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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A.No.2234/93

New Delhi, this the 30th day of September, 1994.

HON'BLE SHRI P.T.THIRUVENGADAM MEMBER(A)

Shri Anand Parkash Qanungo  
Asstt. Controller of Stores (Retd.)  
COFMOW, Tilak Bridge, New Delhi.

r/o C-6/80, Lawrence Road,  
Keshav Puram, Delhi-35.

..Applicant

(By Shri RK Kamal, Advocate with  
Shri S.K.Gupta, Advocate.

Vs.

Union of India, through:

1. General Manager,  
Northern Railways  
Baroda House,  
New Delhi-1.

2. Chief Personnel Officer  
Northern Railways,  
Baroda House,  
New Delhi-1.

3. Chief Adm. Officer (P)  
Central Organisation for  
Modernisation of Workshops,  
Indian Railways,  
Tilak Bridge,  
New Delhi.

..Respondents.

(By Shri R.L.Dhawan, Advocate)

ORDER (ORAL)

HON'BLE SHRI P.T.THIRUVENGADAM MEMBER(A)

The applicant was working as Senior Clerk in the Northern Railway in the office of the Controller of Stores. He was sent on temporary transfer to COFMOW at Tilak Bridge. It is admitted that COFMOW is a temporary railway organisation with no regular cadre of its own. The applicant joined this organisation in 1979 and was given promotions ahead of what he would have obtained in his parent cadre. The respective dates of promotions in COFMOW and in parent cadre are given under:-

	Date of Promotion	
	Regular basis on Northern Railway <u>(under NBR)</u>	Purely on adhoc basis in COFMOW
Head Clerk Rs.425-700 (RS) Rs.1400-2300 (RPS)	2-11-81	15-1-80
Asstt. Supdt. Rs.550-750 (RS) Rs.1600-2660 (RPS)	28-10-87	19-12-81
Supdt. Rs.700-900 (S) Rs.2000-3200 (RPS)	1-5-90	7-6-93
ACOS (Group B) Rs.2000-3500 (RPS)	-	6-11-90

The applicant retired on superannuation on 31-3-92 as Assistant Controller of Stores.

2. As regards pay fixation as ACOS, respondents have produced Annexure R-II and it is their averment that this pay fixation has been based on relevant Railway Board's instructions dated 31-12-85 Annexure R.I. As per the details shown at Annexure R.II the applicant was fixed at Rs.2525 plus 150 personal pay with effect from 21-11-90 and at Rs.2600 plus 75 rupees personal pay with effect from 1-11-91. These fixations are not disputed.

3. However, the main dispute is with regard to the calculation of emoluments/average pay for the purpose of settlement benefits. It is the contention of the respondents that for settlement benefit the pay to be reckoned is that pay which the applicant would have drawn in Northern Railway had he continued there and not the one which he had drawn in COFMOW. But it is the <sup>contention</sup> /

of the applicant that the calculation for retirement benefits should have been based on the actual pay drawn in COFMOW Organisation.

4. At the time of argument it was agreed that this is the limited issue on which the relief is sought. The learned counsel for the applicant referred to pages 14 and 15 of the OA in which a decision from Railway Board was sought on the same issue, though with reference to another case. The relevant correspondence between the Northern Railway and the Railway Board are reproduced as under:-

No.E(REP)III-83 RE8/5-8

Dated 1.8.1986

The General Manager  
Northern Railway, New Delhi

Sub: Payment of DCRG to Shri  
R.L. Arora, Ex officiating  
MEN/MTP, New Delhi.

Please refer to your Railway's D.O. letter No.724E/1534 EiiiA (Sett dated 25.7.1986 addressed to Shri V K Rao seeking clarification whether the pay drawn by Shri Arora in the construction wing of the MTP can be taken into account for the purpose of pensionary benefits. As per Rule 501 of the Manual of Railway Pension Rules emoluments for pensionary benefits shall mean the pay as defined in Rule 2003(21) R-II. Rule 2003(21)R-II defines the pay as the amount which the employee draws monthly as a pay in the substantive or officiating capacity. No indication is available in these Rules which debars the reckoning of the pay drawn by the employee against a work charged post before retirement for pensionary benefits. The payment of settlement dues of Shri Arora may, therefore, be decided accordingly unless there is any other authority that can be quoted, which restricts the counting of the pay drawn against a work charged post.

sd/- K Seshasayi  
Dy. Director, Estt(R) II  
Rly Board

-X-X-

Northern Railway

Headquarters Office  
Baroda House  
New Delhi

No.724 E/1534/EiiiA

dated 1st Aug 1986

The Secretary/Estt  
Railway Board  
New Delhi

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sub: payment of DCRG to Shri RL Arora  
Ex-officiating AEN/MTP New Delhi

Ref: Board's letter No.E(REP)III-83 RE8/5-8  
dated 1.8.1986.

In your letter under reference it has been mentioned that Rule 2003(21) R-II defines the pay as the amount which the employee draws monthly as a pay in the substantive or officiating capacity. It may, therefore be pointed out that Shri R.L.Arora was working as AEN/MTP on adhoc basis and not in officiating capacity. There were many senior to him who were working in lower grade in the Open Line though belonging to the cadre in which Shri R.L.Arora had his lien. If Shri Arora is paid pensionary benefit on the last pay drawn it will create an anomalous situation and there will be claims even for the serving employees in the same cadre for NBR or proforma fixation.

It is therefore, requested that this anomaly may kindly be brought to the notice of the Board and the matter got reviewed and instructions communicated to this Railway early.

Sd/-----  
for General Manager.

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No.E(REP) III-83ME8/5-8

New Delhi dated 16.9.1986

The General Manager  
Northern Railway  
New Delhi.

Sub: Payment of DCRG to Shri R L Arora  
Ex-officidating AEN/MTP New Delhi

Ref: Your office letter No.724 E/1534/Eiiia  
dated 1st Aug 1986.

The arguments put forth in your letter, referred to above are not correct. Claims regarding issue of NBR and pensionary benefits are governed by different sets of rules. The question of the seniors claiming NBR does not arise as NBR benefits are given only when a junior is promoted in his own cadre on regular basis and not outside his cadre. Apart from this, the pay drawn in an officiating capacity, even on ad-hoc basis, has to be taken into account for couting retirement benefits. In view of this, the decision regarding counting the last pay drawn by Shri Arora in the MTP already conveyed vide Board's letter of even number dated 1.8.1986 will stand. The payment of DCRG and pensionary benefit to Shri Arora may please be arranged urgently and a report sent to this office.

Sd/-K.Seshasayi  
Dy.Director, Estt(R)II  
Rly Board.

Thus, it is the contention of the applicant that MTP and COFMOW being similar temporary organisations the issue already stands settled with the interpretation given by the Railway Ministry. Actually, copies of the above letters were also circulated by Northern Railway Headquarters office on 22-8-87 to all the subordinate units (Annexure A.3 to OA) for keeping in view while arranging settlement dues of the employees retired under the circumstances explained therein.

5. The learned counsel for the respondents however, argued that as per rule 49 of the Railway Services (Pension Rules) 1993, the expression 'emoluments' is defined as under:-

"Rule 49. Emoluments: The expression

(a)"emoluments" for the purpose of calculating various retirement and death benefits, means the basic pay as defined in clause (i) of rule 1303 of the Code which a railway servant was receiving immediately before his retirement or on the date of his death: Provided that the stagnation increment shall be treated as emoluments for calculation of retirement benefits..."

The above rule draws reference to the definition of basic pay as defined in clause (i) of the rule 1303 in the Establishment Code (1987 Edition). The relevant rule 1303 reads as under:-

"1303(F.R.9) (21)(a) Pay- Pay means the amount drawn monthly by a Government servant as:-

(i) the pay other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity or to which he is entitled by reason of his position in a cadre;

(ii) .....

(iii) .....,"

It was argued by the learned counsel for the respondents that pay as defined in rule 1303 can only be the pay to which the applicant is entitled by reason of his position in a cadre and the adhoc benefits in COFMOW cannot count.

6. However, a reading of rule 1303 of Establishment Code, quoted supra, would bring out that the pay which the employee was drawing even in an officiating capacity has to be taken into account. It is not disputed that the post in COFMOW is also a post in the Railway Department and the applicant was working as ACOS on adhoc basis at the time of retirement. Hence to deny him the officiating pay for calculation of settlement benefits by invoking the expression "the pay to which he is entitled by reason of his position in a cadre" is not fair. Reckoning of the pay with reference to the cadre entitlement may be necessary in cases like where a person is on deputation and in this case the respondents have averred that the applicant was only on transfer and not on deputation.

7. The above interpretation gets corroborated by the note 6 under rule 49 of the Pension Rules:-

Note 6. Pay drawn by a railway servant while on foreign service shall not be treated as emoluments, but the pay which he would have drawn under the Railway, had he not been on foreign service shall alone be treated as emoluments".

Thus, this note 6 specifically excludes the pay drawn by a railway servant while on foreign service. A perusal of all other notes, namely note 1 to note 8 under Rule 49 brings out that there is no such exclusion with regard to person serving in a temporary railway organisation, which service

cannot be deemed as a foreign service.

8. This has been the interpretation given by the Railway Board in the letter dated 18.9.86 quoted supra.

9. As regards personal pay the learned counsel for the respondents drew attention to Rule 2544 of Establishment Code Volume II 1973 Edition.

"Allowances Reckoned for Pension"

2544. (C.S.R.486) Emoluments and Average Emoluments. The term "Emolument", 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;

(b) personal allowance, which is granted (i) in lieu of loss of substantive pay in respect of a permanent post other than a tenure post, or (ii) with the specific sanction of the Government of India, for any other personal considerations.

Note:- Personal pay granted in lieu of loss of substantive pay in respect of a permanent post other than a tenure post shall be treated as personal allowance for the purpose of this article. Personal pay granted on any other personal considerations shall not be treated as personal allowance unless otherwise directed by the President".

It was argued that personal ~~pay~~ in the case of the applicant in this DA shall not count for settlement benefits, in view of the specific exclusion, as envisaged in the note above.

10. It was further argued by the learned counsel for the applicant that at the time of updating of the Establishment Code in the year 1987, the chapter 25 of the 1971 edition of the code relating to Pension Rules was not taken up for review as a separate self-contained volume on Railway Pension Rules incorporating the vast changes in the rules and a large number of executive instructions issued on the subject since 1979 was being drafted. Such a separate volume on Railway Pension Rules was published in Nov 1993. The exclusion of Personal Pay for the purpose of settlement as envisaged in rule 2544 of 1971 edition of the Establishment code does not seem to figure in the 1993 Pension Rules. Even so, it was argued that the eligibility of personal pay for retirement purposes may have been reconsidered prior to 1993 and the case of the applicant in the OA has to be decided by the extant instructions as on 31.3.1992 when the applicant retired.

11. Since both sides could not clearly establish the rules position as on 31.3.1992 on the aspect of personal pay counting or not counting for pension purposes, I propose to direct the respondents to examine the issue separately and take follow up action as per rules.

12. In the circumstances, the OA is disposed of with the following directions:-

- (a) Settlement benefits of the applicant shall be calculated based on the basic pay of Rs.2525 from 21.11.90 and Rs.2600 from 1.11.91 and revised pension payment order issued within three months from the date of receipt of this order by the respondents.

(b) The arrears of settlement benefits based on the basic pay of Rs.2525 and Rs.2600 as above should be paid to the applicant within three months from the receipt of this order.

(c) The eligibility of the personal pay for the purpose of settlement benefits shall be decided within two months from the receipt of this order and if the applicant is eligible, consequential benefits should be extended to him within one month from taking such a decision. In case the respondents decide that the personal pay shall not reckon for settlement purposes a reasoned order should be given to the applicant within 2 months from the date of receipt of this order. The applicant is given liberty to challenge the aspect regarding personal pay separately.

No costs.

P. T. THIRUVENGADAM

Member(A)  
30-9-94

LCP