



CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH, CALCUTTA

O.A. 350/00140/2012

Order dated: 19.8.2016

Present : Hon'ble Ms. Urmita Dutta (Sen), Judicial Member

Ram Krishna Mandal,  
Son of Late Haralal Mandal,  
Retired Works Manager,  
New Bangaigaon, N.F. Railway,  
Now resident of Flat No. 4A-Satyam,  
1530, Garia Main Road,  
Kolkata - 700 084.

..... Applicant.

Versus

1. Union of India  
Represented by General Manager,  
N.F. Railway,  
Maligaon, Gauhati,  
Assam. Pin - 781 011.
2. General Manager (P),  
N.F. Railway,  
Maligaon, Gauhati,  
Assam. Pin - 781 011.
3. General Manager (M),  
N.F. Railway,  
Maligaon, Gauhati,  
Assam. Pin - 781 011.
4. Financial Advisor &  
Chief Accounts Officer,  
N.F. Railway,  
Maligaon, Gauhati,  
Assam. Pin - 781 011.
5. Divisional Railway Manager(P),  
Rangiya, N.F. Railway,  
P.O. Rangiya,  
Assam.
6. Chief Workshop Manager,  
N.F. Railway,  
New Bangaigaon,

Me.

Assam. Pin - 783 381.

..... Respondents.

For the Applicant : Mr. M.M. Rochoudhury, Counsel

For the Respondents : Mr. B.L. Gangopadhyay, Counsel

ORDER

The instant application has been filed praying for following reliefs:-

"8.(A) That the Hon'ble Tribunal may be graciously pleased direct the respondent Authority/Authorities to bring up to the Hon'ble Tribunal the records of the case and to fix the monthly Pension of the Applicant at Rs. 16755 with all arrears.

(B) That the Hon'ble Tribunal may be pleased direct the respondent Authority to refund the amount of Rs. 64632/- illegally deducted from the settlement dues of the Applicant.

(C) To pass further or other order/orders as the Hon'ble Tribunal may deem fit and proper.

(D) To pay interest at the rate of 18% per annum from 01/11/2009 to date of payment of Rs. 64632/-.

(E) The cost shall be paid by the respondents."

2. According to the applicant, he superannuated from the service w.e.f. 01.11.2009 on the pay scale of Rs. 15600-39100/- with grade pay Rs. 6600/- on the basic pay of Rs. 33510/-, which would be evident from the LPC issued by respondent authorities. On his retirement, though the authorities had refunded Rs. 10926/-, which was deducted from DCRG (Annexure A/3) but Rs. 64632/-

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deducted from settlements dues was not refunded. Moreover, the applicant's monthly pension was wrongly fixed at Rs. 16380/- instead of Rs. 16755/- by an order dated 28.10.2009 (Annexure A/1). The applicant made a representation dated 15.11.2010 praying for correct fixation of pension and refund amount of Rs. 64632/-.

3. Since nothing had been done, he has filed the instant application.

4. The respondents have filed written statement, wherein, they have stated that the applicant was promoted as Group B employee w.e.f. 28.07.1997 in the pay scale of pay of Rs.7500-12000/-. Thereafter he was promoted on an adhoc basis in Sr. scale as DME/Power/KIR in the scale of Rs. 10000-15200/- w.e.f. July, 2007. Subsequently, he was transferred and posted as DME/NBQ and finally superannuated from the service as WM/NBQS w.e.f. 31.10.2009. At the time he superannuated his pay was fixed at Rs. 26160 and Grade Pay was 6600/- and accordingly his pension was fixed at 50% of the last pay drawn by him. Therefore, his pension was correctly fixed at Rs. 16380/- and deduction was made from his DCRG due to final electricity bill Rs. 1848 and over payment of salary of Rs. 13710/- + Rs. 49017/- due to sanction of LWP.

5. Therefore, the applicant was informed vide Railways letter dated 23.04.2010 and 05.07.2010 (Annexure R/1 & R/2) that the

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applicant was wrongly paid his salary. Therefore, his pay was correctly refixed at Rs. 26160/- and Grade pay of Rs. 6600/-. The LPC was finally prepared on 17.10.2009 by Annexure R/3. Recovery of over payment made when he worked as WM(C)/NBQS of Rs. 13710/- overpayment paid under CWM and MBQS on amount of Rs. 13710/- + Rs. 49017/- due to LWP.

6. Therefore, the respondents have correctly deducted the amount and fixed the pension.

7. Ld. Counsel for the applicant has filed rejoinder wherein it is stated that he was granted 1<sup>st</sup> promotion w.e.f 28.07.97 to the post of Entry Grade of Group-B Gazetted Officer on the pay scale of Rs. 750-250-12000/-. Thereafter he was granted 2<sup>nd</sup> promotion w.e.f. 25.04.2003 to the post of Higher Grade Group-B Gazetted Officer on the pay scale of Rs. 8000-275-13500/- and he was further granted 3<sup>rd</sup> promotion w.e.f. 21.04.2007 to the post of DME at Katihar Division on the pay scale of Rs. 10000-325-15200/- but his pay was fixed w.e.f. 01.07.2007 as per his legal option and admission of the competent authority in service book. Accordingly, he had finally superannuated with basic pay of Rs. 33,510 on the pay scale of Rs. 15600 - 39100/- from 01.07.2009 till his retirement. Therefore, his pension has to be fixed as per last pay drawn.

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8. With regard to deduction under LWP, it has been stated that there is no provision of LWP in Chapter 5 (Leave Rule) of Indian Railway Establishment Code, Volume-I. Therefore the order for leave without pay cannot be passed for deduction of salary from gratuity after retirement as per Rule 503 with Railway Board's decision as well as Rule 544(7) of the said Code. As per above two Rules, types of leave is a matter of right of the employee and the granting of the leave is at the discretion of the authority. As per the applicant due to any unauthorized absence, it is possible that the applicant may be without pay but cannot be held as leave without pay. Moreover, from perusal of the Annexure R/2, it would be evident that there was sufficient leave in his credit up to his retirement as indicated i.e. LAP 255 days and LHAP 245 days as on 31.10.09.

9. Therefore, the respondents have wrongly deducted amount of Rs. 49074/- from his DCRG.

10. I have heard Ld. Counsel for both the parties and perused the records.

11. It is noted that the applicant has following submission (i) his pension should be fixed as per his last pay drawn and no recovery can be made (ii) no amount can be deducted under leave without pay as from the perusal of service statements dated 15.10.2009, it

12. would be evident that LAP 255 days and LHAP 245 days as on

31.10.09 was there in his leave account. Therefore, any deduction on the account of leave without pay, cannot be made. On the other hand, as per the respondents, subsequently, vide letter dated 23.04.2010 and 05.07.2010, it was informed to the applicant that his pay at the time of superannuation was Rs. 26,160 plus Grade Pay Rs. 6600/- i.e. 32,760/- and accordingly his pension was fixed at 50% of the last pay drawn by him i.e. Rs. 16380/-. However, from perusal of his LPC dated 10.10.2009 as well as service statement of the applicant dated 15.10.2009, it is noted that his last pay drawn was Rs. 33510/-. Though as per respondents, his last pay drawn Rs. 32760/- but in support of their contention, the respondents neither enclosed any documents nor they have denied authenticity of the LPC as well as service certificate annexed in O.A.

12. Therefore, I fail to understand on what basis the respondents have directed to Bank Authority (Annexure R/2) for deduction his pension to the amount Rs. 9828/- w.e.f. 01.11.2009 from Rs. 16380/- on so called last pay drawn of Rs. 32760/-. Though in their own documents, the last pay of the applicant has been mentioned as Rs. 33510/-.

13. Therefore, in my opinion the applicant is entitled to get pension as per his last pay drawn as mentioned in his LPC dated

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10.10.2009 as well as service certificate dated 15.10.2009 i.e. Rs. 33,510/-.

14. Though with regard to deduction of Rs. 1848/- on account of electricity bill, the applicant has no objection. Further, with regard to deduction under LWP, no averment has been made by the respondents under what circumstances and by which order, they have deducted the amount of Rs. 49074/- under LWP as there are sufficient leave on his account.

15. In view of above, deduction made under LWP is also erroneous. Accordingly the respondents are directed to refund the amount of Rs. 64632/- and also to fix the monthly pension of the applicant on the basis of his last pay drawn of i.e. on Rs. 33510/- and difference of pay and arrears to the applicant within a period of 2 months from the receipt of the order along with <sup>interest @</sup> 8% from the due <sup>date</sup> ~~to~~ till date of receipt of payment.

16. Accordingly, O.A. is allowed with above observation and direction.

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(Urmita Dutta 'Sen')  
Judicial Member

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