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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

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O.A. NO. 1145/1990

DATE OF DECISION : 21.2.92

SHRI R.N. PATHAK & ORS.

...APPLICANTS

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

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SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANTS

...SHRI B.S. MAINEE

FOR THE RESPONDENTS

...SHRI INDERJIT SHARMA

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

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicants jointly filed this application under Section 19 of the Administrative Tribunals Act, 1985 for certain retirement benefits alleging that the calculation of pensionary benefits has not been properly done according to the Extant Rules and administrative instructions.

2. Shri R.N. Pathak retired as Guard Grade 'A' on 30.6.1986 and applicant No.2, Shri S.K. Gupta retired as Guard Grade 'A' on 31.5.1986 and both of them were posted in Tundla, Northern Railway and after retirement are living within the jurisdiction of this Tribunal.

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3. The grievance of the applicants is that pay element of the running allowance admissible to Guards, which is 55% has not been included in DA, ADA, IR etc. for the period prior to 1.1.1986 while it has been so on the revised pay scale basic pay after 1.1.1986. The applicants have claimed the relief that a direction be given to the respondents to add DA, ADA and Interim Relief in the basic salary for the period prior to 1.1.1986 and then add 55% of the same which is the pay element of the running allowance. A further direction be given to the respondents to recalculate the pension on the above relief No.1.

4. None appeared on behalf of the respondents. So the learned counsel for the applicant has been heard at length. The learned counsel for the applicant has placed reliance on the OM No.2/1/87-PIC dt. 8.12.1987 (Annexure A2) issued by the Ministry of Personnel wherein it is stated which is as under :-

"The President is pleased to decide that in the case of employees retiring within 10 months from 1.1.1986 in whose case a part of the period prior to 1.1.1986 is reckoned with for calculation of average emoluments, the emoluments drawn during 1.1.1986 period will include besides basic pay the special pay personal pay etc. as defined in FR B(21) together with DA, ADA, Ad-roc DA and Interim Relief admissible thereon actually drawn by the retiring employee."

According to the learned counsel, in giving pensionary benefits to an employee, the emoluments drawn during 1.1.86

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period reckon for calculation of 10 months' average should be governed by pre 1.1.1986 definition of emoluments since the revised definition of emoluments takes effect from 1.1.1986. This includes basic pay, personal pay, special pay, DA, ADA, Ad hoc DA and Interim Relief. The learned counsel argued that in the case of Railway Guards, which is the runningstaff in calculating the emoluments, 55% of basic pay is also added as element of pay. Since both the applicants retired within five or six months of coming into force of the recommendation of 4th Central Pay Commission, so while calculating their 10 months' average, a period prior to 1.1.86 has also to be considered. According to this OM of Ministry of Personnel (Annexure A2), the applicants claim that in their special pay, it should be 55% of the basic pay+DA+ADA+Ad hoc DA+Interim Relief, while they have only been given 55% of the basic pay. This has been done because of Railway Board's circular PC-IV-87-IMP-PNL dt.6.10.1987 (PS 9423).

This Railway Board's circular is also enclosed with the application as Annexure A3. In paras-2 and 3, it is stated as follows :-

"It is hereby clarified that during the period in which pay is drawn in the pre-revised scale, the following elements will be taken into account for calculation of average emoluments:-

- (a) Basic pay in the pre-revised scale;
- (b) DA, ADA, Ad-hoc DA upto 608 CPI appropriate to the basic pay, actually drawn during the relevant period; and
- (c) Interim Relief appropriate to the basic pay actually drawn during the relevant period in terms of this Ministry's letter No.PC-III/83/PC-IV/3(IR) dt.2.8.83 and No.PC-IV/85/IR/1 dt. 1.5.1985.

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Thus in the case of persons in receipt of special pay etc. the said special pay, DA, ADA, ADHOC DA and Interim thereon will not be taken into account for purposes of calculating average emoluments.

In the case of Running Staff, it is clarified that while calculating the emoluments during the last ten months of service, besides above, the pay element in the Running Allowance will be taken as 'Fifty five per cent of Basic Pay in the pre-revised scale' for the period in which the pay is drawn in the pre-revised scale and 55% of the Basic Pay in the revised scales for the period in which the pay is drawn in the revised scale."

The applicants made certain representations, but to no effect. Thus the only ground taken by the applicant that since Government of India decided that personal pay also has to be included in the average emoluments along with the basic pay for the period, there is no reason to exclude the said element of DA, ADA, Interim Relief etc. for the period prior to 1.1.1986.

5. The respondents contested the application, though on the date of hearing, none appeared for the respondents. The case taken by the respondents is that the application is awfully barred by time because the matter was already decided on 12.12.1988 in the Pension Adalat as is evident by Annexure A1 to the application filed by the applicant himself. However, the matter has been considered on merit. The respondents have referred to a circular of the Railway Board dt. 5.6.1984 (Annexure R1) in which it has been observed that DP for the purpose of calculation of retirement benefits in the case of running staff retiring on or after 1.8.1981

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shall be calculated on pay plus 30% thereof. Hence the emoluments for retirement benefits in the case of running staff retiring on or after 1.8.1981 would consist of basic pay plus 55% thereof as component of running allowance as retirement benefit plus DP at the appropriate percentage calculated on basic pay plus 30% thereof. Further it is stated that the Railway Board's letter dt. 6.10.1987 (Annexure A3 to the application) clearly laid down that the pay element of the running allowance or average emoluments shall only be allowed to the extent of 55% of basic pay in the pre-revised scale and revised scale both. It is stated that the pension of the applicants have been worked out accordingly. The applicants' claim for <sup>5%</sup> 50% component in average emoluments of running element on DA, ADA in addition to the <sup>5%</sup> 50% of the basic pay is not covered under the Extant Rules and the clarification given by the Railway Board's letter dt. 5.6.1984 (Annexure R1 to the counter) and dt. 6.10.1987 (Annexure A3 to the application) has been followed. Thus according to the respondents, the case of the applicant has been duly considered by the Pension Adalat and rejected the same not being covered under the rules. It is further stated that emoluments drawn prior to 1.1.1986, i.e., Pay, DA, ADA, IR cannot be defined as basic pay and as such the benefit of 55% running element cannot be allowed on total emoluments.

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applicant alone

6. I have heard the learned counsel for the parties at length and have perused the record. The learned counsel for the applicant could not show any parallel circular of the Railway Board supplementing the circular dt. 6.10.1987 (Annexure A3). This OM of Ministry of Personal dt. 8.12.1987 does not refer to any running allowance and only is meant for the compliance of departments other than Railways. Since no specific order of the Railway Board has been shown or relied by the learned counsel for the applicant, the contention of the learned counsel cannot be accepted solely on the basis that DRM, Northern Railway, Lucknow in the case of one, J.R.Kapoor and others, Guards of Lucknow Division, has recommended that average pay for ten months is to be calculated by taking basic pay only by the year 1986 and basic pay+DA+ADA+Interim Relief for the period of 1985 after the average pay arrived at as above, 55% of running allowance will be added thereon. Further it is written that the position be advised for information of the Railway Board. This cannot be taken as a substitute for administrative instructions or as a substitute for an order of the Railway Board. When the circular of the Railway Board dt. 6.10.87 (Annexure A3) is clear on the point that it needs no further clarification. The above circular clearly lays down that pay element of the running allowance, i.e., 55% has not been included in DA, ADA, IR etc. for the period prior to 1.1.1986. In the said

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circular, 55% has been added to the basic pay, which has been revised after 1.1.1986 on the recommendation of the 4th Pay Commission's report.

7. If the applicants are allowed the reliefs, which they claim, then it will not be in line with the order of the Railway Board's circular which has statutory force. The administrative instructions, if any, issued by the DRM, Northern Railway cannot override the statutory instructions issued by the Railway Board.

8. The learned counsel for the applicants has also referred to para 4.8. of the Original Application where some calculations have been drawn to show as to what should be the revised pension of the applicants. The respondents have clearly stated in reply to para 4.8 that this calculation sheet of pension produced by the applicants is incorrect and is not in accordance with the Extant Rules and the instructions of the Railway Board referred to above. In reply to this, in the rejoinder, the applicants have only reiterated their stand taken in the Original Application, but they have not referred to any other circular of the Railway Board in that regard. A copy of the letter dt. 25.5.1989 of the DRM, Lucknow (Annexure A1 to the rejoinder) cannot supersede the Railway Board's circular dt. 6.10.1987 (Annexure A3) and as such, the calculations shown by the applications in the

Original Application cannot be said to be correct calculations as per Extant Rules.

9. In view of the above discussion, I find that the present application, though barred by time, yet also on merits, it has no force and is dismissed leaving the parties to bear their own costs.

*J. P. Sharma*

(J.P. SHARMA)  
MEMBER (J)

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