

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

RA 234/2017 in
OA 1529/2017

Reserved on: 29.01.2018
Pronounced on: 2.02.2018

Hon'ble Mrs. Jasmine Ahmed, Member (J)

Union of India through

1. General Manager,
Northern Railway,
Baroda House, New Delhi
2. Financial Advisor & Chief Accounts Officer
Northern Railway,
Baroda House, New Delhi ... Applicants

(Through Shri Shailendra Tiwary, Advocate)

Versus

J.K. Malhotra
S/o Shri K.R. Malhotra
Retd. Sr. Section Engineer (P.Way)
Northern Railway,
Baroda House, New Delhi
R/o H.No.158, Sector-21/B
Faridabad, Haryana-121001 ... Respondent

(Through Shri S.P. Sethi, Advocate)

ORDER

Mrs. Jasmine Ahmed, Member (J)

This Review Application (RA) has been filed by the respondents in OA 1529/2017 against the order dated

4.05.2017. The OA was disposed of at the admission stage itself with the following direction:

“3. In the circumstances, the O.A. is disposed of at the admission stage itself, without going into the merits of the case, with a direction to the respondents to pay the applicant the interest at the rate applicable to GPF for the period of delay beyond three months from the date of his retirement, within a period of 60 days from the date of receipt of a certified copy of this order. No order as to costs.”

2. Before coming to the operative portion while disposing of the OA, in para 2, the Court observed as under:

“2. The applicant had retired on 31.10.1996. The applicant could get his difference of DCRG and leave encashment from the respondents only after a protracted legal battle before this Tribunal. Since the respondents have paid the difference of DCRG and leave encashment, it affirms that these were due to him and, therefore, the applicant is clearly entitled for interest.”

3. The instant RA has been filed challenging the interest part of the Tribunal’s order. The argument of the learned counsel for the review applicants is that the OA was disposed of at the admission stage without issuing notice and accordingly the RA has to be entertained.

4. In my opinion, disposing of an OA at the admission stage itself cannot be a cause for review and it is a misplaced argument on the part of the review applicants. Learned counsel for the review applicants stated that the applicant retired on 31.10.1996 and filed the first OA No.3359/2013 long thereafter, which was disposed of on 25.09.2013 and in this background, the review applicants are not liable to pay interest on the

difference amount of DCRG and therefore, the RA has to be entertained.

5. There is no merit in the argument of the learned counsel for the review applicants as the matter has already been decided long ago on merits and here this cannot be a ground for review as the scope of review is very limited. The definition of review is an error apparent on the face of the judgment.

6. The learned counsel for the review applicants contended that the applicant is not entitled to any interest as he approached this Tribunal after a long period of time and, if at all he is entitled to any interest, that should be from the date of filing of the OA. Here in this case, the Court has given a very specific observation that when the respondents have agreed to pay the difference of DCRG and leave encashment after a long period of time after the retirement of the applicant, it affirmed that the applicant was legally entitled to that and thus any delay in payment of pension and pensionary benefits was liable for payment of interest. It is also a well settled law that if there was no delay on the part of the applicant in the delay caused then the applicant is entitled for interest. Here, there was no part played by the applicant in the delay for grant of DCRG and leave encashment.

7. Learned counsel for the review applicants also argued that after the decision in OA 3359/2013, an MA was filed before this Court for execution of the order passed by this Tribunal and on the basis of that, a sympathetic view was taken and an amount

of Rs.71,989/- as difference of DCRG and Rs.56,300/- as difference of leave encashment was paid to the applicant. It is found that order for the same was issued to the applicant on 29.10.1998 but the Court, while dealing with the MA for execution, has categorically mentioned in para 8 of the order in MA as follows:

"The respondents have not gone beyond giving the break-up of the amount paid to the applicant on account of commutation of pension and DCRG. It has been claimed by the respondents that as stated in Annexure-P/1 filed with the counter reply, total amount due to him on account of difference due to revision of pay has been paid vide AB No.221740 dated 24.03.1998 and CO7 No.221172 dated 24.03.1998. This was communicated to the applicant vide letter dated 12.12.2014. The applicant on the other hand, has submitted a copy of the bank statement starting from 01.01.1998 to 02.11.1998 that does not show any amount credited to his account other than the amount of Rs.184521/- corresponding to the difference in commutation amounting to Rs.1,97,192/-, which was paid after some deductions. There is no entry with regard to the difference of DCRG of Rs.71989/- and difference of leave encashment of approx. Rs.56300/- as calculated by the applicant. The sole ground taken by the respondents is that the matter is more than 15 years old and, therefore, no further information can be supplied. This Tribunal in its order dated 25.09.2013, has directed the respondents to deal with the contentions raised in the legal notice and one of the contentions was that applicant never received DCRG and leave encashment amounts and that is why he demanded payment of that amount with interest of 18%. The respondents in their reply have not been able to establish, other than quoting the AB No.221740 and CO7 No.221172 dated 24.03.1998, that too only in respect of difference of DCRG, that the difference of DCRG and leave encashment was paid to the applicant. In the matter of accounts, and more so in respect of the pensioner who is alive, the argument that no record is available to verify whether the aforementioned amounts were paid or not cannot be accepted." (emphasis supplied)

8. In my considered view, the grounds taken by the review applicants for review of the order have already been dealt with while deciding the MA for execution. Whatever argument has been put forward by the learned counsel for the review applicants is already decided and taken care of by this Tribunal and thus any plea arising out of OA or MA cannot be a ground for filing this RA.

9. Once the review applicants have agreed that the applicant is entitled for difference of DCRG and leave encashment, the order of this Tribunal that the respondents are to pay the applicant interest at the rate applicable to GPF for the period of delay beyond three months from the date of his retirement, does not suffer from any illegality and does not leave any scope for review. As regards the plea taken by the learned counsel for the review respondent of delay in filing the RA, though not a very cogent reason has been made out by the review applicant, as the Review is being dismissed, there is no need to comment anything on delay as raised.

10. In view of above, the RA is found to be devoid of merit and is, therefore, dismissed.

(Jasmine Ahmed)
Member (J)