

LIBRARY

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, CALCUTTA**

O.A. No.350/00 435 of 2016

**SRI PRADIP KUMAR BISWAS, son of
Late Promod Chandra Biswas, aged
about 65 years, Ex-Senior Section
Engineer, P. Way/USFD/KWAE under
Senior Divisional Engineer-II, Howrah
Division, Eastern Railway, residing at
Ghara Bagan, P.O. Bandel, P.S. Bandel,
District : Hooghly, Pin-712123.**

... APPLICANT

V E R S U S

**1. UNION OF INDIA, service through
the General Manager, Eastern Railway,
Fairlie Place, 17, N.S. Road, Kolkata-
700 001.**

**2. THE DIVISIONAL RAILWAY
MANAGER, Howrah, Eastern Railway,
Howrah Division, D.R.M. Building,
Howrah, Pin-711101.**

W.A.

3. THE SENIOR DIVISIONAL

PERSONNEL OFFICER, Howrah,

Eastern Railway, Howrah Division,

Howrah, Pin-711101.

4. THE SENIOR DIVISIONAL

ENGINEER (3), Eastern Railway,

Howrah Division, Howrah, Pin-711101.

5. THE SENIOR DIVISIONAL

ENGINEER (CO-ORDINATION), Eastern

Railway, Howrah Division, Howrah, Pin-

711101.

... RESPONDENTS

BSR

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. OA 350/00435/2016

Date of Order: 10/8/2018

Coram : Hon'ble Mr. A.K.Patnaik, Judicial Member

.....

Pradip Kumar Biswas Vs. Union of India & Ors.

For the Applicant : Mr. B.Chatterjee, Counsel
For the Respondents : Mr. S.Banerjee, Counsel

ORDER

A.K.PATNAIK, MEMBER(Judl.):

The applicant in this O.A. is a retired Railway employee. In this Original Application under Section 19 of the A.T.Act, 1985, he has sought for the following reliefs:

- (a) To quash and set aside the impugned order dated 23.07.2014, passed by the Senior Divisional Engineer (Co-ordination), Eastern Railway, Howrah;
- (b) An order do issue directing the respondents to disburse the interest on the DCRG and Leave Encashment amount from 30.06.2010 to till date as per Railway Pension Rule, 1993;
- (c) Cost;
- (d) And to pass such other or further or orders and/or direction as to this Hon'ble Tribunal may deem fit and proper.

2. Undisputed facts of the matter are that the applicant while working as Senior Section Engineer in the Eastern Railways was issued with an order dated 28.10.2003 along with the inquiry report, by virtue of which an amount of Rs.51,22,493/- was sought to be recovered holding him solely responsible for the shortage of rail as reflected in the stock sheet of 1998-99. This formed the subject matter of O.A.No.913/2008 and this Tribunal vide order dated 30.07.2010 disposed of the said O.A. in the following terms:

W.A.

"16. So far as the present case is concerned, we set aside the office order dated 28.10.2003. The respondents will take immediate steps to request the concerned Accountant General to institute a special audit in the matter so as to fix responsibility between different members and staff as also to suggest systematic changes so as to ensure that such matters do not happen again. Charge handing over and taking over has to be done on the basis of actual verification of stocks on the ground. After special audit has been done, the respondents will be free to institute disciplinary proceeding as per R.S.(D&A) Rules on those found responsible".

3. While the matter stood thus, the applicant had already retired from railway service on superannuation with effect from 30.06.2010. Since he did not receive the settlement dues, he submitted a representation dated 24.8.2010 to the Respondent-authorities in this regard. As there was no response, the applicant moved this Tribunal in O.A.No.2247 of 2010 which disposed of the matter on 15.12.2010 with a direction to Respondent No.3 to deal with the representation and give a speaking order on the same within a period of 4 months from the date of issue of the order. Record shows that a CPC No.82 of 2011 was filed by the applicant for non-compliance of the above order dated 15.12.2010 in O.A.No.2247/2010. This Tribunal on 25.07.2012 passed the following order.

"Learned counsels for both parties are present.

2. Learned counsel for the respondents on the basis of instructions of officer present in the Court had stated on 17.06.2012 that the required dues were already settled and would be paid to him within maximum period of one month. The Tribunal allowed three weeks' time to make the entire payment to the applicant failing which the Senior Divisional Engineer (3), Eastern Railway was to have appeared in person. He appeared in person on 07.06.2012. Time was sought for to intimate as to whether any amount is due to the applicant after Special Audit. It was also stated that fresh charge sheet has issued on 03.07.2012. It was observed that the respondents are deliberately and continuously violating the orders of this Tribunal for which necessary action is to be initiated. After hearing the concerned parties 7 days' time was granted for on 17.07.2012 to inform as to by what date the dues of the applicant will be paid.

WL

3. Mr. Chatterjee on the basis of written communication addressed to him states that the dues will be cleared within 3 months from the date of the letter.
4. We grant the said time. The respondents should file an affidavit to point out as to under what circumstances, instructions were given to the learned counsel for the respondents on 17.05.2012 that everything is ready and dues be paid within a period of month. We hope that the order will be complied before the next date as per this undertaking to the Court.
5. List it on 19.10.2012".

4. In the meantime, the Respondents disbursed the amount due on DCRG and leave encashment in favour of the applicant on 25.09.2012. After receiving the above dues, the applicant preferred a representation dated 14.11.2012(A/5) to the Senior Divisional Personnel Officer, Eastern Railways, Howrah, claiming interest on delayed payment of DCRG and leave encashment, which according to him is due and admissible as per Railway Pension Rules, 1993. As the Railway authorities did not pay any heed to his representation, the applicant approached this Tribunal in O.A.No.263/13. This Tribunal vide order dated 23.9.2013 disposed of the said O.A. with direction to respondents to consider the representation in accordance with the law within a period of 3 months from the date of communication of the order and if the applicant is found entitled to disburse the amount in accordance with law within such time. In compliance of the above order, the respondents issued a speaking order dated 23.7.2014(A/9) rejecting the representation of the applicant. Aggrieved by this, the applicant has filed this O.A. praying for the reliefs as already mentioned above.

5. The grounds on which the applicant has based his reliefs are that the Railway pension Rules, 1993 provides that where the payment of DCRG has been delayed beyond three months from the date of retirement, an interest at the rate

V.A

applicant to SRPF deposits determined from time to time by the Government if India will be paid to the retired Railway servants. Applicant has also urged that non-payment of interest on delayed payment of DCRG and leave encashment is arbitrary and whimsical. He has therefore, called in question the legality and validity of the impugned order dated 23.07.2014 stating the same as bad in law.

6. Respondents by filing a detailed counter-reply have opposed the prayer of the applicant. The main thrust of the counter-reply is that as per direction of this Tribunal in O.A.No.913 of 2008 a special audit was conducted which gave its report on 16.9.2011. According to this report, it could not be concluded in audit if the shortage of scrap rails occurred only during the incumbency of the applicant and as such applicant's responsibility was not beyond doubt. They have submitted that the settlement dues, i.e., DCRG and leave encashment have been disbursed to the applicant on 16.9.2012. According to Respondents as per Railway Rules and guidelines as appeared as provided in Clause(f) of the Office Memorandum appended to Circular dated 15.02.2000, payment of interest on delayed payment of DCRG and leave encashment is not permissible. They have submitted that the O.A. being devoid of merit is liable to be dismissed.

7. Heard the learned counsel for both the sides and perused the records. Admittedly, in pursuance of the direction of this Tribunal in O.A.No.913/2008 the report of the special audit was submitted on 16.09.2011 whereas the applicant was paid the dues on DCRG and leave encashment on 16/25.9.2012. However, it is his case that he having retired from service with effect from 30.6.2010 is entitled to interest on DCRG and leave encashment that was paid on 16.9.2012. In

Ad

this connection, I have gone through the Office Memorandum appended to Circular dated 15.02.2000. Clause-(e) and (f) thereof reads as under:

- "(e) Once it has been decided to pay Gratuity the amount should be paid immediately pending a decision regarding payment of interest. This would reduce the interest liability if any on payment of delayed Gratuity.
- (f) The matter of delayed payment of leave encashment, the Department of Personnel & Training in their note dated 02.08.99 has clarified that there is no provision under CCS(Leave) Rule for payment of interest or for fixing responsibility. Moreover, encashment of leave is a benefit granted under the leave rules and not a pensionary benefit".

8. A bare perusal of Clause-(e) of the Office Memorandum gives a delicate hint regarding payment of interest on delayed payment of DCRG. However, as per Clause(f) there is no provision under CCS(Leave) Rules for payment of interest on leave encashment as the same is a benefit granted under the leave rules. Viewed from this angle, the applicant is not entitled to interest on delayed payment of leave encashment dues. However, it is to be noted that since the special audit conducted as per the direction of this Tribunal submitted its report on 16.09.2011 and the applicant was not held guilty thereby, there was no justifiable reason for the respondents to take another year for disbursement of amount due on DCRG. Since, the applicant was paid DCRG amount on 16/25.09.2012, i.e., after one year of the submission of special audit report, I am inclined to hold that the applicant is entitled to interest on delayed payment of DCRG by the operation of Clause-(e) of the Office Memorandum as quoted above. In view of this, the respondents are directed to calculate interest at the prevalent rate on the DCRG amount for the period from 16.09.2011 to 16/25.09.2012 when the DCRG amount was paid to the applicant.



Before parting with this case, it is to be noted that the applicant has prayed for direction to be issued to respondents to disburse the interest on the DCRG and leave encashment from 30.06.2010, i.e., the date of his retirement to till date as per Railway Pension Rules, 1993. Since there was a direction of this Tribunal in O.A.No.913 of 2008 for conducting a special audit, there was every reason for the respondents to withhold the DCRG amount and leave encashment dues, lest the applicant should be held guilty in the audit report and on this score, they cannot be faulted. Therefore, payment of interest from the date of retirement i.e., 30.06.2010 to 16.09.2012, i.e., the date of actual payment of DCRG and leave encashment amount is not acceded to.

9. The O.A. is disposed of as above with no order as to costs.

(A.K.PATNAIK)
MEMBER (Judl.)

RK