

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

...

original Application No. 1513/2002

this the 13th day of July'2004.

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

S.N. Dwivedi, S/o late Raghunath Dwivedi, aged about
82 years, R/o Village Umapur post office Babhani Hethar,
District Allahabad.

Applicant.

By Advocate : Sri A.B.L. Srivastava.

Versus.

1. Union of India through the Chairman, Railway Board,
Rail Bhawan, New Delhi.
2. The Secretary to Government of India, Department of
pension & pensioners Welfare, Sardar Patel Bhawan,
New Delhi.
3. The General Manager, Northern Railway, Baroda House,
New Delhi.
4. The Divisional Railway Manager, N.R., Allahabad Division
Allahabad.
5. The Senior Divisional Accounts Officer, N.R., Allahabad
Division, Nawab Yusuf Road, Allahabad.

Respondents.

By Advocate : Sri A.K. Gaur.

O R D E R

By this O.A., applicant has sought the following
relief(s):

- "(a) to quash the impugned orders dated 29.12.99
8.5.2000 and 21.11.2000 (Annexure A-1, A-2 and
A-3) which has already been quashed by other
Benches of this Hon'ble Tribunal.
- (b) to quash and set-aside the pension payment order
issued in April'2002 reducing the pension from

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Rs.5528/- to 3328/- retrospectively from 1.1.96 (Annexure A-5) which becomes non-existence in pursuance of the order and direction of other benches of this Hon'ble Tribunal.

(d) Direct the respondent to restore the revised pension payment order dated Oct.1999 issued in compliance of the directions of Hon'ble Supreme Court with a further directions to refund the amount recovered alongwith interest @ 18% per annum.

(d) Direct respondents to pay the Medical allowance @ Rs.100/- per month from 1.12.1997 onwards.

(e) Award the cost of this application compelling the applicant to resort to litigation.

(f) Any other relief, as may be deemed fit in the facts and circumstances by this Hon'ble Tribunal."

2. It is submitted by applicant that applicant retired on 31.5.1979 while serving as Guard-'A' Special and belonged to the category of Running Staff, who were entitled to count 75% of his basic pay as Running allowance, which was treated to be as emoluments for calculation of pension as per rule 2544 (g) (i) (CSR-486) of Railway Establishment Code Vol.II as it stood upto 4.12.1988. As per rules, prior to amendment 5.12.1988, the term emoluments defined for the purposes of terminal benefits was the basic pay the Railway servant had received immediately before his retirement or of the date of his death. Since he retired before 5.12.1988, the pay emoluments included running allowance @ 75% of the basic pay, which was later revised to 55% for those employees who retired after 5.12.1988.

3. It is submitted by applicant that this situation was already settled by Hon'ble Supreme Court in the case of C.R. Rangadhamiah & others reported in ATJ 1997(2) SC 514. However, thereafter respondent no.1 issued a letter dated 29.12.1999 stating therein that running allowance does not form part of the pay, therefore, he issued letters to the respective Banks and directed to pay pension in accordance with the revised formula stated in the order dated 29.12.1999. As a result of this letter, even though applicant's pension was fixed at Rs.5528/- vide PPO dated


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October '99 (page 32), but vide PPO dated April '2000, his pension was reduced to Rs.3328/- that too without giving him any show-cause notice or giving any opportunity to the applicant, therefore, he had no other option, but to file the present O.A.

4. During the course of pendency of the O.A., applicant filed MA No.3719 of 2003 stating therein that as per Annexure CA-2, applicant's pension has again been raised to Rs.3954/- w.e.f. 1.1.1996, but none of the revised pension orders show the calculation as to how amount has been arrived at or why the amount of pension has been reduced and again enhanced to Rs.3954/-, therefore, he has prayed that respondent No.5 may be directed to show detailed calculation of the re-computed pension for each pension order so that he may defend his case properly.

5. It is submitted by applicant that the issue has already been adjudicated upon by various Benches of the Tribunal namely Full Bench, Principal Bench, Chandigarh Bench and also Allahabad Bench of the Tribunal. He has submitted that against the judgment given by Principal Bench in the case of S.R. Dhingra & 23 others with regard to fixation of pension by including running allowance, respondents had filed writ petition but no stay was granted and now respondents have decided to implement the judgment of S.R. Dhingra. He has, thus, submitted that applicant is also entitled to the same benefits as such O.A. may be allowed with costs.

6. Respondents have opposed this O.A. They have explained that applicant's pensionary benefits was raised to the tune of Rs.630 + D.A. with effect from 1.6.1979 after taking into account 75% of pay as running allowance in the wake of the decision of the Government in implementation of the judgment of Hon'ble Supreme Court in Civil Appeal No. 4174-82 of 1995 communicated vide Railway Board's letter



NO. PC III/92/CTC/1/2 dated 14.10.1997 filed as Annexure-9 to the O.A. The pension was also consolidated to the tune of Rs. 1295 + Additional Pay as Rs.15/- with effect from 1.1.1986 in the revised PPO. They have further submitted that Railway Board's letter dated 29.12.1999 filed as Annexure A-1 to the O.A. is not aimed at reducing the recomputed pension as ordered by Hon'ble Supreme Court. The instructions contained in Board's letter dated 29.12.1999 are related to the implementation of the recommendations of Vth Central pay Commission in respect of pre'86 retirees. It is pertinent to mention here that the benefits of revised pension, if any, would accrue only w.e.f. 1.1.1986. On the other hand, the benefit of pension recomputed after taking into account 75% of the pay as pay element in lieu of the running allowance in terms of the judgment of Hon'ble Supreme Court, implemented by Board's letter dated 14.10.1997 and 8.7.1999 and further revised from time to time as per extant instructions will continue to be admissible to the retired running staff from the date of retirement upto to the date of death and to the eligible members of the family so long they are alive. Accordingly, the pension of the applicant has been consolidated and revised to the tune of Rs. 3954 w.e.f. 1.1.1996 in reference to his pension Rs.1310 w.e.f. 1.1.1986 as authorised in the revised PPO No. PSB/200 dated 7.1.1999 in terms of instructions contained in DOP and PWF no. 45/86/PW(A) part.II dated 27.10.1997 filed as Annexure-12 to the O.A. The revised pension payment order no. 0179034323 dated .1.2003 authorising pension to the tune of Rs. 3954 w.e.f. 1.1.1996 has been issued to the bank concerned. It is also submitted that the instruction contained in Board's letter dated 29.12.1999 (filed as Annexure A-1 to the O.A.) are in accordance with the instructions contained in para 2 of DOP and PWS office memorandum dated 10.2.1998 regarding revision of pension of pre 1986 pensioner/family pensioner, in terms of which



the notional pay fixed as on 1.1.1986 as per the pay fixation formula duly taking into account the element of running allowance, is to be treated as average pay and last pay drawn for the purpose of calculating pension and family pension respectively. The DOP and PW in their office memorandum dated 10.2.1998 have further clarified that no more additional elements shall be ^{added} to the pay notionally revised as on 1.1.1986. It is further submitted that the intention behind these instructions were to club all the pre 1986 pensioners together as on 1.1.1986 irrespective of the category to which they belonged at the time of retirement so that the wide disparity in the amount of pension admissible to pre-1986 pensioners who retired during different spell would come to an end and they would start drawing pension based on the corresponding IVth Central pay Commission scale of pay and all such pensioners would be treated alike those who retired on or after 1.1.1986 for the purpose of consolidated pension as on 1.1.1996 as recommended by Vth Central Pay Commission. Lastly, it is submitted that the applicant may submit his claim for payment of fixed medical allowance to the tune of Rs.100/- per month w.e.f. 1.12.1999 on the prescribed form to his bank concerned for payment. They have, thus, submitted that there is no merit in the O.A. the same may, accordingly be dismissed.

7. Counsel for applicant has placed on record number of judgments on the point as to how pension was computed in case of those employees who had retired between 1.3.1973 to 5.12.1988 and they have also dealt with Railway Board's letter dated 29.12.1999. In the judgment given by Hon'ble Supreme Court in the case of C.R. Rangadhamaiah (supra) the apex court held that as per Rule 2301 of the Indian Railway Establishment Code, it is prescribed that the claim of railway servant to pension is regulated by the rules in force at the time when he resigns or is discharged from the service of Government. The respondents, who retired

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after 1.1.1973, but before 5.12.1988 were, therefore, entitled to have their pension computed on the basis of Rule 2544 as it stood on the date of their retirement. Under rule 2544 as it stood prior to amendment by the impugned notification, pension was required to be computed by taking into account the revised pay to be calculated on the basis of the maximum limit of running allowance at 75% of the other emoluments, including the pay as per the revised pay scales under the 1973 rules. It was further held that the Full Bench of the Tribunal has rightly taken the view that the amendments that were made ~~xxxx~~ in Rule 2544 by the ^{impugned} notification dated 5.12.1988 to the extent the said amendments have been given retrospective effect so as to reduce the maximum limit from 75% to 45% in respect of the period from January 1, 1973 to March 31, 1979 and reduce it to 55% in respect of the period from April 1, 1973 to March 31, 1979 are un-reasonable and arbitrary and are violative of the rights guaranteed under Articles 14 and 16 of the Constitution. The said W.p.s filed by the Railway Administration were accordingly dismissed. It was pursuant to C.R. Rangadhamaiah's case (supra) that running allowance was taken into account while computing the pensionary benefits for calculating the emoluments.

8. In the case of S.R. Dingra and 23 others, Railway Board's letter dated 29.12.1999 was challenged and after a detailed discussion and reference to various judgments given on the point of various courts, it was held by the principal Bench of the Tribunal as under :

"Having regard to the discussion made above, we find that it is obligatory on the part of the respondents to update the pay of the applicant as if they were in service on 1.1.1986. For this purpose, as per the relevant instructions, they will take into consideration the average emoluments on the basis of their average pay, DA DP and IR which the applicants 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 in this manner as on 1.1.1986, they will add the element of 75% of running

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allowance. The sum so arrived at shall from the basis for fixing pension as on 1.1.1986 as per relevant rules and instructions. Accordingly, we quash and set-aside the impugned RBE No. 318/99 dated 29.12.1999 (Annexure R-8) and direct the respondents in terms of the observations made above. The respondents shall also refund the recoveries made, if any and if due, from the pension of the applicant or reduction in their pension. The respondents shall implement these orders within a period of three months from the date of communication."

9. It is seen from the letter placed on record by the counsel for the applicant that the respondents have taken a decision to implement the judgment given in S.R. Dhingra's case subject to the out-come of the W.P. pending before the Delhi High Court, meaning thereby that the applicants, therein, would be getting the benefits as ~~on~~ indicated in para / (supra). In the instant case, respondents have tried to explain the letter dated 29.12.1999, whereas it has already been quashed and set-aside by the principal Bench in the case of S.R. Dhingra as is seen from para 8 quoted above. Admittedly, as per respondents' case applicant's pension has been reduced pursuant to the Railway Board's instructions issued from time to time, including the letter dated 29.12.1999. Once the letter has already been quashed and set-aside by principal Bench, naturally the present O.A. , in hand, deserves to be decided on the same line as in the case of S.R. Dhingra. Apart from it, there is another aspect of the matter, which needs to be taken into consideration while deciding the present O.A. namely non-compliance of the principles of natural justice. Admittedly, in the year 1999, respondents have fixed applicant's pension at Rs. 5528/-, which was reduced in April 2000 to Rs.3328/- and again enhanced ~~to~~ to Rs.3954/-, but without giving any details with regard to calculation as to how the said amount has been arrived at.

10. The grievance of applicant is ^{It is} valid ~~and~~ once his pension had been fixed pursuant to the judgment given by the apex court in the case of C.R. Rangadhamaiiah & others the same could not have been reduced without putting him on notice especially when there have been so much litigation on

the issue and number of judgments have already been passed by different Benches of the Tribunal. More-over, person has a right to know the basis on which his pension has been calculated so that he may give a effective representation to the authorities concerned, if he ^{is} ~~is~~ aggrieved. In the instant case, admittedly, neither applicant was given the calculation as to ^{he} how his pension has been reduced from time to time, nor ~~has~~ been given any show-cause notice before reducing the pension. The law is well settled by now that no order which has a civil consequences should ~~not~~ be issued without giving a show cause notice to the person concerned.

11. In view of the above discussion, I am satisfied that the ^{revised B} ~~proposed~~ PPO issued to the Bank straight-away whereby applicant's pension has been reduced to Rs.3328 and later on enhanced to Rs.3954/- cannot be sustained in law, nor can any recovery have been made from him without giving him a show-cause notice, therefore, PPOs and the orders by which respondents have tried to justify their action are quashed and set-aside. Since the principal Bench has already decided the matter finally, I do not think it would be required to remit back the matter to the authorities especially because the respondents have already decided to implement the said judgment. Therefore, this O.A. is also disposed off in terms of the judgment dated 22.1.2002 passed in O.A. no. 2425/2000. The operative portion of the said judgment has already been quoted in para 8. . It goes without saying that the order shall, however, be subject to out come of the W.p. which has already been filed by Railway Administration in Delhi High Court because ultimately what ever ^{is} ~~is~~ decided by High Court of Delhi, shall be binding on both the parties. Therefore, this O.A. stands disposed off in terms of judgment given in principal Bench in the case of S.R. Dhingra & others, respondents shall implement the order in terms of S.R.

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Dhingra's case in the case of the applicant also within a period of three months from the date of communication of this order.

12. In view of the above, the O.A. stands disposed off with no order as to costs.



MEMBER (J)

GIRISH/-