

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 1785/2004

This the 28th day of January, 2005

HON'BLE MR. JUSTICE M.A. KHAN, VICE CHAIRMAN (J)

Sh. N.C.Saxena
Retired Inspector of Works (IOW)
Central Railway, Bhopal Division
Presently residing at:

C/o Dr. Sudhir Chandra
M-II/III, I.I.T.Campus
Hauz Khas, New Delhi-110019.

(By Advocate: Sh. D.R.Roy)

Versus

Union of India through

1. General Manager
Central Railway
Victoria Terminals
Mumbai.
2. Divisional Railway Manager
Central Railway, Habib Ganj,
Bhopal, M.P.

(By Advocate: Sh. R.L.Dhawan)

ORDER (ORAL)

By Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

Applicant is aggrieved by refixation of his pension.

2. Applicant was working as Inspector of Works in the Railways. Consequent upon his absorption in RITES, he was deemed to have retired from Railway service on 18.1.1988. He was drawing basic pay of Rs.2360/- at the time of his retirement. He opted for full commutation of his pension. In accordance with the judgment of the Hon'ble Supreme Court dated 26.4.2000 in OA No. 1 WP(C) No.567/1995 and others, he became entitled to the restoration of 1/3rd commuted portion of his pension plus dearness relief on full pension at par with Central Government pensioners. He became entitled to restoration of 1/3rd commuted portion of pension plus dearness relief on full pension at par with other Central Government pensioners. OM dated 12.7.2000 issued by the

department of Pension and Pensioners Welfare, Ministry of Personnel, Public Grievances and Pensions mutatis mutandis applied to the Railway employees. Relevant extract of the OM is reproduced below:-

“2. The modalities of implementing Supreme Court Judgment dated 26.4.2000 has been under active consideration of the Government. The President is now pleased to decide that Govt. servants who had drawn lump sum payment on absorption in a PSU/Autonomous Body and have become entitled to the restoration of 1/3rd commuted portion of pension in terms of the Supreme court Judgment dated 15.12.1995 shall, apart from the payment of revised restored amount of 1/3rd commuted portion of pension, be also entitled to the payment of dearness relief on the revised restored amount of 1/3rd commuted portion of pension, be also entitled to the payment of dearness relief on full pension from the date of restoration, instead of dearness relief on the revised restored amount of 1/3rd commuted portion of pension. In other words, dearness relief shall be payable on full pension i.e. the revised pension which the absorbed employee would have received on the date of restoration of 1/3rd commuted portion of pension had he not drawn lumpsum payment on absorption. The payment of dearness relief will, however, be subject to the conditions laid down in para 5 of OM dated 14th July, 1998.”

3. The respondents applying this OA fixed the pension of the applicant. Applicant is aggrieved and has assailed the order firstly in OA-3018/2003 which was disposed of vide order dated 15.12.2003 whereby the respondents were directed to dispose of the representation of the applicant. The order passed pursuant thereto was assailed by the applicant in the second OA-973/2004 which was decided on 20.4.2004, again the respondents were directed to decided upon the representation of the applicant. In compliance the respondents passed the order dated 22.6.2004 Annexure A-1 to the OA. It was stated that in terms of the above cited OM the pension of the applicant as on 19.1.1988 was determined at Rs.856/- and the revised pension in accordance with the recommendation of the 5th Pay Commission was fixed at Rs.2,602/-. The 1/3rd of the restored commuted pension of the applicant was Rs.283/- and in addition the applicant was entitled to the dearness allowance calculated on the amount of Rs.2602/-. Applicant is still aggrieved and has assailed this order.

4. Respondents in the counter has justified the order impugned in the OA. It has been stated that order is in accordance with the rules and judgment of the Hon'ble Supreme Court.

5. I have heard the learned counsel for the parties and have gone through the record.

6. The ~~whole~~^{crux} crux of the argument of the counsel for applicant is that the respondents have themselves fixed the revised pension of the applicant in accordance with the recommendation of the 5th Pay Commission and the orders of the Government at

Rs.2602/- p.m. so the amount of $\frac{1}{3}^{\text{rd}}$ pension restored would be Rs.868/- (i.e. $2602 \times \frac{1}{3}$). It is submitted that while the respondents have correctly fixed the amount of pension at Rs.2602/- by order dated 31.12.2003 they have erroneously calculated $\frac{1}{3}^{\text{rd}}$ of the commuted pension restored at Rs.283/-. Drawing attention to page 198 of Railway Boards orders 1998 where a table has been give, it is submitted that the amount of Rs.856/- would be revised and will on revision be Rs.2602/-, therefore, the restored commuted pension would be $\frac{1}{3}^{\text{rd}}$ of Rs.2602/- i.e.868/-. It is submitted that applicant would thus be entitled to Rs.868/- plus dearness allowance calculated on the amount of Rs.2602/-.

7. Conversely, the argument of the counsel for respondents is that the notional pension of the applicant was fixed on 18.1.1988 at Rs.856/- and the $\frac{1}{3}^{\text{rd}}$ restored commuted pension would come to Rs.283/- only. On this amount the applicant would be entitled to the full dearness allowance calculated on the amount of Rs.2602/- which was the revised notional pension of the applicant.

8. The controversy is very narrow. While the applicant wants the amount of the $\frac{1}{3}^{\text{rd}}$ pension restored calculated on the basis of the revised pension of Rs.2602/-, calculated on the date of order of restoration (i.e. after taking into account recommendation of V Pay Commission) the respondents have allowed $\frac{1}{3}^{\text{rd}}$ of the notional pension fixed as on 19.1.1988.

9. The OM dated 12.7.2000 has already been reproduced. It significantly provided "apart from payment of revised restored amount of $\frac{1}{3}^{\text{rd}}$ commuted portion of pension, applicant be also entitled to payment of dearness relief on full pension from the date of restoration instead of dearness relief on the revised restored amount of $\frac{1}{3}^{\text{rd}}$ commuted portion of pension". Now the words, "revised restored amount of $\frac{1}{3}^{\text{rd}}$ commuted portion of pension" requires interpretation. The pension which the applicant would get has two elements. First, revised restored amount of $\frac{1}{3}^{\text{rd}}$ commuted portion of pension and second the dearness relief on the full pension at par with the other Central Government pensioner. What is the 'revised restored amount of $\frac{1}{3}^{\text{rd}}$ commuted portion of pension' is the moot question. There is no controversy as to the entitlement of the applicant to receive dearness allowance on the amount of Rs.2602/- which is the amount of notional revised pension which the applicant would have received at the time of the

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13

order had he not opted for 100% commutation of pension in 1988. Applicant was entitled to restoration of $1/3^{\text{rd}}$ of the notional pension which was 100% commuted on his absorption in RITES. In other words, he was to receive notional pension of Rs.283/- as determined by the respondent. Counsel for applicant though submitted that $1/3^{\text{rd}}$ commuted notional pension would be Rs.286/- but does not raise dispute about the amount of Rs.283/- since a very long time has passed.

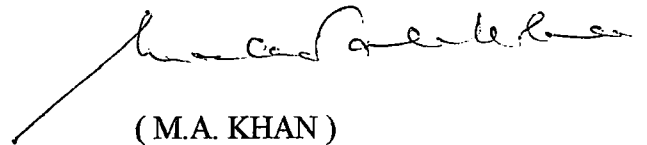
10. Respondents have not revised the pension of Rs.283/- which was notionally fixed as on 31.12.1995, i.e. before 1.1.1996 when the pension of pre 1.1.1996 were revised in accordance with the recommendation of the 5th Pay Commission. The OM talks about revised restored amount of $1/3^{\text{rd}}$ portion of pension. Applicant's contention that the notional pension fixed as on 19.1.1988 should first be revised in the light of the recommendation of the 5th Pay Commission and then $1/3^{\text{rd}}$ of it be restored and fixed as his pension, is devoid of any merit. At the same time, the amount of notional pension he would have got on 19.1.1988 has to be revised in accordance with the recommendation of the Pay Commission and the Government orders including the OM dated 12.7.2000 reproduced above, and ² ~~then~~ to be fixed on the date of the order. The OM dated 12.7.2000 uses the word "revised restored amount of $1/3^{\text{rd}}$ commuted pension." It does not speak of $1/3^{\text{rd}}$ amount of the revised restored pension. The formula, therefore, would not be $1/3^{\text{rd}}$ of Rs.2602/- which is the notional pension fixed on the date of the order which is the revised notional pension ^{on 19.1.1988} of the order but the formula would be $1/3^{\text{rd}}$ of the notional pension fixed as on 19.1.1988 and it would be revised by applying the same formula which is applicable to other pre-1.1.1986 retirees, as on the date of the order. Therefore, unrevised amount of Rs.283/- has not been fixed in accordance with OM dated 12.7.2000.

11. Accordingly, the OA partly succeed. The respondent is directed to revise the notional restored portion of pension, i.e., Rs.283/- at par with other Central Government pre 1.1.1996 retirees and determine it on the date of the order which in the present case is said to be 13.12.2003. In this revised restored amount of $1/3^{\text{rd}}$ commuted portion of pension, dearness allowance admissible on the amount of notional revised pension of Rs.2602/- will be added.



14

12. This exercise be done by the respondents within two months. Care shall be taken by the respondents that the amount of the revised restored 1/3rd portion of the pension of the applicant, thus, calculated would be at par with the amount of the pension which the pre 1.1.1996 retiree of the Central Government employee who are in receipt of pension of Rs.283/- p.m. as on 19.1.1988 would be paid. Parties shall bear their own cost.



(M.A. KHAN)
Vice Chairman (J)

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