learned counsel for
 the respondents is present and prays for time
 to file written statement. Allowed.

List on 5.6.96 for written statement
 and further orders.

Member

nkm

18-6-96

None is present. List for written
 statement and further order on 9-7-96.

Member

1m

10.7.96

None present. Written statement has not been submitted.

List for written statement and -her orders on 5.8.96.

Member

pg

comins

5.8.96

None present. Written statement has not been submitted. Mr S. Sarma prays for one months time for submission of written statement on behalf of Mr B.K. Sharma, learned Railway Counsel. Allowed.

List on 2.9.96 for written statement and orders.

Member

nkm

R-5/8

2.9.96

None present.

Written statement has not been submitted.

List for written statement and further order on 20.9.96.

Member

trd

2/9

20.9.96

None present.

Written statement has not been submitted.
List for written statement and further orders on 8.10.96.

62
Member

trd
trd
20/9

8-10-96

None is present. Written statement has not been submitted. List for written statement and further order on 12-11-96.

62
Member

lm
lm
9/10

12.11.96

None is present. Written statement has not been submitted.

List for written statement and further order on 2.12.96.

62
Member

nkm

nkm
12/11

16.4.97

None is present. Written statement has not been submitted.

List for hearing on 30.4.1997.

62
Member

pg

pg
13/14

2-7-97

1575 filed by

in respect

30-4-97

Mr.H.P.Barma the applicant seeks adjournment for 3 months due to his medical treatment. None for the respondents.

This case to be listed for hearing on 6th August 1997.

Member

lm

12/5

6.8.97. Adjourned to 20.8.97. By order

20.8.97

On the prayer of Shri H.P.Barma the applicant, hearing is adjourned to 24.9.1997.

Member

pg

24.9.97

Shri H.P.Barman, the applicant is present in person. Mr S.Sengupta, learned Railway counsel is present and submits that he will take up this case for the Railways and prays that the hearing may be adjourned to next week. Prayer allowed.

Hearing adjourned to 1.10.97.

Member

pg

24/9

1.10.97

Adjourned to 29.10.97.

By order

29.10.97

The applicant Mr H.P. Barman is present in person. Mr B.K. Sharma, learned Railway Counsel is present on behalf of the respondents. Both sides have concluded their submissions. Hearing concluded. Judgment reserved.

bo
Member

nkm

ms
3/11

26.11.97

Judgment pronounced. The application is partly allowed as indicated in the order. No order as to costs.

bo
Member

11/12/97
Copy of The Judgment has been sent to the D/sec. for issuing the same to the parties.

sl. vide No. 3674-3677

dated 12-12-97.

pg

ms
26/11

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

O.A.No.251/95 of 199

DATE OF DECISION.....26-11-97.....

Shri H.P.Barman

(PETITIONER(S))

Applicant in Person

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India & Ors

RESPONDENT(S)

THE HON'BLE

THE HON'BLE SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ? *yes*
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 ?

Judgment delivered by Hon'ble ADMINISTRATIVE MEMBER

Ganguly
26.11.97

9

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.251/95

Date of Order: This the 26th Day of November 1997.

HON'BLE SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER

Shri H.P.Barman,
Ex.Divisional Commercial Superintendent,
Dibrugarh, N.F.Rly.
Now Advocate,
Durgasarobar, Guwahati-9. ... Applicant.
By Advocate In Person.

-Vs-

1. Union of India,
represented by General Manager,
N.F.Railway, Maligaon, Guwahati-11
2. Divisional Railway Manager,
Tinsukia Division,
P.O. & dist.Tinsukia, Assam
3. Chief Personnel Officer
N.F.Rly, Maligaon, Guwahati-11.

By Advocate Mr.B.K.Sharma, Rly.Advocate.

O R D E R.

SANGLYINE, MEMBER(A):

The applicant retired from service under the North East Frontier Railway as officiating Divisional Commercial Superintendent, Dibrugarh on 31-8-89. The respondents were to pay him the following dues on retirement and they were paid on the dates indicated against each -

- 1) Leave Encashment of Rs.36928.00 paid on 1-10-90.

- 2) Group Insurance of 4032.00 paid on 31-3-90.

- 3) Amount of Commutation of Pension of Rs.
Rs.71045.00 paid on 30-11-89.

The applicant submitted representations claiming interest on the amounts on account of the delay. His representations were not disposed of by the respondents. He therefore came before this Tribunal in O.A.No.16 of 1993 and

contd/-

in the order dated 2-6-95 the respondents were directed to consider the representations dated 4-3-91 and dated 27-7-92 submitted by the applicant on merit. The respondents had complied with the directions and came to the conclusion according to their letter No.545 E/1/341/PN(O) dated 26-4-95 that the applicant was not entitled to any interest. Hence this Present application.

2. The applicant has submitted that there was deliberate delay on the part of the respondents in paying his dues. In support of his contention he has referred as examples to the fact that his Last Pay Certificate was sent to Headquarters without vetting by the Accounts Section and that the Annexure 'C' for payment of the Group Insurance money was sent without signature of the bill preparing office thereon. These facts were confirmed by the General Manager(P), N.F.Railway in his letter dated 28-9-89 addressed to the Divisional Railway Manager(P), Tinsukia. He has submitted that under such circumstances he is entitled to interest on the amounts. Further, in support of his contention that he is entitled to interest he has placed reliance on the decisions as reported in AIR 1985 SC 356, 1990(1)(SLR) 637 and (1987)4 ATC 206. The learned Railway Counsel has contested the contentions of the applicant and relies on the impugned letter and the written statement of the respondents. According to him there was no delay in payment of the dues to the applicant. There was a little delay in the case of payment of Leave Encashment but that delay does not warrant payment of interest on the amount. Further, he submits that the decisions rely on by the applicant are not applicable to the facts of the case of the applicant.

contd/-

3. The applicant had claimed the interest at the rate of 18% p.a. for the period from 1-9-1989 to 1-10-1990 in respect of Leave Encashment amount. Similar interest is claimed for Group Insurance amount for the period from 1-9-89 to 3-3-90. Interest of 18% p.a. on the amount of commutation of pension for the period from 1-9-89 to 30-11-89 has also been claimed. According to the respondents the amount of Leave Encashment was to be paid by the Division from which the officer had retired. The applicant had retired from service while serving in Tinsukia Division. The respondents have claimed that the delay in payment of the amount was unintentional and even if there was delay, there is no rule or instructions for payment of interest on account of delay in payment of Leave Encashment. It has however, been found that the respondents have not substantiated with any evidence to the effect that the delay in making the payment was unintentional. The contention that there was a communication gap between the Headquarters at Maligaon and the Tinsukia Division regarding the payment of Leave Encashment amount is unacceptable because according to the impugned order the dues was to be paid by the Tinsukia Division itself because the Division was the sole authority to pay the Leave Encashment. The leave accumulated was at the credit of the applicant as on the date of his retirement and the amount of Leave Encashment of such accumulated leave becomes dues to the employee immediately after such retirement. The payment of Leave Encashment amount cannot be detained beyond reasonable period thereafter in the absence of any ground which may disentitle the employee to get the amount of Leave Encashment as per rules or to delay the payment thereof. Here in this case there is nothing shown to disqualify the applicant from getting his dues. However, to be fair to the respondents, it appears that correspondences were going on between them a

the applicant up-to December 1989 in this regard when the applicant finally submitted the required documents on 11-12-89. After that there was no justification shown for the delay. Granting that sometime for making the payment was necessary after 11-12-89, it is considered that the delay from 1-1-90 till the date of payment was without any reasonable ground. The applicant was therefore, prevented from enjoying his dues without any fault of his own during the period. Under the circumstance it is held that the applicant is entitled to interest on the amount of Leave Encashment with effect from 1-1-1990 to 30-9-1990 at the bank rate for fixed deposits prevailing at the relevant period.

4. For the delay in payment of Group Insurance amount of Rs. 4032.00 the applicant is not entitled to any interest as apparently it was not due to the fault of the respondents. According to the respondents the application for payment of the amount dated 2-3-90 was submitted by the applicant in the prescribed form to the competent authority of the respondents only on 21-3-90. This was received by the respondents on 21-3-90 and the payment was made on 23-3-90. The applicant has not shown that these are otherwise. It is true that the applicant had sent the form regarding payment of Group Insurance to the competent authority of the respondents earlier on but apparently the payment could not be made on the basis thereof. It was only after submission of the prescribed form as stated that final payment was made on 31-3-90. Thus the claim for payment of interest on the amount fails.


contd/-

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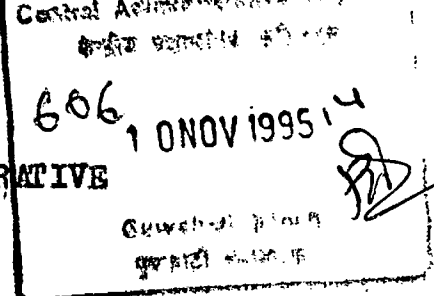
5. The payment of commutation of pension was made exactly 3 months after the date of retirement of the applicant. It is true that the Last Pay Certificate was sent without vetting by the Accounts Section which had resulted in the delay in the payment of Pensionary benefit. But the same apparently had been rectified and the amount had been paid 3 months after retirement of the applicant. It was the intention of the respondents to pay the Pension to the applicant in time and they had sent the LPC to appropriate authority even before the date of retirement of the applicant. I am of the view that this short delay was not intentional. Moreover, for the period from 1-9-89 to 30-11-1989 the applicant was drawing full pension without taking into account the commuted amount. Under the facts and the circumstances I consider that the applicant is not entitled to any interest for the delay in payment of the amount of the commutation of pension.

6. In view of the above, the application is partly allowed. The respondents are directed to pay the interest as indicated hereinabove within sixty days from the date of receipt of this order.

7. No costs.


(G.L. SANGLYINE)
ADMINISTRATIVE MEMBER
26.11.9

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE
TRIBUNALS ACT, 1985



Title of the case : Bhri H.P.Barman

... Applicant

Vs.

Union of India

represented by General Manager,

N.F.Rly., Maligaon , Guwahati-11.

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Signature of the
Applicant

For use in Tribunal's Office

Date of filing

or

Date of receipt by post

Registration No.

Signature
for Registrar

Filed by
S.P. Barman
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Application No. 251 /1995

Sri H.P. Barman, Ex Divisional Commr. Suptd/Debrughat, N.F.
now Advocate,
Durgasrobar, Guwahati - 9 ... Applicant

vs

1. Union of India
represented by General Manager,
N.F.Rly., Maligaon, Guwahati - 11

2. Divisional Railway Manager,
Tinsukia Division,
P.O: & Dt: TINSUKIA, Assam

3. Chief Personnel Officer
N.F.Rly., Maligaon, Guwahati-11

Respondents

DETAILS OF APPLICATION :

1. Particulars of the order against which the application is made.

The application is directed against the order under letter No. 545E/1/341/PN(O) dt. 26.4.95 passed by the General Manager(P), N.F.Rly., Maligaon.

2. Jurisdiction of the Tribunal:

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of this Tribunal.

3. Limitation:

The applicant further declares that the application is within the limitation period prescribed in section 21 of the Administrative Tribunals Act, 1985.

4. Facts of the case :

1. That the applicant retired on 31.8.89, but the Rly. Administration paid Leave encashment after 13 months of retirement, Group Insurance after 7 months and amount of Commutation after 3 months despite the D.O. letter dt. 8.9.89 to D.P.O/ (Divisional Personnel Officer)/ Tinsukia

contd...2.

A copy of the said d.o. letter dt. 8.9.89 is annexed hereto as Annexure 'A'.

2. That this culpable delay in paying the retirement dues, the applicant is entitled to ^{interest} for blocking his rightful dues as under :

Amount of interest.	On amount of dues	Rate of interest.	Period.
Rs 7201.00	Rs 36,928.00 Leave Encashment	18%	13 months (from 1.9.89 to 1.10.90 (Paid))
Rs 423.00	Rs 4,032.00 Group Insurance	18%	7 months from 1.9.89 to 31.3 (Paid)
Rs 3197.00	Rs 71,045.00 Amount of commutation	18%	3 months from 1.9.89 to 30.89 (Paid).
<u>Rs 10821.00</u>			

The applicant claimed the above interest of Rs 10821.00 vide his representation dated 6.3.91 followed by reminder dated 27.7.92.

A copy of the representation dated 6.3.91 and dated 27.7.92 each are annexed hereto and marked as Annexure B & C.

3. That the delay took place due to lapse on the part of the DRM(P)/Tinsukia for sending the L.P.C without vetting by the Accounts and the Annexure 'C' for the Group Insurance without signature of the Bill Preparing Office vide GM(P)'s letter No. 545E/1/341/PN(O) dt. 28.9.89 to DRM(P)/Tinsukia.

A copy of the said letter dt. 28.9.89 is annexed hereto and marked as Annexure D.

4. That as per rule Final settlement dues are payable at the time of retirement. The Supreme Court held that "Pension and gratuity are no longer any bounty to be distributed by the Govt. to its employees on their retirement but have become, under the decision of this court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with penalty of payment of interest at the current market rate till actual payment". (AIR 1985 SC 356.).

contd...3.

17
R. B. Bano

5. That the Supreme Court further held that interest on pension and gratuity amount, etc. would be awarded with effect from the date on which the same became due on his superannuation and not from the date of writ petition. (1987) 4 ATC - 206, Hamendra Nath vs State of Bihar & Ors.)

6. That the Railway Administration did not respond to the applicants representations dt. 6.3.91 and 27.7.92 claiming interest and as such this Hon'ble Tribunal had to be approached vide his Application No. 16/93. This Hon'ble Tribunal was pleased to dispose of the Application directing the Respondent to dispose the above representations vide its orders dt. 2.2.95, giving liberty to file fresh application, if advised, to do so.

A copy of the above order dated 2.2.95 is annexed hereto and marked as Annexure E.

6. That the GM(P) in disposing the representations informed the applicant that there was some delay in paying Leave Encashment but not intentional though their lapses have been admitted in GM(P)'s letter NO. 545E/1/341/PN(O) dt. 23.9.89 that the settlement dues have been held due LPC not being vetted by the Accounts and the Annexure 'C' for the Group Insurance not being signed by the Bill Preparing Office (Annexure D).

A copy of the GM(P)'s Letter No. 545E/1/341/PN(O) dated 26.4.95 disposing the representations of the applicant is annexed hereto and marked as Annexure F.

7. Being dissatisfied with the above reply dt. 26.4.95 the applicant submits this fresh application before this Hon'ble Tribunal.

5. Grounds for relief with legal provisions:

(i) For that the impugned order of the GM(P) in his No. 545E/1/341/PN(P) dt. 26.4.95 informing the applicant that delay is not intentional is not a speaking order and is merely suppression of fact regarding their lapses.

A.P. Barman
18

(ii) For that the retiral benefits such as leave encashment Group Insurance and commutation amount are payable at the time of retirement and to get them on the date of retirement is a valuable right and as such for culpable delay the Rly. is responsible for interest at the market rate. as held by the Supreme court and other High courts.

6. Details of the remedies exhausted:

The applicant declares that he has availed of all the remedies available to him under the relevant service rules, etc.

7. Matters not previously filed or pending with other court:

The applicant further declares that he had not previously filed any application in any other bench of the Tribunal.

8. Reliefs sought

It is prayed that the Respondent may be asked to pay interest amounting to Rs 10821.00 as per rule and decisions of the Supreme Court *setting aside the order dt 26.4.95 (Annex. F).*

And any other relief or reliefs the Hon'ble deems fit and proper.

9. Interim order - Nil.

10. Application not sent by post.

11. Particulars of Postal Order No. 344046 dt 4.11.95

12. List of enclosures:

1. Applicant's d.o. letter dt. 8.9.89
2. Representations dt. 6.3.91 and 27.7.92
3. GM(P)'s No. 545E/1/341/PN(O) dt. 28.9.89
4. Order of the Tribunal dt. 2.2.95
5. GM(P)'s reply of even No. dt. 26.4.95

- Verification -

I, Sri Haripada Barman s/o late Rajani Kanta Barman, retired DCS/DBRT aged about 63 years, resident of Durgasarobar do hereby verify that the contents of paras 1 to 12 are true to my personal knowledge and believe and that I have not suppressed any fact.

Date
Place

To Registrar.

A.P. Barman
Signature 6.11.95

Dated : 8.9.89.

Shri H.P. Barman,
Ex DCS/Dibrugarh.

My dear Deb,

Sub: Transfer Allowance, LPC, Group
Insurance, etc.

You would be glad to learn that I have
enroled as an Advocate of the Guwahati High
Court from 6.9.89.

I am sending the forms of transfer and
packing allowances and Group Insurance duly
filled in for early payment. The audited LPC
and no objection certificate as called for vide
GPDs No. 545E/1/341(O) dated 11.8.89 may kindly
be sent to Head quarters for calculation of
pension amount.

Yours Sincerely

Encl: 8

(H.P. Barman)

Shri S. Deb,
DPO/Tinsukia.

Attested
H.P.B.
S.D.N.
6.11.95

Relieved on 31-8-89

L1S — 8.9.89
LPC moved on 6.9.89

Copy.

Dated 6.3.91

To
The General Manager,
N.F.Rly,
Maligaon,
Guwahati-11

Sir,

Sub: Claim for interest for late payment
of leave encashment, Group Insurance
and commutation amount.

I have the honour to inform you that as per rule the above final settlement dues are payable at the time of retirement. I have retired as DCS/DBRT on 31.8.89, but the leave encashment was paid on 1.10.90, Group Insurance, on 31.3.90 and the amount of commutation, 30.11.89, despite my d.o. letter dated 8.9.89 to DPO/TSK followed by letter dt. 11.12.89 enclosing MOP, Receipt Acknowledgment in reference to DPC/TSK's letter No. EB/2 (Gazetted) dt. 26.11.89 and my d.o. letter or to DRM/TSK dt.6.3.90.

The above payment of final settlement dues were blocked for a considerable period for which I am entitled to get interest @ 18% p.a. and accordingly total interest comes to Rs 20,821.00 as summed up below:-

Amount of Interest	On the amount of dues	Rate of Interest	Period
Rs 70201.00	Rs 36,928.00 (leave encashment)	18%	12 months (from 1.9.89 to 1.10.89)
423.00	4,622.00 (Group Insurance)	18%	7 months (from 1.9.89 to 31.3.90)
3197.00	71,045.00 (amount of Commutation)	18%	3 months (from 1.9.89 to 30.11.89)
.....			
Rs 10821.00 (Total)			

Will you kindly look into this and arrange to pay the above amount of interest early.

Yours faithfully,

Sd/-

(H.P.Barman)
Ex DCS/DBRT

Copy to DRM/TSK
CPO/Gazette/PNOI

Sd/- (H.P.Barman)
Ex DCS/DBRT.

Attended
H.P.B.
6.11.91

Copy.

AMEMB, IV.

To
The General Manager,
R.P.Biz. Lullgren,
Larchmont- 701011

Sub: Repaying Part of the Settlement Due.

Sir,

I have the honor to inform you that I retired on 11.9.70 as DSO/DM. The following dues have not yet been paid to me though the concerned authorities have been approached with written representations and also by personal interview. I would request you to look into these just to avoid unwanted and expensive litigation.

1. I was due retirement on 2.6.70 and transferred to DM on 11.10.70 as DSO/DM for 10 months 10 days. I request the DSO vide by representation dated 4.12.70 to treat this short period of transfer as a temporary transfer and retain the Rly. P. as normal rent in terms of Rly. Service Letter No. 1(6)743 RI-3 of 11.9.70 at Rs. 31 187/70. But the DSO considered normal rent for 2 months only after transfer and the rent period for panel rent till 11.10.70, date of vacation. I retired on 11.9.70 and vacated the quarter on 11.10.70. Under the existing rules, quarters can be retained for 2 months after retirement as normal rent. This rule has not been removed.

A sum of Rs 5726.27 has been recovered as panel rent @ Rs 840.00 p.m. against the normal rent @ Rs 20.00 vide DSO's DSO Letter No. 105/1/531/1(9) dt. 1.12.70. If the entire period of my stay at DM for 10 months 10 days cannot be considered as a temporary transfer to give me the benefit of retention of the P. as normal rent, at least I am entitled to retain P. as normal rent for 2 months after transfer and 2 months after retirement. For these two periods, a sum of Rs 1006.00 has been recovered as excess for panel rent.

2. A sum of Rs 75.00 as electric charge for December '70 has been recovered 6-free- also by DSO/DM vide DM letter No. 10/7/Corres./1 dt. 7.6.70 through Salary Bill for the month of August '70 and received also by DSO from 1970 vide DSO's letter No. 105/1/531/1(9) dt. 1.12.70.

3. I have already represented vide my letter dt. 6.3.71 that as per rule final settlement dues are payable at the time of retirement. I retired as DSO/DM on 11.9.70, but the leave encashment was paid on 1.10.70, Group Insurance, Rs 11.5.00 and the amount of commutation, on 29.11.70, despite my doc. letter dated 9.9.70 to DSO/DM followed by letter dt. 11.12.70 enclosing J.C.P. Receipt Acknowledgment in reference to my DSO's letter No. 10/7/Corres./1 dt. 11.11.70 and my doc. letter to DSO/DM dt. 6.3.70.

The above payment of final settlement dues were blocked for a considerable period for which I am entitled to get interest @ 12% p.m. and accordingly total interest came to Rs 11,621.00 as shown by below:-

contd....2.

<u>Amount of Interest</u>	<u>On the amount of dues</u>	<u>Rate of Interest</u>	<u>Period</u>
₹ 70201.00	36328.00 (Leave Increment)	15%	12 months from 1.9.53 to 1.10.53
453.00	4032.00 (Group Insurance)	15%	7 months from 1.9.53 to 31.3.54
3197.00	71245.00 (amount of commutation)	15%	3 months from 1.9.53 to 23.11.53

₹ 10921.00 Total Interest.

Thus total amount of dues are as under :-

1. Refund of excess penal rent ₹ 1036.00
2. Refund of excess elec. charge 53.00
3. Interest as shown above 10921.00

Total ₹ 11076.00

Could you kindly look into this and arrange payment of the above dues without further delay.

Yours faithfully,

Dated 27.7.53

CG/-
(E.P. Sharma)
Asst. Secy/DEPT

Copy to SEC/FMO

Copy to SEC/SEC, P.O. Simsbika, Dist. Simsbika
For information
I am and
I am
I am

24/ (E.P. Sharma)
Asst. Secy/DEPT

*Altered
2/8/54
Per
6/11/55*

N.F. Railway

No. 345E/1/341/PN(O)

Maligaon, dated 28.9.89

To : DRM(P)/TSK

Sub.:- GIS & LPC of Shri H.P.Barman,
Ex DCS/DBRT

Ref :- Your letter No. EB/2(Gazetted)
dated 18.9.89

- *** -

The LPC of Shri H.P.Barman received under your letter quoted above does not serve as it is not duly vetted by Accounts since the payment of pensionary benefits is held up. You are, therefore, requested to send the LPC in duplicate duly vetted by Accounts.

The Annexure 'C' in connection with payment of GIS is also returned herewith for resubmission of the same after signed by Bill Preparing Office along with certificate.

Please treat this as MOST URGENT.

DA : As above.

GC.27/9

for GENERAL MANAGER (P)

- ***** -

Attended
LBB
Daw.
6.11.95

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BRANCH.

Original Application No. 16 of 1993.

Date of Order : This the 2nd Day of February, 1995.

Shri G.L. Sanglyine, Member (Administrative)

Shri Haripada Barman.

Advocate,

Durgasorobar, Guwahati-9.

... Applicant

Applicant appeared in person.

- Versus -

1. Union of India
represented by General Manager,
N.E. Railway, Maligaon, Guwahati-11.

2. Divisional Railway Manager,
Tinsukia Division,
P.O. & Dist. Tinsukia, Assam.

3. Chief Personal Officer,
N.E. Railway, Maligaon, Guwahati-11 ... Respondents.

By Advocate Shri B.K. Sharma, Railway counsel.

ORDERG.L. SANGLYINE, MEMBER (A)

This application has been submitted by the applicant on 28.1.93 under Section 19 of the Administrative Tribunals Act 1985. The relief sought for in this application is as follows :

" If the Railway Administration can show rules that the entire period of transfer for 10 months 10 days cannot be treated as temporary transfer at the verge of retirement of the applicant, then the applicant claim a sum of Rs. 11975.00 toward refund of penal rent, electric charge and interest as shown in paragraph 6(vii) above. "

2. The applicant Shri Haripada Barman appears in person and makes his submission. Shri B.K. Sharma, learned

contd...2/-

Railway counsel, appears for the respondents. While the import of the above relief is being scrutinised Shri Sharma has raised objections to the maintainability of this application. His objections are -

- (i) the applicant cannot seek such relief as above without challenging the order of transfer which, in fact, the applicant had carried out, and
- (ii) the applicant is in contravention of Rule 10 of the Central Administrative Tribunal (Procedure) Rule, 1987 as it seeks plural remedies.

The applicant has countered the objections by saying that he is a retired Railway official and cannot challenge the transfer order after his retirement. But in connection with the penal rent charged on him he had made his representation dated 4.12.1989 (Annexure-1) requesting the authorities to treat his transfer to Dibrugarh as a temporary transfer as it involved a short period from 31.10.1988 to 31.8.1989 only. He further submits that his application in the manner it has been filed has avoided multiplicity of proceedings. Moreover, he says that the Railway counsel cannot raise such objections which are not part of the pleadings of the respondents in their written statement. Be that as it may, the fact remains that apart from its tenor, the relief sought for has to be understood only through scrutiny and deliberations. After such exercise, it is revealed that the relief sought for in this application involved the nature of transfer order, the penal rent, electric charges and the interest on various amounts claimed by the applicant on the alleged delay in the payment of his dues. It has

contd....3/-

become clear that there are more than one cause of action involved in this application, at least, broadly two, namely, Penal rent and interest. This clearly is in contravention of the aforesaid rule 10 and for this reason alone the application is liable to be dismissed. However, I am inclined to look into the contents of this application further.

3. The applicant submitted his representations dated 4.12.89 and dated 2.4.90 regarding Penal rent. He submitted his representations dated 6.3.91 and 27.7.92 regarding interest. The delay was however condoned vide our order dated 13.8.93 in Misc. Petition No. 7 of 1993.

4. The applicant retired from service as Divisional Commercial Superintendent, Dibrugarh on 31.8.1989. Before that he was transferred from Maligaon Headquarters to Dibrugarh on 31.10.1988 and had joint in his new post at Dibrugarh. He retained his Railway quarter No. 42A in Maligaon West. This quarter was released by him only on 23.10.1989 after his retirement. For this retention of the quarters he was charged rent for the period from 21.12.1988 to 23.10.1989 as below -

*Normal rent-	21.10.88 to 20.12.88	
	@Rs. 45/-p.m.	= Rs 90.00
Penal rent-	21.12.88 to 23.10.89	
	@Rs 340/- pm i.e. 10% on basic pay of	
	Rs 3400/-	= Rs 3534.00
Difference of increased rate of qrs. rent w.e.f. 1.7.87 to 23.10.89 @Rs5/- (Rs50-45) comes to		Rs 140.00
		Rs 140.00

Total amount to be recovered is Rs 3674.00

Amount recovered from salary bill as well as Gratuity
Rs 3726.00 - Rs 3674.00

Excess recovery made Rs 52.00 *

5. The applicant was transferred from Maligaon to Dibrugarh as mentioned above and the period of his stay in Dibrugarh from 31.10.88 to 31.8.89 was 10 months 10 days. He has not shown that he had made any representation against the order of transfer in any manner. On the other hand, it was stated by him that, as in duty bound, he had carried out the order without demur. It was only on 4.12.89, after his retirement, that he had submitted a representation to SDCG, Maligaon in connection with penal rent charged on account of retention of the Railway quarter that he had raised the question of temporary transfer. Even in this representation he did not make any prayer for treating the transfer as a temporary transfer. In fact it is only an expression of his view that as the period of his transfer "is very short and temporary in nature," normal rent only was to be charged. He was not sanguine of his stand and added that if the authorities could not agree with his view, then normal rent should be charged for the initial two months from 31.10.1988 and for another two months from 31.8.89. Apparently, the authorities ~~have not agreed with his view~~ granted his prayer regarding the first period. The applicant has not shown that the order of transfer has stipulated that his transfer to Dibrugarh was a temporary transfer. In fact, he could not have shown for he himself had treated the transfer as a permanent transfer by drawing the normal allowances and enjoying the facilities admissible in the case of permanent transfer. The period from his transfer to the date of his retirement is more than 180 days mentioned in the last paragraph of Annexure-II to the written statement

contd... 5/-

(Railway Board letter No. FC-IV/85/Smp/AL-7 dated 9.2.1967) on which applicant strongly relies. It is under these circumstances as can be seen that the rent for the quarter was charged as above. Whether the applicant occupied another Railway quarter in his new place of posting in Dibrugarh is not a question in this application. Occupation of Government quarters and payment of rent for the same are regulated by specific rules which are unambiguous. The applicant has also to be governed by those rules and has to comply with them. Apparently he had not made requests to the authorities concerned at the appropriate time for allowing him to retain the quarters by paying normal rent on ground of temporary transfer but it was only when he felt the pinch of penal of penal rent that a request was made vide letter dated 4.12.1989 in the manner it was made. Similarly it is expected that the authorities concerned would observe the rules. The applicant was officially allowed to retain the quarters on payment of Penal rent in terms of memorandum dated 9.4.85 of General Manager (P). If so, it is not understood why they had not allowed the applicant to pay normal rent for the period from 1.9.89 to 23.10.89, which is less than 2 months after his retirement unless there are other reasons preventing them to do so. It appears that the respondents have not even sent a reply to the applicant in response of his letter dated 2.4.90 (Annexure-II).

6. The applicant had retired on 31.8.1989 but according to him (i) his leave encashment of Rs. 36,928/- was paid on 1.10.1990, (ii) Insurance money of Rs. 4032/- was paid on

31.3.90 and (iii) Commutation of Pension of Rs 71,045/- was paid on 31.11.1989 and these delays are not attributable to him. He therefore claims interest of Rs 10,831/- on account of delay in payment of his dues. The respondents gave excuses for delay in payment of the amount of leave encashment and term and delay of one year and 1 month as a 'slight delay'. They state that the delay was unintentional and was caused by various factors. At any rate, they contend that there is no rule provided for payment of interest on delay of payment of leave encashment amount. Regarding the delay in payment of Insurance money the respondents put ~~the~~ blame on the applicant. They state that he had failed to submit the claim in time. He had submitted the claim in the Division only on 2.3.90 which was received in Headquarters on 21.3.90. The applicant however referred to letter dated 27.9.89 by General Manager(P) which shows that he had submitted the claim in time. Commutation of Pension was due to the applicant immediately after the date of his retirement but he was paid on 30.11.1989, three months after his retirement. The respondents claim that it is not an abnormal delay and no interest is payable for delay in payment of amount of Commutation of Pension as there is no instruction from the Railway Board for payment of such interest. These are the contentions in their written statement but the fact remains that the General Manager, N.F. Railway, Maligaon, Guwahati has not so far sent the applicant a reply to his letters dated 6.3.91 and 27.7.92 in which he had requested for payment of the aforesaid amount of interest. The applicant

now submit that he is entitled to the interest claimed and has placed reliance on the following decisions -

1. AIR 1953 SC 286 in State of Madras vs. ^{E.P. Rail} ~~Madras~~
2. (1957) 4 AIR 236 in Iyengar Seth vs. State of Bihar and others, and
3. (1957) 4 AIR 578 (H.L.) in V. Balakrishnan Iyer vs. Government General, Tamil Nadu.

The learned Railway counsel has submitted that each case has to be decided on its own merits and facts and those decisions relied on by the applicant can be distinguished in the facts of the present case of the applicant. There cannot be any dispute to this position. However unfortunately the representations of the applicant are lying unattended to by the General Manager, E.P. Railway. In view of the following order it is necessary to consider the relevance of these decisions to the facts of the case of the applicant or to determine whether the three amounts in which interest is claimed are pecuniary benefits or whether interest is payable.

7. In the light of the foregoing circumstances, the respondents are directed to dispose of the representations dated 2.4.02, dated 4.3.02 and dated 27.7.02 submitted by the applicant on merit within 6(Six) months from the date of receipt copy of this order after due considerations of the relevant facts, rules and law. As a result thereof, the applicant will be at liberty to submit fresh application (s), if he is advised to do so, before this Tribunal.

8. As a result, the application is disposed of as above. There is no order as to costs.

Attested
Sd/-
Adv.
6/11/95

CO/- S. K. S. (Adv.)

Registered With A/D. 31

N.F. RailwayOFFICE OF THE
GENERAL MANAGER (P)
GUWAHATI-781011

No. 5453/1/341/PN(C).

Dated 26-4-95.

To
Shri H.P. Barman, Ex.DCS,
Vill. Durga Sarobar,
Guwahati-9,
PIN- 781009.Sub: Your representations dt. 2.4.90, 4.3.91
and 27.7.92 for payment of interest for
delayed payment of some final settle-
ment dues.Ref: Hon'ble CAT/GHY's order dt. 2.2.95
in OA No. 16 of 1993.

.....

In compliance with the order of the Hon'ble
CAT/GHY in OA No. 16/93, the representations cited above
have further been considered in relation to the relevant
rules and orders of the Ministry of Railways (Rly. Board)
and is being communicated to you for your satisfaction.

2. In the representations, you requested for
payment of interest for delayed payment of (i) leave
encashment of Rs 36,928/- (ii) Insure money (GIS) of
Rs 4032/- and (iii) Commutation of pension of Rs 71,045/-
paid on 31.11.89.

2.1 You had retired as senior scale officer of
this Railway and are quite aware about the rules/orders
as well as system of working. The pension and all other
final settlement dues of the Gazetted Officers are
sanctioned and paid centrally from Headquarters while
the payment of leave encashment, bill is made by the
Division from which the Officer has retired. While making
payment of your leave encashment, it is observed that
some delay has occurred in observing the formalities and
also due to communication gap in between Headquarters
and Tinsukia Divn. from which you had retired. But the
fact remains that for this unfortunate and unintentional
delay, no rules/ instructions permit for making payment
of interest on the relevant amount. Even though the said
amount has been received by you on 1.10.90, you will
appreciate that the bill was prepared much earlier in
the Division, but delay has occurred in passing the bill
for some reasons or other which cannot be termed as
intentional for which you are to bear with.

2.2 As regards delay in payment of GIS money of
Rs 4032/-, it is stated that the delay occurred due to the
reasons that your application for payment of the same was
submitted in prescribed form in the Division only on
2.3.90 as per date put by you in the form which was
received in CPO's office on 21.3.90 and passed for payment
on 23.3.90. Therefore, there was no delay in this respect.

contd.....2.

Leave Encashment
by Tinsukia

LPC at
A.D. Tinsukia

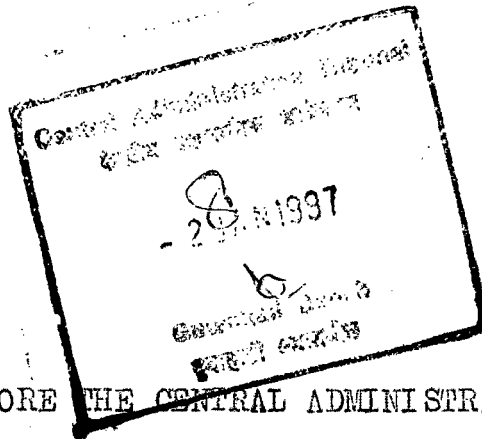
upto 11-12-89

2.3 As regards the payment of interest on Commutation of pension, it is stated that the Commutation value was passed by FA & CAO(Pen) on 27.11.89 which was received by you on 30.11.89 i.e. within 3 months from the date of your retirement on 31.8.89. Even though the commuted value of pension was received by you on 30.11.89, you have drawn your full pension (Rs 1700/- + Relief) upto that date without any deduction against commutation of pension amounting to Rs 566/-. Therefore it is not understood as to how you are claiming double benefit i.e. drawal of full pension + relief as well as interest which in no case may be admissible as per relevant facts, rules and law.

3. In view of the facts explained herein above, it is expected that you will appreciate that no injustice has been caused with any ill motive in regard to payment of your final settlement dues. Further more, the recovery of house rent has also been made from you strictly as per rules/ instructions. Since you had retailed your Rly. accomodation at Maligaon but retired from service from TSK Divn., no rules permit to recover normal rent beyond the period mentioned in CPO's Memorandum No. 5453/1/341(0) dated 29.12.89/1.1.90, endorsing a copy to you and others.

for GENERAL MANAGER (P).

Attended
JH
QDN
6.11.95



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

IN THE MATTER OF :

O. A. No. 251 of 1995

Shri H.P. Barman ... Applicant.

Vs.

Union of India & Ors. ... Respondents

AND

IN THE MATTER OF:

Written statement for and on
behalf of the respondents.

The answering respondents beg to state as follows :-

1. That the answering respondents have gone through a copy of the application filed by the applicant and have understood the contents thereof.
2. That save and except the statements which are specifically admitted here-in-below, other statements made in the application are categorically denied. Further, the statements ~~xx~~ which are not borne on records are also denied and the applicant is put to the strictest proof thereof.

Contd....2

3. That with regard to the statements made in paragraph 4.1 of the application, it is stated that the applicant has retired from the capacity of Sr. Scale Officer after rendering full length of services and it is therefore, expected that the applicant should be well conversant with the pension rules/orders as well as working system of the railways. It is well nigh to mention here that while finalising the settlement dues of an employee, verification of service records, one of the important issues is to determine the qualifying services. From the past experience it has been observed that the settlement dues in some cases could not be finalised in time in absence of history of service records are received and updated by the various Divisions/Offices where staff concerned were posted and also for communication gap in between Division and Head-quarters. The instant case of the applicant is also of the similar nature as mentioned above.

As regards the payment of leave salary, it is stated that in cases of Gazetted Officers, Pension and all other ~~xxxx~~ settlement dues are sanctioned and paid centrally from the HQs after collecting all particulars/papers from the Division immediately before his retirement. However, the leave salary (encashment of credited leave) bill is prepared by the Division where the Officer worked, immediate before his retirement. While dealing with all these administrative formalities, some delay has taken place in payment of leave encashment in spite of best efforts.

Contd....3

However, it is pertinent to mention here that there is no provision for payment of interest against delayed payment of leave salary @ 18% P.M. as claimed by the applicant.

As regards payment of G.I.S., it is stated that the applicant did not submit his G.I.S. form duly filled-in in time and submitted the same only on 2.3.90 in the office of Divisional Railway Manager(P) at Tinsukia which was received in CPO's Office on 21.3.90 and the same was passed for payment on 23.3.90. Therefore, there was no delay on the part of the railway administration in making payment of G.I.S. money.

As regard the payment of commutation value, it is stated that the commutation of pension is an additional benefit extended to the retired railway employees which is normally paid along with other retirement dues after the retirement. The applicant has received the commutation value of pension on 30.11.89 i.e. within the 3 months from the date of retirement w.c.f. 31.8.89 A.N. It is, therefore, evident that no abnormal delay has taken place in making payment of commutation value of pension to the applicant and the time taken has been to complete administrative formalities only and in this case also there is no provision for payment of interest.

4. That with regard to the statements made in paragraph 4.2 of the application, it is stated that the applicant in consideration of his own has claimed for the

Contd....4

22
36
over
payment by the administration as culpable. This is nothing but a baseless allegation which are completely denied. The position as brought out above is reiterated. The delay whatsoever has taken place is unintended and purely of a procedural nature.

5. That with regard to the statements made in paragraph 4.3 of the application it is stated that the administration was very much concerned to make payment of the settlement dues to the applicant as early as possible for which Divisional Rly. Manager(P)/Tinsukia, was vigorously persuaded by the Hd. Qrs. While processing the case on 'top priority' for early payment of settlement dues to the applicant some microscopic lapses has taken place for which some unavoidable delay in making the payment has occurred which was absolutely unintentional.

6. That the answering respondents deny the correctness of the statements made in paragraph 4.4 of the application. It is reiterated that the administration had taken all out efforts to make the payment of settlement dues in favour of the applicant with utmost promptitude. But due to some unavoidable reasons as mentioned in the foregoing paras, little delay for payment of F.S. dues observing all the formalities and also due to communication gap in between Hd.Qrs. and Tinsukia Division from which the applicant retired.

Contd....5

7. That with regard to the statements made in paragraph 4.5 of the application, it is reiterated that the delay was totally unintentional. At the same time, it may be pointed out that there is no rule/instruction regarding payment of interest on the relevant amount as claimed by the applicant.

8. That with regard to the statement made in paragraph 4.6 of the application, it is stated that the reply of all the representations dtd 2.4.90, 4.3.91 and 27.3.92 has been sent to the applicant as per the direction of the Hon'ble Tribunal dtd 2.2.95.

9. That with regard to the statements made in paragraph 5(i) and 5(ii) of the application, it is stated that the charges as brought out is baseless. It is reiterated that the pension and other F.S. dues of the Gazetted Officers are sanctioned and paid centrally from the HQs. While the payment of leave encashment bill as made by the Division from which the officer retired. In this instant case, it is stated that some delay occurred in the payment of leave encashment due to communication gap in between HQs. and Tinsukia Division. Regarding the payment of G.I.S. there was no delay on the part of the railway administration in making payment. The applicant failed to submit the G.I.S. form duly filled in by time. As regards the payment of commutation value,

Contd....6

it is further stated that the same has been paid within 3 months from the date of retirement. It is, therefore, evident that no abnormal delay has taken place in making the payment of commutation value of pension to the applicant.

The retirement benefits and to make the payment on the date of retirement as a right claimed by the applicant cannot be admitted. It is pertinent to mention here that the process of the case for the payment of P.S. dues of an employee initiated well in advance before his retirement keeping in mind to make payment on the day of retirement. In spite of the concerted efforts, delay occurred in passing the bill for some reasons or other which cannot be termed as intentional. In such cases, the applicant should bear with the administration.

In view of the above, it is prayed that the Hon'ble Tribunal may dismiss the case as there is no foundation in this O.A. filed by the applicant which deserves to be outrightly rejected.

10. That under the facts and circumstances stated above, the instant application is not maintainable and liable to be dismissed.

Contd....7

VERIFICATION.

I, ^{Smt.} ~~Shri~~ M. Brahma, aged about 36 years, by occupation Railway Service, working as Deputy Chief Personnel Officer of the Northeast Frontier Railway administration, do hereby solemnly affirm and state that the statements made in paragraphs 1 and 2 are true to my knowledge, those made in paragraphs 3 to 9 are true to my information derived from the records of the case which I believe to be true and the rests are my humble submission before this Hon'ble Tribunal.

✓ M. Brahma
DEPUTY CHIEF PERSONNEL OFFICER
NORTHEAST FRONTIER RAILWAY
MALIGAON :: GUWAHATI-11
FOR & ON BEHALF OF
UNION OF INDIA.

उप मुख्य कर्मिक अधिकारी (राज०)

Dy. Chief Personnel Officer (G)

पू० सी० रेलवे, गुवाहाटी-781011.

N. F. Rly., Guwahati-781011.