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In the Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. RA-94/89 In
OA-557/88

Date: 20.4.1990.

Shri Arun Kumar Dutta Petitioner

Versus

Union of India Respondents

For the Petitioner Shri D.C. Vohta, Counsel

For the Respondents Shri S. K. Sikka, Counsel

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Shri D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman)

The petitioner is the original applicant in OA-557/88 which was disposed of by this Tribunal by its judgement dated 2.6.1989. The grievance of the applicant related to the payments made by the respondents for his pension and gratuity, etc., pursuant to an order of this Tribunal dated 26.11.1987 in CCP-49/87 in OA-174/86 wherein it was mentioned that if he found that pension and gratuity due to him had not been correctly calculated and paid, it was open to him to file a proper application under Section 19 of the Administrative Tribunals Act, 1985. That is how OA-557/88 came to be filed.

2. In para.11 of this Tribunal's judgement dated 20.8.1986 in OA-174/86, it was observed that "the petitioner shall be granted terminal retirement benefits for the period of his service in the Railways, the period

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of his deputation in the Border Road Development Board and a period of two years of his service till 28.3.1976 in the Hindustan Steel Works Construction Ltd."

3. The grievance of the petitioner is that the Tribunal, in its judgement dated 2.6.1989 in DA-557/88, did not take into account the prayers contained in his amended application in regard to the payment of pension, gratuity, ^{or commuted} pension and interest.

4. The respondents had calculated his pensionary benefits, treating him as on Railway service upto 15.3.1974 on the basis of his presumptive pay that would have been drawn by him, had he been in Railway service upto 15.3.1974. The petitioner has annexed copy of a letter dated 21.6.76 from the Chief Personnel Officer to the Chief Accounts Officer, Eastern Railway, Calcutta, according to which, the petitioner was a permanent Assistant Inspector of Works (AIOW) on the Eastern Railway. He was appointed as Assistant Executive Engineer through U.P.S.C. and joined Border Road Development Board on 30.11.1966. His lien was maintained on the Railways. He tendered resignation from the post of AIOW held by him in Eastern Railway w.e.f. 15.3.1974 which was accepted by the Railways vide their letter dated 15.3.1974. It was stated that since he had tendered resignation from the Railway w.e.f. 15.3.74 and the same had been accepted by them, the period of service rendered by him in Border Road Development Board should be deemed to be on deputation and his F.S.C. had to be realised from the Border Road Organisation. He has also given the particulars of pay drawn by the petitioner in the Border Road Development Board, according to which,

he drew pay of Rs.860 plus D.A. for the period from 30.11.1973 to 28.3.1974. The petitioner has also referred to the letter of the Chief Personnel Officer dated 28.2.1972, according to which, a provisional panel of names had been prepared for the post of Assistant Engineers, including the name of the petitioner. Against the name of the petitioner, it has been remarked that he is on deputation to Border Road Development Board as A.E.E.(L) (vide Annexure J-2 to the rejoinder affidavit).

5. The contention of the petitioner is that his pension should have been calculated by taking into account the pay of Rs.860 + D.A. which he was drawing while on deputation to the Border Road Development Board. In this context, he has relied upon the provisions of Rules 33 and 34 of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as 'the Pension Rules').

6. We have carefully gone through the records of OA-174/86, OA-557/88 and the pleadings of both the parties in the present petition. At the outset, it may be stated that the Tribunal had, in its judgement dated 2.6.1989, taken into consideration all the aspects of the case of the petitioner set out in OA-557/88 as originally filed in the Tribunal and the amended application. The Tribunal had also taken into account the judgement dated 20.8.1986 in OA-174/86.

7. As regards the calculation of pension of the petitioner, the Tribunal in its judgement dated 20.8.1986 in OA-174/86, had held that he shall be granted "terminal benefits for the period of service in the Railways, the period of his deputation in the Border Road Development

Board and a period of two years of his service till 28.3.1976 in the Hindustan Steel Works Construction Ltd."

8. In para.6 of its judgement dated 2.6.1989, the Tribunal observed that "the applicant stood reverted as AIOW and if the respondents have calculated his pension on the basis of his pay that he was drawing as AIOW, the action of the respondents cannot be faulted now." In para.7 of the said judgement the Tribunal had observed that "there is no doubt that the applicant was selected for promotion to the post of AEN, but unless he took over charge of the post of AEN, he could not be considered as having become a member of the Service and, therefore, his prayer for considering him as having been promoted as AEN in 1972 has no locus standi."

9. The petitioner has contended in the present petition that he had worked as Inspector of Works, Tubewell Organisation for three continuous years and that his reversion to the post of AIOW was illegal and that he was entitled to get the benefit of service on the "Next below Rule", i.e., promotion from the day his junior in the panel assumed charge of AEN in August, 1972.

10. Rules 33 and 34 of the Pension Rules deal with the emoluments and average emoluments for the purpose of computing pension. Rule 33 provides that "the expression "emoluments" means pay as defined in rule 9 (21) of the Fundamental Rules (including dearness pay, as determined by the order of the Government issued from

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time to time) which a Government servant was receiving immediately before his retirement or on the date of his death."

11. Note 7 under Rule 33 stated that "Pay drawn by a Government servant while on foreign service, shall not be treated as emoluments, but the pay which he would have drawn under the Government had he not been on foreign service, shall alone be treated as emoluments".

12. Rule 34 provides that "Average emoluments shall be determined with reference to the emoluments drawn by a Government servant during the last ten months of his service".

13. The Pension Rules do not apply to the railway servants by express exclusion (see Rule 2(a) of the Pension Rules). However, the Railways have made corresponding Rules.

14. The name of the petitioner was included in the panel for promotion to the post of AEN. He did not, however, take charge of the L post as he was then on deputation to the Border Road Development Board. The case put forward in the present petition is that he is entitled to the benefit of proforma promotion under the "Next below rule" from August, 1972 when his junior assumed charge of the post of AEN. The respondents have not controverted in their reply affidavit the above averments in the petition. We see force and merit in the contention raised by the petitioner.

15. In the facts and circumstances of the case, it was not fair and just on the part of the respondents to have calculated his pension and retirement benefits

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on the basis of the pay he would have drawn as AIOW and not as AEN. In our opinion, the respondents should have applied the Next below rule in his case as he had been duly empanelled as AEN and as his juniors had been promoted in 1972. We, therefore, hold that the average emoluments for the purpose of calculating his pension should be on the basis of the pay of the post of AEN from the due date as per rules and not that of AIOW. The respondents are directed to revise the pension, relief on pension, gratuity and all other retirement benefits of the petitioner on the above basis and release the amounts admissible to him on this account by way of arrears within a period of three months from the date of communication of this order. His future pension should also be regulated accordingly.

16. The Tribunal's judgement dated 2.6.1989 is modified on review to the extent indicated in para.15 above. In other respects, we see no reason to modify the findings and conclusions in the said judgement.

17. The petition is disposed of on the above lines. The parties will bear their respective costs.

D. K. Chakravorty
(D. K. Chakravorty)
Administrative Member
20/4/890

P. K. Kartha
20/4/90
(P. K. Kartha)
Vice-Chairman (Judl.)