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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA No.707/88

Date of decision:27.5.93.

Sh. R.D.Mangla

...

Petitioner

vs.

Union of India through
Secretary,
Ministry of Public Grievances
& Pension & ors. ... Respondents

CORAM:THE HON'BLE SH.I.K.RASGOTRA, MEMBER(A)
THE HON'BLE SH.J.P.SHARMA, MEMBER(J)

For the Petitioner ...Sh.D.R.Gupta, Counsel.

For the Respondents ...None.

JUDGEMENT(ORAL)
(BY HON'BLE SH.I.K.RASGOTRA, MEMBER(A))

The petitioner retired from Northern Railway on 31.3.1985. His pension was fixed at Rs.653/- with Rs.375/- as Dearness Relief. The Railway Board issued a circular letter dated 17.5.85 regarding treatment of a portion of Additional Dearness Allowance as pay for the purpose of retirement benefits. The affected persons were asked to give option in accordance with paragraph 4 either to have both the pension/service gratuity and death-cum retirement gratuity calculated on their pay without including the element of Additional Dearness Allowance and Ad hoc Dearness Allowance as Dearness Pay and continue to get Dearness Relief on pension in accordance with the orders so far in force or to have both the pension/service gratuity and death-cum-retirement gratuity calculated after taking into account the element of Dearness Pay as now being merged. In such cases, the pensioners will be entitled only to the instalments of Dearness Relief which were sanctioned beyond the average index level 568. The said circular also raised the ceiling on

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maximum amount on gratuity from Rs.36000/- to Rs.50,000/-. The Ministry of Railway modified the said orders vide their letter dated 27.6.1985 and communicated the sanction of the President to the effect that for purpose of average emoluments under Rule 2445-RII(Para 502) of Manual of Railway Pension Rules), the Dearness Allowance, Additional Dearness Allowance and Adhoc Dearness Allowance upto average index level 568 shall be treated as Dearness Pay with effect from the dates from which these were sanctioned. It was further decided in modification of the provisions made in paras 4&7 of the Ministry of Railways letter dated 17.5.85 that the benefit of Dearness Pay as mentioned in Para 1 above would be automatically given both for pension/ service gratuity and D.C.R.G to all Railway servants retiring on or after 31.3.85. Further provision was made to protect the loss in pension if it occurs in some cases by way of grant of personal pension. Para 3 of the said letter further provided that the question of exercising option between the two alternatives as mentioned in the letter dated 17.5.85 shall not arise. Where,however, such an option has already been exercised, the same shall not be acted upon by the concerned authorities. It appears that the petitioner had exercised his option but he is now seeking the advantage of the Ministry of Railways orders dated 27.6.85 modifying the earlier order of 17.5.85 to the effect that the option exercised by him should not be acted upon. He,therefore, prays that his pension should be fixed without taking into consideration the option exercised by him which

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would entitle fixing of his pension at the level of Rs.1216 per month.

2. The respondents in para 6.11 of their counter-affidavit do not seem to have taken into consideration the instructions of the Railway Board issued vide their order dated 27.6.85. Had this been done, the question of following the option exercised as explained in para 6.11 of the counter-affidavit would not have arisen. The petitioner is presently getting the pension of Rs.1147/-+ Rs.66 personal pension. Thus there is a difference in the amount of pension which he is drawing and which a pensioner who retired prior to 31.3.85 was drawing is Rs.66+ Rs. 20 per month. The ~~date~~ if contention of the petitioner is that/his option is not taken into consideration his pension would also increase to Rs.1233/-.

3. We have considered the matter carefully. The petitioner has given further details in MP No.2589/92 in regard to his entitlement. After a perusal of the record carefully and considering the counter of the respondents, we order and direct the respondents to consider refixation of the pension of the petitioner in accordance with the Ministry of Railways order dated 27.6.85 ignoring the option exercised by him. The OA is allowed to the extent indicated above. The above orders shall be implemented within a period of three months from the date of communication of this order. No costs.

J. P. Sharma
(J.P.SHARMA)
MEMBER(J)

I. K. Rasgotra
(I.K.RASGOTRA)
MEMBER(A)