

Central Administrative Tribunal
Principal Bench: New Delhi.

OA No.3896/2016

Reserved on: 04.04.2018
Pronounced on: 06.04.2018

Hon'ble Mr. Uday Kumar Varma, Member (A)

Smt. Bimla w/o Shri Promo Jon,
Safaiwali CHI/New Delhi Rly Station,
Under Divisional Railway Manager,
New Delhi.

R/o B-64/5, G.F., Gali No.16,
Mandawali, Faizalpur, Delhi.

...Applicant

(By Advocate: Khairati Lal)

Versus

Union of India through

1. The General Manager,
Northern Railway,
Baroda House, New Delhi.

2. The Divisional Railway Manager,
Northern Railway, S.E. Road,
New Delhi.

...Respondents

(By Advocate: Sh. A.K. Shrivastava)

O R D E R

The instant Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- i) *Direct the respondent no.2 to release Rs.99,373/- remaining retiral benefits and Rs.8948/- interest thereon as non-payment of due claim is due to administrative fault;*
- ii) *Simultaneously respondent no.2 be advised to rectify the irregularity regarding counting of qualifying service being the date of appointment as 05/06/1984 instead of 31/12/1995 and arrange payment of arrears for 11 years 6 months and 26 days.*

2. Brief facts emanating from the OA are that the applicant was appointed as Safaiwali w.e.f. 05.06.1984

under CHI, New Delhi whereas her retiral dues have been calculated w.e.f. 31.12.1995 taking into account only 20 years of service instead of 31 years. The applicant being aggrieved, as contended by her, met the concerned officer personally and sent various representations including legal notice for counting her qualifying service w.e.f. 05.06.1984 but received no favourable response from the side of the respondents. She further submitted that the Assistant Personal Officer (Sett), Northern Railway vide letter dated 01.06.2015 informed that she is entitled to get retiral dues to the tune of Rs.9,62,302/- [i.e. Provident Fund Rs.2,77,566/-; Leave Encashment Rs.1,26,735/-; GIS Rs.7053/-; Commutation of pension Rs.2,34,020/- and DCRG Rs.3,16,838/-] but the respondents have credited only a sum of Rs.8,62,929/- withholding of an amount of Rs.99,373/- towards DCRG in an illegal and arbitrary manner. She has further submitted that the respondent no.2 issued PPO No.0115021273 to her in scale of Rs.5200-20200/- + GP Rs.2000/- and fixed her pension at Rs.11,900/- taking into account the qualifying service as 25 years, which is also incorrect, but for that purpose she submits that she would file a separate case.

3. The respondents have filed their written reply stating that the applicant was appointed as casual labour Safaiwali

w.e.f. 05.06.1984 and subsequently screened on 31.12.1995. She got 1st promotion on 01.11.2003 in the grade of Rs.2610-3540/- under cadre restructuring and 2nd promotion on 26.03.2008 in the grade of Rs.2650-4000, besides 1st and 2nd MACP w.e.f. 01.09.2008 in GP 1900 and 16.03.2000 in GP 2000 respectively. It is further submitted that the applicant stood retired on 31.05.2015 and after given her benefit of 50% of service from casual labour to date of screening and 100% from the date of screening to her date of retirement, her qualifying service comes to 25 years, 2 months and 13 days and her non-qualifying service is 3 months and 8 days. Therefore, after subtracting the non-qualifying service from qualifying service, her net qualifying service comes to 24 years, 11 months and 5 days. The respondents contend that although on the eve of retirement, applicant's provisional retiral dues were calculated at Rs.9,62,302/-, but after final calculation as per rules and in accordance with her qualifying service, a sum of Rs.99,374/-, which became due to the respondents, was deducted, break up of which is given as under:-

<i>Sl. No.</i>		<i>Amount deducted (In Rs.)</i>
1	<i>Excess 90 days LAP availed during her service</i>	86,751/-
2	<i>Recovery made as per DPO/NDLS letter No.E/26/Bill.P-2, dt. 06.05.15</i>	713/-

3	<i>Last pay deducted for medical card</i>	11900/-
4	<i>I.Card</i>	10/-
	<i>Total</i>	99,374/-

4. The learned counsel for the respondents argued that the deductions have been made as per rules and the applicant is misleading the Tribunal without any reason and rhyme as the grievances raised by her through various letters and legal notice were duly replied by the respondents vide letters dated 29.09.2015, 08.01.2016, 04.02.2016, 19.02.2016, 08.04.2016, 05.09.2016 and 19.01.2017 respectively (Annexures R-II to R-IV).

5. I have heard the learned counsel for the parties and perused the material on record.

6. At the time of oral hearing, the only argument advanced by the counsel for the applicant was that once the respondents have sanctioned her retiral benefits as per order dated 01.06.2015 (Annexure A-1) which reflects the payment details, they cannot subsequently made any deduction and, therefore, deduction of Rs.99,373/- made by them from her retiral dues is completely illegal and unsustainable in the eyes of law.

7. The respondents, on the other hand, in their written reply have given the details of the deductions so made and stated that since these amounts were due from the

applicant, the same were adjusted before the release of her DCRG.

8. We have seen the order dated 01.06.2015 (Annexure A-1). This document mentions that the amounts indicated against various items of retiral dues are **provisional**. Perusal of this document further suggests that this may not be characterized as a final payment order. It is merely a provisional summary of settlement of dues in favour of the applicant and, therefore, this plea of the applicant that this is a final order of payment and no modification can be made in the same does not seem to be acceptable. On the other hand, the respondents have explained the reasons for deductions and even the applicant at the time of oral hearing did not dispute these dues which were due from her to the Government. However, her sole objection is to the fact that once payment order has been passed, no deduction can be made. The respondents had the option of withholding the due amount of recovery and insisting the applicant to pay the amount due to her, but they chose deducting/adjusting the same from the DCRG of the applicant. The recoveries do not pertain to amounts which may have been paid to the applicant by way of wrong fixation of pay or by erroneous grant of ACP or MACP and, therefore, there does not appear any legal bar in recovering

these amounts before the final retiral benefits were released.

9. In view of the facts and in the context of administrative and legal propriety, I am not inclined to interfere in this OA. In my view dues from the applicant, which are not disputed, have been correctly deducted from her retiral dues. The applicant's contention that no deductions can be made after the final payment has been decided is also not corroborated by any document because the only document referred to by her shows provisional summary of settlement of dues in her favour.

10. As regards second relief qua counting of qualifying service, the counsel for the applicant did not mention about it at the time of oral hearing. However, I find that this issue of counting of qualifying service has also been satisfactorily explained by the respondents in the written reply under the title 'brief history of the case'. The OA is, thus, dismissed being bereft of merit. No costs.

(Uday Kumar Varma)
Member (A)

/AhujA/