

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA 1522/2014
MA 1287/2014

New Delhi, this the 10th day of January, 2018

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

Shri Vinay Kumar Bahl
Aged about 61 years, Group – C
S/o Late Shri Lal Chand
R/o Lal Ashiana, 1764 Multan Mohalla,
Rani Bagh, Delhi-110034 ... Applicant

(Through Shri Amit Anand, Advocate)

Versus

Union of India through

1. General Manager
Northern Railway,
Baroda House, New Delhi.
2. Divisional Railway Manager,
Northern Railway, Delhi Division,
State Entry Road, New Delhi
3. Dr. Divisional Personnel Officer,
Northern Railway, Delhi Division,
State Entry Road, New Delhi
4. Sr. Divisional Operations Manager,
Northern Railway, Delhi Division,
State Entry Road, New Delhi ... Respondents

(Through Shri Rahul Pandey, Advocate)

O R D E R (Oral)**Mrs. Jasmine Ahmed, Member (J)**

The main issue in this OA is whether letter dated 2.01.1971 issued by the Railway Board has been superseded by any further order or not and, if not, then how far the impugned order is valid. The applicant has prayed for the following reliefs:

- "(i) Quash and set aside the impugned order dated 13/1/14 (Annexure A-1 colly) and recovery orders dated 20.01.14 and 29.01.14 (Annexure A-1 colly) up to till the decisions and finalization of the applicant leave account case.
- (ii) May also pass any further order (s), direction (s) as be deemed just and proper to meet the ends of justice."

2. Shri Amit Anand, learned counsel for the applicant states that the order dated 13.01.2014 is completely arbitrary, illegal and violative of respondents' own letter dated 2.01.1971. He also states that in view of aforesaid letter dated 2.01.1971, the respondents have acted arbitrarily withdrawing the increments earned by the applicant during the period 1995-1997 by treating the said period as leave without pay in 2014, after about two years of the applicant's retirement and that also without taking any decision and finalizing the leave account of the applicant. Learned counsel for the applicant further states that the respondents have not even given any show cause notice to the applicant and that any action which attracts civil consequences

cannot be taken without any proper notice as per the settled legal position. He drew my attention to letter dated 2.01.1971 issued by the Railways, attached at page 35 of the rejoinder, which reads as follows:

"Attention is invited to para 2(E) of the Board's letter of even No. dated the 20.08.1970 on the above subject wherein it has been laid down that at the time of retirement/termination of service of employees, scrutiny of their leave account should ordinarily be restricted to the last three years of their service etc. In this connection, the question whether in a case where there is prime facie evidence that the leave account of an employee has not been kept up to date and does not bear an endorsement of verification, it should be open to the Accounts Office to scrutinise the unverified period, has been reconsidered by the Board. It has been decided, in consultation with the Ministry of Finance and D&AG that in such cases scrutiny of the leave record should be restricted to the last three years of service in all cases. In view of this clause (e) of para 2 of Board's letter of 20.08.1970, referred to, be substituted as under:-

"(e) At the Time retirement/termination of service of employees, scrutiny of their leave accounts should be restricted to the last three years of their service in all cases."

3. As per the above quoted letter dated 2.01.1971, the scrutiny of the leave account of any employee should be restricted to the last three years of his service. Learned counsel for the applicant states that on this issue, in pursuance of the Tribunal's order dated 6.03.2017, the Divisional Railway Manager (P), Northern Railway, New Delhi wrote a letter to the General Manager (P), Headquarters Office, Baroda House, New Delhi dated 15.03.2017 asking about maintenance and verification of leave accounts and qualifying service for pension in reference to

Railway Board letter no.E (G)70 LE 1-4 dated 02.01.1971. It was asked in that letter categorically –

"It is, therefore, requested that Railway Board may be approached to provide guidelines/confirm whether the instructions dated 02.01.1971 are still prevalent or any further instructions have been issued superseding the same".

In pursuance of letter dated 15.03.2017, the General Manager (P) wrote a letter to the Divisional Railway Manager, Northern Railway categorically replying as under:

"With reference to your letter cited above, it is submitted that as per record available in this office on the subject matter, the instructions issued by Railway Board and circulated under N.Rly P.S.No. 5197, 8810, 14579 & 14579 & 14585 are enclosed herewith which are clear and self explanatory and the instructions dated 02.01.1971 has not been superseded".

4. Learned counsel for the respondents very fairly stated that the contention and the argument raised by the learned counsel for the applicant is valid as the letter dated 2.01.1971 has not been superseded till date by any order issued by the Railway Board.

5. Accordingly, the OA is allowed and the impugned order dated 13.01.2014 and recovery orders dated 20.01.2014 and 29.01.2014 are quashed and set aside. No costs.

(JASMINE AHMED)
MEMBER (J)

/dkm/