

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH: JODHPUR.

O.A. No.258/96

Date of Order: 31.8.1998

Jug Raj Arora s/o Shri Munni Lal, r/o Khanda Falsa, Opposite Bholi Baion Ka Mandir, last employed as Sub Head, Workshop Accounts Office, Northern Railway, Jodhpur.

... Applicant

VERSUS

1. Union of India represented by the Additional Secretary, Department of Pension & Pensioners Welfare, Lok Nayak Bhavan, Khan Market, New Delhi-110003.
2. Chairman, Railway Board, Rail Bhavan, Rafi Marg, New Delhi-110001.
3. General Manager, Northern Railway, Baroda House, New Delhi-110001.
4. Financial Advisor & Chief Accounts Officer, Northern Railway, Baroda House, New Delhi-110001.
5. Workshop Accounts Officer, Northern Railway, Jodhpur.

... Respondents

Mr. S.K. Vyas, Counsel for the applicant.

Mr. V.D. Vyas, Counsel for the respondents.

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member

Hon'ble Mr. Gopal Singh, Administrative Member

O R D E R

Per Hon'ble Mr. Gopal Singh

Applicant, Jug Raj Arora, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for a direction to respondent No. 1 to modify their *Leopold Singh*.

orders contained in O.M. dated 16.4.1987 (Annex. A/2) and to grant same revised pension to those who retired between 31.3.1985 to 31.12.1985 as was granted to those who retired prior to 31.3.1985 but on or after 31.1.1982.

2. Applicant's case is that in terms of para 4.1 (D) of O.M. dated 16.4.1987, the applicant who retired on 30.11.1985 was not entitled to any additional relief corresponding to the relief sanctioned to the persons retired prior to 31.3.1985. Further in terms of para 6.2 of the said O.M., the existing pensioners who retired between 31.3.1985 to 31.12.1985 who are in receipt of personal pension would continue to be granted personal pension as a separate element and the personal pension so sanctioned would not be merged into the pension for consolidation w.e.f. 1.1.1986 as has been done in the case of pensioners who had retired prior to 31.3.1985. This O.M. has created anomalous situations amongst the pensioners who had retired between 31.3.1985 and 31.12.1985 vis-a-vis the pensioners who had retired prior to 31.3.1985 and on or after 1.1.1986. The applicant had submitted many representations to the respondents in this regard but the anomaly could not be resolved. Feeling aggrieved the applicant has filed this O.A.

3. Notices were issued to the respondents and they have contested the application on various grounds which we find frivolous.

4. We have heard the learned counsel for the parties and perused the records of the case.

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5. This anomalous situation was also agitated before the Bombay Bench of the CAT in O.A. No.643/95 in which the Tribunal had decided that the Department of Pension may refer such matter to the Vth Pay Commission or the matter may be gone into by an expert body like Anomalies Committee. The Ministry of Pension had in turn also referred the case to the Vth Pay Commission. There is no dispute that the anomaly exists and the pensioners who had retired between 31.3.1985 and 31.12.1985 are getting less pension than the pensioners who had retired prior to 31.3.1985.

6. The Vth Pay Commission has dealt with this issue in para 138.13 to 138.15 of their report, as reproduced below:

MERGER OF PERSONAL PENSION WITH PENSION FOR DR

138.13 Pensioners who retired between 31.3.1985 and 31.12.1985 and who were granted personal pension have requested for merger of their personal pension with pension so as to become entitled for drawal of Dearness Relief which is presently being paid on basic pension only. WE have given our sympathetic consideration to the demand made by this section of pensioners who retired between 31.3.1985 and 31.12.1985. We have taken note of the fact that personal pension was granted to the above retirees whose pension plus D.R. between CPI 320 and 568 worked out to be more than pension at CPI 568. This was done to ensure that future retirees drawing the same emoluments and having rendered the same length of service did not draw pension which was less than that of their counterparts who had retired earlier. Though the Fourth CPChad recommended the payment of a lump sum amount in lieu of personal pension so that this did not continue as a separate element in the rationalised pension structure, the Government decided not to accept the recommendation on the ground of financial implications and the personal pension continues to be paid as a separate element without any D.R. thereon.

138.14 The Department of Pension and Pensioners' Welfare have referred this matter to the Commission vide their D.O. No.38/4/96-P&PW(A) dated 21.5.1996 in pursuance of an order dated 15.3.1996 made by the Bombay Bench of the Central Administrative Tribunal in O.A. No.643/95 in the case of L.G. Vaishampayan versus UOI.

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138.15 Since we have conceded the principle of complete parity in pension of past pensioners up to 1.1.1986 and modified/reasonable parity thereafter, the pension of all the past pensioners who retired up to 31.12.1985 shall be refixed by notional fixation of their pay without taking into account the element of D.A. which was treated as D.P. and the element of personal pension would automatically go away. All the past pensioners shall get the same amount of pension as admissible to a post 1.1.1986 retiree, provided they had the same length of qualifying service and emoluments.

7. In the light what has been stated above by the Vth Pay Commission in their report we do not consider it necessary to discuss in detail and establish the anomaly as an anomalous situations has already been recognised by the concerned authorities.

8. The learned counsel for the respondents has also argued that the O.A. is time barred and facts as narrated by the applicant in the O.A. clearly go to show that the claim is hopelessly time barred and belated. The same deserves to be rejected. We have considered this argument. In our opinion short payment of pension is a continuing wrong against which the applicant can raise his claim in the Tribunal. In the instant case by a separate order passed today in the M.A. No.209/96, we have condoned the delay in presentation of the O.A., therefore, this point is not required to be discussed here again. The argument of the learned counsel for the respondents on this point is rejected.

9. In these circumstances we consider it just and proper to direct the respondent No. 1 to devise a mechanism so as to compensate the pensioners who had retired between 31.3.1985 and 31.12.1985, for the loss they have suffered because of the anomaly.

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10. The O.A. is accordingly disposed of with the above directions with no order as to costs.

*Gopal Singh*  
(Gopal Singh)  
Administrative Member

*3/1/98*  
(A.K. Misra)  
Judicial Member

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Part II and III destroyed  
in my presence on 30/3/98  
under the supervision of  
section officer ( ) as per  
order dated 20/2/98

Section officer (Record)

15/5/98  
22/5/98  
Copies of order  
sent to PEF (orders)  
OA & MP  
by Regd P.D. 3216  
recd no 819198  
dt 21/5/98

17.5.98  
attached application  
stamped  
5/6/98  
file record  
from section officer  
on 21/5/98