

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Dated: This the 8th day of oct 2010

Original Application No. 1313 of 2006Hon'ble Mr. S.N. Shukla, Member (A)

Prabean, S/o late Sri Sukhey, R/o Adarsh Nagar, Gali No. 10-A,  
 Najibabad, Distt: Bijnor UP.

..... Applicant.

By Advocate: Sri J.N. Singh

V E R S U S

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Moradabad Division, Moradabad.
3. Senior D.A.O. Northern Railway, Moradabad.

..... Respondents.

By Advocate: Smt. Sikha Singh

O R D E R

This OA has been filed seeking the following reliefs:-

- i. *issue a writ, of certiorari quashing and modifying the Revised Pension payment Advice order dated July 2006 (Annexure No. 6 to the OA) issued by respondent No. 3.*
- ii. *issue an order and direction to the respondents for taking into consideration the notional pay of last then months as with drawn salary by the applicant for fixation of last pay scale of the applicant for giving the benefit of notional increment and promotion as directed to the Hon'ble Tribunal by its order dated 16.07.2004.*
- iii. *issue a direction to the respondents to pay arrears of the pension amount with interest accordingly to the applicant.*
- iv. *issue any writ, order, direction as this Hon'ble Tribunal deems fit and proper in the circumstances of the case.*
- v. *award cost to the applicant of this Original Application"*

1  
 23  
 —

2. This OA emanates as a consequence of order dated 7/10.10.2005 issued from the office of Divisional Railway Manager, Northern Railway, Moradabad, which reads as under:

“इस कार्यालय के समसंब्यक पत्र दिनांक 19.07.2005 की निरन्तरता में सूचित किया जाता है कि वाद संख्या 21/28 में पारित निर्णय के लाभार्थ निम्नलिखित वादी ..... को भी वाद सं 226/87 454/87 व ...09/87 की भाँति दिनांक 1.1.84 से प्रोफार्मा फिक्सेशन के आधार पर पी0डब्ल्यू0एस0 वेमात्र 4500-7000 में पदोन्नति किया जाता है।

1	श्री महर सिंह	पी0 डब्ल्यू0एस0	बिजनौर
2	प्रवीन	““““““““““	न्जीवाबाद
3	रमेश	““““““““““	धामपुर
4	आनन्द पाल सिंह	““““““““““	राजा का वहपुरा

वास्तविक वेतन निर्धारण इस कार्यालय के द्वारा जारी पदोन्नति आदेश दिनांक 19.07.05 से ही देय है। उपरोक्त कर्मचारियों का वेतनमात्र 4500-7000 में वेतन निर्धारण कर इस कार्यालय को अवगत कराये।”

3. The applicant was an employee of the Railways stood promoted to the post of PWS in the scale of Rs. 4500-7000, w.e.f. 01.01.1984 on proforma fixation basis. However, as per order actual pay fixation was to be effective from 19.07.2005 only.

4. The applicant retired on superannuation on 31.07.2005 while issuing a revised pension payment advice order for calculating the amount of pension payable, the respondents worked out the salary drawn for the last 10 months for determining the pension as indicated in the following para.

5. The stand of the respondents is demonstrated by reproducing para 8 of the Counter Affidavit which reads as under:-

“8. The applicant was promoted against the post of PWS in Grade Rs. 4500-7000 w.e.f. 23.7.2005 as per direction of Hon'ble CAT, Allahabad in OA No. 21/88 and his pay was fixed Rs. 6750/- He was superannuated from services on 41.7.2005 as such he had been on the promoted post in Grade Rs. 4500-7000 only for 09 days. Before his promotion he was working as mate in Grade Rs.

1  
सं

3050-4590 and was drawing basic pay Rs. 4510. The calculation of pension was made as per average pay of last 10 months as per calculation given below: -

Period	Months	Days	Last pay	Total pay	DP (50% of last pay)	Grant Total
1.10.04 to 31.12.04	03	-	4430/-	13290.00	6645.00	19935.00
1.1.05 to 22.7.05	06	22	4510/-	30261.00	15130.00	45391.00
23.7.05 to 31.7.05	-	09	6750/-	1959.67	974.83	2939.50
	09	31				68266.00

10 months average pay =  $68266.00/10=6826.60$

Accordingly his pension was rightly fixed @ Rs. 3362.00 + Relief.

The settlement dues have been made accordingly & Pension has been revised through PPO No. 0105080324."

6. The case of the applicant on the other hand is that his average pay for the last 10 months should have been worked out in the notional manner by assuming his date of promotion w.e.f. 01.01.1984 and then determining his notional pay w.e.f. 01.10.2004 onwards and ending with 31.07.2005.

7. In support of the contention of the applicant learned counsel for the respondents placed reliance on the judgment of **N. Srinivasan vs Union of India : 1994 (3) SLR 589**. Some of the relevant paragraphs of the above order are reproduced as under: -

*"the next question that arises is regarding the fitment for the purpose of salary \*\*\* It is, therefore, reasonable that the appellant should be fitted into the scale of pay at a point where full notional seniority which he would have been entitled to, had the right thing been done at the right time, is recognised. Plainly put, he will be drawing a salary on 20<sup>th</sup> December 1967 on the basis of a notional appointment as traffic inspector as on 1<sup>st</sup> January, 1959. This will govern the salary part of his service from 20<sup>th</sup> December, 1967."*

The Court further observed that –

*" We make it clear that while seniority is being notionally extended to him from 1-1-1959, the appellant will*

1  
CSV

not be entitled to any salary quo traffic inspector prior to 20<sup>th</sup> December, 1967. However, he will be entitled to salary on the terms indicated above from 20<sup>th</sup> December, 1967, as traffic inspector, that is to say, he will be eligible to draw the difference between what he has drawn and what he will be entitled to on the basis we have earlier indicated in this judgment."

.....  
 13. In the case of Paluru Ramakrishniah and others v. Union of India and another, 1989 (10) ATC 378 : [1989 (2) SLR 202 (S.C.)] their Lordships of the Supreme Court approved a passage from the judgment of the Madhya Pradesh High Court .....

14. It is seen from the above that their Lordships approved of the service rule that where there is no work, there will be no pay. Since the applicants did not put in any work as Executive Engineer before their superannuation, they would not be entitled to any enhanced pay for the period. Undoubtedly their pension would be refixed on the basis that they were holding the post of Executive Engineer on 5-11-1976. We have already held that they would be entitled to the consequential benefits arising out of the refixation of their pension such as enhanced pension, gratuity, encashment of leave and also enhanced value of commutation of pension.

15. The decision of S.Krishnamurthy v. General Manager, Southern Railway (supra) lays down a law which is contrary to the view taken by the Chandigarh and New Bombay Benches of the Tribunal. We will also refer in this context to K.K. Agrawal v. Union of India and others, (O.A. 1108 of 1988) decided by one of us (Hon'ble Sri B.C. Mathur) sitting singly at the Principal Bench. He took the view that the applicant therein was not entitled to the grant of arrears of pay and allowances but was entitled only to get a revision of pension on the basis of notional increments. The claim for arrears of salary was negatived since the applicant had never worked at any time as Executive Engineer.

.....  
 20. Going by the above dictum of the Full Bench the applicant would not therefore be eligible for arrears of pay and allowances in the higher post consequent upon the order of proforma promotion. However, he would be entitled to the proforma fixation of pay in the higher post as on the dates of his promotion with consequential increments on notional basis from the new dates and to re-fixation of his pension on the date of his superannuation basis on the above notional fixation of pay in the promotional posts. He is therefore entitled to arrears of pension and other pensionary benefits including difference in gratuity, encashment of leave and also enhanced value of commutation of pension as held by the Full Bench."

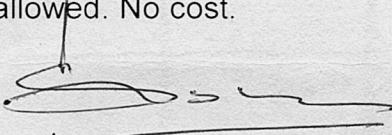
8. The ratio laid down comes out clearly in the last para No. 20 quoted above, that is to say that the applicant is entitled for arrears of pension and other pensionary benefits including difference in

1  
 8/11

gratuity, leave encashment and also enhanced value of commutation of pension by working out his pay on notional basis by providing for increment etc for each year of service starting from the date of his proforma promotion i.e. w.e.f. 01.01.1984 and also take into calculation each of last 10 months of salary on assumed basis, as would have been payable if he has been getting if was promoted w.e.f. 01.01.1984, wherever the actual amount drawn is less than the assumed number. The working relied upon by the respondents in para 5 above is incorrect to the extent that the salary drawn for the period 01.10.2004 to 22.07.2005 should have been the assumed number on notional basis and not the pay actually drawn.

9. As a consequence of the finding given above the competent authority is directed to rework the pension and pass a fresh Pension Payment Authority Order in accordance with the direction of this Tribunal and pay arrears of pension and other retiral benefits as payable on revised enhanced pension within a period of three months from the date receipt of a certified copy of this order is served upon them.

10. With the above observation the OA is allowed. No cost.



Member (A)

/pc/