

27.11.2024
S/L/ No.1
gd/ssd

MAT/1337/2024
THE GENERAL MANAGER METRO RAILWAY,
KOLKATA AND ANR.
VS
SRI RUDRA PRASAD RAY AND ORS.
IA NO: CAN/1/2024, CAN/2/2024
with
COT/139/2024
RUDRA PRASAD RAY
VS
THE GENERAL MANAGER METRO RAILWAY KOLKATA
AND ORS.

Mr. Soumak Bera,
Ms. Anamika Pandey,
Mr. Ashok Halder
..for the Appellants.

Mr. Ayan Banerjee,
Mr. Dhiman Banerjee
..for the Respondent No.1.

Mr. Arjun Ray Mukherjee,
Mr. Subhendu Sengupta
..for the State.

Ms. Sohini Chakraborty
..for the Respondent No.3.

Re: CAN 1 of 2024

1. This application has been filed by the appellants seeking condonation of delay of 22 days in filing this appeal.

2. Learned counsel for the appellants has referred to the explanation which has been furnished in the application and also has made submission in respect of the explanation for the delay.

3. We find that the delay in filing this appeal has been sufficiently explained and the appellants were

prevented from filing the appeal within time on account of bona fide reason.

4. Hence, CAN 1 of 2024 is accordingly, allowed. The delay in filing the appeal is condoned.

Re: MAT 1337 of 2024

5. This intra court appeal filed by the Metro Railway, Kolkata is directed against the order dated 13.05.2024 in WPA 20554 of 2023.

6. By the said order the learned Single Bench allowed the writ petition filed by the petitioner with regard to the prayer (c) in the writ petition that the writ petitioner would be entitled to the difference together with additional increment between the pay he received at Metro Railway and the pay at the parent cadre for the period between 06.08.2019 to 14.07.2023 from the Metro Railway.

7. The learned advocate appearing for the appellants would strongly rely upon the Master Circular No.57 which deals with matters pertaining to deputation and would refer to clause 3.3 of the Master Circular to support the submission that the writ petitioner had exercised his option for the second time by option letter dated 12.09.2019 opting to draw the pay and allowances in terms of the parent cadre of recommendation of Seventh Pay Commission as

applicable to the Railways since his joining in the Railways i.e. from 6th August, 2019 (Forenoon). In the said option letter the writ petitioner has further stated that he is not using any official vehicle of the Railways since joining as competent authority and also no official accommodation is occupied by him.

8. The appellant would contend that the effect of the Master Circular has not been considered by the learned Single Bench and direction ought not to have been issued for payment of the enhanced pay and allowances.

9. In this regard, the learned senior advocate for the appellants has drawn our attention to the averments set out in the affidavit-in-opposition filed by the Metro Railway in the writ petition.

10. It is seen that the writ petitioner had filed exception to the report/affidavit-in-opposition in which certain vital facts have been placed on record. In paragraph 11 of the said reply the writ petitioner has pointed out the benefits claimed by the Metro Railway and the benefits which the writ petitioner would have received in his parent cadre from which it is seen that the benefits which the writ petitioner would have received is far more higher than in the deputation post. Above all, the claim made by the writ petitioner is based upon the Second National Judicial Pay Commission and based on the said report of the Pay

Commission, pay slip has been issued by the Judicial Department to the writ petitioner.

11. Therefore, the recommendations of the Second National Judicial Pay Commission will have an overriding effect over and above the Master Circular issued for dealing with cases of deputation. One more fact which is not in dispute is that the present incumbent who is occupying the post of competent authority has been given the benefit which the learned writ court had directed to be paid to the writ petitioner.

12. Thus, we find that the ultimate direction issued by the learned Single Bench does not call for any interference.

13. The writ petitioner has filed a Cross Objection claiming interest for the delay in releasing the arrears.

14. Since the matter was subject matter of judicial interpretation and the court having considered the rival contentions and passed the judgment, we are of the view that this is not a fit case where interest should be ordered.

15. For the above reasons, the appeal filed by the Metro Railway, Kolkata in MAT 1337 of 2024 is dismissed and the order and direction issued by the learned Single Bench shall be complied with by the Metro Railway, Kolkata within a period of six weeks from the date of receipt of the server copy of this order.

16. Upon failure to comply with this direction, the writ petitioner will be entitled to the entire arrears together with simple interest at 8% per annum.

17. For the reasons stated above, COT 139 of 2024 is dismissed.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)