

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-3101/2004
MA-2625/2004

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New Delhi this the 25th day of October, 2005.

Hon'ble Shri Shanker Raju, Member(J)

Sh. Jaswânt Raj Khanna,
S/o Sh. Tulsi Dass Khanna,
R/o WZ-1105, Rani Bagh,
Shakurbasti,
Delhi-34.

Applicant

(through sh. Amit Anand, Advocate)

Versus

Union of India through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divl. Railway Manager,
Northern Railway,
Ferozepur Division,
Ferozepur.
3. The Sr. Divl. Accounts Officer,
Northern Railway,
Ferozepur.

Respondents:

(through Sh. R.L. Dhawan, Advocate)

Order (Oral)

Heard the learned counsel for the parties.

2. Applicant impugns reduction in pension without issuance of show cause notice and states that whatever formula to a pre-retiree of 1986 has been adopted is in consonance with the Full Bench decision in OA-777/2002 (K. Venkata Rao & Ors. Vs. U.O.I. & Ors.).

It is stated that the following formula has been evolved:-

(13)

"35. Identical is the position herein. Necessarily, the pension has to be drawn keeping in view the parity that to be so maintained. The pension so fixed would not be re-fixed to the disadvantage of the railway servants. In accordance with the said office memorandums, it was obligatory on the part of the respondents to update the pay of the applicants as if they were in service on 1.1.1986. Thereafter, their pension had to be calculated as on 1.1.1986 as per the relevant instructions. They should take into consideration the average pay, Dearness Allowance, Dearness Pay and Interim Reliefs that they were drawing at the time of their retirement and 20% of the basic pay without reckoning the running allowance of 75%. After fixing the notional pay as on 1.1.1986, they should add the element of 75% of the running allowance and the sum so arrived at, should form the basis for fixation of pension as on 1.1.1986, as per rules and the instructions. We, therefore, approve the view taken by the Principal Bench in the case of S.R. Dhingra (supra) whereby R.B.E. No.318 of 29.12.1999 was quashed."

3. In the above conspectus, learned counsel would contend that DoP&T O.M. dated 10.2.1998 which had been adopted by the Railway had not been adhered to and are over ridden by the directions of the Full Bench.

4. On the other hand, respondents' counsel states that in the Full Bench decision double benefit accorded to a pre-retiree of 1986 has been deprecated and the averments to this regard clearly indicate that applicant's revised pension w.e.f. 1.1.1996 was computed due to administrative mistake by giving him the benefits of 75% pay element in lieu of running allowance and his revised pension was sanctioned in excess vide P.P.O. dated September 2000. Accordingly, an inadvertent mistake of the Government can be rectified even without giving a show cause notice. In the light of methodology envisaged in the Full Bench that pension of pre-retiree as on 1.1.1986 has to be calculated which includes the average pay, Dearness Allowance,

Dearness Pay and Interim Reliefs and 20% of the basic pay without reckoning the running allowance of 75%.

5. However, this 75% allowance would have to be added as basic pay for fixation of pension. There is no whisper of accord of grant of fixation of pension in the light of the decision of Full Bench. It is stated that the decision of the Full Bench is under challenge before the appropriate forum yet there is no impediment to consider it as a precedent to which a Single Bench is bound to follow the Full Bench.

6. In the light of the above, this OA is partly allowed. Action of the respondents for stoppage of the pension and recovery thereof is set aside. Recovered amount shall be restored back to applicant. However, this shall not preclude the respondents to re-examine fixation of the pension in the light of decision of the Full Bench(supra) and in that event law shall take its own course. The above directions shall be complied with within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member(J)

Nv/