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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, DELHI.

Regn. No. OA 542 of 1987

Date of decision: 17.4.90

V.S. Murthy

....

Applicant

Vs.

Union of India

Respondents

PRESENT

Shri J.C. Singhal, counsel for the applicant.

Shri P.P. Khurana, counsel for the respondents.

CORAM

Hon'ble Shri Justice Amitav Banerji, Chairman

Hon'ble Shri B.C. Mathur, Vice-Chairman.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

B.C. Mathur
(B.C. Mathur) 17.4.90

Vice-Chairman

AB
(Amitav Banerji)

Chairman

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Hon'ble Shri B.C. Mathur, Vice-Chairman.

(Judgement of the Bench delivered by Hon'ble
Shri B.C. Mathur, Vice-Chairman)

JUDGEMENT

This is an application filed by Shri V.S. Murthy, retired Vigilance Inspector, Hindustan Organic Chemicals Ltd., Rasayani, against FA&CAO, Central Railway, Bombay VT's letter No. A C/209/Admn/001/VSM dated 18.11.1986 read with Government of India, Ministry of Transport, Deptt. of Railways, Railway Board's letter No. E (G)86 PN3/25 dated 22.10.1986 denying the applicant the benefit of counting deputation allowance as emoluments for pensionary benefits while working in Hindustan Organic Chemicals Ltd.

2. Brief facts of the case are that the applicant was appointed as a Clerk Grade II in the scale of Rs. 55-130 (PS) in the office of the Financial Adviser and Chief Accounts Officer Ex. G.I.P. Railway (now Central Railway) Bombay-VT and was promoted as Stock Verifier in 1953. In 1979, while the applicant was working as a Stock Verifier in the scale of Rs. 425-750, he was selected for the post of Vigilance Inspector in the scale of Rs. 490-30-640-35-815-40-1055 on deputation basis by the Hindustan Organic Chemicals Ltd., Rasayani, where he joined on 14.12.1979 and was permanently absorbed in the HOCL on 8.12.1982 after his resignation from the Central Railways.

3. Under the extant orders of the Govt. of India, a pensionable employee on permanent absorption in a public sector undertaking was entitled to grant of pension etc. on the basis of the qualifying service etc. Against the normal rule of commutation of pension to the extent of 1/3rd of the pension, in such cases the Govt. of India allowed full commutation of pension. This was accordingly done by FA&CAO, Central Railways, vide his letter dated 1.3.1983 (Annexure A-10 to the application). The calculation of pension in the said letter has, however, been done without taking into account the deputation (duty) allowance of Rs. 150/- p.m. plus 42%, as dearness pay, which the applicant was drawing all along during the period of deputation. This has been wrongly excluded from the calculation of pension, DCRG family pension and pension relief, even though the above emoluments were taken into account by the Administration for the purpose of recovery of leave salary and pension contribution (Annexure A-22(i) to 26 to the application). The applicant represented against these exclusions (Annexures A-11 and A-12) which has been rejected by the respondents vide the impugned dated orders 18.11.86 and 22.10.86 (Annex. A-1 and A-2). The applicant has also been wrongly denied the 'relief to pensioners' to which he is entitled.

4. According to the applicant, the respondents have not taken into consideration the deputation allowance for the purposes of calculating pension treating his deputation to HOCL as a foreign service or deputation to a non-Govt. department or body in terms of Paras 501(4)(i) and 506 of the Manual of Railway Pension Rules, 1950 - (Extracts at Anex. A-13 and A-14) which is absolutely untenable inasmuch as deputation to the said organisation is neither a foreign service nor is it a non-Govt. body. The Railway Pension Manual is meant primarily for the guidance of the staff and cannot supersede the Code provisions which constitute the statutory Rules framed by the President of India under Article 309 of the Constitution as is explicit from the copy of the extract of the preface to the Manual (Annexure A-15). Para 2544 (CSR-486) of the Indian Rail-

which way Establishment Code, Vol. II provides that 'emoluments' for the purpose of calculating pension include deputation (duty) allowance and para 2546 of the Code only excludes local allowances and deputation (local) allowances and it nowhere mentions the words "or deputation (duty) allowance" as wrongly contained in para 506 of the Pensiona Manual. Even if it is assumed that the instructions contained in para 506 of the Manual of Railway Pension Rules are valid, the fact remains that the HOCL, to which the applicant "was on deputation, is not a non-Govt. body, even if it is not a Government Deptt. Para 2003 (FR.9) of the Railway Estt. Code, Vol. II make it absolutely clear that the HOCL is not foreign service as it is wholly owned and controlled by the Government of India. The whole question depends on what are 'emoluments' which mean pay as defined in FR-9(21) and includes special pay and the term 'deputation' (duty) allowance has been treated as 'special pay' as defined in the FRs vide Ministry of Finance's letter No. F.1(11)-E-III(B)/75 dated 7.11.75 The deputation (duty) allowance being in the nature of special pay should count in full for pension, DCRG and relief to pensioners. He has prayed that his pension, family pension, DCRG and pension relief should be recalculated after including in the emoluments the elements of deputation (duty) allowance of Rs. 150/- and 42% dearness pay thereon drawn by the applicant; the revised pension should be recalculated and full commutation value thereof should be worked out as admissible alongwith the revised family pension, DCRG and pension relief, the difference paid to him and the 'relief to pensioners' restored to him w.e.f. 8.12.82. He has claimed interest at the rate of 15% p.a. on arrears of commuted pension, DCRG and 'Pension Relief' from 8.12.82 till the date of payment.

5. The respondents in their reply, have stated that the application is not maintainable before the Tribunal and the Tribunal has no jurisdiction to entertain this application. The cause of action, if any, arose in favour of the applicant on 8.10.84. Hence the application is not filed in time and is barred by limitation.

6. According to the respondents, after the absorption of the applicant in the HOCL his settlement which was finalized

by the Railways and while calculating the pension, his deputation allowance which was drawn by him in HOCL (which is a non-Government Department) was excluded as it is not permissible as per Rules 506(i) of the Manual of Railway Pension Rules. The applicant was accordingly informed on 8.10.1984 that the deputation allowance drawn on deputation to the non-Government Department or Bodies does not count as emoluments for pensionary benefits and therefore the question of counting deputation allowance and 42% dearness pay thereon for the purpose of pensionary benefit does not arise. The applicant is not entitled to any relief. The pension contribution during foreign service of the applicant was erroneously recovered after ^{taking} into account the deputation allowance but it is a transaction between Railway Administration and HOCL and will be settled as per Rules in force. The applicant however is not concerned with this transaction personally.

7. The respondents have admitted that the Manual of Railway Pension Rules is for the guidance of staff and is not the final authority. The final authority is the Ministry of Railways to whom the case of the applicant was referred to and who have confirmed vide their letter No. E(G) 86/PN/25 dated 22.10.86 that deputation allowance drawn by the applicant while on deputation to HOCL, Rasayani, will not count as emoluments for pensionary benefits. Regarding paras 2544 (CSR 486) and 2546 (CSR 486) of the Indian Railway Establishment Code, Vol. II, referred to by the applicant, they are to be read with para 2403 (CSR 361) and Para 2149 of the I.R.E. Code, Vol. II, which state that the Service must be paid by Govt. to qualify for pension and since the applicant's service in HOCL was not paid by the Govt., it does not qualify for pension. However, in order to secure to the Railway servant on deputation to Foreign Service, the pension that he would have earned by service under Government, a Foreign Service Contribution is received either from the employee or the organisation to which he is deputed. In terms of Para 2149 (F.R. 117) of I.R.E. Code Vol. II rates of pension contribution prescribed have been designed to secure to the Railway servant the pension that he would have earned by service

under Govt. if he had not been transferred to Foreign Service which implies that deputation (duty) allowance is not to be taken into account for calculating pensionary benefits in respect of staff who are on deputation to Foreign Service. On reading these 'Codal Provisions with Para 501 (4) 1 and 506 MRPR, it is very clear that deputation pay in respect of Foreign Service cannot be taken into account for the purpose of calculation of pensionary benefits. The applicant has misquoted irrelevant para which is not concerned with the subject matter. Definition given in Rule 2003 (FR 9) Paras 8 and 9 regarding "Foreign Service" and "General Service" only distinguish the Foreign service with reference to the pay of Railway servant. The applicant was receiving his pay while on deputation to HOCL from sources other than the General Revenues and his service has been correctly treated as Foreign Service. Moreover, Ministry of Finance's letter dated 7.11.1975 is not applicable to the subject matter as this letter only clears the eligibility of the deputation allowance to the Government servant while on deputation and it is nowhere mentioned that the deputation allowance is to be counted for the purpose of giving pensionary benefit. Hence, it is not taken into account while calculating pension and DCRG as per Para 501 (4)(1) and Para 506 of the MRPR. The applicant's service while on deputation is not reckoned as Government service as laid down in Para 2403 (CSR 361) of I.R.E. Code Vol. II and as such deputation allowance is not reckoned as pay for pensionary benefits. Service on deputation will count as qualifying service for pension etc. only when the pension contribution is made for the period of deputation. The applicant after he resigned from Railway service was permanently absorbed in the HOCL from 8.12.82 and was serving in that organisation and serving employees are getting dearness allowance appropriate to their pay of that organisation. Hence, they are not eligible for relief on pension after re-employment. The applicant has commuted full part of his pension and after commutation 100% of his pension,

the applicant was not in receipt of any pension. The question of paying any relief on ceased pension should not arise.

8. We have heard the learned counsel of both the parties and gone through ^{the} records carefully. Admittedly, Manual of Railway Pension Rules, 1950, is for the guidance of Railway staff and its provisions, therefore, cannot override the Rules contained in the Railway Establishment Code (Vol. II) which have the statutory force. The contention of the respondents to deny the benefits of special pay in calculating pension etc. without taking into account special pay on the ground of provisions of Manual of Railway Pension Rules is, therefore, not tenable. Having said that we would like to go into the relevant provisions in the Railway Establishment Code on which the claim of the applicant is based.

1. Paragraph 2003 (FR-9) 21(A) of the Indian Railway Establishment Code Vol. II defines the pay for the purpose of reckoning emoluments and includes:

- i) Pay other than special pay
- ii) Overseas pay, special pay and personal pay.
- iii) Other emoluments which may be specially classed as pay by the President.

1. According to paragraph 2544-A(CS 486-A) special pay is included in the emoluments. The relevant portion of 2544-A (CS-486-A) is reproduced below:

"2544-A (CSR 486-A) Same as otherwise provided in Rule 2544-B (CSR 486-B). In respect of officers retiring from service or after the 1st November, 1959, the term "emoluments" means the emoluments which the officer was receiving immediately before his retirement and includes:

(a).....

(b).....

(c) Special pay attached to a post other than a tenure post, when the special pay has been sanctioned permanently and the post is held in a substantive capacity."

Further, the deputation (duty) allowance is not excluded from counting in the emoluments in terms of paragraph 2546 (CSR 488) of Indian Railway Establishment Code. The deputation duty allowance, therefore, forms part of the emoluments. This position has also been clarified in Ministry of Finance, Department of Expenditure letter No. F1(2)-E-III(B)-75 dated 7.11.1975 as "the term deputation duty allowance is "deemed to be special pay as defined in Fundamental Rules." Deputation (duty) allowance constitutes special pay and thus forms part of the emoluments as defined in the Fundamental Rules, as well as Paragraph 2544 (CSR 486) of Indian Railway Establishment Code. The benefit of special pay as "emoluments, however, is available only when "sanctioned permanently and the post is held in substantive capacity".

The conditions for reckoning special pay as emoluments for pension are further supplemented in Rule 2544-B (CSR 486-B) which reads as under:

"If an officer holding a permanent post in substantive capacity.

(a).....

(b) is confirmed in such higher permanent post any time during the last three years of his service after having officiated in that post continuously for three years or more his emoluments for pension in respect of the higher post for any period beyond three years continuous service in that post shall be determined under Rule 2544-A (CSR 486-A) as if he held in substantive capacity a permanent post on a time scale identical with that of higher post".

The special pay viz. deputation (duty) allowance in the case under discussion has, however, not been drawn for any period beyond three years continuous service in the post where the benefit was available. The applicant joined the HOCL on 14.12.1979 and was permanently absorbed in that organisation on 8.12.1982 (well within a period of three years).

9. In view of the above discussion we are of the view that deputation (duty) allowance in case of such deputation to bodies owned wholly or substantially or controlled by the Government would reckon for pension etc. in terms of the provisions made in Rule 2544-A and 2544-B (CSR 486-A 486-B) of the Indian Railway Establishment Code Vol.II subject to the fulfilling of the conditions laid therein - notwithstanding the Manual of Railway Pension Rules. The benefit of counting special pay for pension etc., however, is not applicable to the applicant as he does not fulfil the condition of period of service during which he should have drawn such special pay in accordance with Rule 2544-A (CSR 486-A) and Rule 2544-B (CSR 486-B).

Similarly, other terminal benefits received by the applicant also need no augmentation as claimed. The applicant had received the commutation value by way of terminal benefits equal to 100% of his pension on absorption in the HOCL, a public sector enterprise, in accordance with the policy laid down by the Railway Board. The question of payment of dearness relief is, therefore, not relevant.

10. We are unable to appreciate the argument of the learned counsel of the applicant that he is getting relief on $1/3$ rd of the commuted pension. Such relief would certainly be admissible if the commutation remained at $1/3$ rd stage, but ^{when} the commutation has been 100%, the nexus of the employer and employee as far as the Railways are concerned ceases. The same will also be true where a Railway employee had opted for Contributory Provident Fund instead of getting pension. Once the Railway had paid the entire contribution under that Scheme, no further dearness relief would be admissible in the case of employees who opted for Contributory Provident Fund Scheme instead of pension. Similarly, a person who had gone over to a public sector undertaking and got his pension commuted 100%, by way of terminal benefits on his own option, in our view, he cannot be entitled

to any further relief on account of dearness allowance.

11. In the facts and circumstances of the case, the claim of the applicant cannot be accepted and the application is dismissed accordingly. There will be no orders as to costs.

B.C. Mathur
18.4.90

(B.C. Mathur)
Vice-Chairman

AB

(Amitav Banerji)
Chairman