

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 423/92
T.A. NO.

DATE OF DECISION 27/7/94

Mr. Gani Miya Karim Miya Kazi Petitioner

Mr. P.K. Handa Advocate for the Petitioner (s)

Versus

Union of India and Others Respondent

Mr. N.S. Shevde Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. K. Ramamoorthy Member (A)

The Hon'ble Dr. R.K. Saxena Member (J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No

Gani Miya Karim Miya Kazi,
Retired Driver B₂, Baroda,
Quarter No. 446/A - Railway
Colony, near Sardar Nagar,
Vadodra.

Applicant

Verdicts

1. Union of India, Secretary, Ministry of Railways, owning and represented by General Manager, Western Railway, Churchgate, Bombay.
2. Divisional Railway Manager, Western Railway, Vadodra Division, Pratap Nagar, Baroda.
3. Senior Divisional Mechanical Engineer, D.R.M. office Western Railway, Pratap Nagar, Baroda.
4. Senior Divisional Accounts Office, Western Railway, Pratap Nagar, Baroda.

Respondents

For the applicant - Sri P.K. Handa
Advocate

For the respondents - Sri N.S. Shende
Advocate.

JUDGMENT

In
O.A. 423/1992

Date 27/7/94

Per Hon'ble Dr. R.K. Saxena, Member (J.)

The applicant was working as driver in locomotive Baroda yard. On periodical test, the applicant was sent for medical examination

and vide letter no M.D/216/2/11 dated 4/5/3/86 (Annexure A-1), he was not found fit to work as driver in A1/A1wo category. His case was recommended for change of category. According to the applicant, no alternative post was available for him, he was then compelled to seek voluntary retirement which was accepted by respondent no 2 ^{w.e.f 10.9.86} vide his order dated 30.9.86 (Annexure A-2). On his retirement, his settlement dues were paid on the basis of the old scale whereby only 30% of the running allowance which was raised to 55% and was made effective since 1.4.79, was taken into consideration.

It is also contended by the applicant that the report of II Pay Commission, after it was accepted by the Govt of India was made effective from 1.1.1986. By this report, the old scale of pay Rs 425-640 was revised to Rs 1350-2200 (R.P.). The applicant whose voluntary retirement was made effective from 30.9.1986, he was not allowed the new (revised) scale of pay. In the revised pay scale, his pay on the date of retirement becomes Rs 1760-00. He contends that subsequently, the pay was fixed ^{on 9.10.86} at Rs 1760-00, but his settlement dues were determined on the old scale. D

The applicant also averred that before his retirement, he remained on medical leave and was under the treatment of railway doctor and thus the pay drawn by him before proceeding on medical leave, cannot be the basis for determination of his settlement dues. The report of Pay Commission was made effective nine months prior to his date of retirement and thus the dues must have been settled on the revised scale particularly when his pay was fixed at Rs 1760-00 in revised pay scale.

The relief sought is that the P.P.O. issued to the applicant be quashed and set aside; and direction be given to the respondents to make payment of his settlement i.e., pension, gratuity, commutation, leave salary etc. on the basis of revised pay scale which was made effective from 1.1.1986 and to make payment of arrears as well.

The respondents contested the case on the grounds that the application was filed beyond the period of limitation because the P.P.O. was prepared on 7.1.1987 whereas the application is filed in 1992. The ground of recurring loss in pension, is urged not a valid reason to delay the case so late

before the Tribunal. It is also contended that after the applicant was found medically unfit, he was summoned before the Screening Committee twice, and on the request of the applicant that he wanted to seek voluntary retirement, his case was recommended; and the application of voluntary retirement was accepted ~~on 10.10.1986~~.

So far as the determination of amounts of pension, gratuity, etc are concerned, the case of the respondents is that the pay of the applicant for the purpose was fixed in the old grade of Rs 425-640, and the gratuity allowance was also added on the basis of the rule in vogue then. In computing the period of service and the salary, the period of leave from 31.8.1985 to 9.10.1986 when the applicant was on leave without pay was not taken into consideration. Thus the last pay which was determined was Rs 515-00 and according to the dues were settled. The respondents also averred that the amount of pension of the applicant was correctly fixed at Rs 917/- excluding DA.

The applicant in his rejoinder referred to the Railway Board's letter dated 15th of April, 1987

regarding revision of provisions regulating pension and contended that pensionary benefits should have been calculated on the basis of revised pay scale.

We have heard the learned counsel for the applicant and the respondents and perused the record.

It is undisputed a fact that the request of voluntary retirement of the applicant was acceded to by the respondents and the said voluntary retirement was made effective from 10.10.1986. The report of II Pay Commission was also made effective from 1.1.1986. There is also no dispute that the applicant had been on leave without pay from 31.8.85 to 30.9.86. The only difference is that according to the respondents, this period of leave without pay continued till 9.10.1986 whereas the applicant restricts it to 30.9.86 only. For the purpose of our decision, this controversy of period of leave without pay is not of great importance. The point of relevance is that before the date of retirement on 10.10.1986, the salary of the applicant was fixed at Rs 1760-00 on 9.10.1986 in the revised pay scale. Though the respondents allowed the

benefit of revised scale for determination of salary, yet they were not prepared to extend the same benefit for determination of pension, gratuity and other pensionary matters. It is here that the dispute arises.

The meaning of leave, method of calculation of period of qualifying service and the procedure of determination of pension are given in the Manual of Railway Pension Rules, 1950. We, therefore, proceed to consider them. Para 420 deals with leave. It reads:

" 420 - Leave - (i) All periods of leave with leave salary taken upto the date of superannuation or the date of extension of service, if any, count as qualifying service.

(ii) Notwithstanding the provision contained in sub-para (i) above, in respect of employees governed by the ex-Company

Railway Leave Rules, the leave preparatory to retirement limited to six months, availed of after the date of superannuation will count as qualifying service.

(iii) In respect of Railway servants in service on or after 19th April, 1968, extraordinary

leave may be allowed to count for pensionary benefits at the discretion of the competent authority in the following circumstances— namely (i) if it is taken on medical certificate; (ii) if it is taken due to the inability of the person concerned to join or rejoin duty due to civil commotion or natural calamity provided that he has no other type of leave to his credit; or (iii) if it is taken for prosecuting higher scientific and technical studies."

The reading of this para shows that leave described therein may be treated as qualifying service. In the present case, the applicant had been on leave without pay for about a year. The fixation of his pay at Rs 1760-00 on 9.10.86 suggests that his case of leave was found covered by the competent authority under sub-para (iii) of para 420 and that period of absence was considered as period of service.

Para 423 deals with calculation of period of qualifying service. Para 501 deals with emoluments which shall be taken into consideration for fixing the pension and gratuity. To quote:

" 501. Emoluments - (1) In respect of Railway servants quitting service on or after 15th June 1968, emoluments for pensionary benefits shall mean the "pay" as defined in Rule 2003 (2) - R. 11, which the Railway servant was receiving immediately before quitting service. The benefit of higher officiating pay for gratuity/ death-cum-retirement gratuity will, however, be given only if such pay was/ would have been drawn continuously for a period of not less than 22 days. In the case of running staff, emoluments for gratuity/ death-cum-retirement gratuity will also include the monthly average of the running allowance drawn during the 365 days of running duty immediately preceding the date of quitting service limited to 75 per cent of the emoluments as defined above. The earners pay

(2) The earners pay shall count as "enrolments" for pension and gratuity with effect from 1st December 1968. For this purpose the enrolments as ~~defined~~ reckoned under para 501(1) shall be increased by the earners pay appropriate to the pay equal to such enrolments. Persons who are

to 'seen' (3) Persons who are eligible for the benefits under sub-para (1) will not be entitled to the ad-hoc increase in pension

sanctioned in Railway Board's letter No F (P) 63 PN-1/32 dated 21st October 1963. However, if the pension advisable without taking into account the "deafness pay" but the ad hoc increase in pension is more favourable than the benefits under sub-para (1), the individual may be granted the former.

(H) The calculation of emoluments under sub-para (1) and (2) above is subject to the following proviso:—

(1) if immediately before quitting service a Railway servant has been absent from duty on leave with allowances (including leave preparatory to retirement) or on foreign service or having been suspended but reinstated without forfeiture of qualifying service, his emoluments should be taken at what they would have been had he not been on such leave or foreign service or suspension.

In view of this procedure, the absence from duty either on account of proceeding on leave or going on foreign service or on being placed under suspension, the period shall be included in the service. In the present case, the period of leave from 31.8.1985 to 9.10.1986 has been excluded from qualifying service as is

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mentioned in para 5 of the counter-
affidavit filed by the respondents.

It is done in accordance with
the provision of para 502 which
defines the term 'average emoluments'
during the last three years of
qualifying service. Now the
period of three years is reduced
to ~~the~~ ten months. According to
this para, the absence from duty
on account of extraordinary
leave (without leave salary) is
to be disregarded in the calculation
of the average emoluments.
Thus the situation obtainable
under para 501 as detailed above
and under para 506, is quite
distinct and separate. The period
of leave under para 506, remains
no more ^{even} a part of qualifying
service.

The question arises as to
what should be the average pay
of ten months of the applicant.
According to the respondents,
the pay receivable by the
applicant before the period of
leave without pay, shall be
taken into consideration, and
on doing so, the amount of
pension was fixed. The
contention of the applicant,
on the other hand, is that his
pay in the revised scale
was determined at Rs 1760-00
on 9.10.1986 and that amount
should be deemed receivable
by him. In this connection
reliance has been placed

on the decisions in the cases S. Banerjee vs Union of India and others AIR 1990 S.C. 285 and T.N. Bhargava 1PC vs Union of India and others (1993) 24 Administrative Tribunals cases 611. So far as the case of S. Banerjee is concerned, the question involved was as to what should be deemed the date of retirement i.e. 31.12.1985 or the 1.1.1986 when he was allowed to retire in the forenoon of 1.1.86. The Hon'ble Court held that the date of retirement shall be 1.1.86. but in view of the proviso of rule 5(2) of the rules, the petitioner would not be entitled to any salary for the day on which he actually retired. In this way, the ratio of the decision rather supports the plea of the respondents. In the other case, T.N. Bhargava was promoted to the post of Director General of Police with effect from 30.6.1986 although the order of promotion was passed on 12.12.89. and pay was fixed at Rs 7800-00 as on 31.10.88 vide order dated 17.1.1990. The date of retirement of Bhargava was 31.10.1988. The Accountant General Madhya Pradesh had not taken into account the basic pay so fixed by Madhya Pradesh Govt. When Sir Bhargava was given promotion i.e. if was given promotion on 30.6.1986 but the actual order of promotion could be passed only on 12.12.89 and salary was fixed vide order 17.1.1990, naturally the salary became receivable from the date of

of promotion. Again the ratio of this decision is not applicable to the applicant because for the purpose of fixing pension, the amount actually received by the applicant in the last ten months, is to be taken into consideration. According to the facts admitted to both the sides, the applicant had been on leave without salary from 31.8.85 i.e. for more than ten months. He did not receive any salary and thus his receivable salary in that period was nil. Even that period has been excluded from the qualifying period of service and there is no challenge to this order. Naturally, the department fell back on the salary prior to 31.8.85 and that salary was received by the applicant in the old pay scale.

On the consideration of the facts and circumstances of the case, provisions for determination of pension and the law placed before us, we come to the conclusion that there is merit in the case and thus the application is rejected. The parties shall bear their own cost.

Dubdees
(Dr. R. K. Saxena)

Rai
(K. Rawalwala)

Date	Office Report	ORDER
5-5-94		<p>Mr. Handa will file M.A for condonation of delay in the Registry and to give copy to Mr. Shevde.</p> <p>Adjourned to 11-7-1994.</p> <p><i>[Signature]</i></p> <p>(Dr. R.K. Saxena) Member (J)</p>
		<p><i>[Signature]</i></p> <p>(V. Radhakrishnan) Member (A)</p> <p>vtc.</p>
11.7.94.		<p><i>279</i> <u>M.A. / 145/94</u></p> <p>When it is came up for hearing Mr. Handa states that he is not pressing this M.A. Hence M.A. / <i>279</i> / 94, stands disposed of.</p> <p><u>O.A. / 423/92</u></p> <p>Heard the learned advocates.</p> <p>Judgment reserved.</p> <p><i>[Signature]</i></p> <p>(Dr. R.K. Saxena) Member (J)</p>
		<p><i>R</i></p> <p>(K. Ramamoorthy) Member (A)</p> <p>ait.</p> <p><i>The Judgement pronounced in open court -</i></p> <p><i>[Signature]</i></p> <p><i>Dr. Raval (Dr. R.K. Saxena) member (J)</i></p> <p><i>[Signature]</i></p> <p><i>(K. Ramamoorthy) member (A)</i></p>

DATE	OFFICE REPORT	ORDERS
17-3-94		<p><u>M.A.145/94 in O.A.423/92</u></p> <p>Heard learned advocates. M.A.145/94 for early hearing. M.A. allowed and is disposed of accordingly.</p> <p><u>O.A.423/92</u></p> <p>At the request of Mr. Shevde, adjourned to 7-4-1994.</p> <p></p> <p>(V. Radhakrishnan) Member (A)</p>
7-4-94		<p>ssh"</p> <p>At the request of learned advocates for the parties the case is adjourned to 18-4-1994.</p> <p></p> <p>(V. Radhakrishnan) Member (A)</p>
18-4-94		<p>vtc.</p> <p>Learned advocates are present.</p> <p>Adjourned to 5-5-94.</p> <p></p> <p>(V. Radhakrishnan) Member (A)</p>
		<p>ssh"</p>

DATE	OFFICE REPORT	ORDERS
26.4.93		<p>Mr. N.S. Shevde for the respondents seeks time to file reply on 12th March, 1993. Last chance was given. However, in the interest of justice one more chance is given to file reply. Time granted upto 10th May, 1993 for filing reply, failing which the matter shall proceed ex-parte. Call on 10th May, 1993.</p> <p><i>Re-subi- Reply not filed. An.Raval 5.5.93</i></p>
		<p><i>M.R.Kolhatkar</i></p> <p>(M.R. Kolhatkar) Member (A)</p> <p><i>Ne</i></p> <p>(R.C. Bhatt) Member (J)</p> <p>vtc.</p>
10.5.93		<p>Mr. N.S. Shevde for the respondents seeks time to file reply. Mr. P.K. Handa is present for the applicant. Time is granted upto 10th June, 1993 to file reply. No further time will be given. The applicant at liberty to file rejoinder within two weeks thereafter. The matter be placed for final hearing in due course.</p> <p><i>M.R.Kolhatkar</i></p> <p>(M.R. Kolhatkar) Member (A)</p> <p><i>Ne</i></p> <p>(R.C. Bhatt) Member (J)</p> <p>vtc.</p>

Office Report	ORDER
5-5-94	<p>Mr. Handa will file M.A for condonation of delay in the Registry and to give copy to Mr. Shevde. Adjourned to 11-7-1994.</p>
	<p>(Dr. R.K. Saxena) Member (J)</p> <p>(V. Radhakrishnan) Member (A)</p> <p>vcc.</p>
11.7.94.	<p>⁴⁷⁹ <u>M.A./145/94</u></p> <p>When it is came up for hearing Mr. Handa states that he is not pressing this M.A. Hence M.A.⁴⁷⁹/145/94, stands disposed of.</p>
	<p><u>O.A./423/92</u></p> <p>Heard the learned advocates.</p> <p>Judgment reserved.</p>
	<p>(Dr. R.K. Saxena) Member (J)</p> <p>(K. Ramamoorthy) Member (A)</p>
17.7.94	<p>ait.</p> <p><i>the Judgement pronounced in open court</i></p> <p><i>Dr. R.K. Saxena Member (J)</i></p> <p><i>(K. Ramamoorthy Member (A))</i></p>