

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-1882/95

New Delhi this the 14th day of November, 1996.

Hon'ble Shri R.K. Ahooja, Member(A)

Shri Adarsh Kumar,
S/o Shri Banarsi Das,
R/o 111, New Mandi,
Shiv Puri,
Muzaffar Nagar(UP).

Applicant

(through Shri G.D. Bhandari, advocate)

versus

1. Union of India,
through the General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Divl. Railway Manager,
Northern Railway,
Moradabad.

Respondents

(through Shri B.S. Jain, advocate)

ORDER

The applicant was holding the substantive post of Dy. Chief Controller and was posted as a Transportation Instructor in the Zonal Training Centre, Chandausi and was on that basis allowed teaching allowance/special pay of Rs.100/-. The applicant retired on superannuation on 31.7.1986 before the implementation of the 4th Pay Commission recommendations and his pension was calculated in the old pay scale. The teaching allowance/special pay was paid to the applicant upto December, 1985 which was also taken into account for his pensionary benefits. From January, 1986 onwards the same was not taken into account because of the orders dated 6.10.1987 issued by the Railway Board. On the introduction of the 4th Pay Commission recommendations with effect from 1.1.86, the pension of the applicant was

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revised. The order was also issued as per Annexure A-4 which took into account the special pay drawn by the applicant. Later the pay of the applicant was revised with retrospective effect on the basis of the next below rule which also necessitated the revision of the pensionary benefits to him. In doing so, the teaching allowance/special pay drawn by the applicant upto December, 1985 was not taken into account. The applicant made various representations but no action was taken and being aggrieved by the same, the applicant has approached this Tribunal.

2. The respondents submit that the application is time barred as the applicant retired on 31.7.1986 and his pension orders were issued on 8.8.1988 and 31.10.90. The applicant gave his first representation on 21.1.93 and the present O.A. was filed only in October, 1995. On merits the respondents submit that the pension of the applicant has been correctly fixed as per rules.

3. I have heard the learned counsel on both sides.

4. It is an admitted position that under the 4th Pay Commission recommendations, pay scale, teaching allowance/special pay was taken into consideration while fixing the pension and this facility was available upto December, 1985. The Railway Board disallowed this facility from 1.1.86. Under the new discompensation on the implementation of the 4th Pay Commission

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recommendations, pension was to be fixed at 50% of the average emoluments for 10 months. Since the applicant retired in July 1986 the emoluments drawn by him in the pre-revised scale had also to be taken into consideration. It is from this point of view that Rs.100/- by way of teaching allowance/special pay becomes relevant. The learned counsel for the respondents submitted that since the rules as in 1986 did not permit the counting of the teaching allowance while fixing the pension, the claim of the applicant was refused. He argued that the applicant was receiving the benefit of the revised pay rules as well as pension rules effective from 1.1.86 and, therefore, he had to be governed in all respects by those rules and could not rely on any extra benefit accruing to him before 1.1.86.

5. It is an admitted fact that prior to 31.1.85, the teaching allowance/special pay was being considered for the purpose of pensionary benefits. In calculating the pension, the respondents have taken into account the emoluments drawn by the applicant for the three months but those emoluments have not been considered in the new scale but in the old pay scale. If the benefit of the new pay scale did not become available before 1.1.86 then ancillary benefits of the previous pay scales cannot be denied while taking into consideration the emoluments of the earlier period and therefore it was incumbent upon the respondents to take into consideration the teaching

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allowance/special pay drawn by the applicant prior to 1.1.86 while calculating the pensionary benefits on the basis of 10 months emoluments.

6. In view of the above position, the application is allowed. The respondents are directed to recalculate the pensionary benefits of the applicant by including the teaching allowance/special pay for the period prior to 1.1.86. The same will be done by the respondents within a period of three months from the date of receipt of a certified copy of this order.

There will be no order as to costs.

R.K. Ahooja
(R.K. Ahooja)

~~Member (A)~~

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