

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

HON. SHRI R.K. AHOOJA, MEMBER (A)

NEW DELHI, THIS 6th DAY OF JUNE 1997.

OA NO. 1623/95

SHRI R.D. MANGLA
S/o Sh. Lachhu Ram
427/3 Roshanpura
Near Ahata Sillwanan
P.O. Gurgaon
HARYANA

...APPLICANTS

(By Advocate - Shri K.K. Puri)

VERSUS

1. Union of India through
Its Secretary
Ministry of Railways
Railway Board
Rail Bhawan
NEW DELHI

2. Northern Railway
through its General Manager
Baroda House
NEW DELHI

..RESPONDENTS

(By Advocate - Shri R.L. Dhawan)

ORDER

The applicant retired from Northern Railway on 31.3.85 as Office Superintendent. His pension was fixed at Rs.653/- with Rs.375/- as dearness relief and w.e.f. 1.4.1985, one-third pension to the extent of Rs.217/- per month was commuted. A circular was issued by the Railway Board dated 17.5.85 regarding treatment of a portion of additional D.A. as pay for purpose of retirement benefits. Options were asked from the affected persons either to have both pension/service gratuity and Death-cum-Retirement Gratuity calculated on their pay without including the amount of additional D.A. and ad hoc D.A. as dearness pay and continue to ~~to~~ get dearness relief on pension or to have both pension/service gratuity and DCRG calculated after taking into account the element of dearness pay. In the latter case, pensioners were entitled only to dearness relief sanctioned beyond the cost index level of

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✓ 568. A copy of this circular is at Annexure A-2. This was modified by another circular dated 27.6.85(A-3) further extending the merger of D.A., Additional D.A. and ad hoc D.A. upto an average index level of 568 and since any loss of pension was protected, the question of exercising option did not arise. It was however stipulated that if such an option is exercised, the same shall be acted upon. Since the applicant did not receive the benefits under the latter order dated 27.6.85 (A-3), he filed O.A. No.707/88 before this Tribunal. Vide judgement dated 27.5.93 (A-4), the respondents were directed to consider refixation of the pension of the applicant in accordance with the circular of 27.6.85 ignoring the option exercised by him. Since the respondents did not implement the order within the stipulated time, a CP No.43/94 was filed which was also disposed of finally on 10.1.95. Since revised PPO had been issued by the respondents, the notice issued to them was discharged. An R.A. No.63/95 was also filed by the applicant which was disposed of on 25.7.95. It was observed therein that the applicant had no case that either the PPO had ^{not} been issued or the payment was not made in accordance with the PPO. The R.A. was dismissed with liberty to the applicant to challenge the PPO in terms of law, as advised. The present O.A. filed on 30.8.95 is in sequel to that order.

2. The grievance of the applicant is that prior to the issue of the revised PPO in accordance with the directions of this Tribunal in O.A. No.707/86, his pension in accordance with the option earlier exercised had been fixed at Rs.992 per month and the commutation

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amount was fixed at Rs.330 per month (A-8). By the impugned order dated 5.5.94, he has been restored back his original pension of Rs.658 with commutation amount of Rs.219 per month. The respondents therefore propose to recover the excess amount of Rs.13932 paid by way of commutation value after the exercise* of his option.

3. The applicant alleges that while this excess amount is being recovered in one go, while calculating his revised pension, the deduction of commuted value from his pension is still being calculated at Rs.330. In short, he says that if the excess commuted value is being recovered then deduction on account of commutation for the intervening period be fixed at the lower level of Rs.219.

4. The respondents in reply deny the allegation. They raise a preliminary objection of time limitation and resjudicata. On limitation, they submit that the impugned order (revised PPO) was issued on 5.5.94 while the O.A. has been filed on 31.8.95, that is, late by over three months. As regards resjudicata, respondents point out that issue of revised PPO has already been adjudicated in OA No.707/88. The contempt petition filed by the applicant for non-compliance had also been dismissed. The applicant according to the respondents is therefore barred from raising the matter again. On merits, they stand by their calculations.

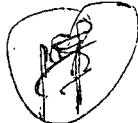
5. I have heard the counsel and have also gone through pleadings on record. The 1d. counsel for the applicant argues that there is no delay since the RA was

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disposed of on 25.07.1995 in which liberty was given to file this O.A. An M.A. seeking condonation of delay, if any, has been filed as a matter of abundant caution. The opposing counsel says that this liberty was granted in accordance with law. They argue that the pendency of an R.A. does not extend the limitation. The applicant claims that the impugned order is a matter separate from the decision of the Tribunal which was sought to be reviewed. However, the delay is only of about three months and considering that the applicant is a pensioner, the delay, if any, is condoned.

6. The Tribunal has already indicated while disposing of the R.A. that the correctness of the revised P.P.O. issued in pursuance of the decision of the Tribunal in O.A. No.707/88 is a separate matter. I agree with the 1d. counsel for the applicant. The question in the earlier O.A. was of exercise of the option and not of the commutation of pension or how it should be calculated or the manner in which the over-payments or arrears would be determined. This being so, the present O.A. is not barred by resjudicata.

7. On merits also, I find that the applicant has a good case. The respondents in determining the pension of the applicant in 1985 and in 1987 allowed the consideration of a certain part of the dearness allowance as part of the salary for purposes of calculation of retiral benefits. However, the affected persons were asked to exercise their option. The applicant exercised that option for the revised method of calculation. Consequently, his pension as well as commutation were recalculated with retrospective effect. Then followed a



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circular order dated 4.10.1985 (A-3) which further liberalised the provisions allowing a larger part of the dearness allowance to be calculated in the salary for calculation of retiral benefits providing further that the loss, if any, would be protected. In view of this last provision, it was stated that through the question would not arise but where such option had been exercised earlier in pursuance of the circular 17.5.1985 then the affected persons will have to stand by that option. By the order of this Tribunal, the applicant will not be bound by that option and would have the benefit of the circular (A-4). In compliance the respondents issued the revised PPO (A-1). In this the commuted value was reduced. Now if the respondents consider that there has been overpayment of commuted pension and seek to recover such payments, then while calculating the dues to the applicant for relevant period, they have to deduct the commuted pension also at the lower rate. Otherwise, the applicant will suffer ^a loss ~~in~~ pension. On the one hand the respondents pay the money and thus in effect reduce the commutation value and on the other hand they deduct the higher commuted pension from the revised salary. They can do one but not both either that they let the commuted value of pension stand for the intervening period and then deduct the higher commuted ^{value} ~~pension~~ from the revised ^{pension} ~~salary~~ or recover the excess amount and deduct the remaining portion at the lower rate of commuted value.

8. In the light of the above discussion, I allow the application partially and direct that the impugned order A-1 will be amended to the extent that in para 2 thereof, the amount will be reduced by the commuted value of

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pension of Rs.219 per month from 1.4.85, i.e., the date on which the revised pension becomes effective and not from the date of issue of the order, i.e., 5.5.94, or the date from which the payment of the revised authority actually commenced. OA is disposed of accordingly. No costs.

R.K. Ahuja
(R.K. AHOOJA)
MEMBER(A)

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