

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 721 of 1994

Allahabad this the 21st day of May, 2002

Hon'ble Mr.C.S. Chadha, Member (A)  
Hon'ble Mrs.Meera Chhibber, Member (J)

Jamuna Prasad Srivastava, aged about 75 years, Son of Late Shri Mahesh Nandan Srivastava, Retd.Senior Civil Engineer, Rly.Electrification, Allahabad, resident of C-41 Kareilly , Allahabad.

By Advocate Shri Ram Kumar Nigam Applicant

Versus

1. Union of India through Chairman, Railway Board, New Delhi.
2. General Manager, Northern Railway, Baroda House, New Delhi.
3. General Manager(RE) Railway Electrification, Allahabad.

Respondents

By Advocate Shri Prashant Mathur

O R D E R ( Oral )

By Hon'ble Mr.C.S. Chadha, Member (A)

The case of the applicant is that he was promoted from the rank of Assistant Engineer on an ad-hoc basis as Divisional Engineer w.e.f. 08.07.74 and he retired from that post on 30.11.77. While officiating in an ad-hoc capacity as Divisional Engineer, he was granted the senior scale of pay available to a regular Divisional Engineer, which

was Rs.1100-1600. However, at the time of retirement the department discovered that his pay had been ~~xxx~~ wrongly fixed. According to the extant rules, persons who were promoted in an ad-hoc capacity were supposed to draw only the basic pay of the Junior scale as applicable to them from time to time plus an officiating pay of Rs.150/- per month, therefore, shortly before his retirement the so called excess payment was recovered from the applicant, but later, on the representation and considering the fact that he was about to retire, as a special case, the so called overpayment was refunded.

2. The applicant claims that in view of the fact that he continued to draw the pay in the scale of Rs.1100-1600 right upto the date of retirement and in view of the fact that the pension is determined on the average pay of the last 10 months, his pension should have been fixed on the basis of actual pay drawn and not on the notional pay which the railways <sup>to</sup> discovered should have been paid to him by virtue of the rules applicable at the time of his promotion. Learned counsel for the applicant has also drawn our attention to a letter of the Chief Engineer Electrification, Allahabad at annexure A-13 in which he recommended that since the Railway Board had decided to refund the over payment from settlement dues of the officer concerned ipso facto the Railway Board also approved that he should have been paid the pension as having drawn salary of Rs.1600/- per month in last 10 months preceding his retirement. Learned counsel for the respondents

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has submitted that this is not binding and the decision making body is the Railway Board. We have no doubt that the decision making body is the Railway Board but it is that Board itself which agreed to allow the applicant to retain the salary of Rs.1600/- per month.

3. Learned counsel for the respondents also argued that the relief granted to the applicant vide O.A.No.596/98 was for granting the pension according to extant rules and since the extant rules permitted the pay to such ad-hoc promotees at the rate of pay in the Junior Scale plus special pay Rs.150/-, the pension granted to the applicant was correct. The fixation of pension is not determined by what should be the notional pay of the applicant at the time of retirement. The rules for fixation of pension clearly lay down that the pension has to be determined on the basis of average pay of last 10 months salary actually drawn. In view of the fact that the actual salary paid was Rs.1600/- and the same was permitted to be retained by the Railway Board, we cannot agree that the pension of the applicant must be fixed on a notional pay according to the rules applicable at the time of promotion of the applicant. Learned counsel for the respondents could not quote any rule which would permit fixation of pension on such notional pay.

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4. In view of the circumstances mentioned above and in view of the fact that the Railway Board permitted the applicant to retain the pay of Rs.1600/- actually drawn by him, his pension should -have been fixed on the basis of that pay. The O.A. is therefore, allowed. The impugned order is quashed. The respondents are directed to fix his pension on the basis of actual salary drawn by the applicant <sup>le</sup> on the last 10 months i.e. Rs.1600/- per month. This order may not be followed as a precedent because of the special circumstances under which the said higher pay was allowed to be retained by the applicant and also keeping in view the fact that the applicant is now 87 years old and cannot be further harassed by further litigation. The arrears in accordance with the above order may be paid to the applicant within a period of 4 months from the date of copy of this order is filed. No order as to costs.



Member (J)

/M.M./



Member (A)