

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 147 of 2001

New Delhi, this the 15th day of October, 2001

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Shri L.C. Agrawal
aged about 82 years
R/o D-II/43, Kidwai Nagar East,
New Delhi.

...Applicant

(By Advocate: Ms. Garima Prasad, proxy for Shri Juris
Consultants, Counsel)

Versus

1. Union of India
through its Secretary,
Personal Department,
New Delhi.
2. Chairman,
Railway Board,
Ministry of Railways,
Rail Bhawan,
New Delhi-110 001.
3. Deputy Secretary,
Railway Board,
Rail Bhawan,
New Delhi.
4. General Manager,
North Eastern Railway,
Gorakhpur-273001.

-RESPONDENTS

(By Advocate: Shri R.N. Singh, proxy counsel for Shri
R.V. Sinha, Counsel)

ORDER

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant is aggrieved of an order dated 13.4.2000 whereby the Government of India, Ministry of Railways, Railway Board had rejected the request of the applicant for allowing pension at the rate of 50% of the minimum of PHOD grade on the plea that this PHOD grade of Rs. 7300-7600 came into effect in 1988, i.e., much after the retirement of the applicant from service and it was stated that since the applicant had not worked in the

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grade so his request for allowing pension at 50% of the minimum of PHOD grade was not agreed to.

2. The applicant retired from the service of North Eastern Railway, Gorakhpur from the post of Chief Engineer. He alleges that on the recommendations of the Vth Pay Commission, the Government of India had issued an order dated 17.12.1998 which is as under:-

" The President is now pleased to decide that w.e.f. 1.1.1996 pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced w.e.f. 1.1.1996 of the post last held by the pensioner. However, the existing provisions in the rules governing qualifying service and minimum pension shall continue to be operative. Similarly w.e.f. 1.1.1996 family pension shall not be less than 30% of the minimum pay in the revised scale introduced w.e.f. 1.1.1996 of the post last held by the pensioner/deceased Government servant".

3. Copy of the above order is at Annexure-I. Based on this, the Railway Board also issued a similar order vide Annexure-2. The applicant alleges that as per this order the pension of any employee cannot be less than 50% of the minimum pay in the revised scale of pay introduced w.e.f. 1.1.1996. After these orders were passed, the applicant requested the GM, N.E. Railways, Gorakhpur to revise the pension of the applicant and orders were issued regarding fixation of his pension on the basis of 50% of Rs.18400/-, the minimum of the pay scale of Rs.18400-22400 w.e.f. 1.1.1996.

4. The applicant further alleges that there were different level of scales of Chief Engineers since 1976. In the year 1976 there were two level posts, i.e.,

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Level-I and Level-II in the pay scale of Rs.2500-2750 and Rs.2250-2500 which were merged in the year 1986 and a common scale was given to both of them as Rs.5900-6700 and in the year 1988 again two levels were created, i.e., Chief Engineer/Chief Administrative Officer (Construction) PHOD grade in the pay scale of Rs.7300-7600 whereas Chief Bridge Engineer/Chief Engineer Construction/Chief General Manager continued to be in the scale of Rs.5900-6700. The scale of Rs.7300-7600, i.e., PHOD grade was replaced by the scale of Rs.22400-24500 and the scale of Rs.5900-6700 was replaced by scale of Rs.18400-22400. The applicant claims that he retired from the pay scale of Rs.2500-2750 on 30.6.76 and this post was replaced by scale of Rs.7300-7600 and then as Rs.22400-24500 w.e.f. 1.1.1996, so the applicant's pension should be fixed at 50% of Rs.22400/-, i.e., the minimum of pay scale of Rs.22400-24500. For this purpose the applicant also relies upon the classified list of Gazetted Establishment of Railway Officers of Engineering Department as on January, 1976, i.e., Annexure-7 and Annexure-8 and the applicant claims that the post of Chief Engineer is a post of the Head of the Department in the Railways so the applicant's pension should not have been fixed at 50% of the minimum of the scale of Rs.18400-22400 which is the replacement of lower scale of Rs.5900-6700 and pre-revised scale was Rs.2500-2750.

5. The applicants also says that the post of Chief Engineer, NE Railway has always been designated as post of Principal Head of the Department (PHOD) and promotion is by way of selection and the applicant was promoted as Chief Engineer by way of selection so he is



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entitled to the pension at 50% of the minimum in the pay scale of Rs.22400-24500 and, therefore, prays for a direction to the respondents for fixation of his pension at 50% of the scale of Rs.22400-24500.

6. The respondents who are contesting the OA agree that the applicant at the time of his superannuation was holding the post of Chief Engineer Level-I in the pay scale of Rs.2500-2750 and was drawing the pay of Rs.2625/- at the time of his retirement but after the 4th Pay Commissions recommendations the pay scale of Rs.22400-24500 was merged and both the scales were replaced by Rs.5900-6700 and after the 4th Pay Commission, the pension of the applicant was fixed accordingly, to which the applicant has no grievance.

7. The respondents further submitted that as per the letters issued by the authorities, 48 posts of PHODs were upgraded consequent on the cadre review and due to restructuring and strengthening the set up to cope up with the increase workload and responsibilities and not as replacement scale of 4th CPC and thus upgraded posts were given the pay scale of Rs.7300-7600. The corresponding pre-IVth CPC grade of Rs.7300-7600 was Rs.3000/- and was not a replacement of lower scale of Rs.2500-2750, which the applicant was holding at the time of retirement. Thus the applicant could not have been replaced in the scale of Rs.7300-7600 and since the scale of the applicant was merged in the replacement grade of SAG, i.e., Rs.5900-6700, the same was given to the applicant and it is only in 1988 when there was a functional need and justification the post of PHODs were

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upgraded to HAG (Rs.7300-7600) on review of cadre and not by way of replacement and these posts were treated as creations by surrendering the lower grade posts and those upgraded posts attain a different character.

8. It is further submitted that the post of PHODs were filled up by duly empanelled officers so the respondents submitted that the applicant retired from service on 30.6.1976 and never performed the duties in the higher grade than the grade he was working nor he was emapanlled to upgraded post of PHOD so he cannot put a claim on the ground that the post from which he retired was pinpointed at a later stage for upgradation to a higher post.

9. The post of PHODs grade also carries increased workload, higher responsibilities and other functional needs and worth of charge prevailing at the relevant point of time and since the applicant had never worked on the PHODs grade post with higher responsibilities, so his claim for replacement scale with those of PHODs who worked on the post with higher responsibilities is not justified and hence it is submitted that his pension has been rightly fixed in the replacement scale of 4th Pay Commission and 5th Pay Commission and his prayer for allowing him pension at 50% of the minimum of the scale of Rs.22400-24500 is not maintainable and the OA should be dismissed.

10. I have heard the learned counsel for the parties and gone through the records of the case.

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11. The learned counsel for the applicant submitted that since the post of Chief Engineer which the applicant was holding at the time of his superannuation was at the Level-I post carrying pay scale of Rs.2500-2750 though this post had been merged with Level-II post by the 4th CPC w.e.f. 1.1.1986 and common scale of Rs.5900-6700 was given, but again some difference has been created in the year 1988 so the applicant was entitled to hold the post of Chief Engineer of PHOD grade and was entitled to the scale of Rs.7300-7600 which has been replaced by Rs.22400-24500 and according to the 5th Pay Commission, the applicant was entitled to the 50% of the pension of the minimum of the pay scale of Rs.22400-24500. In reply to this, the counsel for the respondents submitted that a similar matter had come up before the Mumbai Bench which was decided by the Mumbai Bench to which I (Shri Kuldip Singh) was also a party in OA 469/2000 and the court after considering the matter in detail had dismissed the OA. The decision given by a Division Bench is binding on the Single Bench and on the same analogy the OA is liable to be dismissed.

12. In reply to this the counsel for the applicant submitted that the judgment given by the Division Bench at Mumbai is not applicable to the present facts of the case and the OA should be allowed.

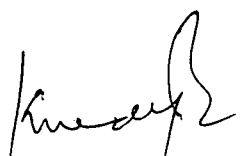
13. The pleadings on the record show that the applicant has based his claim only on replacement scale of PHOD Grade which had been upgraded in the year 1988 after the retirement of applicant. The applicant is

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wrongly assuming that pay scale of Rs.22400-24500 is the pay scale of the same post which he was holding at the level of Rs.2250-2500. Since the replacement of his pay scale was only to Rs.5900-6700, which after Vth CPC was replaced by scale of Rs.18400-22000, so the pay scale of the post was revised to Rs.18400-22000.

14. Though in the year 1988 post of Chief Engineers were again split up into two levels as some posts were upgraded and upgraded Chief Engineers were given the pay scale of Rs.7300-7600, but the other remained in the scale of Rs.5900-670. Those who were upgraded were upgraded only after selection and were given increased work load, higher responsibilities etc. Since applicant had already retired as such he could not undergone selection and could not have been given increased work load, or higher responsibilities as per upgradation, so he had no occasion to work on upgraded post in the pay scale of Rs.7300-7600, as such he cannot be given the replacement scale of Rs.22400-24500 and his pension cannot be fixed taking into consideration the said pay scale.

15. Even otherwise, the contention raised by the applicant has no merits because the issue as raised by the applicant in his OA is fully covered by the judgment of the Mumbai Bench in OA 469/2000. So applying the judgment of the Mumbai Bench in an of the considered view that the OA has no merits and the same is liable to be dismissed. Accordingly, the OA is dismissed but without any order as to costs.


(KULDIP SINGH)
MEMBER (JUDL)