

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 180/000847/2014

Friday, this the 27th day of July, 2018

CORAM

**HON'BLE MR.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE MR.ASHISH KALIA, JUDICIAL MEMBER**

A.V.Mathews, aged 60 years

Son of A.J Varkey

Retd., Station Master, S.Railway

Residing at Anjilimoottil

Thiruvanchoor P.O

Kottayam-686 037

... **Applicant**

[By Advocate M/s.Varkey & Martin]

V.

1. Union of India represented by
General Manager
Southern Railway,Chennai – 600 003
2. Divisional Personnel Officer
Southern Railway
Trivandrum – 695 014
3. Sr.Divisional Finance Manager
Southern Railway
Trivandrum – 695 014
4. Addl.Divisional Railway Manager
Southern Railway
Trivandrum – 695 014

... **Respondents**

(By Advocate Mr.Thomas Mathew Nellimoottil, Sr.PCGC)

This application having been finally heard on 24.7.2018, the Tribunal on 27.07.2018 delivered the following.

ORDER

Per: MR.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

O.A 180/847/2018 is filed by Mr.A.V.Mathews, retired Station Master, seeking a direction to the respondents to refund the withheld pay and allowances for 35 months with interest, consequent to the cancellation of

penalty.

2. This is the second time applicant is approaching this Tribunal. Initially he had been subjected to departmental action for allegedly sleeping on duty and causing destruction to a digital camera and was punished with reduction of pay by one stage for 35 months (non-cumulative). As the appeal and revision against the penalty order was rejected, the applicant approached this Tribunal in O.A 464/2011. As per order dated 28.1.2013, this Tribunal set aside appellate/revisional order and remanded the case back to the Appellate Authority for reconsideration (Annexure A-1). Applicant retired voluntarily from service on 30.11.2013.

4. On being served a lawyer notice, the Appellate Authority cancelled the penalty as per Annexures A-2 and A-3 documents. But the pay and allowances of the applicant withheld for 35 months were not refunded to the applicant. In his last representation dated 10.1.2014, applicant has sought refund of a sum of Rs.1,72,304/- (vide Annexure A-4). In this O.A, the applicant seeks refund of the above mentioned amount with interest at the rate of 12% per annum for the delay in effecting the refund.

5. Respondents have filed reply statement wherein they have admitted the facts mentioned in the Original Application, although the actual amount due to the applicant is contested as Rs.1,61,889/-.

6. A rejoinder was filed by the applicant to the reply statement reiterating the

contentions made in the O.A and drawing the attention of this Tribunal to the delay of more than 1 ½ years since Annexure A-1 order to get grant the refund.

7. Respondents filed an additional reply statement wherein at Annexure R-2 the following communication is produced as copy:

“

SOUTHERN RAILWAY

No.V/P, OA 180/00847/2014/97

Divisional Office
Personnel Branch
Trivandrum – 14
Dated : 13.04.2015

Shri.A.V.Mathews
SM/KTYM (Rtd.)
Anjalimoottil House
Thiruvanchoor (P.O)
Kottayam
Pin: 686 037

Sub: Recovery of overpayment made towards
refunding of salary due to cancellation of
punishment

Ref: Judgement in O.A 180/00847/2014/97

While implementing the judgment in O.A 180/00847/2014 an amount of Rs.1,61,889/- has been made towards arrears due to the cancellation of punishment vide Sr.DOM/TVC letter No.V/T20/DAR/MIS/09 dated 30.12.2013. Subsequently IIIrd MACP has been granted to you vide DPO/TVC Mem No.V/P.535/MACPS/SMs/Vol.II on 26.2.2015. An amount of Rs.1,15,841 has been made to you as MACP arrears vide bill No.VII/2459 dated 3.3.2015. While scrutiny of the arrears working sheet, it is seen that an amount of Rs.71,680/- has been paid to you in excess than the amount actually due. It is hereby informed to you that this amount of Rs.71,680/- paid to you in excess will be recovered from your revised gratuity & leave salary and you will be advised to remit the balance amount if any to the Railways (DCP/TVC).

Sd/-
/DPO/TVC

Copy to Chos/Settlement ”

8. Heard Shri.Martin.G.Thottan representing M/s.Varkey & Martin on behalf of the applicant and Shri.Thomas Mathew Nellimoottil on behalf of the respondents. Perused the records.

9. During the final hearing, Shri.Martin.G.Thottan, learned counsel for the applicant submitted that respondents are retaining the amount claimed on the ground that some amount has been paid to him in excess as MACP arrears. We feel that the best course of action to bring the matter to a conclusion would be to offset the due amount mentioned in Annexure R-2 against the amount estimated as arrears inclusive of interest. As there has been a long delay in making the refund despite the cancellation of the penalty, we direct that interest at the GPF rates for the period of delay in effecting the refund (1.1.2013 to September 2014) is to be added to the actual arrears. The amount due from the applicant as excess payment made as MACP arrears can be offset from this amount and the balance paid to the applicant within 30 days from the date of receipt of a copy of this order.

10. The Original Application is disposed of as above. No costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

**(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

List of Annexures

Annexure A-1 - True copy of order dated 28.1.2013 in O.A No.464/2011

Annexure A-2 - True copy of Letter No.V/T/20/Misc/09 dated 30.12.2013 to the applicant's advocate

Annexure A-3 - True copy Letter No.V/T/20/DAR/Misc/09 dated 30.12.2013 issued by Sr.DOM/TVC

Annexure A-4 - True copy of applicant's representation dated 10.1.2014 to the 2nd respondent by the applicant

Annexure A-5 - True extract of O.O No.T.63/2012/SMs dated 28.11.2012 issued by the 2nd respondent

Annexure R-1 - True extract of the Memorandum No.V/P.535/II/MACPS/SMs/Vol.II dated 26.2.2015

Annexure R-2 - True copy of the letter No.V/P.OA 180/00847/2014/97 dated 13.4.2015.

.....