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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

OA No.550 of 1999 Date of Decision:19.4.2000

S.D.Agnihotri ...Applicant

(By Shri K.N.R.Pillay,Advocate)

versus

Union of India & Ors. ...Respondents

(By Shri Rajeev Bansal,Advocate)


Coram:

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastri, Member(A)

1. To be referred to the reporter or not?

Yes ✓

2. Whether it needs to be circulated to
other benches of the Tribunal?


(V. Rajagopala Reddy)
Vice Chairman(J)

Cases referred:

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.550 of 1999

New Delhi, this 19th day of April, 2000

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

S.D.Agnihotri
S/o Late Pandit J.R. Agnihotri
Retired Divisional Superintending Engineer
Northern Railway
New Delhi. ...Applicant

(By Shri K.N.R.Pillay, Advocate)

versus


1. Union of India, through
The Secretary
Ministry of Railways
New Delhi-110 001.
2. The General Manager
Northern Railway
Baroda House
New Delhi-110 001. ...Respondents

(By Shri Rajeev Bansal, Advocate)

Order (oral)

By Reddy, J.

The applicant while working as Divisional Superintending Engineer in the Railways, was promoted to senior scale on 16.6.1980. Thereafter by an order dated 22.12.1983 he was further given officiating promotion to the Junior Administrative Grade with effect from 23.12.1983. On rectification with reference to the pay fixed to his junior, the applicant's pay in the senior scale was revised at Rs.1600 in the grade of Rs.1100-1600. Consequently the pay of the applicant during his officiating promotion to Junior Administrative Grade was at Rs.1680 in the grade Rs.1500-2000. The applicant retired from service on 30.11.1984.



.2.

2. The learned counsel for the applicant Shri K.N.R. Pillay submits that as the applicant was officiating in the grade Rs.1500-2000 in the post of Junior Administrative Grade, the pension of the applicant has to be fixed on the basis of his emoluments he was drawing within ten months from the date of retirement but the applicant's pension has been fixed ~~only~~ taking into consideration his emoluments in the senior scale of Rs.1100-1600. As per the Revised Pension Payment Advice the pension of the applicant was fixed at Rs.5443 against notional pay of Rs.3750 treating him as having retired in the senior scale of Rs.1100-1600 (RS)/3000-4500 (RPS)/10000-15200 instead of in the Junior Administrative Grade Rs.1500-2000(RS)/3700-5000(RPS)/12000-16500.

3. The case of the respondents however is that as the applicant was holding the substantive post only in the senior grade in the scale of Rs.1100-1600, his pension has to be fixed only on the basis of the said pay and not on the basis of the officiating pay he was drawing on the date of retirement.

4. We have perused the pleadings and considered the arguments advanced by either side.



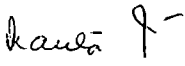
5. The only question that falls for consideration in this case is whether the emoluments in the post of Junior Administrative Grade in the scale of Rs.1500-2000 (pre revised) could be taken into consideration for the purpose of fixation of pension of the applicant? The facts in this case are not in dispute. The applicant was promoted to the post of Junior Administrative Grade from 23.12.1983 and he retired during his officiation in the said post on 30.11.1984 and that he was not regularised in the promoted post. If the respondents take into consideration the pay on the date of retirement, the applicant is entitled to succeed. The assertion of the respondents' counsel that the pay of the employee in the substantive post should only be reckoned for the purpose of - fixation of pension, is ~~not~~ supported by any provision of law or any judgement of the court. On the other hand, the learned counsel for the applicant relies upon rules 33 and 34 of the CCS(Pension) Rules 1972 where the words used are actual emoluments received by the employee and a judgement in Anil Kumar Biswas Vs. UOI & Ors [1993(23)ATC 859] of the Calcutta Bench of the CAT. In the above case it was held that an employee who was getting higher pay due to his officiation on higher post on the basis of High Court stay but was not reverted even after dismissal of the Transferred Application was

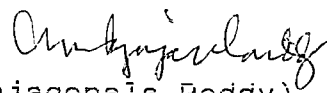
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entitled to pension according to emoluments actually received by him. The action of the respondents in revising pension by notionally determining the pay which he would have drawn had he been reverted, was held as not valid.

6. In the instant case, the Railway Service Pension Rules, 1993 are in parameteria with the CCS(Pension) Rules, 1972. Hence, the applicant is entitled for fixation of pension as per the emoluments he was receiving in the Junior Administrative Grade.

7. The OA is accordingly allowed. The impugned order dated 28.1.1999 (Annexure A.II) is quashed. The respondents are directed to revise the applicant's pension on the basis ^{of his pay in} of the scale in Junior Administrative Grade of Rs.1500-2000(RS) and pay the same along with arrears, within one month from the date of receipt of a copy of this order. No order as to costs.


(Mrs. Shanta Shastri)
Member(A)


(V. Rajagopala Reddy)
Vice Chairman(J)