

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 58/2005

Thursday this the 21st day of June, 2007

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

A.K.M. Nair,
S/o late K.N.Krishna Pillai,
Kavilvalappil House,
Padinjarekkara, Manikkoth PO
Kanhagad, Kasargod.

....Applicant

(By Advocate M/s D.Narendranath and Harisharma M)

V.

- 1 Union of India, represented by the Secretary to the Ministry of Railways New Delhi.
- 2 Eastern Railway, represented by its General Manager, Fairly Palace 17-NS Road, Kolkatta-1.
- 3 Metro Railway, represented by its General Manager, 33/1 Chowringhee Road, Kolkatta-71.Respondents

(By Advocate Mrs. Sumati Dandapani (Sr) with Ms.P.K.Nandini)

The application having been heard on 6.6.2007, the Tribunal on 21.6.2007 delivered the following:

ORDER

Hon'ble Mr. George Paracken, Judicial Member

The grievance of the applicant in this OA is regrading the pensionary benefits granted to him by the respondents. His contention is that the respondents have not taken into consideration the permissible period of his qualifying service while fixing his pension and other terminal benefits.

2 The brief facts are that during the entire period of his service from 1.4.66, the applicant served three organizations, namely, the Eastern Railway, Metro Railway, Calcutta and Konkan Railway Corporation Ltd (KRCL for short). He joined the Railway Workshop at Kanjanpara under the Eastern Railway on 1.4.66 as an Electrical Fitter. While working there in the said capacity in the scale of pay of Rs. 260-400, he was relieved from that post to enable him to join the Metro Railway, Calcutta with effect from 28.2.1974 keeping his lien in his parent department i.e., Eastern Railway. He joined the Metro Railway with effect from 1.3.74. From there, he opted for a deputation with the KRCL, an autonomous organization under the Railway, with effect from 1.4.1991, still maintaining his lien in his parent department as a Highly Skilled Electrical Fitter in the scale of pay of Rs. 1320-2040. He sought permanent absorption with the KRCL. The KRCL advised him to tender his technical resignation from his parent Railway. Accordingly the applicant had submitted his technical resignation to the General Manager, Metro Railway, Calcutta from where he came on deputation to the Konkan Railway. Metro Railway did not accept his request for technical resignation but forwarded his request letter to the Eastern Railway, which accepted the same with effect from 1.4.1999. According to the applicant, while he was working in the Metro Railway, Calcutta till his absorption in the KRCL with effect from 1.4.99, the contribution towards Provident Fund Account, Foreign Service Contribution, contribution towards Group Insurance Scheme etc. were being remitted to Metro Railway by the KRCL upto 31.3.1999. He has also stated that when the Pay Commission's recommendations were implemented with effect from 1.1.1996, he was on deputation to the KRCL

from Metro Raiway, Calcutta and therefore, he was entitled to get his pension revised by the Eastern Railway, in accordance with the 6th Central Pay Commission recommendations. His claim is that he continued to be an employee of the Eastern Railway till he was absorbed with the KRCL with effect from 1.4.99. To support his contention, he has produced Annexure.A7 service certificate from the Eastern Railway issued by the Works Manager stating that his period fo service in the Eastern Railway was from 1.4.66 to 1.4.99. He, therefore, contended that the pensionary benefits ought to have been fixed on the basis of of pay drawn by him as on 31.3.99.

3 The applicant made Annexure.A9 representation to the General Manager, Eastern Railway, Calcutta. He has stated that he has worked for 17 years in the Metro Railway Construction as well as on the open line as he was promoted as Electrical Chargeman in the open line with effect from 24.12.1999 in Metro Railway. He has also submitted that all the staff who retired from Metro Railway project got their final settlement as per the last pay drawn in Metro Railway though their lien was for a lower grade which they were holding in their parent Railway. He has submitted that the fixation of his pension at the grade at which he was having lien in the Eastern Railway has caused him heavy monetary loss, even though he was on deputation to KRCL till his absorption with effect from 1.4.99. He has, therefore, requested that his pension should be fixed based on the pay which he was drawing immediately before his retirement according to the extant rules of IREM. He has submitted that he was on deputation to KRCL upto 31.3.99 and working in the grade of Rs. 1600-2660 at the time of technical resignation. The service rendered on deputation should have

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been considered as service in the Railways and the pay drawn at the time of technical resignation shall be considered as the 'pay' for final settlement/fixation of pension. The final settlement/fixation of pension at a lower pay in the grade where he was having the lien is a clear case of injustice to him.

4 However, the Metro Railway (Respondent No.3) vide Annexure.A13 letter dated 3.2.2003 rejected his request simply stating that they were unable to do anything more as fixation of pension has been done according to the extant rules. By Annexure.A4 letter dated 20.12.2003 the Respondent No.1 Eastern Railway also rejected his request stating that all the benefits in connection with pension, family pension, DCRG,CVP have been extended to him on the basis of the cadre pay drawn last in the parent Railway as sanctioned.

5 The second respondent on behalf of the respondents in the reply submitted that as per the Railway Services (Pension) Rules, 1993, pension is determined on the basis of the average emoluments drawn by an incumbent. The average emoluments, in the case of the applicant, have been arrived, under Rule 50 with reference to the emoluments drawn by him during the last ten months of service. The emoluments are defined under Rule 49 and basic pay is defined in clause (1) of Rule 1303 of the Indian Railway Establishment Code (IREC) which reads as under:

"1303: (FR9): Pay means the amount drawn monthly by a Government servant as

(i) the pay other than special pay or pay granted in view of his personal qualification which has been sanctioned for a post held by him substantively or in an officiating capacity or to which he is entitled by reason of his position in a cadre."

6 The pay is defined under clause (b) of Rule 49. Note 6 to

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clause (b) of Rule 49 expressly excludes the pay drawn by a Railway servant while on foreign service to treat as emoluments which reads as under:

"6 Pay drawn by a railway servant while on foreign-service shall not be treated as emoluments, but the pay which he would have drawn under the Railway, had he not been on foreign service shall alone be treated as emoluments."

The respondents have further stated that applicant was holding a lien in the Eastern Railway and he was on foreign service to Metro Railway maintaining his lien in his parent post of HS Electrical Fitter on Eastern Railway. Thereafter the applicant was taken to KRCL where he got himself absorbed subsequently. In these circumstances while calculating pension for the service rendered by him under the Eastern Railway his substantive pay in the post held by him substantively in Eastern Railway alone should be reckoned and the enhanced pay drawn him during foreign service or on deputation cannot be reckoned as mandated by the rules.

7. I have heard Advocate Mr. Hari Sharma for the Applicant and Ms. P.K. Nandini for Smt. Sumati Dandapani (Sr) for the respondents. The contention of the applicant is that he was transferred to the Metro Railway, Calcutta with effect from 1.3.74 and he remained there till 1.4.99 when he was absorbed in the KRCL. In the Metro Railway, Calcutta he has been drawing the pay scale of Rs. 1320-2040 and it has been raised to Rs. 1600-2660. Therefore, his last pay drawn should have been determined on the basis of the pay which he was drawing in the Metro Railway, Calcutta. However, the respondents have not agreed to this contention of the applicant as the rule does not permit for the same. According to the respondents, when the applicant was on foreign service with the Metro Railway, Calcutta, he was given the higher scale of pay and

he was also given promotions there. In terms of the extant rules, his emoluments has to be determined on the basis of the post held by him at the time of his joining th Metro Railway Project on foreign service basis. He has been in the scale of pay of Rs.1320-2040 and he was given notional promotions in his parent department at par with the other similarly placed persons in his parent department. The scale of pay and basic pay ~~was~~ arrived at accordingly and they have been taken into consideration for fixation of his pension.

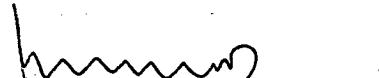
8 When this case was heard on 6.6.2007 and the orders reserved, the applicant's counsel made a further contention that the Metro Railway is very much a part of the Eastern Railway and, therefore, the applicant should not have been treated as on foreign service terms. He has taken a week's time to produce the documents to the effect that the Metro Railway is part of the Eastern Railway. However, he could not produce any such documents.

9 I have gone through the entire pleadings of the parties and heard the counsels on behalf of them. The issue is in a narrow compass,. The applicant is a permanent employee of the Eastern Railway. He was sent on foreign service of the Metro Railway from 1.3.74 and he remained there upto 31.3.199 when he was absorbed in the KRCL while he was on deputation there. His qualifying service for the purpose of pension has been taken into consideration from 1.4.66 to 31.3.1999 when he was finally absorbed in the KRCL. The applicant has contended that the pay scale in which he was placed at the time of his absorption ie 1600-2660 and the basic pay he was drawn on that date ie., 1.4.99 should have been taken into consideration for fixation of his pensionary benefits. However, he has

not supported this contention with any rules. On the other hand according to Rule 1303 of the IREC, when the applicant has been sent on foreign service, his notional pay in the parent cadre only could be considered for fixation of pension and other terminal benefits. The respondents have correctly followed there rules. The applicant has not alleged any violation of the existing rules.

10. In the facts and circumstances of the case, I do not find any merit in the contention of the applicants. Hence the OA is dismissed. No order as to costs.

Dated this the 21st day of June, 2007


GEORGE PARACKEN
JUDICIAL MEMBER

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