

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 92/87.  
T.A. No.

199

DATE OF DECISION 31.12.1990.

Shri Prem Jeewan Sharma Petitioner

Shri G.D. Bhandari Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri K.N.R. Pillai Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. I.K. Rasgotra, Member(A).

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

  
(Amitav Banerji)  
Chairman  
31.12.1990.

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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

REGN. NO. D.A. 92/87.

DATE OF DECISION: 31.12.1990.

Shri Prem Jeewan Sharma

... Applicant.

Versus

Union of India & Ors.

... Respondents.

CORAM: THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.  
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(Å).

For the Applicant.

... Shri G.D. Bhandari,  
Counsel.

For the Respondents.

... Shri K.N.R.Pillai,  
Counsel.

(Judgement of the Bench delivered by  
Hon'ble Mr. Justice Amitav Banerji,  
Chairman)

The question in issue in the present case is a short one. The Respondents-Railways promoted the applicant in the grade of Rs.700-900 with effect from 1.1.1984 vide the order dated 3.5.1984 issued by the Assistant Personnel Officer, Northern Railway, Bikaner. Subsequently, another order was issued on 26.6.1984 whereby the pay/applicant was fixed at Rs.760/- from 1.1.1984 (vide Annexure 'B'). The applicant fell sick on 29.1.1985 and remained under treatment of the authorised Railway Doctor till 3.7.1985 when the Divisional Medical Officer, Northern Railway, Bikaner declared him unfit for service as a Chief Booking Supervisor vide Annexure 'C'. The applicant awaited orders from 3.7.1985 to 15.10.1985. No decision was taken by the respondents either for retiring him permanently

or giving him an alternative job. However, the applicant received an order dated 15.10.1985 (Annexure 'D') by which he was stated to have been retired from service on medical grounds from 3.7.85. The order also conveyed that his pay in substantive grade will be Rs.425-640 and in the officiating grade Rs.550-750 at Rs.750/-. Being aggrieved, the applicant filed the present Application. It was stated that the premature retirement order in this case was bad in law as it was implemented with retrospective effect from 3.7.1985 although the order was passed on 15.10.1985. He was paid his enhanced salary from July 85 to September 85 but on passing of the orders (Annexure 'D'), the salary of these three months was deducted from his retiral benefits, which was illegal. Even the amount which was earmarked/had been withdrawn. It amounted to Rs.225/-, @ Rs.75/- per month. Another amount of Rs.60/-, @ Rs.20/- per month on account of Insurance has also not been refunded to the applicant. The promotion order of the applicant in the grade of Rs.700-900 (RS) had not been implemented and the applicant was made to retire on the pay he was already drawing in the grade of Rs.550-750 (RS). His pension was also worked out on the basis of the pay of Rs.750/-. His claim was that his pay should have been fixed at Rs.760/- w.e.f. 1.1.1984 and at Rs.795/- as basic pay. Thus, there was a grave error on the part of the respondents in fixing his pay at a lower rate. The applicant also claimed that he was denied the legal right

of commutation of pension. His representation made to the respondents was also disallowed. An appeal to the General Manager, Northern Railway, New Delhi was also rejected.

The applicant prayed for a direction to implement their own orders promoting the applicant in the grade of Rs.700-900(RS) and fixing his pay at Rs.760/- p.m. w.e.f. 1.1.1984, for quashing the orders dated 24.7.1986 (Annexure 'J') and dated 29.7.1985(Annexure 'K').

In the reply by the respondents, it was stated that the applicant was retired as medically unfit for all categories. Secondly, the question of giving him an alternative job did not arise. The applicant himself admitted that he was retired on medical ground on 3.7.1985. As regards promotion, the Cadre Controlling Authority had declared the applicant eligible for promotion to the grade of Rs.700-900 from 1.1.1984 on temporary ad hoc basis subject to qualifying in the selection. The promotion was also subject to no DAR/Vigilance/Fraud case being pending against him. However, there was a charge-sheet for major penalty against the applicant from 18.1.1983, which had been admitted by the applicant in his representation (Annexure R-II). Hence the competent authority decided not to give effect to the promotion and directed that instead the post be down-graded to Rs.550-750 as per orders at Annexure R-I. The above order dated 19.10.1984(Annexure R-I) pertains to promotions of Coaching Clerks. There was an entry against Shri Prem Jeewan. His salary was fixed at Rs.750/- with the following note:-

"As intimated by the SS/DEC, SF-5 is pending against

him, therefore, he will continue to hold the grade Rs.550-750 till SF-5 is finalised. The post of grade 700-900 is temporarily downgraded in grade Rs.550-750 at DEC".

It was thus urged that there is no case made out for interference.

We have heard Shri G.D. Bhandari and Shri K.N.R. Pillai, the learned counsel for the parties. It is not in dispute that there was a charge-sheet against the applicant on 18.1.1983 by the Area Superintendent, Delhi. This was enquired into by Shri R.K. Ram, Area Officer, Rewari. The applicant's case is that he was exonerated of the charges and no penalty was imposed on him till his retirement on 3.7.1985. He has further stated that the above case was filed. It appears that since there was an order of premature retirement of the applicant, the disciplinary proceeding was not continued. It could not be proceeded unless there was a charge of "grave misconduct". We are, therefore, of the view that since the disciplinary proceeding was not continued, it could not have an ill effect on the applicant in the matter of fixing of pay. If the disciplinary proceeding was not continued but filed it meant that it was closed without any adverse orders against the applicant. In that event, the applicant would be entitled to the benefit that he had been given/under the pay fixation. We are further of the view that the applicant who had been prematurely retired was entitled to the benefit

of fixation of pay at a higher rate than Rs.750/- per month as fixed by the respondents. If his pay was fixed at Rs.760/- on 1.1.1984, he would be entitled to a higher pay on 3.7.1985 taking into account the increments. It was, therefore, necessary for the respondents to take an appropriate action to fix the salary of the applicant at the rate of Rs.760/- per month w.e.f. 1.1.1984 and to the rate of Rs.795/- per month taking into account the increment after one year. He is also entitled to refixation of his pension from 3.7.1985 on the basis of the pay last drawn @ Rs.795/- and also the gratuity calculated according to the above rate of pay. Thus the view taken in the letter dated 29.7.1985 (Annexure 'K' to the O.A.) is erroneous.

Taking into consideration the above, we are of the view that the Application is liable to be allowed and the letter/order dated 29.7.1985 (Annexure 'K' to the O.A.) is liable to be set aside and further the applicant's pay is liable to be fixed at Rs.795/- per month on the date of his premature retirement from service on 3.7.1985 and also calculation of his pension and gratuity on the last pay drawn at Rs.795/- p.m. We, therefore, allow the Application, set aside the letter/order (Annexure 'K' to the O.A.) dated 29.7.1985 and direct the respondents to calculate and determine the amount of pension and gratuity accordingly within a period of three months from the date of service of a copy of this order on the respondents. We leave the parties to bear their own costs. We order accordingly.

*Shalabh*  
(I.K. RASGOTRA)  
MEMBER (A)

'SRD'

*AB*  
31/12/10  
(AMITAV BANERJI)  
CHAIRMAN