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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 808/91

DECIDED ON : 30.7.1992

Amar Nath Sharma

... Applicant

-Versus-

Union of India & Ors.

... Respondents

CORAM : THE HON'BLE MR. T. S. OBEROI, MEMBER (J)
THE HON'BLE MR. P. C. JAIN, MEMBER (A)

Shri G. D. Bhandari, Counsel for Applicant

Shri B. K. Aggarwal, Counsel for Respondents

J U D G M E N T (ORAL)

Hon'ble Mr. P. C. Jain, Member (A) :-

The applicant was appointed as a Trains Clerk in the Delhi Division of the Northern Railway on 7.8.1951 and retired on superannuation in the afternoon of 28.2.1990. At the time the applicant was working as Guard Grade 'A' in the pay scale of Rs.425-600, he applied, was selected and appointed to officiate as Vigilance Inspector in the grade of Rs.550-750 vide notice dated 4.3.1986 (Annexure A-2). He joined on that post on 5.3.1986 and continued to work as such upto 30.1.1990 when he was repatriated to his parent post. It is clearly stated in the order dated 4.3.1986 (supra) that he would not be allowed to go back at his own request under any circumstances before the expiry of two years, but his post in the Vigilance Organisation was purely on temporary basis and the Railway Administration had the right to repatriate him to his parent department at any time without assigning any reason even if he had not completed the initial period of tenure or extension, if any.

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On repatriation from the Vigilance Organisation which incidentally was at his own request, as is clear from the notice dated 31.1.1990 (Annexure A-11), he was posted as Guard (Mail) in the scale of Rs.1400-2600 to which he was promoted under the Next Below Rule vide notice dated 29.11.1988 (Annexure A-12). The primary dispute in this case is about the alleged incorrect fixation of the pension of the applicant on his retirement on superannuation. In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs :-

- "i) to set aside the impugned Pension Payment Order dated 1.3.90 (A-1) and further direct/ order the respondents to recalculate pension of the applicant and other ancillary benefits in terms of DOP Letter dated 1.8.80 (A-15);
- ii) to recalculate and refix the pay of the applicant in Grade Rs.1600-2660 and grant stagnation increments and other ancillary consequential benefits for the period 5.3.86 to 31.1.90;
- iii) grant market rate interest on the arrears so calculated with any other relief deemed fit and proper in the interest of justice."

2. The respondents have contested the O.A. by filing a reply to which a rejoinder has also been filed by the applicant. From the order dated 23.1.1992 it appears that this O.A. was dismissed with no order as to costs at the admission stage itself by a Bench comprising of one of us (Hon'ble Shri T. S. Oberoi, Member (J)) and Hon'ble Shri I. K. Rasgotra, Member (A). However, on the same date another order is recorded on the ordersheet which is as below :-

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"At this stage, Shri G. D. Bhandari, learned counsel for the applicant pointed out that apart from Item No.1 in the relief para, there is yet another aspect to be argued, for which he wants to address arguments. Shri Aggarwal, learned counsel for the respondents is also available, and for the same, the case is adjourned to 24.1.92."

From the above, it is understood that the case is yet to be disposed of. The petition of the applicant for transfer of this case from Court No. IV was dismissed by the Hon'ble Chairman by order passed on 21.2.1992. Accordingly, we have perused the material on record and also heard the learned counsel for the parties for final disposal of the case at the admission stage itself.

3. Though the applicant has prayed for, as already stated above, for more than one relief, yet the learned counsel for the applicant submitted before us that he is ^{now} pursuing in this application his relief pertaining to only the alleged incorrect fixation of his pension. The respondents have worked out the average emoluments of the applicant for the period of ten months before his retirement as below :-

"9 months pay from 1.5.80 to 31.1.90 @ Rs.2660/-	23,940.00
8 days pay from 1.2.90 to 8.2.90 @ Rs.2660/-	760.00
20 days pay from 9.2.90 to 23.2.90 @ Rs.2360/-	1,685.71
R.A. 55% of 1685.71 (Running Allowance)	927.14
	<hr/> 27,312.85
Average emoluments =	2,731.28
P. Pension = $\frac{2331.28}{66} \times 33$ =	1,365.64
Cy	= 1,366.00"

The above manner of calculation shows that the pay which the applicant drew as Vigilance Inspector for nine months and the pay of joining time from 1.2.1990 to 8.2.1990 has been taken into account for purposes of calculating average emoluments, and the pay of the applicant in the pay scale of his substantive post has been taken into account only for the period from 9.2.1990 to 28.2.1990 and that the 55% of pay as Running Allowance has been calculated only ^{on the} ~~for the period~~ pay drawn by him on his substantive post for a period of 20 days before superannuation. The contention of the applicant on the other hand is that his basic pay in his substantive post to which he was promoted in October, 1988 was Rs.2360/- and the 55% of the aforesaid basic pay is required to be calculated in lieu of the running allowance for calculating the average emoluments for purposes of pension. Based on his calculation as above, he has worked out that his average emoluments come to Rs.3658/- per month and, therefore, his pension should have been fixed as Rs.1829/- and not at Rs.1366/-, as has been done by the respondents.

4. We have given careful consideration to the rival contentions of the parties on the only question which remains for adjudication in this case. It is not in dispute that during the relevant period of ten months, preceding the date of retirement on superannuation, for a period of nine months the applicant was working on a tenure post. The dispute is on the point whether the pay drawn by the applicant on the tenure post can be taken into account for calculating the average emoluments in accordance with the rules. The applicant has relied on the instructions issued by the Government of India, Ministry of Home Affairs (Deptt. of Personnel and Administrative Reforms) in their notification No. 6(2)-PEN(A)/79 dated 1.8.1980 in which it is clearly stated that the

"Government of India have reached the conclusion that the pay drawn in a tenure post cannot be allowed to count as emoluments for pension." The applicant also relied on the provisions of Para 2544 of the Indian Railway Establishment Code Volume-II 1974 Edition wherein also it is stated as below :-

"2544. (G.S.R. 486) — Emoluments and Average Emoluments. — The term "Emoluments", used in these Rules, means the emoluments which the officer was receiving immediately before his retirement and includes —

- (a) pay other than that drawn in tenure post;
xxx xxx"

5. We have not been shown that the above provision relied upon by the applicant in support of his case is either not applicable to the applicant or that the same has since been rescinded or modified. Learned counsel for the respondents has also not been able to show that there is another provision either in terms of a rule or an instruction of the Railway Board that pay drawn by a Railway servant in a tenure post will have to be counted. In view of this, we have to hold that the respondents were not correct in taking into account the pay drawn by the applicant in the tenure post pf Vigilance Inspector for working out his average emoluments during the period of ten months prior to his retirement on superannuation for working out his monthly pension. It is not in dispute that 55 per cent of pay is added to the pay as above for working out the average emoluments for purposes of pension in case of staff who belong to the running category and to which category of staff this benefit has been allowed under the orders issued by the Railway Board.

C.L.

6. In the light of the foregoing discussion, this O.A. is partly allowed with the direction that average emoluments of the applicant for the period of ten months prior to the date of retirement on superannuation shall be calculated by the respondents on the basis of his pay which he would have drawn in the pay scale of Rs.1400-2600 to which he had been promoted under the Next Below Rule in October, 1988, and 55 per cent of such a pay for working out the average emoluments. This direction shall be complied with by the respondents within a period of three months and the arrears due to the applicant on this account shall be disbursed to him.

On the facts and in the circumstances of this case, we leave the parties to bear their own costs.

(P. C. Jain)
(P. C. Jain)
Member (A)

(T. S. Oberoi)
(T. S. Oberoi)
Member (J)

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