

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.210/00158/2019

Dated this Wednesday, the 09th day of October, 2019

CORAM: R.VIJAYKUMAR, MEMBER (A)

Vinod Kumar Gautam, Working as Chief Loco Inspector HQRS
 O/o Sr. FA&CAO (IT) Age 52 years,
 Under Billing SPO (T&C) CSMT I.T. Centre,
 CSMT Mumbai 400 001.
 Residing at RBIV/E-4, Central Railway Colony, Berkley Palace,
 Sir J.J.Road, Byculla, Mumbai 400 008. .. ***Applicant***
(In Person)

VERSUS

1. Union of India, Through its Secretary,
Railway Board, Rail Bhawan, New Delhi 110 001.
2. Principal Chief Personnel Officer, Central Railway,
Headquarters Office, CSMT Mumbai 400 001.
3. Principal FA&CAO, Central Railway, Headquarters Office,
CSMT Mumbai 400 001. ... ***Respondents***
(By Advocate Shri V.D.Vadhavkar)

ORDER

This application has been filed on
 29.01.2019 under Section 19 of the
 Administrative Tribunals Act, 1985 seeking
 the following reliefs:

“8.1. Command the Respondents to pay mileage
 of 4000/- kms with interest as per Railway Board's
 L.No.RBE No.232/2002 dated 31.12.2002 (Annexure
 A/10).

8.2. Command the Respondents to pay
 compound interest @24% on delayed arrears as per
 order dated by Hon'ble Supreme Court judgment.
 Since, it was delayed for 30 and 20 years respectively
 on account of Railway administration's lapses.

8.3. This Hon'ble Tribunal may be pleased to order the Respondents for a exemplary compensation of Rs.10,00,000/- (Rupees Ten Lakh) or an amount deemed suitable by this Tribunal for the mental and financial harassment given to the applicant for the last 30 and 20 years respectively, without any fault of the Applicant. This is a clear example of the negligence, harassment and insensitivity of the Respondents.

8.4. Command the Respondents to Award cost of the litigation to the Applicant since Respondents have forced the Applicant to seek legal remedy twice and even after this Tribunal's order dated 27.09.2018 have not resolved the matter and forced to approach this Tribunal again annexed as Annexure A/3.

8.5. Upon holding that action of respondent authorities in declining the claims of the applicant is bad in law, set aside the order dated 31.10.2017 and speaking order dated 04.12.2018. Copies annexed as Annexure - A/1 ad Annexure A/2.

8.6. Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case."

2. The applicant commenced service with the respondents on 25.04.1988 and after initial training had served with the respondent No.1, when he was placed under suspension for the period from 07.07.1997 to 31.07.1997. In regard to the said delinquency, orders were passed by the respondents imposing a minor penalty of withholding increment for a period of one year (NC) under SF-11 while also regularizing his suspension period by treating it as on duty for all purposes.

The applicant has charged that he was not paid the full stipend for the period of his training from 25.04.1988 to 09.12.1988 and the difference amount came to be Rs.458/- in all in regard to this stipend. The difference between the subsistence allowance of 50% wages and regular wages for the suspension period from 07.07.1997 to 31.07.1997 was also not paid to him and this amounted to Rs.2,696/-. The applicant has also claimed that during the suspension period, which was regularized, he was entitled to mileage allowance paid to the Running Staff at the minimum of 160 km per day. He relies on respondents orders E(D&A) II-72/FE-4/3 (R.S.) dated 03.11.1972 read with previous orders dated 17.09.1951 by which running allowance is treated as pay and entitles him to a claim of 160 km per day. He also refers to RBE No.232/2002, which observes that many Zonal Railways had continued to pay at the rate of 160 km per day for the period of suspension treated as duty for all purposes, although the instructions contained in the orders dated 03.11.1972 had been superseded by the

respondents Board order dated 17.07.1981. Therefore, on the issue of recovery and recovery of over payments, the Board decided in letter dated 31.12.2002, RBE No.232/2002 (Annexure A-10) that cases prior to 17.04.2002 need not be reopened which he says supports his claims for running allowance for the prior period.

3. The applicant claims that subsequent to Board orders of January, 1989, the other trainees were paid difference of stipend but his file was not traceable and he was not paid and, therefore, he started representing thereafter and it is seen from the reply of the respondents that there is on record a letter referred by the Railway Board in the year 2000 which was sent for examination on the claims made by the applicant in regard to the arrears of stipend, arrears of suspension pay etc. Finally, the applicant was paid arrears of stipend and arrears of pay for the suspension period in June 2017 but not the mileage amount for the period of suspension. The applicant kept filing representations and then filed OA No.528/2018 before this Tribunal wherein

orders were passed on 07.09.2018 directing the respondents to pass a reasoned and speaking order on his representation that no interest had been paid to him on the arrears disbursed to him and further, in regard to the mileage allowance. Although mileage claims are not mentioned in the orders of this Bench, it transpires that the applicant had claimed mileage allowance at the rate of 120 days involved in that matter. The respondents have passed speaking orders on 04.12.2018 stating that the salary and stipend arrears were paid to him in June 2017 but that no interest was possible in the absence of any provision in the rule for such payment. The applicant has now challenged this order on the grounds that the respondents have not paid mileage for 4000 km calculated now at the rate of 160 km per day on the basis of Railway Board orders dated 31.12.2002 condoning past payments of the Zonal Railways and ordering that no recovery should be made.

4. In support of his claims for interest on late payment of dues, he refers to the judgment of the Hon'ble Apex Court in SLP

No.14746 of 2018 dated 17.07.2018 (Annexure A-6) in **Union of India and Ors. Vs. Surinder Kumar Dhingra** by which SLP was dismissed and the arrears were ordered to be paid as per orders of the Lower Court as below:

“ORDER

Delay condoned.

We do not find any reason to entertain this Special Leave Petition, which is, accordingly, dismissed. However, the question of law is kept open.

We grant a period of eight weeks to the petitioners to implement the orders. We make it clear that in case the orders are not implemented within eight weeks from today, the arrears will carry interest at the rate of 18% and the officer(s) responsible for the same shall be personally liable for the same.

Pending interlocutory application(s) is/are disposed of.”

5. During arguments, the applicant has reiterated his pleadings and also referred to the judgment of Hon'ble High Court of Delhi in **Union of India & Ors. Vs. Bhagwan Dass & Anr** in Writ Petition No.2736/2018 dated 13.11.2018 which relies on the decision of the Hon'ble Apex Court in **S.K.Dhingra** supra and direct stepping up of pay of seniors to the level of the juniors. Since no mention of interest is made in the judgment cited, the applicant could not explain the relevance of the **Bhagwan Dass** case supra.

6. The respondents have argued that this applicant first agitated this matter before this Tribunal in the year 2018 in regard to the claims for stipend for the years 1988 for which co-trainees had already been paid in January, 1989. The applicant has also argued for arrears of suspension pay for the period from June 1977 and had claimed mileage allowance also for this period. However, he had filed this case after a considerable lapse of time and, therefore, slept over his rights, if any in the matter. Further, they argue that nothing has been mentioned regarding mileage allowance in the orders of this Tribunal in OA No.528/2018. They submit that the claims of the applicant were settled after continuous interaction and correspondence with the Zonal Railways covering Bhopal and Jhansi Division from which he had been transferred to Central Railways at Mumbai. Thus also submit that there is no way for them to verify if running or mileage allowance was paid to him previously and further argue that the instructions of 17.04.2002 do not directly entitle him for

payment of any mileage allowance for the period of suspension although regularized as duty for all purposes.

7. Pleadings have been carefully perused, the learned counsel for the respondent has been heard and the applicant, who appeared in person, has been heard at length.

8. The applicant's claims are threefold. First, is the claim for stipend or Rs.458/- as arrears for the period of training and he orally submits, without proof, that orders were issued by the respondents sanctioning the difference in January, 1989 and this was paid to the other trainees but payment was not made to him because his files were missing. Second, is in regard to the difference of pay due after treating suspension period as on duty while imposing minor punishment. This amount also remained pending and the applicant submits that he made several representations in this regard. Third, is the claim by the applicant that mileage allowances was then sanctioned by that Zonal Railways at 160 km per day and that the Railways Board orders of 2002 was a confirmation that he was entitled to such

sanction. Since the applicant has subsequently been paid the arrears of stipend and suspension period pay in June 2017, his claims are now restricted to penal interest for the delay in these payments and for the payment of mileage allowances along with interest.

9. The applicant has referred to the orders of the Tribunal in **S.K.Dhingra** in OA No.3857 of 2010 dated 24.10.2011 of the Principal Bench against orders of the respondents rejecting the claim of the applicants for stepping up of pay on par with juniors in their orders dated 11.02.2010 and also sought a mandamus to modify the orders of respondents dated 24.07.2009. The respondents filed an appeal before the Hon'ble High Court of Delhi and then to the Hon'ble Apex Court which disposed of the belated appeal by imposing an 18% interest on the arrears to be paid to the applicant. It is also noticed from the judgment that the officers responsible for the delay and lack of sanction were also held personally responsible for the payment of interest. The reading of the order of

the Hon'ble Supreme Court read with the orders of the CAT and the orders of the Hon'ble High Court of Delhi in another case of **Bhagwan Dass** supra shows that not only were the applicants in those cases prompt in raising their demand and agitating their matter before the Tribunal, the delay and the manner in which the respondents dealt with the matter attracted the ire of the Hon'ble Apex Court with the result that a penal imposition was made. Although those circumstances do not prevail in this matter where it is evident that apart from allegedly making continued representations as submitted by the applicant and as orally mentioned by him in these proceedings, the only time he approached this Tribunal was in the year 2018. However, it is settled by the Hon'ble Apex Court in a catena of judgments that the Courts cannot rush to the aid of a petitioner who has slept over his rights. Therefore, the comparisons sought to be drawn by the applicant clearly do not help his case.

10. Since both the stipend and the arrears due to regularization of suspension have

already been paid to the applicant, the question of limitation or whether these were continuous causes of action does not arise at this stage in these proceedings. However, this issue is salient in the altered circumstance that the applicant now claims interest on the paid dues and has no evidence to show that he agitated the matter prior to 2018 before this Tribunal. Therefore, at this stage, we are not persuaded that the applicant can claim any continuous cause of action for payment of stipend or suspension pay period let alone the issue of payment of interest unless he alleges delay between sanction and disbursement but that is not imputed in this case.

11. With regard to the mileage allowances, the orders of the Board of 03.11.1972 read with orders dated 17.07.1981 are clear in treating suspension period ordered to be regulated as duty for all purposes, as part of pay. The Railway Board in RBE No.49/2002 dated 17.04.2002 which is annexed by the respondents conveys the examination by the Board of different practices followed by

various Zonal Railways on the quantum of allowance. The order notes that for such running staff, they will be paid non-running duty at Headquarters at 30% of basic pay or if performed at outstation they will be paid as per the rates as Annexure B of the letter. This order supersedes the previous order but in respect of the specific aspect of cases of suspension regulated as 'on duty', it states as below:

"4. As the orders in force in the matter prior to issue of the instructions dated 17-7-1981 were repugnant to these instructions, the earlier orders on the subject got superseded. As such, for periods of suspension of the Running staff which are eventually treated as duty for all purposes, 30% of the basic pay is admissible for such periods to the Running staff in terms of Para 3.5(i) of Board's letter dated 17-7-1981 *ibid*. It is, therefore, desired that aberrations in the matter, if any, may be rectified in light of the above position."

12. From the above, what is evident is that not only the previous orders of the Board prior to 17.07.1981 were held to be not valid but that in terms of the orders dated 17.07.1981, which would take effect from 01.08.1981, 30% basic pay is permitted for the periods of suspension of running staff which are eventually treated as duty for all purposes. Therefore, it is apparent that the applicant was entitled to 30% of

the basic pay for the period of suspension and that has not been paid to him despite instructions of the Board. As we have noted before, the claim of mileage allowance is associated with payment of salary due during the suspension period. Therefore, the rule and law governing such claims will also govern this claim of mileage allowance. Although the arrears of pay during the suspension period have been settled, we are constrained by the law laid down by the Hon'ble Apex Court in **Madhav Laxman Vaikunte Vs. State of Mysore, (1962) 1 SCR 886** and followed by the Hon'ble High Court of Bombay in **State of Bombay Vs. Ganpat Dhondiba Sawant, AIR 1966 Bom 228** and following the discussion in **Jagdish Mitter Vs. Union of India of the Hon'ble High Court of Punjab and Haryana AIR 1969 PH 441** dated 28.02.1969 to hold that limitation bars the stale claims of the applicant. With regard to the claim of interest on various amounts claimed, it is also clear that the applicant himself has slept over the matter and not agitated the issue before the Courts as was

his legal duty and right and therefore, the binding law as held by the Hon'ble Apex Court will apply.

13. In the circumstances, this OA is dismissed. No costs.

(R. Vijaykumar)
Member (Administrative)

kmg*

JD
11/10/19