

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 10th day of October, 2000.

CORAM :- Hon'ble Mr. Rafiq Uddin, Member-J

Original Application No. 1073 of 1995

1. K.P. Srivastava, S/o Late J.K. Lal
R/o Quarter No. 111, Vikash Pradhikaran Colony,
P.O. Basant Nagar, Ram Nagar, Varanasi.
2. Seema Srivastava, unmarried daughter of
K.P. Srivastava, R/o- 111, Vikash Pradhikaran
Colony, P.O.- Babsabt Nagar, Ram Nagar,
Varanasi.

..... Applicants.

Counsel for the applicants:- Sri Sajnu Ram
Sri S.K. Mishra
Sri P.K. Kashyap

V E R S U S

1. Union of India through the General Manager
Eastern Railway, Fairlie Place, Calcutta.
2. Divisional Railway Manager, Eastern Railway
Varanasi.

..... Respondents.

Counsel for the respondents:- Sri G.P. Agrawal

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O R D E R (Oral)

(By Hon'ble Mr. Rafiq Uddin, J.M.)

The applicant who retired as Assistant Traction Loco Controller (A.T.L.C.), Eastern Railway, Mughalsarai on 31.08.94, has filed this O.A seeking direction to the respondents to give retiral benefits on the basis of his basic pay of Rs. 2300-00 per month. The applicant further seeks that 50% of basic pay should also be added for calculating his retiral benefits. The applicant has also claimed that the amount of Rs. 26,252/- deducted from his gratuity be paid to him. The applicant also claims that first class railway pass should also be issued to Miss. Seema Srivastava being unmarried daughter and for payment of the aforesaid amount with the arrears.

2. The facts of the case are that the applicant was posted as A.T.L.C on 01.09.86 after he was declared medically unfit in the cadre of Electric Shunter. Further, coming in to force the recommendation of the 4th Pay Commission, pay of the applicant was fixed in the scale of Rs. 2000-3200 and he was getting Rs. 2300/- as basic pay on 31.10.91. However, at the time of retirement pay of the applicant has been shown in the certificate of retirement as RS. 2180/- per month instead of Rs.2300/- and his pension, gratuity, leave salary and other retiral benefits have been paid to him treating his pay Rs. 2180/- per month. The applicant claims that all retiral benefits should have been paid to him on the basic pay of Rs. 2300/- per month.

2. The applicant also states that he was Supervisor in the running cadre and per the direction of the Railway Board, 50% of the basic pay should have been added for the purpose of calculating of retiral benefits including pensionary benefits etc. but the respondents had added

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only 20%. Thus the applicant is legally entitled to the retiral benefits on the basic pay of Rs. 2300-00 + Rs. 1150 i.e. Rs. 3450/-.

3. I have heard Sri S. Ram, learned counsel for the applicant and Sri G.P. Agrawal, learned counsel for the respondents.

4. It has been contended by the learned counsel for the respondents on the basis of pleadings containing in the counter affidavit that the applicant was previously Engine Turner and was de-categorised and declared unfit in the lower medical category on 04.03.86. The applicant himself had given willingness for alternative appointment as A.T.L.C in Gr. Rs. 425-640 which existed prior to implementation on 4th Pay Commission. In view of the recommendation of the 4th Pay Commission, some complication in fixing of the pay of the applicant occurred and provisionally his pay was fixed at higher scale. Later on his pay was finally fixed in August, 1994 at the rate of Rs. 2180/-per month. It is also urged that the applicant is not entitled for addition of 50% running benefit for pensionary benefits because he is not holding the post of running staff. It is thus claimed that the pay of the applicant has been re-fixed in lower scale at the time of retirement and without giving him opportunity in this regard. It is not pleaded or alleged by the respondents that the pay of the applicant was fixed at higher scale on the basis of ^{mis-}representation made by the applicant. Thus in my opinion the action of the respondents for reducing the basic pay of the applicant at the eve of his retirement and without giving him opportunity is arbitrary and hence deserves to be quashed. Similarly the recovery

of Rs. 26,252/- from gratuity of the applicant is also arbitrary and violation of natural justice. It has been held by the Apex Court in the case of D.V. Kapoor Vs. U.O.I. & ors., A.I.R 1990, s.c. 1923 that withholding gratuity payable to the applicant after his retirement as measure of punishment ^{is not justified} because right to gratuity is statutory right and the President is not empowered to withhold gratuity after retirement. Therefore, the applicant is entitled for all the pensionary benefits including benefit of leave encashment etc. on the basis of his basic pay at the rate of Rs. 2300/- per month. The applicant has also prayed for payment Rs. 26,252/- which has been deducted from his gratuity.

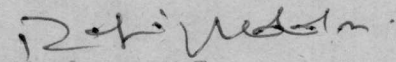
5. As regards addition further 50% of the basic pay for the purpose of calculating of retirement benefits, the learned counsel for the applicant has referred to Clause 'C' para 94 of I.R.E.M Vol. I which provides that while determining arrears for the purpose of calculating of retiral benefits, the running staff shall paid dearness allowance as admissible from time to time on their basic pay plus 30% there of in the case of running staff who retired prior to 01.08.81. It ^{however} ^{20%} admitted that the applicant has also been allowed by the respondents for this purpose ^{But} there is no provision of addition of 50% in the aforesaid rule.

6. It is also not disputed by the applicant ^{that} after his de-categorisation in lower medical category on 04.03.86, the applicant was ^{not} in the cadre of running staff. Therefore, the question of addition of Rs. 50% of basic pay does not arise and the claim of the applicant on this ground fails. ^R

7. As regards the claim of the applicant for direction to the respondents to issue the first class railway pass to his unmarried daughter, the applicant has not applied to the respondents so they have not refused his claim for this purpose. The applicant is therefore is at liberty to apply to the appropriate authority for issuance of the required pass because the pleadings of the applicant on this point are silent and vague.

8. Accordingly the O.A is partly allowed, and the respondents are directed to determine and calculate the pensionary benefits of the applicant treating his last pay at the rate of Rs. 2300/- per month. The respondents are also directed to refund the sum of Rs. 26,252/- deducted from the applicant within three months from the date of communication of this order.

There will be no order as to costs.


Member - J

/Anand/