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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1388/2001

New Delhi, this the 26. day of November, 2001

Hon'ble Shri S.A.T. Rizvi, Member (Admn)

Roshan Lal Sagar,
S/o Shri Champa Ram
R/o 1449/8-E, Shiv Marg, Durga Puri,
Loni Road,
Shahdara, Delhi-110093

... Applicant

(By Advocate : Shri Prakash Chandra)

Versus

1. Union of India, through
General Manager,
Northern Railway,
Head Quarters Office,
Baroda House, New Delhi
2. F.A. & C.A.O., N. Rly.,
Baroda House, New Delhi

... Respondents

(By Advocate : Shri R.P. Aggarwal)

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Heard the learned counsel on either side.

2. By an order passed on 1.5.2001 which is a PPO (Annexure A-1), the FA & CAO, Northern Railway, has fixed the pension of the applicant at Rs.4,560/- per month. The same should have been fixed instead at Rs.4,760/- per month in accordance with the last pay of Rs.9,700/- p.m. drawn by the applicant. The aforesaid PPO (A-1) has accordingly been impugned in this OA with the applicant praying for directions to be issued to the respondents to revise his pension to Rs.4,760/- p.m., and family pension to Rs.2,856/- p.m. (instead of Rs.2,790/- p.m.). Directions are also sought to be issued to the respondents to make payment to the applicant of the remaining pensionary benefits such as

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Pension, Gratuity and Commutation by taking his last pay drawn as Rs.9,700/- p.m.

3. From the facts placed on record it would appear that the applicant who became a Sr. Clerk on 24.6.1968 was promoted as Ward Keeper (DSKP) Gr.III in the pay grade of Rs.210-320 on 20.7.1972. Later, he was placed in the Construction Organisation and promoted as DSKP Gr-II in the pay grade of Rs.1600-2660/- on ad-hoc basis w.e.f. 17.7.1985. He was regularised in the same grade in his parent cadre w.e.f. 21.4.1990. Subsequently he was further promoted in the same Organisation as Sr. DSKP /Gr-I in the pay grade of Rs.6500-10500/- again on ad-hoc basis w.e.f. 7.8.1990. On this post also he was later regularised in his parent cadre w.e.f. 29.2.1996. Later he retired, while still working in the aforesaid pay grade of Rs.6500-10500/-, on 31.8.2000. These facts are not in dispute.

4. Based on the aforesaid last pay grade of Rs.6500-10500 in which the applicant had been placed, he has shown in paragraph 4.8 of the OA that 50% of the average emoluments (of last 10 months) would, in his case, work out to Rs.4,760/-. The learned counsel appearing on his behalf has, on this basis, argued that the applicant's pension should have been fixed at Rs.4,760/- p.m., and, if this is accepted, the family pension will also have to be revised to Rs.2,856/- p.m.

5. In support of his contention, the applicant has placed reliance on Railway Board's letter dated 2

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13.3.1972 (Annexure A-2) which provides that no objection can be taken to allowing staff in the Construction Organisation promotions to one grade higher than on the Open Line in the exigencies of work. This is how, according to the learned counsel, the applicant was placed in a higher pay grade when he came to work in the Construction Organisation. He also places reliance on the Railway Board's instructions (A-5) issued in July 1991 which seem to provide that -

"Claims regarding issue of NBR and pensionary benefits are governed by different sets of rules. The question of the seniors claiming NBR does not arise as NBR benefits are given only when a junior is promoted in his own cadre on regular basis and not outside his cadre. Apart from this, the pay drawn in an officiating capacity, even on ad-hoc basis, has to be taken into account for counting retirement benefits. In view of this, the decision regarding counting the last pay drawn by Shri Arora in the MTP already conveyed vide Board's letter of even number dated 1.8.1986 will stand." (emphasis supplied)

The aforesaid extract has been taken from the Railway Board's letter dated 18.6.1986 forming part of the document placed at Annexure A-5.

6. Based on the aforesaid argument, the applicant has proceeded to contend that no recovery can be made from him in respect of the period from 7.8.1990 to 31.8.2000 in terms of FA & CAO letter dated 16.4.2001 placed at Annexure A-5/1. The learned counsel appearing on behalf of the respondents has submitted that when the applicant was promoted in the pay grade of Rs.6500-10500 w.e.f. 7.8.1990 on ad hoc basis, his pay should have been fixed in accordance with the following provisions

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made in para 5.3 of DOP&T's OM dated 29.4.1988 adopted by the Railways vide PS No.9824 (Annexure R-1) dated 12.3.1989:-

"In cases of appointment to a second or subsequent ex-cadre post in a higher pay scale than that of previous ex-cadre post, the pay may be fixed with reference to the pay drawn in the cadre post and if the pay happens to be less than the pay drawn in the previous ex-cadre post, the difference may be allowed as personal pay to be absorbed in the future increase in pay."

Thus, on his appointment as Sr. DSKP on ad hoc basis w.e.f. 7.8.1990, the applicant's pay was required to be fixed with reference to his pay in the basic cadre of DSKP Gr-III and not with reference to the pay he was drawing on ad-hoc basis in DSKP Gr-II. The learned counsel has submitted that by following the aforesaid guide-line the applicant's pay has already been refixed vide Notice dated March 2001 (Annexure R-2). Following the refixation of his pay, a due and drawn statement dated 20.8.2001 has also been prepared and a copy of the same is placed at Annexure R-3. In the circumstances, the learned counsel submits that the applicant's pay has been fixed at Rs.9,300/- instead of at Rs.9,700/- and this has been done correctly in accordance with the PS No. 9824 dated 12.3.1989 (R-1).

7. I have considered the rival contentions raised on behalf of the parties. I find that while the applicant relies on Railway Board's letter dated 18.6.1986, an extract wherefrom has been reproduced in paragraph 5 above, the respondents have instead relied on the aforesaid PS No. 9824 issued much after the

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Railway Board's letter dated 18.6.1986. I also find that the respondents have not only relied on the aforesaid PS dated 12.3.1989 but have proceeded in accordance with the joint procedure laid down in the Circular dated 22.6.1993 (Annexure R-4) which, inter alia, deals with the aforesaid PS No. 9824. The same also refers to the case of the same Shri Arora to which a reference has been made in the extract reproduced in paragraph 5 above. Thus, it is abundantly clear that the respondents have correctly relied on the instructions contained in PS No. 9824 dated 12.3.1989 and the joint procedure Circular dated 22.6.1993 (Annexure R-4). The applicant is, therefore, found to have no case for fixation of his salary at Rs.9,700/- per month. Accordingly the OA deserves to be dismissed.

8. For all the reasons mentioned in the preceding paragraphs, the OA is found to be devoid of merit and is dismissed. There shall be no order as to costs.

S.A.T. Rizvi
(S.A.T. RIZVI)
Member (A)

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