

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

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O.A./T.A. No 1146 of 1997

Decided on: 15.4.1998

Sh.O.N. TeriApplicant(s)

(By Shri M.K. Gupta Advocate)

Versus

U.O.IRespondent(s)

(By Shri P.S. Mahendru Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE ~~SHRI~~ DR. A. VEDAVALLI, MEMBER (J)

1. Whether to be referred to the Reporter or not?
2. Whether to be circulated to the other Benches of the Tribunal?

(K. MUTHUKUMAR)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1146 of 1997

New Delhi this 15th day of April, 1998

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri Onkar Nath Teri
R/O B-40, Sujan Singh Park,
Sonapat (Haryana)-131001.

...Applicant

By Advocate Shri M.K. Gupta.

Versus

The Union of India through
General Manager,
Northern Railway,
Baroda House,
New Delhi 110 001.

...Respondents

By Advocate Shri P.S. Mahendru.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

By the impugned order dated 11.10.1995, the respondents had refixed the pay of the applicant in the scale of Rs.425-700 as Head Clerk in terms of the provisions contained in P.S. No. 7937. The applicant is aggrieved over this order and has prayed for quashing of this order to the extent that his pay refixed in the parent cadre shows his pay plus an element of personal pay. The applicant's grievance is that by refixing in this manner, the respondents have ignored the personal pay element indicated therein for purposes of reckoning his emoluments for determination of his pension. Applicant filed O.A. No.956 of 1993 claiming that his last pay drawn at Rs.680/- per month in the construction organisation of the Northern Railway should be treated as emoluments for settlement of his dues on his permanent absorption in the Indian Railway Construction Company Ltd. (IRCON). In that

petition, he claimed the relief as was allowed by the Tribunal in the case of one Shri G.H. Swami Vs. Union of India - O.A. No. 1522 of 1991 decided by the Tribunal on 29.4.1992. In disposing of the previous application of the petitioner, i.e., O.A. No. 956 of 1993, it was held that the ratio in Swami's case (Supra) was fully applicable to the facts and circumstances of the case of the applicant and, therefore, the respondents were directed to consider refixation of the applicant's pay in the light of the judgment in Swami's case (Supra) and the settlement dues should also be recalculated and paid to the applicant along with 10% interest till the date of payment. Thereafter, the applicant filed a Contempt Petition CCP No.195 of 1995 alleging contumacious disobedience and non-compliance of the Tribunal's direction in O.A. No. 956 of 1993. Before the CCP was decided, the respondents had issued the order dated 11.10.1995 refixing the applicant's pay. Therefore, the Contempt Petition was disposed of in the following manner:-

"6. If respondents were dissatisfied with the judgment dated 13.5.1994 it was open to them to have gone in appeal against the same. They did not do so, but instead when the applicant represented to them on 1.7.1994 for implementation of that judgment informed him that his case was not at par with that of Shri Swami although the Tribunal had specifically held in its judgment that the ratio of Swami's case (Supra) was fully applicable to the facts and circumstances of the present case. In our opinion it was a fit case for initiating contempt action against the respondents, who however have redeemed their conduct by issuing order dated 1.10.1995 refixing the applicant's pay.

7. The question now remains whether personal pay is to be counted as pay at the time of pay fixation. Both sides have cited various rules extracted from IREC Volume II: Manual of Railway Pension Rules 1950 and PS No.9824 and No.7937 to support their respective contentions.

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8. After considering the rival contentions, we hold that the question whether personal pay is to be counted as pay at the time of fixation in the facts and circumstances of the present case is not an issue that can be the subject matter of a CP. A CP is limited in scope and content and what has to be determined in it is whether a party has deliberately and wilfully disobeyed or failed to comply with the court's direction. After having issued the order of pay fixation, it cannot be said that there has been deliberate and wilful violation or non-compliance of the Court's directions. Whether personal pay is to be counted for pay fixation is a matter that cannot be adjudicated upon in a C.P. Accordingly, we give liberty to the applicant to agitate the same through appropriate original proceedings in accordance with law, if so advised.

9. With leave granted to the applicant as aforesaid nothing further survives in this CP which is accordingly dismissed and notices to alleged contemnors are discharged".

2. It may be seen from the above that the Contempt Petition was rejected in view of the fact as recorded by the Tribunal that "the respondents had redeemed their conduct by issuing order dated 1.10.1995 refixing the applicant's pay". It appears that the reference is wrongly indicated as 1.10.1995 instead of 11.10.1995. However, the same order dated 11.10.1995 is impugned in the present application only for the purpose of adjudication on the question whether personal pay is to be counted for pay fixation as was done by the respondents in this case. The applicant was given liberty by the Tribunal, while disposing of the Contempt Petition by its observation in para 8 of the order extracted above. The grievance of the applicant, as mentioned above, seems to be that as a result of refixation of the pay, as ordered in the impugned letter dated 11.10.1995, the respondents have denied the applicant his full pension and other terminal benefits consequent on not treating the personal pay as part of the applicant's pay for this

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purpose. Applicant relies on the definition of pay as under Rule 2003 (21) of the Railway Service Manual and also Rule 501 and 506 of the Manual of Railway Service Pension Rules, 1950 and contends that his last pay drawn for purpose of emoluments should be taken as Rs.680/- which he drew from 1.8.1984 prior to his permanent absorption in IRCON with effect from 29.4.1985. On the other hand if the pay fixation, as shown in the impugned letter is taken, the personal pay element will have to be ignored and there will be only Rs.560/- that will be taken into account as the last pay drawn for the purpose of pension. This essentially is the grievance of the applicant.

3. Respondents say in their counter-reply that the applicant's pay in terms of para 5.3 of the Railway Board's instructions circulated under Northern Railway's P.S. No. 9824 was refixed giving him the benefit of option for refixation of his pay for promotion in the grade of Rs.425-700 as Head Clerk in terms of PS No. 7937 subject to obtaining Railway Board's post-facto approval for non observance of the extant rules as per PS No. 7937, and this was specifically indicated in the impugned order. Therefore, on the basis of this refixation of pay, his revised settlement dues were calculated and paid to him. They maintain that applicant's pay was also refixed in the impugned order on the same pattern as already adopted in the case of Swami (Supra) and the settlement dues were recalculated and paid to him.

4. We have heard the learned counsel for the parties and have carefully perused the record.

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It is necessary to reproduce the impugned order:-

"In order to implement the Hon'ble CAT New Delhi judgment passed on 13/5/1994(30.5.1994) in the case of Shri O.N. Teri, Ex. Head Clerk (P), registered under OA No. 956/1993 and also to avoid contempt petition filed by him under CCP No. 195/1985, his pay in terms of PS No.9824 (Para 5.3) is refixed as under duly vetted by the Associate Accounts, by giving him the benefit of option for fixation of pay on his promotion in grade Rs.425-700 as Head Clerk in terms of PS No. 7937 subject to obtaining Railway Board's post-facto approval for non-observation of extant rules as per P.S. No. 7937 as there is nothing on the record to confirm that he exercised the option for refixation of his pay in Grade Rs.425-700 as Head Clerk (P) in terms of provision contained in PS No. 7937.

Date	Pay as already drawn on Const. Wing.	Pay refixed on parent cadre.
29.4.82	Rs.620/- in Grade Rs.425-700.	Rs.488/- + 132/-P.P.
16.7.82	Rs.620/- in Grade Rs.425-700.	Rs.500/- + 120/-P.P. in Grade 425-700(Rs.)
1.8.82	Rs.640/- in Grade Rs.425-700.	Rs.530/- + 110/-P.P. in Grade 425-700(Rs.)
1.8.83.	Rs.660/- in Grade Rs.425-700	Rs.545/- + 115/-P.P. in Grade 425-700 (Rs.)
1.8.84	Rs.680/- in Grade Rs.425-700	Rs.560/- + 120/-P.P. in Grade 425-700(Rs.)
29.4.85	Rs.680/- in Grade Rs.425-700	Rs.560/- + 120/-P.P. in Grade 425-700(Rs.)

He may be deemed to have retired from Northern Railway on his permanent absorption in IRCON w.e.f. 29.4.1985 (A.N.)."

6. By their letter dated 29.12.1994 at Annexure R-3, the respondents clarified as follows:-

"Your case has been re-examined in the light of the judgment of the Hon'ble CAT, New Delhi, delivered on 13.5.1994 in O.A. No. 956 of 1993 and it has been transpired that your case for deferring the fixation of your pay is not at par with that of Shri Govind Hari Swami in as much as the latter has exercised his option for deferring his fixation of pay from the date of his next annual increment in the lower grades at the time of his promotion from time to time in the construction office in terms of

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the instructions of the Railway Board, circulated under PS No. 7937. Whereas in your case there is nothing on the record to confirm that you exercised the option for refixation of your pay as Head Clerk(P) grade Rs.425-700 in terms of PS No. 7937.

In the circumstances, you have been settled correctly and nothing more is due to you."

7. From this it would appear that the respondents considered that the fixation of pay cannot be on par with Shri Swami's case (Supra). It was clarified that while Swami had exercised his option for fixation of pay from the date of his next annual increment from time to time in the Construction Organisation in terms of the Railway Board's instructions PS No.7937, there was nothing on record that the applicant had exercised similar option for refixation of pay in terms of PS No.7937. However, by the impugned letter it is stated that in order to avoid Contempt Petition No.195 of 1995, his pay was refixed by giving him the benefit of option for fixation of pay in the grade of Rs.425-700 as Head Clerk in terms of PS No.7937 subject to ex-post-facto approval of the Railway Board. The respondents maintain that the post in the Construction Organisation being an ex-cadre post and the personal pay which has been refixed in terms of aforesaid order cannot be treated as personal pay as defined in para 2003 (23) of the Indian Railway Establishment Code. In terms of para 2003 (21) of the Indian Railway Establishment Code, personal pay means "additional pay granted to Railway servant to save him from loss of substantive pay in respect of a permanent post and due to revision of pay or to any reduction of such substantive pay otherwise than as a disciplinary measure or in exceptional circumstances on, other personal considerations". Para 2544 of Indian Railway Establishment Code Volume II defines

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emoluments as follows:-

" Emoluments means: the emoluments which the officer was receiving immediately before his retirement and includes -

(a) pay other than that drawn in tenure post:

(b) personal allowance, which is granted (i) in lieu of loss of substantive pay in respect of permanent post other than a tenure post, or (ii) with the specific sanction of the Government of India, for any other personal considerations".

8. In the light of this, the personal pay as granted to him as a result of refixation of pay as shown in the impugned letter dated 11.10.1995, cannot be reckoned for purposes of reckoning emoluments for determination of his pension and other benefits.

9. We find that in disposing the applicant's O.A. 956 of 1993, the Tribunal relied on the judgment in Santosh Kumar Vs. U.O.I. (OA 1012 of 1989 decided on 11.11.1991, reported in 1990 CSJ (CAT) 25 PB), wherein it was held as follows:-

"The concept of retention of lien in the parent cadre cannot be used to curtail the benefit of the actual pay drawn with reference to the pay drawn by the next junior in the parent cadre. The retirement dues of the applicant will thus require to be calculated in accordance with the pay drawn by him in the post: which he held prior to his retirement. Further the fixation of pay of the applicant in the parent cadre by applying the principle of NBR with reference to his next junior is not relevant. The principle underlying the NBR is to protect the senior employee outside when his next junior is promoted in his own cadre on ad hoc regular basis. The intent is not to bring down or reduce the senior employee outside his line to the stage of his next junior in regular line".



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10. The above judgment had become final and there is no averment by the respondents that the above ratio in the aforesaid judgment has not been accepted by them and that they have appealed against the same.

11. In view of the above judgment, Swami's re-fixation ordered was done in accordance with the salary drawn by him while on deputation in the Construction Wing of the Northern Railway and eventually on his deputation to IRCON. The benefit of this fixation in respect of Swami's case was also extended to the applicant by the judgment of the Tribunal in O.A. No. 956 of 1993. The respondents cannot frustrate the applicant's case of re-fixation of pay by seemingly giving him the benefit of PS 7937 and at the same time excluding the personal element as shown in the fixation for the purpose of reckoning his emoluments. Further in terms of Rule 501 under Manual of Railway Pension Rules, 1950, defines pay as follows:-

"501, Emoluments - In respect of Railway servants quitting services on or after 15th June, 1968. 'emoluments' for pensionary benefits shall mean the 'pay' as defined in Rule 2003 (21) R.II which the Railway servant was receiving immediately before quitting service....."

12. Rule 2003(2) R.II of the Indian Railway Establishment Code defines pay as follows:-

"(21)(a) Pay means the amount drawn monthly by a railway servant as-

(i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre, and

(ii) overseas pay, special pay and personal pay, and

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(iii) any other emoluments which may be specially
 clased as pay by the President." (emphasis added)

13. From the above it is clear that even as per the above definitions, the personal pay as shown in the impugned order will have to be reckoned as pay under 2003(21) of the Indian Railway Establishment Code and accordingly will have to be treated as emoluments for purposes of determining the applicant's settlement dues of pension and other terminal benefits consequent on his absorption in the IRCON.

14. In the light of the above, the respondents are directed to recalculate the settlement dues of the applicant by taking into account the personal pay as shown in the impugned order as also part of the emoluments as defined under the Indian Railway Establishment Code and Railway Pension Rules (Supra) and the applicant be paid the amounts due to him along with 10% interest from the date it became due till the date of its payment.

No costs.

A. Veda Valli

(DR. A. VEDAVALLI)
 MEMBER (J)

Rakesh

K. Muthukumar

(K. MUTHUKUMAR)
 MEMBER (A)