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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO.2153/2003

New Delhi, this the 10th day of November, 2004

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

S.K. Sinha,
S/o Late Sh. Lalla Nityanand,
Asstt. Manager (Elect.),
Construction Project Division,
RITES Bhawan, Plot 1,
Sector 29, Gurgaon-122 002 (Haryana)

Residential Address:

S.K. Sinha,
G-167/F-1, Raj Apartments,
Dilshad Colony,
Delhi - 110 095
(By Advocate : Shri G.D. Bhandari)

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Applicant

Versus

Union of India, through

1. The General Manager,
Chitraranjan Locomotive Workshop,
Chitraranjan
2. The Chief Personnel Officer,
Chitraranjan Locomotive Workshop,
Chitraranjan
(By Advocate : Ms. Aparna Rastogi Jain)

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Respondents

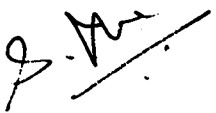
ORDER

By Sarweshwar Jha, A.M. :

The applicant has prayed for the respondents being directed to release his pension, amount of commutation of pension, gratuity and all other settlement dues to which he is entitled on his deemed retirement on 7.6.2001 with interest from the date of his retirement to the actual date of payment.

2. The applicant was initially appointed as an Apprentice Electric Charge man 'A' on 9.2.1979 at Chittaranjan Locomotive Workshop after going through the process of selection. He was subsequently promoted as A.S.S. (Elect) in the grade of Rs.6500-10500 w.e.f. 1.6.1987, firstly on ad-hoc basis and later on regular basis. He has claimed having

rendered satisfactory service and that there was nothing adverse against him. However, he was asked to submit application for retirement/resignation from CLW, Chittaranjan and the same was complied with by him. His resignation was accepted and that the RITES were requested to regularize the period beyond three years (deputation period), which expired w.e.f. 22.1.2001 in terms of Para 8.2 of the Ministry of Personnel, PG & P (DOPT)'s OM dated 5.1.1994. The applicant also submitted his willingness, as required (Annexure A/4). In fact, he has submitted all the settlement papers including request for commutation of pension, as required by the respondents. But these payments including the Provident Fund have not been made to him so far. It is observed that due to the applicant having fallen sick on 22.1.2001, the CLW authorities did not send the settlement papers to the Settlement Section and consequently these papers could not be filed in time. It further appears that leave account and vetting of Foreign Service Contribution for 3 years and 5 months of his deputation period in the RITES before his absorption in the said organisation have been sorted out and which might have led to delays. The applicant has, however, contended that his leave account and FSCs were inter-departmental controversy/issues and that the applicant has nothing to do with them and, therefore, it was the responsibility of the respondents to have finalized the settlement dues for payment. According to him, his case suffered negligence on the part of the authorities. He submitted another representation dated 21.3.2002 (Annexure A/9) to CLW, Chittaranjan and requested them for his settlement dues being paid to him consequent to his permanent absorption in RITES w.e.f. 7.6.2001. He submitted another representation on 27.1.2003 on the subject. It was followed up with a representation on 27.1.2003 and another one dated 30.7.2003. It was made clear by him to the authorities concerned that he needed the settlement dues for attending to his family problems and also for higher education of his children. The applicant has also referred to the instructions of the Department of Personnel & Training regarding timely payment of retirement dues. It is surprising that the authorities did not care to pay even the provisional pension to the applicant pending payment of settlement dues.





3. There is a reference to the directions of the Railway Board dated 15.4.1991 regarding retirement dues being paid to the employees on superannuation and that interest being paid if gratuity is paid after six months of retirement. Reference has also been made to the decisions of the various Courts including those of the Hon'ble Supreme Court in the matter. The amounts due to the applicant have been indicated in paragraph 4.29 of the OA.

4. The respondents have, however, submitted that the applicant has not exhausted the departmental remedies available to him and, accordingly, this OA should be dismissed for that reason alone.

5. On the facts of the case, they have submitted that while the applicant had been appointed as Apprentice Charge-man 'A' w.e.f. 9.2.1979 and had been promoted to the post of Assistant Shop Superintendent (presently known as Section Engineer) w.e.f. 1.6.1987 and further as Senior Section Engineer w.e.f. 10.11.1998, he was released on deputation to RITES w.e.f. 20.1.1998 where he joined on 23.1.1998 for a period of three years. He tendered technical resignation from the Railways and was absorbed in the RITES w.e.f. 7.6.2001. They have admitted that the applicant has rendered more than 22 years of service in the Railways and is eligible for pro-rata pension, Provident Fund, GIG, and Commuted value of pension. The relevant forms were submitted by the applicant on 20.8.2002 and necessary action for payment of the said dues has been taken. He has already been paid Provident Fund amounting to Rs. 2,14,981/- and GIS of Rs.8,988/-. As regards pro-rata pension and commuted value of pension, the respondents have submitted that Foreign Service Contributions for the period the period from 1.4.1998 to 31.3.1999 and from 1.4.2000 to 6.6.2001 have been deposited by the RITES, but no F.S.Cs for the period from 1.4.1999 to 31.3.2000 have been deposited by them so far. The matter has been referred to them so that they deposit the F.S.Cs in respect of the applicant for the said period to settle his case. They have claimed that the applicant is aware of these facts and that, instead of pursuing the matter with the RITES, his present employer, he has filed the present OA as a pressure tactics. They have also submitted that there has been no delay on

their part in payment of the settlement dues and as such no interest is payable to the applicant. Arrears of pension with D.R. will be paid after finalization of the pension on receipt of pending F.S.Cs from the RITES. Gratuity will be settled on finalization of outstanding claims, if any, from the Departments, where the applicant had worked during his service rendered in the Railways. Encashment of leave for 300 days is also under process for payment. The respondents have, therefore, disputed the allegation of the applicant that pension, commutation of pension and gratuity have been with-held by them,

6. The applicant, in his rejoinder, has, however, contested the submissions made by the respondents on facts which need not be reproduced here.

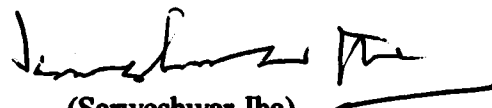
7. However, during the course of arguments, the learned counsel for the applicant has affirmed that a cheque for Rs.36,056/- on account of F.S.Cs for the period from 1.4.1999 to 31.3.2000 in respect of the applicant has been issued in favour of FA & CAO, CLW and was encashed by the said authority and debited to RITES Account on 22.7.2000 as per the bank statement, which has been placed on record, and, therefore, it is not correct for the respondents to say that F.S.Cs have not been paid. The learned counsel for applicant has also argued that, as held by the Hon'ble Supreme Court in Civil Appeal No.1024 of 2003 decided on 5.2.2003 in the case of **H. Gangahanume Gowda v. Karnataka Agro Industries Corpn. Ltd.**, the respondents are liable to pay interest on delayed payments of gratuity, cash equivalent to leave encashment, etc., if the delay in these payments has occurred not due to the fault of the applicant. According to him, delays have taken place in payment of settlement dues to the applicant for no fault of his.

8. I have given a careful perusal to the facts of the case of both the sides and find that, for one reason or the other, the settlement dues have not been paid to the applicant so far. To argue that FSCs have not been received from the RITES for the period from 1.4.1999 to 31.3.2000 and for that reason arrears of pension have not been paid after finalization of pension and further that gratuity will be settled only on finalization of outstanding claims, if any, from the different departments and further that leave encashment for 300 days has not been paid so far, ^{do not} not appear quite reasonable and defy all logic. The respondents



should have checked the outstanding dues etc. in respect of other Divisions of the Railways so as to finalize his pro-rata pension, gratuity, leave encashment etc. and consequential arrears, as the case may be, much earlier and should not have allowed the matter to hang on till this OA was filed by the applicant. The applicant's representations submitted on the subject do not appear to have been given due consideration by the respondents. The case appears to have been dealt with with utter lack of promptitude. It was expected of the respondents that they had considered the matter on priority when it had been brought home that the applicant required the money to meet the cost of his children's higher studies. His frequent visits to their Office also did not bear any fruit. It would have been appreciated if generalities, like, leave encashment being processed, etc. could have been avoided and a serious and focused effort had been made to sort out the matter, which was in any case the inherent responsibility of the respondents.

9. Under these circumstances, this OA is disposed of with a direction to the respondents to release all the settlement dues in respect of the applicant without any further delay and, in any case, within a period of two months from the date of receipt of a copy of this order with interest on delayed payments as admissible under the relevant rules and as held by the Hon'ble Supreme Court in the cases referred to hereinabove. No order as to costs.


(Sarveshwar Jha)

Member (A)

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