

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

O.A. 767/97

Present : Hon'ble Mr. Justice R.N. Ray, Vice-Chairman.

Hon'ble Mr. B.P. Singh, Administrative Member.

Pratul Kumar Chaki & 10 Ors.

- v e r s u s -

1. Union of India  
represented by the General Manager,  
N.F. Railway, Maligaon, Gauhati.
2. The Chief Personnel Officer,  
N.F. Railway, Maligaon, Guahati.
3. The Chief Mechanical Engineer,  
N.F. Railway, Maligaon, Guahati.
4. The Divisional Railway Manager,  
N.F. Railway, Katihar (Bihar).
5. The Senior Divisional Mechanical Engineer (D)  
Diesel Shed, Malda Town, N.F. Railway,  
PIN: 732102.

...Respondents.

For the applicant : Mr. A.K. Banerjee, counsel.

For the respondents : Ms. U. Sanyal, counsel.

Heard on 20.03.2001

Order on 18.04.2001

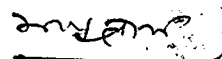
O R D E R

B.P. Singh, AM

Shri Pratul Kumar Chaki with 10 others working as Diesel Khalasi Helper/Diesel Electrical Gr.III under Diesel Shed, Malda Town, N.F. Railway have filed this O.A. about their fixation of pay and prayed for the following reliefs:-

"8.

- (a) Leave be granted under Rule 4(5)(a) of the Central Administrative Tribunal Rules 1985.
- (b) An order be passed directing the respondent authorities to rescind/revoke and withdraw the letter No.Em/191/1/Refixn/267 dated 18.1.1996



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issued by the Senior Divisional Mechanical Engineer (Diesel), Malda Town, N.F. Railway, and further directing them to fix up the applicants in the appropriate scale of pay on the basis of last pay drawn and to pay all arrears including other consequential benefits arising thereto.

- (c) An order be passed directing the respondent authorities to set right the anomalies of the fixation of pay in the light of the 'Modus operandi' of the other organisation as referred to this application."

2. The fact of the case as it appears from the O.A. is that (D)

all the applicants are ex-servicemen and have been re-employed in Railway service as Gr.D after retirement. In military most of them were in Gr.C category of staff. All of them are drawing pension after retirement from army. They were posted in Army as Naik, Habildar etc. as would be clear from statement at Annexure-A.

2.1. The applicants state that on re-employment they have not been accorded the benefit of fixation of pay after retirement from Military service and re-employment in Rlys. They brought the anomaly in the notice of authorities but they have been denied the benefit.

2.2. The applicants represented against the irregular fixation of pay. It appears that matter was examined by the Divisional Railway Manager (P) N.F. Railway Katihar. The Sr. Divisional Mechanical Engineer (Diesel) Malda Town informed the applicant vide letter dated 18.1.96 (Annexur-B) that "in all cases where the pension is fully ignored, the initial pay on re-employment shall be fixed at the minimum of the scale of pay of the re-employed post" and accordingly their pay was fixed on re-employment.

2.3. The applicants submit that similarly circumstanced ex-military staff re-employed in the Nationalised Banks and New India Insurance Co. have been given the benefit of fixation of pay on the basis of last pay drawn. Thus it is clear that the existing rule is being misinterpreted. The applicants state that para 4 of the Central Civil Services (Fixation of Pay of Re-employed Pensioners) orders 1986 also provides for the

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fixation of pay on the basis of last pay drawn. The applicants also cited the pay fixation case of Shri Swapan Kumar Goswami as per Annexure-D re-employed under W.B. Govt. where his pay on re-employment was fixed on the basis of last pay drawn before retirement.

2.4. The applicants made further appeal dated 16.5.97 vide Annexure-E to respondents to do justice in their pay fixation but nothing happened. The respondents have categorically refused to refix the <sup>pay</sup> pay like other similarly circumstanced ex-servicemen as referred to above. The case of such ex-Military men re-employed under Dy. Chief Mechanical Engineer (P) Charbag, Lucknow, N.Railway vide Annexure-F were also cited where all of them were given the benefit of post pay at the time of fixation of pay on re-employment. The applicants also produced the cases of fixation of pay of ex-Military persons on re-employment in the New India Assurance Co. Ltd. vide Annexure-G and the Federation of the Indian Bank Employee Union vide Annexure-H. In spite of all these practices and precedents the respondents gave terse reply that their fixation of ~~pay~~ <sup>pay</sup> cannot be done on the basis of last pay drawn and they are not ready to reconsider their case. Their prayers have fallen on the deaf ears. Aggrieved with the above attitude the applicants have filed this O.A. and prayed for reliefs quoted above.

3. We heard Sri A.K. Banerjee, Id. counsel for the applicants and Ms. U. Sanyal, Id. counsel for the respondents. We have gone through the O.A., reply to the O.A. and rejoinder to the reply alongwith various annexures.

4. Sri A.K. Banerjee, the Id. counsel for the applicants reiterated the facts and submitted that the order dated 18.1.96 (Annexure-A) is patently illegal, irregular, malafide and in violation of principles of natural justice and by that order the applicants have been deprived of their due and legitimate benefit of fixation of pay on re-employment. The Id. counsel further submitted that fixation of the pay of applicants at the lowest of the scale after production of practices, precedents and copies

2/10/97

of rules of various other departments & organisations is legally impermissible and morally untenable. The respondent authorities have not applied their minds properly as the rule of law does not discriminate between individuals on the basis of their status, position and posting at different places. The case of the applicants should have been viewed keeping in mind that everyone is equal before the eyes of law otherwise Arts. 14, 16 & 21 of the Constitution would be attracted. Thus whole matter is outcome of motivated and biased attitude. The Id. counsel again submitted that the respondent authorities' acts are highly discriminatory and violative of statutory provisions regarding fixation of pay on re-employment of ex-servicemen. The Id. counsel submitted that similarly circumstanced ex-servicemen in other depts. & organisations have been given the benefit and, therefore, they are also entitled for the same and the same should be granted to them by allowing the O.A. and granting the prayers.

5. Ms. Sanyal, Id. counsel for the respondents has contested the allegations/statements made in the O.A. except those which are relevant for determination of the issue involved in the O.A. The Id. counsel submitted that the application has got no cause of action and as such the same is liable to be dismissed. The Id. counsel submitted that the applicants are working at Malda Town Diesel Shed on being re-employed in Gr.D post after retirement from Military service. They were appointed as Diesel Khalasi in 1989 and their pay was correctly fixed. On receipt of their representation, they were intimated that there is no anomaly in fixation of their pay. The Id. counsel further submitted that on receipt of representations from the applicant and from the Staff Union of Malda Branch necessary correspondence was made with DRM(P) Katihar, who is divisional authority in establishment matter. The DRM vide his letter dated 11.4.94 (Annexure-R/1) intimated that the fixation was correctly done in accordance with Railway Board letter dated 21.1.87 enclosing

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a copy of DOP&T O.M. dated 31.7.1986 on the subject and this confirmed the reply sent to the applicants vide Annexure-B dated 18.1.96 of the O.A. The Id. counsel submitted that in all cases where the pension is fully ignored, the initial pay on re-employment shall be fixed at the minimum of the scale of pay of there-employed post. This rule was meticulously followed in the case of the applicants. The Id. counsel further submitted that the cases of Shri Swapan Kumar Goswami cited by the applicants is not relevant as the case related to State Govt. of W.B. They may have their own rules. In respect of Norther Railway cases the Id. counsel drew our attention that the pay of the staff was fixed with reference to letter dated 20.4.59 and 7.1.83 (Sl.No. 8340). But R-II dated 31.7.1986 regarding fixation of pay of re-employed pensioners clearly provides that "the President is now pleased to decide that in supersession of all the previous orders on the subject, the initial fixation of pay and other benefits on re-employment of ex-servicemen pensioners as also civilian pensioner will be governed by the Central Civil Services (Fixation of Pay of Re-employed Pensioners) orders 1986 xxx with reference to all the appointments made on or after 1.7.1986 and the pay of there-employed pensioners may be fixed as per enclosed order." Thus all the earlier orders have been superseded by this order and pay has to be fixed according to these orders. The Id. counsel further submitted that circulars of Banks and New India Assurance Co. are similarly not applicable in the case of the applicants. The Id. counsel further submitted that the claim of the applicants have never been ignored. The claim was taken up at different levels of Staff Union. After threadbare scrutiny of the claim it was decided that fixation already done in favour of the applicants are in order. Thus the application is wholly misconceived misleading and baseless and not tenable in law and reliefs prayed are denied. The application, therefore, deserves to be dismissed with costs.

6. The undisputed fact of the application is that all the applicants were ex-servicemen and were appointed in Gr.D post during 1989. Their pay on re-employment was fixed at the minimum of the scale of there-employed post. The applicants made representation that their pay should

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be fixed taking into consideration their last pay as has been done in Indian Assurance Co. Banks, Govt. of W.B. and in the case of Railway employees Charbagh, Lucknow, Northern Railway. The case of the applicants was re-examined and discussed threadbare with the staff unions and it was found that fixation of their pay was correctly done according to para 4 (b) (i) & (d) (i) of the Central Civil Service (Fixation of Pay of re-employed Pensioners) Orders 1986, for convenience sake the above provisions are reproduced as under:-

"4. Fixation of Pay of re-employed pensioners.

(b) (i) In all cases where the pension is fully ignored, the initial pay on re-employment shall be fixed at the minimum of the scale of pay of the re-employed post.

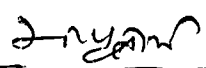
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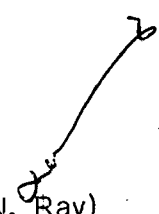
(d) In the case of persons retiring before attaining the age of 55 years and who are re-employed, pension (including pension equivalent) of gratuity and other forms of retirement benefits) shall be ignored for initial pay fixation to the following extent.

(i) in the case of ex-servicemen who held posts below commissioned officer rank in the Defence Forces and in the case of civilians who held posts below Group-'A' posts at the time of their retirement, the entire pension and pension equivalent of retirement benefits shall be ignored. "

The pay fixation was done in the case of the applicants according to above provisions correctly by following the rules meticulously. We don't find any irregularity or violation of the orders regarding re-fixation and, therefore, find the application misconceived and without any merit.

7. In view of the above finding the application without any merit we reject the same without any order as to costs.

  
(B.P. Singh)  
Member (A) 18042001

  
(R.N. Ray)  
Vice-Chairman.