

Fixation
of pension
& Retirement
benefits with
present
& past
(No)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

(7)

O.A. No. 136 OF 1989.
TxAxNax

DATE OF DECISION 17-2-1992.

J.H. Raval, Petitioner

Mr. D.R. Chaudhary, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. B.R. Kyada, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.Y. Priolkar, Administrative Member.

The Hon'ble Mr. R.C. Bhatt, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

CL

J.H. Raval,
Hindu, Adult, Occu:Pensioner,
Residing at Rajkot
Address: 11 Bajrangwadi,
"Aashirwad"
Near Jamnagar Road,
Rajkot. Applicant.
(Advocate:Mr.D.R.Chaudhary)

Versus.

1. Union of India
Through its General Manager,
Western Railway,
Churchgate, Bombay.
2. The Divisional Railway Manager(E)
Western Railway
Kothi Compound,
Rajkot. Respondents.

ORAL ORDER

O.A.No. 136/1989

Date: 17.2.1992.

Per: Hon'ble Mr.M.Y.Priolkar, Admn. Member.

The applicant in this case, who was serving as Loco Foreman, Western Railway at Rajkot, retired from the post of MCF Fitter in the revised scale of Rs.1400-2300 with effect from 22.6.87 on medical grounds. The cadre of MCF Fitter had been upgraded with retrospective effect from 1.1.1984 by upgrading the category of Fitter skilled Grade-I scale under Railway Board's order dated 14.2.1986. A written test for suitability was held on 25.8.86 in which the applicant had appeared ^{by} approved and after the applicant was declared successful in that test, orders were issued on 1.5.87 for upgrading the post held by the applicant and promoting the

applicant to the upgraded post from 1.1.1984 with proforma fixation of pay from 1.1.1984, and the arrears being payable from 1.1.1986. The arrears due to him as a result of this promotion were also paid to him on 18.8.1987.

2. The applicant's grievance is that although he is entitled to pensionary benefits on the basis of the salary drawn by him including arrears in the upgraded post of the MCF Fitter in the revised scale of Rs.1400-2300, he has been paid pensionary benefits on the basis of the pay scale in the lower post i.e., prior to upgradation of Fitter skilled grade-I in the pre-revised scale of Rs. 380-560, by the respondents, on the ground that as he had not physically joined the upgraded post, the benefit of the pay scale of that post and pension based thereon will not be admissible to him.

3. Admittedly, under the CCS Pension Rules, the entitlement for pension is determined on the basis of the average emoluments for the last ten months actually drawn by the Government servant prior to his retirement. In the present case, there is no dispute that the applicant has actually drawn the emoluments in the upgraded post of MCF Fitter during the last 10 months of his service i.e., prior to his retirement on medical ground on 22.6.1987. The

respondents have not advanced any reason for not fixing the pension in the higher pay scale except that he was found medically unfit to join the upgraded post. It is also pointed out that the headquarters office i.e., Western Railway, Headquarters Office, Bombay has written to the Divisional Railway Manager on 29.7.1988 to examine the applicant's case in terms of the Railway Board's letter dated 21.1.85 in which the decision of the Railway Board on the recommendation of Railway Labour Tribunal 1971 regarding medically decategorised employees has been communicated. This decision is to the effect that if an employee has been empanelled or trade tested before decategorisation, the decategorised employee must be considered for giving him the benefit of promotion which he would have received but for his decategorisation. The learned counsel for the respondents suggested that the Divisional Railway Manager may be directed now to decide the applicant's case within a specified time frame. Apart from this long period of inaction on the part of the respondents, since in the present case the applicant was retired on the basis of medical opinion without formally decategorising him and he has not worked even on a single day in any lower or alternative post after the medical opinion based

on which he should have been decategorised, the provisions of this Railway Board's circular will not be applicable in the case of the applicant. These instructions of the Railway Board have been issued with the object of giving the benefits of the promotion post even in cases where on medical grounds employees are decategorised and would have been promoted, being on the panel, but for decategorisation. But in the present case this contingency has not arisen as the employee ^{was} ~~straight~~ away retired on the basis of the medical Board's opinion without having been first shifted to any lower post appropriate to his medical status. In any case, since there is no dispute that the pension has to be determined strictly on the basis of the average emoluments actually drawn for the last ten months and the applicant has actually drawn the emoluments during the last ten months of his service in the higher pay scale and it is not the respondent's case that the emoluments drawn by him during the last ten months of his service are to be reduced retrospectively and recovery enforced, the pension has necessarily to be fixed on the basis of such average emoluments which were actually drawn in the higher pay scale.

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4. In the result, the applicant succeeds. We direct that the retirement benefits of the applicant may be determined on the basis of the ten months' average emoluments drawn by him in the upgraded cadre of MCF Fitter in the revised pay scale of Rs.1400-2300, and the payment of his differential pension, DCRG, commuted amount of pension and leave encashment should be made, as far as possible, within a period of three months from the date of the receipt of a copy of this order. There is no order as to costs.

Renu

(R.C.Bhatt)
Member (J)

M.Y.Priolkar

(M.Y.Priolkar)
Member (A)