

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 516 OF 2000
Cuttack, this the 21st day of December, 2001

Goda Satna


Applicant


Vrs.

Union of India and others ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes.*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No.*


(N. PRUSTY)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN

21.12.2001

8

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACKBENCH, CUTTACK.

ORIGINAL APPLICATION NO. 516 OF 2000
Cuttack, this the 2nd day of December, 2001

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI N. PRUSTY, MEMBER (JUDICIAL)

.....
Goda Satna, Retired LRLM "A" Optg.,
Village Ratanpur,
P.O.-Kuhudi, District-Khurda.....Applicant

Advocate for applicant - Mr.D.P.Dhalsamant

Vrs.

1. Union of India, represented through its General Manager, S.E.Railway, Garden Reach, Calcutta-700 043.
2. Divisional Railway Manager, S.E.Railway, Khurda Road, District-Khurda-752 050.
3. Divisional Accounts Officer, S.E.Railway, Khurda Road, Khurda-752 050.
4. Sr.Divisional Personnel Officer, S.E.Railway, Khurda Road, Khurda..... Respondents

Advocate for respondents - Madam C.Kasturi.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

J. Som,

In this O.A. the petitioner has prayed for a direction to the respondents to pay him the arrear salary from March 1996 to 31.8.1997 after fixing his pay in the Fifth Pay Commission pay scale from 1.1.1996. He has also prayed for payment of arrear retiral benefits as per revised scale of pay with interest. Respondents have filed counter opposing the prayer of the applicant. No rejoinder has been filed. We have heard Shri D.P.Dhalsamant, the learned counsel for the petitioner and Madam C.Kasturi, the learned Railway Advocate for the respondents and have also perused the pleadings.

2. For the purpose of considering the petition it is not necessary to go into too many facts of this case. The admitted position is that the applicant joined Railways as Line Man Grade-I in 1963 and he retired on superannuation on 31.8.1997. It is also the admitted position that prior to his retirement on 31.8.1997 the applicant was on long leave. According to the applicant, he remained on leave on medical ground from March 1996. The respondents have stated that the applicant remained absent from duty from 3.12.1995 till the date of his retirement on superannuation on 31.8.1997. This averment of the respondents that the applicant was away from his duty from 3.12.1995 has not been denied by the applicant by filing any rejoinder. It is also the admitted position that Fifth Pay Commission pay scales came into force with effect from 1.1.1996. It is also the admitted position that the Fifth Pay Commission pay scales were given effect to by the Railways by bring into Revised Pay Rules, 1997. The respondents have rightly pointed out that in the Revised Pay Rules, Note 3 below Rule 7 provides as follows:

"Note 3- Where a Railway servant is on leave on the 1st day of January, 1996, he shall become entitled to pay in the revised scale of pay from the date he joins duty. In case of Railway servant under suspension he shall continue to draw subsistence allowance based on existing scale of pay and his pay in the revised scale of pay will be subject to final order on the pending disciplinary proceedings."

Thus the legal position is that if a Railway servant is on leave on 1.1.1996, he is entitled to get pay in the Fifth Pay Commission revised pay scale only from the date he rejoins his duty. The logic of this is that during the

leave period such Railway servant is entitled to get the last pay draw which would be in accordance with the Fourth Pay Commission pay scale. In the instant case, admittedly the applicant did not join duty on or after 1.1.1996 till he superannuated on 31.8.1997. In view of this, it is clear that the applicant is not entitled to get the Fifth Pay Commission pay scale.

3. The applicant has prayed for a direction to the respondents to give him his arrears salary from March 1996 to 31.8.1997. Respondents have pointed out that the applicant was away from his duties from 3.12.1995. They have also mentioned that he had not sufficient leave on his account and therefore his pay could not be drawn except for the period from 26.12.1995 to 10.2.1996 and again from 11.3.1996 to 12.3.1996. The learned counsel for the petitioner has made the point that as in paragraph 5 of the counter the respondents have stated that his pay was drawn from 26.12.1995 to 10.2.1996 and again from 11.3.1996 to 12.3.1996, the applicant must be deemed to have been on duty during this period. On a perusal of paragraph 5 of the counter it is clear that the respondents have mentioned that during this period the applicant was sanctioned leave which naturally was on the basis of last pay drawn and it cannot be held that the applicant was given his pay during the period. The second point made by the learned counsel for the petitioner is that during the period from 11.2.1996 to 10.3.1996 leave salary has not been paid to him. The respondents in paragraph 7 of the counter have pointed out that from 26.12.1995 to 25.1.1996 the

J. J. M.

applicant was granted Commuted Leave and from 26.1.1996 to 10.2.1996 and again from 11.3.1996 to 12.3.1996 he was granted sick leave. Leave salary has been paid to him during this period rightly on the basis of last pay drawn. In view of our above discussion we hold that the applicant is not entitled to get the Fifth Pay Commission pay scale as he never joined duty after 1.1.1996. This prayer of the applicant is accordingly rejected.

4. The second question which arises in this case is whether the retiral benefits have to be computed on the basis of Fifth Pay Commission pay scale. Pension and retiral benefits are determined as per rules on the basis of average emoluments. Rule 50 of the Railway Services (Pension) Rules, 1993 provides that average emoluments shall be determined with reference to the emoluments drawn by a railway servant during the last ten months of his service. For the purpose of the present case Notes 1 and 2 below Rule 50 are relevant which are quoted below:

"Note 1: If during the last ten months of his service a railway servant has been absent from the duty on leave of which leave salary is payable or having been suspended had been reinstated without forfeiture of service, the emoluments which he would have drawn, had he not been absent from duty or suspended, shall be taken into account for determining the average emoluments:

Provided that any increase in pay (other than the increment referred to in Note 3) which is not actually drawn shall not form part of his emoluments.

Note 2: If, during the last ten months of his service, a railway servant had been absent from duty on extraordinary leave, or

S. J. M.

had been under suspension the period whereof does not count as service, the aforesaid period of leave or suspension shall be disregarded in the calculation of the average emoluments and equal period before the ten months shall be included."

From the above it is clear that for the period of leave during the last ten months of service, if the leave salary has been drawn, then it has to be determined on the basis of leave salary and not on the basis of emoluments which he would have drawn had he not been absent from duty because while determining this any increase in pay which is not actually drawn shall not form part of the emoluments. As the applicant has not drawn the Fifth Pay Commission pay scale, for counting his average emoluments the Fifth Pay Commission pay scale cannot be taken into account. Moreover, according to Note 2 quoted above, if the applicant was on extraordinary leave during the last ten months, then this period has to be excluded and an equivalent period before the ten months shall be included. Going by this also the applicant will not be entitled to have his pensionary benefits calculated on the basis of the Fifth Pay Commission pay scale which has not been received by him. In view of this, it is clear that the applicant is not entitled to have his retiral benefits fixed on the basis of the Fifth Pay Commission pay scale.

5. In consideration of all the above, the O.A. is held to be without any merit and the same is rejected. No costs.

(N. PRUSTY)
MEMBER (JUDICIAL)

SOMNATH SOM
(SOMNATH SOM)
VICE-CHAIRMAN