

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 803 of 1994 decided on 9.2.1998.

Name of Applicant - Sh. Laxman Singh

By Advocate : Sh. B.B. Patel

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Versus

Name of respondent/s Union of India

By Advocate : Shri R.L. Dhasmana

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes/No
2. Whether to be circulated to the other Benches of the Tribunal. - Yes/No

Sahu
(N. Sahu)
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.803 of 1994

New Delhi, this the 9th day of February, 1998

Hon'ble Mr. N. Sahu, Member (Admnv)

Pooran Singh, S/o Shri Bali Singh, Aged
about 63 & 1/2 years, R/o RZ/A-14, Mahavir
Enclave, New Delhi.

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- APPLICANT

(By Advocate Shri B.B. Raval)

Versus

1. Union of India through the Chairman,
Railway Board, Rail Bhavan, New Delhi.

2. The General Manager, Northern Railway,
Government of India, Baroda House,
Copernicus Marg, New Delhi - 110001.

3. The D.R.M., N.Rly, Govt. of India,
Bikaner Division, Bikaner.

-RESPONDENTS

(By Advocate Shri R.L. Dhawan)

ORDER

By Mr. N. Sahu, Member (Admnv) -

The prayer in this Original Application is
to pay an additional sum of Rs.13,512/- with 24%
interest till the date of payment.

2. This simple point is the only point that
remains to be decided and the admitted facts are to
be found in the additional reply of the respondents
filed on 20.3.1997 for which a rejoinder has also
been filed. The applicant has claimed this
additional amount on the basis of his pay drawn in
an ex cadre post in the construction organisation.
The respondents have settled his retiral benefits on
the basis of his cadre pay at the rate of Rs.2450/-
in the grade of Rs. 2000-3200. The applicant
retired on the basic pay of Rs.2600/- p.m. on

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31.7.1988. It is submitted that his pension has to be decided on the basis of average pay drawn during the last 10 months. His pay was fixed at Rs.2375/- as on 1.1.1986 on the basis of the Fourth Pay Commission recommendations. This was raised to Rs.2600/- on 1.5.1987 after giving two annual increments.

3. I have carefully considered the submissions. The concept of average emoluments as well as qualifying service are defined in Railway Services (Pension) Rules, 1993. Under Rule 50 average emoluments have to be determined with reference to the emoluments drawn by him during the last 10 months of his service. The exceptions for a different treatment are listed in Rule 50 itself. They are occasioned by (i) suspension; (ii) extra ordinary leave; and (iii) earned leave for long periods. With regard to qualifying service the definition is that the qualifying service of a Railway servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. Service means service under the Government and paid by the Government. The service of a Railway servant shall qualify for pensionary benefits provided there is continuous service in the Indian Railways and only excludes service in a non-pensionable organisation. No rule has been shown to me to show that the construction organisation is a non-pensionable organisation. The services to be excluded from total service are

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Parasuram JF

specifically noted as (i) under age service; (ii) apprentice service; (iii) leave without pay; (iv) strike; (v) substitute service first six months; (vi) suspension period; and (vii) period during which a stipend is paid.

4. I have not been shown any authority to exclude service from the construction organisation. I am of the considered view that the applicant's service in the construction organisation though ex cadre is still Railway Service and deserves to be treated as qualifying service. The entitlements also deserve to be treated as part of average pay. The average monthly pay should be reckoned on the basis of the 10 monthly average regardless of whether the applicant served in an ex cadre post or not.

5. In this view of the matter, the claim is allowed. The respondents are directed to verify the calculation of the difference in amount of retirement benefits by way of pension and DCRG etc. payable to him in accordance with Annexure-A-11 and Annexure-A-12 enclosed at pages 59 and 60 of the O.A. If they are satisfied of the correctness of the calculations they may remit the amount to the applicant within six weeks of the receipt of a copy of this order. If they consider that the calculation is arithmetically incorrect, they may substitute their own correct calculation and remit the amount to the applicant within the period mentioned above. In the circumstances of the case

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and considering the history of litigation earlier I
do not think it is a fit case for awarding interest
or cost of this litigation. The O.A. is disposed
of as above.

Narashimha Sahu
(N. Sahu) 9/2/98
Member (Admnv)

rkv.