

CENTRAL ADMINISTRATIVE TRIBUNAL  
 ERNAKULAM BENCH  
O.A. NO.72/2011

Dated this the 29<sup>th</sup> day of July, 2011

C O R A M

HON'BLE Mrs. K. NOORJEHAN, ADMINISTRATIVE MEMBER

R.Radhakrishnan, S/o N.Ramankutty Pillai  
 Ex.Signal Inspector Gr.III, Signal & Tele Communications  
 School, Southern Railway, Podanur) R/o Uthradam,  
 Chandanathoppu, Quilon-14.

Applicant

(By Advocate Mr.T.C.Govinda Swamy)

Vs.

- 1 Union of India represented by General Manager  
 Southern Railway, HQ Office, Park Town P.O  
 Chennai-13.
- 2 Chief Workshop Manager, Signal & Telecommunication  
 Workshop, Southern Railway  
 Podanur, Kovai Dt.
- 3 The Senior Assistant Finance Advisor(W&S)  
 Signal & Telecommunication Workshop,  
 Southern Railway, Podanur, Kovai Dt.

Respondents.

By Advocate Mr. V.V.Joshi

The Application having been heard on 25.7.2011 the Tribunal  
 delivered the following:

O R D E R

HON'BLE Mrs. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant is aggrieved by refusal of the respondents to grant  
 him the dearness relief on pension in an arbitrary and illegal manner.

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2 The applicant was initially appointed as Signal Inspector on 30.8.1980. While so he applied through proper channel for the post of Overseer Gr.I (re-designated as Sub-Engineer) in the Kerala State Electricity Board (for short KSEB). On his selection and appointment as Sub-Engineer, he resigned from the Railway services on 17.9.1991. According to him he had put in about 11 years qualifying service. He averred that in terms of the Railway Pension Rules technical resignation is to be treated as deemed retirement and he has the option either to have the pensionary service counted in the KSEB or to receive pro-rata pension from the Railways. Since the issue relating to his service rendered in the Railways could not be settled by the Railway authorities he was constrained to file OA 729/2008 before this Tribunal. The Tribunal vide order dated 21.1.2010 allowed the OA to the extent that subject to the provisions of relevant rules, the applicant is entitled to pension from December 2006 onwards. It is averred that PPO (Annex.A1) was issued vide order dated 30.7.2010 wherein he was denied drawal of dearness relief. The applicant represented to the 2<sup>nd</sup> respondents narrating the fact that there is no provision for denial of dearness relief as the pay drawn by the applicant in the Railways has not been protected in KSEB. His representation was rejected on the ground that as per Hon'ble Court order the applicant is entitled to grant of pension only and that too from Dec.2006. Therefore this O.A.

3 The respondents filed reply statement resisting the claim of the applicant. They submitted that the applicant had not applied through proper channel for recruitment to the post of Overseer Gr.I (Sub-Engineer) in KSEB. On receipt of appointment order from KSEB the applicant had requested to relieve him to join KSEB. Accordingly the respondents issued termination order dated 3.9.91. They have also stated that on resigning from services the settlement benefits due to him were released. It is also stated that at the time of resignation he had 11 years of qualifying service.

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It is further stated that as per the order of this Tribunal in OA 729/2008 he is entitled for only pension that too from December 2006. To this effect they have referred Union of India Vs. Tarsem Singh (2008) 8 SCC 648. They further submitted that in compliance of the order of this Tribunal in OA 729/2008, he was paid Rs.1,65,000 as pension arrears including DCRG for the period Dec.2006 to July 2010 and no dearness relief was paid. They have rightly paid the amount as admissible to the applicant in accordance with the rules and orders of the Tribunal.

4 The applicant filed rejoinder reiterating the averments in the O.A and further submits that the Railway Board vide order dated 5.8.99 (Annex.A5) had allowed payment of dearness relief to re-employed pensioners.

5 We have heard the learned counsel for the parties and have perused records.

6 There is no dispute that the applicant had 11 years of qualifying service while leaving the Railways for joining KSEB as Overseer Gr.I/Sub-Engineer. By order of this Tribunal in OA 729/2008 the applicant was granted pension w.e.f December 2006 onwards and he was paid arrears of pension and DCRG amounting to Rs.165000/- which was confirmed by the learned counsel for the applicant. Moreover, the applicant has averred that the pay drawn by the applicant in the Railways has not been protected in the KSEB and fixed at the minimum of pay scale of the post. Thus the question that comes up for consideration before me is whether the applicant is entitled to dearness relief on pension w.e.f December 2006 onwards.

7 A clarification issued by Govt of India, Department of Pension & Pensioners Welfare OM No.45/73/97-P&PW(G) dated 2.7.1999 regarding payment of dearness relief to re-employed pensioners and employed family pensioners, the relevant portion of para 3(a) is extracted below:

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"In so far as re-employed pensioners are concerned, the entire pension admissible is to be ignored, at present only in the case of those civilian pensioners who held posts below Group-A and those ex-servicemen who held posts below the ranks of Commissioned Officers at the time of their retirement. Their pay on re-employment, is to be fixed at the minimum of the pay scale of the post in which they are re-employed. Such civilian pensioners will consequently be entitled to Dearness Relief on their pension in terms of the recommendations of the 5<sup>th</sup> Central Pay Commission at the rates applicable from time to time."

This O.M was circulated by Railway authorities, through their circular R.B.E No.190/99.

8 I notice that the applicant was granted pension for the services rendered in the Railways and there is no specific direction to the effect that the applicant is not entitled for consequential benefits, if any, flow therefrom. The respondents have correctly paid the DCRG as admissible to him as a consequential benefits.

9 When the case came up for hearing, the applicant's counsel produced an order by Armed Forces Tribunal, Regional Bench Chennai. An identical issue was elaborately considered by the Armed Forces Tribunal, Regional Bench Chennai in T.A No.194/2010. It was held in its order dated 2.5.2011 that "The applicant is entitled to Dearness Relief of pension with effect from 18.7.1997 and also the relief of merger of 50% of Dearness Relief with basic pension with effect from 1.4.2004, if he is not paid 61% of DR."

10 In view of the above, facts and circumstances of the case, I am of the view that the applicant is entitled for dearness relief on pension for the period from December 2006 onwards. The respondents are directed to work out the same and the arrears be paid to him within two months from the date of receipt of a copy of this order. The OA is allowed. No costs.

Dated 29<sup>th</sup> July, 2011

  
K. NOORJEHAN  
ADMINISTRATIVE MEMBER

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