

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 338 of 2003

Allahabad this the 13th day of August, 2004

Hon'ble Mr. Justice S.R. Singh, V.C.

W.A. Khan, aged about 65 years, S/o Late Shri Mohim Khan, R/o Village & Post Bhenwapur, Post Isur, District Sultanpur (U.P.), presently residing at C/o Shri Sultan Khan, 107 Nanakganj, Sipri Bazar, Jhansi.

Applicant

By Advocate Shri Rakesh Verma

Versus

1. Union of India through the General Manager, Central Railway, Chhatrapati Shivaji Terminus, Mumbai.
2. The Divisional Railway Manager, Central Railway, Jhansi.

Respondents

By Advocate Shri S.K. Anwar

O R D E R ( Oral )

While the applicant was working as Chargemen-B in the scale of Rs.1400-2300, in which his basic pay was Rs.1850/-, he was served with a charge memo, which ultimately resulted in an order of punishment of compulsory retirement dated 17.01.1996. The respondents, it appears, proceeded to fix retiral benefits of the applicant as if his basic pay was Rs.1800/- at the time of his compulsory retirement. This is evident from the Service Certificate dated 10/04/87, a copy of which has been annexed as annexure A-4 to the O.A. The grievance of the applicant is that at the relevant time, he was working on the post of Chargeman 'B' in the scale of Rs.1400-2300/- on the basis of his ad hoc appointment though permanent lien was on the post of Skilled Fitter



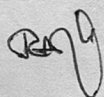


Grade Rs.1320-2040. The question involved is that whether applicant's retiral benefits, pension etc. should be fixed taking his basic pay as Rs.1850/-, which he was drawing at the time of his compulsory retirement in the scale of Rs.1400-2300 or Rs.1800/- in the scale of Rs.1320-2040.

2. Shri Rakesh Verma Counsel for the applicant submits, relying upon a decision of the Tribunal in O.A.No.453/99 Shyam Lal Vs. U.O.I. & others decided on 30.01.02, that the applicant is entitled to fixation of his retiral benefits by taking his basic pay at Rs.1850/- which he was getting at the time of retirement. He has also placed reliance on the Railway Service (Pension) Rules, 1993, which provides that average emoluments for the purpose of determination of various retiral benefits, shall be determined with reference to the emoluments drawn by the railway servant during the last 10 months of his service. Rule 51 of the said Rules provides for Superannuation Pension while Rule 52 provides for Retiring Pension, to a Railway servant who retires or has retired before attaining the age of compulsory retirement in accordance with the provisions of Rules 66 and 67 of the Railway Service (Pension) Rules and Rule 1802 of Indian Railway Establishment Code.

3. Shri S.K. Anwar, Counsel for the respondents on the other hand, submits that in view of Rule 49 of Railway Service (Pension) Rules, 1993 read with F.R.9 sub rule 21 A, the applicant is not entitled to fixation of his retiral benefits on the basis of the pay that he was drawing at the time of retirement from a post on which he was working on ad hoc basis.

4. I have given my anxious consideration to the submissions made across the bar.





5. Clause 21(a) F.R. 9 defines pay, which means an 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; and
- (ii) overseas pay, special pay and personal pay;
- (iii) any other emoluments which may be specially classed as pay by the President.

6. It is submitted by Shri S.K. Anwar that although the applicant was working on ad hoc basis in the scale of Chargeman 'B' but that would not be in "Officiating capacity" so as to attract FR 9(1). Shri Anwar has placed reliance on F.R.19 which defines word 'Officiate' as under :-

(19) Officiate - A Government servant officiates in a post when he performs the duties of a post on which another person holds a lien. The Central Government may, if it thinks fit, appoint a Government servant to officiate in a vacant post on which no other Government servant holds a lien."

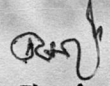
7. It is not disputed that no person was holding lien on the post held by the applicant at the time of his retirement. It is also not disputed that the applicant was performing the duties of the post of Chargeman Grade 'B' on which he appointed on ad hoc basis in the scale of Rs.1400-2300 by the competent authority though he was not regularised on that post but that by itself, in my opinion, does not mean that the applicant was not working on the post of Chargeman Grade 'B' in the officiating capacity within the meaning of F.R.21(a)(1).





8. In my opinion, Shyam Lal (supra) was similarly circumstanced and I am of the view that retiral benefit of the applicant should be fixed within 3 months in the manner in which the retiral benefits of Shyam Lal has been fixed pursuant to the direction given in O.A. No. 453 of 1999 Shyam Lal Vs. U.O.I. and others. It is further made clear that if the Tribunal's order dated 30.01.2002 in O.A. No.453/99 has been set aside by any superior Court, it would be open to the respondents to follow the Judgment of Superior Court.

There will be no order as to costs.

  
Vice Chairman

/M.M./