

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 534 1990  
X.X.XX No.

DATE OF DECISION 30.5.1991

P.Balankutty \_\_\_\_\_ Applicant (s)

Mr.P.Sivan Pillai \_\_\_\_\_ Advocate for the Applicant (s)

Versus

UOI rep. by the General Manager, S.Railway, Madras & 3 others Respondent (s)

Smt.Sumathi Dandapani \_\_\_\_\_ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji - Vice Chairman

and

The Hon'ble Mr. A.V.Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

(Mr.A.V.Haridasan, Judicial Member)

The applicant, who is a pensioner retired from Railway service on 31.1.1986 as Head Clerk from the Divisional Office, Southern Railway, Trivandrum has filed this application under Section 19 of the Administrative Tribunals Act, praying that the respondents may be directed to fix his pensionary benefits in the revised scale in terms of paragraph 5 to 8 of the circular of the Government of India, Ministry of Railways, Railway Board RBE/S.No.90/87 dated 15th April, 1987 (Annexure-A3) with all attendant benefits.

...2/-

2. The applicant retired from service while he was working as Head Clerk in the Divisional Office, Southern Railway, Trivandrum on 31.1.1986. His pensionary benefits were determined in accordance with the pre-revised scale of pay by Exbt.A1 order dated 18.2.1986. On the revision of the scales of pay of Railway Servants based on the recommendation of the 4th Pay Commission, the applicant was by letter dated 5.5.1987 (Annexure-A2) asked to exercise his option either to retain the pre-revised scale or come to revised scale. A copy of the circular of Govt. of India, Ministry of Railways dated 15th April, 1987, Annexure-A3 was also sent to him. Employees who had already exercised their option in favour of the revised scale of the pay were given another opportunity to re-opt the pre-revised scale of pay from 1.1.1986. According to paragraph 12(2) of this circular the option should be exercised within two months from the date of its issue. The applicant submitted his option to come to the revised pay scale of pay on 19.5.1987. According to the applicant, later when he came to know that the option submitted by him on 19.5.1987 did not reach to the office, he gave an option form signed to the dealing clerk who was his friend, to be used as stand-by in case the first option did not reach the concerned authority. Since nothing was heard about the refixation of his pension the applicant submitted a representation on 11.8.1987

requesting that his pension may be fixed in accordance with the revised pay scale. In reply to this representation the Divisional Personnel Officer, Southern Railway, Trivandrum, the second respondent informed the applicant by Annexure-A4 letter dated 18.9.1987 that revision of pay due to his option to come over, <sup>to the</sup> 4th Pay Commission's scale has been made and papers had been submitted to the Divisional Personnel Officer, Trivandrum for arranging the payment of the revised pension. But to the applicant's surprise in the impugned order revising his pension dated 23.10.1987, Annexure-A5 his pension and gratuity were determined on the basis of the pre-revised scale of pay. The applicant made representations praying for refixation of his pension in accordance with the option exercised by him on 19.5.1987. In reply to these representations the applicant received Annexure-A6 reply dated 16.5.1988 stating that the pensionary benefits were revised on the basis of his latest option dated 31.7.1987, calculating the pensionary benefits in the pre-revised scales. The applicant again pointed out the mistake <sup>in</sup> fixing the pension in the pre-revised scale since he had submitted his option on 19.5.1987 to come to the revised scale of pay. To this representation, the applicant received the Annexure-A7 reply dated 23.11.1988 informing him that, though he had opted to come to the revised scale by option dated 19.5.1987, as he had made a subsequent option dated

31.7.1987 respecting the pre-revised scale, the same was acted upon on humanitarian grounds though submitted out of time, and that a third option cannot be entertained. The applicant took up the matter with the Pension Adalath but without success. Therefore, the applicant has filed this application praying that the impugned orders Annexure-A5, A6 and A7 may be quashed and the respondents may be directed to rectify his pay in accordance with revised scale of pay on the basis of the recommendations of the 4th Pay Commission. It has been averred that the respondents have gone wrong in acting upon an option which was undated and submitted out of date as a stand by while they themselves have admitted that the option exercised by him on 19.5.1987 within the time limit had already been received in the office.

3. The respondents in the reply statement has sought to justify the impugned order at Annexure-A.5 on the ground that his second option though received out of time was accepted on humanitarian grounds and that there is no provision for a third option. In the rejoinder filed by the applicant, it is reiterated that he had not re-opted the pre-revised scale and while there was an option submitted within time, the respondents should not have acted upon an option which was submitted out of date to his detriment.

4. We have heard the argument of the learned counsel on either side and have also gone through the documents produced.

5. It is admitted by the respondents and it is borne out from Annexure-A7, that the option dated 19.5.1987 opting to continue in the revised scale was received in the office. But the stand of the respondents is that since he had submitted a re-option dated 31.7.1987 to go to the pre-revised scale, on humanitarian ground, it was accepted and the pension and gratuity have been fixed accordingly. The respondents also have in the reply statement stated that the option dated 31.7.1987 was beneficial to the applicant, and that, therefore on humanitarian ground it was accepted and acted upon. According to the applicant, while he had submitted an option to retain the revised scale of pay for the purpose of fixation of pensionary benefits on 19.5.1987, i.e. within three months from the date of issue of Annexure-A3, the respondents have gone wrong in refixing his pension in accordance with the pre-revised scale of pay basing on an alleged re-option submitted by him on 31.7.1987, beyond the period stipulated in paragraph 12(2) of the Annexure-A3. The averment in the application that the second option submitted by the applicant was an undated one intended to be a stand-by thinking that the first option has not reached in the office has not been controverted by the respondents in their reply statement. If as a matter of fact the second option was one re-opting for going back to the pre-revised scale, the respondents should have produced this option submitted by the applicant.

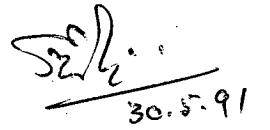
The respondents have not produced the same before the Tribunal. Since the second option is dated 31.7.1987 submitted beyond the period stipulated in paragraph 12(2) of the Annexure-A3, the respondents should have ignored that and ~~refix~~<sup>ed</sup> the applicant's pension and gratuity according to the option submitted on 19.5.1987 because that alone<sup>w</sup> a valid option submitted within<sup>the</sup> time limit. Since the option to retain the revised scale of pay is more beneficial to the applicant, it is meaningless to say that the applicant's pension and gratuity were refixed in accordance with the pre-revised scale on humanitarian ground. The contention of the respondents that allowing the applicant to again opt for the revised scale of pay would have far reaching consequences, and that that would give rise to claims by several other persons for similar refixation is not an answer to the claim of the applicant that his pension and gratuity should have been fixed in accordance with the valid option submitted by him in time. Therefore, we are of the view that the applicant is entitled to have his pensionary benefits computed and refixed in accordance with the revised scale of pay on the basis of option submitted by him on 19.5.1987.

6. In view of what is stated in the foregoing paragraph, we find that the impugned orders at Annexure-A5, A6 and A7 are liable to be quashed, and the applicant

is entitled to have his pension and gratuity refixed in accordance with the option submitted by him on 19.5.1987. We therefore, quash the impugned orders Annexure-A5, A6 and A7 and direct the respondents to refix the pensionary benefits of the applicant treating that he has opted to retain the revised scale of pay as per his option dated 19.5.1987 and to disburse to him the monetary benefits consequent on such refixation. Action in the above lines should be completed within a period of two months from the date of communication of this order. There is no order as to costs.

  
(A.V.HARIDASAN)  
JUDICIAL MEMBER

30/5/91

  
(S.P.MUKERJI)  
VICE CHAIRMAN

30.5.1991

1.10.91

CCP No. 59/91

NVK & AVH

Mr. P. Sivan Pillai - for applicant.  
Mrs. Dandapani

At the request of the counsel for the applicant who states that some more instructions should be obtained from the applicant, list for further directions on 15.10.91.

*B*  
1.10.91

18.10.91  
(15)

NVK & AVH

Mrs. Sivan Pillai  
Mrs. Preethy

The Counsel for the petitioner submits that some order has been received, which he sees sometime to receive, therefore call on 18.11.91 -  
stdy.

*B*  
18.10.91

18.11.91

SPM&AVH

Mr. Sivan Pillai  
Mrs. Preethy

The learned counsel for the respondents is directed to produce the calculation sheet regarding fixation of the applicant's pension under the ~~pre~~ revised scale of Rs. 743/- <sup>and</sup> under the revised scale at Rs. 710/- on the next date of hearing. She should also explain under what circumstances the pension of the applicant under the revised pay scale stands reduced.

List for further directions on CCP on 11.12.91.

*Am m/s  
I.O issued  
on 20/11/91*

*on 5/12/91*  
18.11.91

NVK & AD

(22) Mr. Girvinda Singh

Mrs. Preethi & Respondent

Respondents have filed the statement  
in the CEP Application. See the statement  
dated 10/1/92.

2/1

11/1/92

10.1.92

SPM&AVH

Mr. Sivan Pillai  
Mr. MCCherian rep. Smt. S.D.

On request of counsel for the applicant  
list for further directions on 13.1.92.

SPM

10.1.92

13.1.92

(18)

SPM & AVH

Mr. Sivan Pillai  
Mrs. Preethi

At the request of the  
Learned Counsel for the respondents  
List for further directions on  
13.1.92

SPM

10.1.92

1) Statement by  
Respondents filed  
on 10/1/92

2) Statement by  
Petitioners filed  
on 13/1/92

B

20.1.92

(19)

SPM & AVH

13.1.92

Mr. Sivan Pillai  
Mrs. Dandapani

The Learned Counsel for the Respondents  
seeks 2 weeks time to verify the  
Statement filed by the respondents on  
Computation of pensions.

List for further directions on

5.2.92

SPM  
B  
20.1.92

5.2.92

SPM&AVH

Mr.P.Sivan Pillai-for applicant.  
Mrs.Preethy for respondents.

At the request of counsel for respondents, list for further directions on CCP on 13.2.92.

5.2.92

13.2.92

SPM & AVH

Mr.P.Sivan Pillai-for petitioner  
Mrs.Dandapani

The learned counsel for respondents seeks some time to reply to the statement of calculation filed by the petitioner. List for further directions on 24.2.92.

M.P.1625/91 to accept additional documents is disposed of.

13.2.92

24.2.92

SPM&AVH

Mr.P.Sivan Pillai  
Mrs.Dandapani

At the request of the Counsel for the petitioner, list for further directions on CCP on 2.3.92

24.2.92

SPM & AVH

(23) Mr P Sivan Pillai  
Mrs Dandapani

Heard the learned counsel of both the parties. Learned counsel for the respondents seeks some more time to ascertain why the rates of DA, ADA, Adhoc DA and IR was not calculated in Exbgs. R1 at the rates prevalent on 31.12.85 as <sup>provided in</sup> ~~prayed~~ para 9(1) of the Ministry of Railways letter dated 15.4.87 at Annexure A3.

List for further direction on 19.3.92.

Copy of the order be given to the parties by hand.

AV Haridasan  
(AV Haridasan)  
Judicial Member

2.3.92

SP Mukerji  
(SP Mukerji)  
Vice Chairman

3/50  
m-mos  
4.30 PM  
D. ISWAN D.

19-3-92  
(6)

Mrs. Sivan Pillai  
Mrs. Preethi

At the request of the  
Learned Counsel for the petitioner,  
Call on 27.3.92

SVH

✓  
(AVH)

(SPM)

19-3-92

SPM

27-3-92

(9)

Mr. Gorinda Swami  
Mrs. Dandapani

List for further  
direction on 9.4.92

✓  
(AVH)

✓  
(PSHM)

27-3-92

SPM

NVK & AVH

(6) Mr P Sivan Pillai by Jalaja  
Mrs Sumathi Dandapani

Respondents have filed a statement in  
compliance of the original order. Applicant  
seeks some more time. Call on 27.5.92.

✓  
AVH

NVK

9.4.92

27.5.92

(9)

Mr. P. Sivan Pillai,  
Mrs. Dandapani

Heard the learned Counsel  
for the parties.

The learned Counsel for the  
respondents is directed to set further  
interpretation of para. 9 of Annexure  
R3.

List for further direction on

17.6.92

Sd/-

(AVH)

(8pm)

27.5.92

17.6.92  
(13)

Mr. Sivan Pillai  
Mr. Ramakrishnan

At the request on behalf of  
the learned Counsel for the respondents,  
list for further direction on 22.6.92.  
No further adjournment will be  
given.

Sd/-

(AVH)

(8pm)

17-6-92

22.6.92.

Mr. P. Sivan Pillai  
Mrs. Dandapani

The learned counsel for the respondents seeks one month's time to file a reply which she expects from the Railway Board. Accordingly list for further directions on CCP on 22.7.92.

AVH

22.6.92.

SPM

22.7.92.

Mr. TCG Swamy - for applicant.  
Mrs. Dandapani

The learned counsel for the respondents Smt. Dandapani has not received reply yet from the Railway Board. Accordingly list for further directions on CCP on 12.8.92.

AVH

22.7.92

SPM

1048782. Mr. P. Sivan Pillai  
Mrs. Dandapani.

Heard the learned Counsel for both parties. The learned Counsel for the respondents indicated that in accordance with their interpretation the computation of DA / ADD etc. of the applicant has been done correctly in accordance with the Deptt. of Personnel & Pension notification dated 9.6.87. Accordingly we close the C.C.P and discharge the notice with liberty to the applicant to move appropriate legal forum to seek further redress on the above issue, in accordance with law.

Alleged  
(A. V. Haridasan)

J.M.

SPL

(S. P. Mukerji)  
V.C.

1048782

F.O.  
P.W.D.  
M.K.M.