

Central Administrative Tribunal
Jodhpur Bench, Jodhpur

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Date of order : 10.7.2001

O.A.No. 225/1997

1. Laxman Singh S/o Banney Singh aged about 64 years by caste Hindu Rajput R/o 17/343, Chopasni Housing Board, Jodhpur, retired on 30.6.1991 as JPM Tool Checker from Northern Railway Workshop, Jodhpur with Ticket No. 1536 of Millwright Shop No.4.
2. Prem Shanker S/o Chotey Lal aged about 63 years by caste Hindu R/o 2-Cha-40, Madhuban Colony, Basni, Jodhpur, retired on 30.7.1992 as JPM Took Checker from Northern Railway Workshop, Jodhpur with Ticket No. 9578 of Shop No. 21.



Mohabbat Singh S/o Chiman Singh Gehlot aged about 63 years By caste Hindu Mali R/o Malion Ki Gali, Near Udaimandir Police Station, Jodhpur retired on 31.8.92 as JPM Tool Checker from Northern Railway Workshop, Jodhpur with Ticket No. 866 of Shop No. 10,2 & 13.

... Applicants

Versus

1. The Union of India through General Manager, Northern Railway, Headquarter's Office, Baroda House, New Delhi.
2. The Deputy Chief Mechanical Engineer (Workshop), Northern Railway, Jodhpur.
3. The Financial Advisor and Chief Accounts Officer, Northern Railway, Headquarters Office, Baroda House, New Delhi.

... Respondents.

[Signature]

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Mr. K.K.Sharma, Counsel for applicants.

Mr. R.K.Soni, Counsel for the respondents.

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CORAM :

HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER

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ORDER

BY THE COURT :

The applicants have filed this Original Application with the prayer that the order Annex.A/1 dated 25.10.1996 and order Annex.A/2 dated 25/30.9.1995 be quashed and appropriate directions to the respondents be issued to make the payment of salary at the enhanced rate to the applicants as per the pay fixation on proforma basis and pension be also directed to be revised on proforma ~~basis~~ ^{pay} and from the respective dates of retirement of the applicants. It is further prayed that all the retiral benefits on the basis of proforma fixation be directed to be paid to the applicants. The applicants have also prayed that interest at the rate of 24% per annum on such payments be also ordered to be made to them.

2. Notice of the Original Application was issued to the respondents who have filed their reply to which a rejoinder was also filed by the applicants.

3. I have heard the learned counsel for the parties and have gone through the case file.

4. The rival contentions relating to the controversy in hand are given in brief hereunder :-

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5. The applicants were initially appointed in category 'D' as Khalasies in the Northern Railway Workshop, Jodhpur and due to superannuation retired from service from the post of JPM Toolcheckers. The applicant No. 1 retired on 30.6.1991, applicant No. 2 retired on 30.7.1992 and the applicant No. 3 retired on 31.8.1992. The respondents in pursuance of the order dated 13.12.1993 passed in O.A. No. 400/1988 passed an order on 29.4.1994, Annex.A/4 fixing the pay of the applicants on the post of Senior Clerk grade Rs. 1200-2040 with effect from 1.4.1989. Thereafter, another order dated 12.9.1994, Annex.A/5 was passed by the respondents promoting the applicants on the post of Head Clerk in the grade of Rs. 1400-2300 with the stipulation that on proforma promotion, arrears on the basis of the pay fixation are ~~are~~ not payable. The applicants who had retired earlier than these orders claimed revision of their pensionary benefits on the basis of pay fixation orders as mentioned above but the same was refused by the respondents vide impugned orders. Hence this O.A.

6. The contention of the respondents is that the applicant did not shoulder the responsibility of the higher post and had retired much prior to the passing of the proforma promotion orders and pay fixation orders, therefore, they are not entitled to the arrears of pay. Moreover, since they had not actually drawn the pay as per the pay fixation ^{pension and} they are not entitled to revised/pensionary benefits. The O.A. of the applications is devoid of merits.

7. Both the learned counsel for the parties elaborated their arguments on the lines of their pleadings which ~~we~~ need not repeat here. From the facts of the case, as

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mentioned above, it can be noted that the orders granting promotion to the applicants and consequent pay fixation came ~~claimed~~ to be passed by the respondents in pursuance of the order of the Tribunal dated 3.2.1994, Annex.A/3. When the order of the Tribunal was passed the applicants had already retired on superannuation. The respondents had granted promotion on proforma basis on account of merger of the applicants in the clerical cadre and their pay was fixed accordingly. These orders were passed in the year 1994. Therefore, in pursuance of these promotion orders, applicants could not have shouldered higher responsibilities because they had retired on superannuation much earlier, hence, the plea taken by the respondents that applicants ~~that~~ ~~applications~~ had not shouldered the responsibilities of a higher post and consequently are not entitled for arrears as per the pay fixation, is devoid of any force. The respondents by granting notional promotion to the applicants and proforma fixation of their pay, recognised their right of being promoted with effect from 1.4.1989 and on the next higher post on 16.2.1991. Had these two promotions being granted to the applicants in time while they were in service, all the three applicants would have been benefited. But, these two orders came to be passed after the directions issued by the Tribunal, therefore, the applicants were not at all in a position to give actual effect to the promotion orders by taking over the charge of the promotional post. Admittedly, the applicants had not shouldered the responsibility of the higher post and, therefore, as per the stand taken by this Tribunal in an earlier judgement passed on 2.11.2000 in O.A.No. 67 of 1999, the applicants may be held not entitled for arrears of pay on the basis of revised pay

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fixation on notional basis. However, the applicants cannot be denied the benefit of revised pension and pensionary benefits on the basis of notional pay fixation. In (1993) 24 ATC 611 - T.N.Bhargava, IPS Vs. Union of India and Ors. it was held that "the word 'received' should be read as 'receivable' in the context for granting retiral benefits. Hence, in case of retrospective promotion after retirement with notional pay fixation, even though without right to payments, held, the basic pay so fixed could not be ignored for calculating the retiral benefits. Legislative intent behind the rule taken into account for interpretation - beneficent construction."

8. In view of the aforesaid principle, I am of the opinion that if due to retirement a Government servant is unable to carry-out the promotion then in such a case, he cannot be deprived of his revised pensionary benefits on the basis of revised pay fixation on the ground that he had not drawn the actual pay so fixed. Therefore, if the respondents are permitted to interpret the present situation in their own way as pleaded by them, it would mean refusal of benefits to the applicants inspite of they having been found entitled for the same. The law never intended that only illusory orders are passed and actual benefits are not ~~entitled~~ to be further passed on. If this is permitted then the entire import of the litigation and directions given by this Tribunal in this regard, would be of no use and can be said to be an exercise in futility. In my opinion, when notional pay fixation is granted to a Government servant after he had retired, his pension and pensionary benefits are required to be revised on the basis of revised pay fixation irrespective of the fact whether such Government employee was

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paid arrears or not.

9. As discussed above, I am of the opinion that the applicants cannot be denied revision of pension and the pensionary benefits on the plea taken by the respondents. The applicants are, in my opinion, entitled to receive all the retiral benefits including pension as per the pay fixation order passed by the respondents.

10. I have also considered the claim of the applicants relating to arrears of pay. In my opinion, the applicants are not entitled to the arrears of pay as per rules for not having shouldered the responsibilities of the higher post. Their claim in this regard deserves to be rejected.

11. The O.A. is, therefore, partly accepted. The respondents are directed to recalculate, ~~then~~ revise and pay to the applicants arrears of pension and difference amount of all other pensionary benefits of the applicants on the basis of revised fixation of pay as indicated in their orders from time to time, within a period of three months from the date of communication of this order along with simple interest at the rate of 9% per annum from the date such amount became due till the date of payment.

12. The prayer of the applicants relating to payment of arrears of pay etc. on the basis of revised pay fixation on proforma basis, is hereby refused.

13. Parties are left to bear their own costs.

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8/7/2001
(A.K.Misra)
Judicial Member

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R. Ray
19/5/2007

Regele
19/5/2007

Part II and III destroyed
in my presence on 15/5/07
under the supervision of
Section Officer (1) as per
order dated 13/3/07
Section Officer (Record)