

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA No.1097/2002

New Delhi this the 26th day of August, 2003

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman (J)

R.Ananthan,  
S/O Late Sh.V.S.Ramaswamy Iyer,  
Retired Loco Inspector  
(Railway Board) R/O C-81,  
Pocket 'B', Mayur Vihar, Phase-II,  
Delhi-110091

..Applicant

(By, Advocate Shri K.K.Patel )

VERSUS

1. Union of India through-  
The Chairman, Railway Board,  
Rail Bhawan, I, Rafi Marg,  
New Delhi.
2. The Executive Director,  
Public Grievances,  
Railway Board, Room No. 471,  
Railway Bhawan, New Delhi.

..Respondents

(By Advocate Shri R.P.Agarwal )

O R D E R (ORAL)

(Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman (J)

In this application, the applicant has impugned the letter issued by the respondents dated 30.10.2001 disposing of his representation on the subject of enhancement of pension/family pension with 50% add on factor of pay element of running allowance and retiral benefits thereof, as extended to Loco running staff deputed to work in stationery duties like Loco running supervisors etc.

2. I have heard Shri K.K.Patel, learned counsel for the applicant and Shri R.P.Agarwal, learned counsel for the respondents and perused the relevant documents on

BS

record. Learned counsel for the applicant has also submitted written submissions today with copy to the opposite side, which are placed on record.

3. A preliminary objection has been taken by the respondents that the applicant in the present case was one of the applicants in OA 1344/1994 in which the same issue regarding addition of running allowance to their pensionary benefits has been raised. The Tribunal by order dated 31.1.1996 had disposed of the same together with three other OAs (Annexure R 1). However, Shri K.K.Patel, learned counsel submits that in that case, the claim related only to add on element of 30% basic pay and what <sup>he is</sup> <sub>2</sub> is now seeking in the present OA is 55% add on element of basic pay and therefore, the facts are different. Learned counsel has relied on the judgement of the Hon'ble Supreme Court in G.C.Ghosh and Ors. Vs. UOI and Ors (1192(9) ATC 94) decided on 20.7.1988 and the judgement of the Tribunal (Calcutta Bench) in Janranjan Basu and Ors Vs. UOI and Ors ( OA 1007/1993) decided on 19.5.2000.

4. On the other hand, Shri R.P.Agarwal, learned counsel for the respondents has submitted that the present applicant was applicant No.1 in OA 1344/94 and as such he cannot reagitate the same issue through the present application. The reliefs are, therefore, barred by the principles of res judicata and constructive res judicata. He has also submitted that in OA 1344/1994 the applicant

had challenged the same order passed by the respondents dated 25.11.1992. These facts have been clearly stated by the respondents in reply to Para 7 of the OA. They have also submitted that the applicant had suppressed material facts intentionally i.e. regarding filing of the earlier OA 1344/1994 which was disposed of by Tribunal's order dated 31.1.1996 with connected three OAs.

5. Shri K.K.Patel, learned counsel has countered the arguments by stating that what was claimed in OA 1344/94 was 30 % add on pensionery benefits and in the present OA, 55% add on pensionary benefits. According to him, the claim in respect of add on element of 55% of basic pay for the purpose of calculation of pensionary benefits on retirement was not considered by the respondents in OA 1344/1994.

6. After consideration of the pleadings on merits and the submissions made by the learned counsel for the parties, I find no merit in this application. The same is accordingly dismissed for the following reasons:-

(i) A perusal of the judgement order of the Tribunal(PB) dated 31.1.1996 in OA 1344/1994 with connected cases clearly show that not only the pay element which was identified as 30% of the basic pay for the running staff was considered but also 55% of the basic pay for retirement purposes of such staff of Railways was considered. The applicant has indeed not mentioned the

12

fact that he had filed previously OA 1344/1994 in Paragraph 7 of the OA and this fact has been brought out only <sup>the 12</sup> ~~in~~ reply. Therefore, on <sup>the</sup> ~~the~~ ground of suppression of facts and the principles of res judicata and constructive res judicata, the OA is liable to be dismissed.

(ii) The relevant portion of the impugned letter dated 30.10.2001 reads as follows:-

"Please refer to your representation dated 5.7.2001 followed by reminder dated 15.9.2001 on the above mentioned subject. The matter has been examined in consultation with the Pay Commission Directorate of Board's Office. In terms of Para 5.5 of Board's letter No.E(P&A)II/83/RS 10 (iv) dt.25.11.92 (copy enclosed) only those loco inspectors who retired from railway service on or after 1.1.1993 are eligible for addition of add on element of 30% of basic pay alongwith their basic pay for the purpose of calculation of pensionary benefits on their retirement. Since, you retired from service on 30.6.90 i.e., prior to 1.1.1993, the benefits of add on element of 30% of basic pay for the purpose of calculation of pensionary benefits in terms of Board's letter referred to above is not admissible in your case".

The applicant has now relied on the judgement of the Hon'ble Supreme Court in G.C.Ghosh's case (supra) decided on 20.7.1988, which he could have done when OA 1344/1994 was pending. That judgement deals with parity in employment and has held that under Articles 14 and 16 of the Constitution of India, the same treatment is required to be accorded to the petitioners regardless of the fact that they are serving <sup>in</sup> ~~in~~ the Eastern Railway, unless it is shown

that there are some distinguishing features, for according a different treatment. The applicant had already filed OA 1344/1994 which has been dismissed by the Division Bench of the Tribunal by order dated 31.1.1996. It is settled law that he cannot reagitate the same issue in the present application. The order of the Division Bench in OA 1344/1994 has become final and binding as it is not informed that any appeal has been filed in that case in the High Court. Besides, judicial propriety requires that the judgement of the larger Bench should be followed by the Single Bench, which is a settled principle of law.

(iii) The reasoning given by the respondents in the impugned letter dated 30.10.2001 based on dates of retirement of the Loco Inspectors who retired from service on and after 1.1.1993 cannot also be held as either arbitrary or illegal. In any case, these arguments have been fully dealt with by the aforesaid Division Bench order of the Tribunal dated 31.1.1996.

5. In the result, on both the above grounds of suppression of material facts which results in misuse of the process of law and the principles of res judicata/constructive res judicata the OA fails and is dismissed.

No order as to costs.

*Lakshmi Swaminathan*

( Smt. Lakshmi Swaminathan )  
Vice Chairman (J)

sk