

(14)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.No.1521/97

New Delhi: this the 25th day of September, 1998

HON'BLE MR.S. R. ADIGE, VICE CHAIRMAN (A).

K.D.Makhija S/o Late Shri D.C.Makhija,
Chief Draftsman (retd.),
N. Fly. Construction Organisation,
Kashmiri Gate,
Delhi.
R/o N.-36, Kalkaji,
New Delhi-19. Applicant.

(By Advocate: Shri M.L.Sharma)

Versus

Union of India through

1. General Manager,
Northern Railway,
Headquarters Office,
Baroda House,
New Delhi.
2. Chief Personnel Officer,
Northern Railway,
Headquarters Office,
Baroda House,
New Delhi.
3. Chief Administrative Officer/Const.,
Northern Railway,
Kashmiri Gate,
Delhi.

..... Respondents.

(By Advocate: Shri P.S.Mahendru.)

ORDER

HON'BLE MR.S. R. ADIGE, VICE CHAIRMAN (A).

Applicant prays for calculation and payment of pension, commutation and gratuity on the basis of a basic pay of Rs.2375/- which he claims he was drawing immediately before his retirement, together with difference between sums claimed and actually paid with interest @ 18% p.a. thereon.

2. I have heard applicants' counsel Shri M.L. Sharma and respondents' counsel Shri P.S.Mahendru.

3. Applicant was put to officiate in the grade Rs.2000-3200 in an ex cadre post in Railway Construction Organisation since 1986 and on the date of his superannuation on 31.8.93 was drawing a basic pay of Rs.2375/- p.m. after getting annual increments. Meanwhile in his own cadre applicant was regularised in the aforesaid grade of Rs.2000-3200 w.e.f. 2.4.91, and would have drawn a basic pay of Rs.2240/- on 31.8.93, but for his deployment on ^{an} ex cadre post.

4. The basic question for adjudication in this case is whether applicant will be entitled to pensionary benefits on the pay he was actually drawing against an ex cadre post on the date of his retirement, or whether he would be entitled to pensionary benefits on the pay he would otherwise have drawn in his cadre, but for his deployment on the ex cadre post. Northern Railway letter No.720-E/XXXVI/Pension dated 22.6.93 which is consistent with earlier instructions on the subject makes it clear that in such cases pensionary benefits would have to be determined on the pay the retiree would otherwise have drawn on a cadre post but for his deployment to an ex cadre post.

5. Under the circumstances, respondents cannot be said to have acted illegally, arbitrarily or malafidely in fixing applicant's retirement benefits on his pay fixed at Rs.2240/- p.m. on a cadre post, and the judgments relied upon by applicant and referred to in the OA including judgment in OA 2329/96 J.P. Sharma Vs. UOI which were delivered in the facts and circumstances of those particular cases, and none of which have specifically

noticed the aforesaid Circular dated 22.6.193 do not advance applicant's claim for fixation of pensionary liabilities on the basis of the pay and allowances he was drawing on an ex cadre post.

6. Under the circumstances, I hold as follows:

- (a) Recoveries/adjustment, if any, made from applicant's pensionary benefits in respect of pay and allowances earned by him while in service without giving him a reasonable opportunity to show cause offends the principle of natural justice and the same should be refunded to applicant within 3 months from the date of receipt of a copy of this order with interest at the rate of 12% p.a. from the date the recovery/adjustment was made till the date of actual refund. If any such recovery/adjustment is to be made, it will be open to respondents to do so in accordance with law.
- (b) Applicant will be entitled to pensionary benefits calculated on the basic pay he would have earned in his cadre at the time of superannuation had he not been deployed on an ex cadre post, and not on the basic pay he actually earned while
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deployed on an ex cadre post.

7. This OA is disposed of in terms of
Para 6 above. No costs.

Rufchge
(S.R. ADIGE)
VICE CHAIRMAN (A).

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