

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.252/06

Thursday this the 14th day of June 2007

C O R A M :

HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER

A.P.Narayanan,
S/o.V.K.N.Nair,
Retired Boiler Maker Gr.I, Palakkad Division.
Residing at Iynamparambath House, Post Mala,
Via Trithala, Ottappalam Taluk, Palakkad District.

...Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented
by its Secretary to Government of India,
Ministry of Railways (Railway Board), New Delhi.
2. The Divisional Railway Manager,
Southern Railway, Palakkad Division, Palakkad.
3. The Divisional Personnel Officer,
Southern Railway, Palakkad Division, Palakkad.
4. The Senior Divisional Finance Manager,
Southern Railway, Palakkad Division, Palakkad.
5. The Manager,
Canara Bank, Trithala, Palakkad District.

...Respondents

(By Advocate Mr.P.Haridas [R1-4] & Mr.V.B.Hari Narayan [R5])

This application having been heard on 14th June 2007 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant is a retired Boiler Maker Gr.I in the scale of Rs.1320-2040/-, having been superannuated on 31.7.1995. Earlier he was holding the post of Boiler Maker Gr.II in the scale of pay of Rs.1200-1800. Applicant's promotion to the post of Boiler Maker Gr.I was effected from

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29.11.1994 on the basis of an order dated 18.10.1999 of this Tribunal in O.A.377/97, vide Annexure A-1. This order was challenged by the respondents in O.P.No.4124/00 which was dismissed by the Hon'ble High Court of Kerala vide Annexure A-2 order dated 18.3.2005.

2. The 5th Central Pay Commission while considering revision of pay scales, combined both Boiler Maker Gr.II and Gr.I and recommended a common replacement scale of Rs.4000-6000. However, while considering such recommendation, the Railway Board by order dated 24.11.1998 retained the pay scale of Rs.4000-6000 in respect of erstwhile pay scale of Rs.1200-1800 to provide pay scale of Rs.4500-7000 with effect from 1.1.1996 in respect of erstwhile pay scale of Rs.1320-2040. In so far as the revised pay scale is concerned the applicant is not benefited in respect of his pay since he stood retired from the service from 31.7.1995 itself.

3. In so far as recommendations of the 5th Central Pay Commission relating to retirement benefits, it was decided as under :-

" w.e.f. 1.1.1996, pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced w.e.f of the post last held by the pensioner/deceased Railway servant.

3.0.Revision of Pension/Family Pension of Railway servants who were in service on 1.1.1986 and retired/died during the period from 1.1.1986 to 31.12.1995.

3.1.If the basic pension of a Railway servant who retired from service during the period from 1.1.1986 to 31.12.1995 with the maximum qualifying service of 33 years, when consolidated as on 1.1.1996 in terms of para 4.1 of DOP&PW's OM No.45/86/97-P&PW(A)Pt.II dated 27.10.1997 circulated on the Railways vide Board's letter No.F(E) III/97/PN1/23 dated 7.11.1997 (Bahri's RBO 1997, P.160), works out to be less than 50% of the minimum pay of the revised scale of pay introduced w.e.f. 1.1.1996 for the post

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last held by the Railway servant as on the date of retirement, his/her basic pension should be raised to 50% of the minimum pay of the revised scale of pay. Where the retired Railway servant had less than the maximum qualifying service of 33 years, the basic pension so revised should be suitably reduced pro-rata subject to a minimum of Rs.1275. The pension thus revised should be treated as the basic pension w.e.f. 1.1.1996."

4. On the basis of the above decision, the pension of the applicant was fixed at Rs.2216 plus relief vide Annexure A-5 PPO dated 3.2.2000. This amount was continued to be paid to the applicant as pension. However, after the passing of the High Court's order dated 18.3.2005, the respondents have passed Annexure A-6 order dated 27.6.2005 which reads as under :-

" In compliance with the OP No.4124/2000 filed by Railway Administration, before the Hon'ble High Court of Kerala against the order of Central Administrative Tribunal, Ernakulam Bench in O.A.No.377/97 filed by Shri.A.P.Narayanan, Boiler Maker/SRR, he is promoted as Boiler Maker/Gr.I in scale Rs.1320-2040 with effect from 29.11.1994 (superannuated from service on 31.7.1995) as per the judgment dated 18.3.2005.

Pay fixed at Rs.1470 in scale Rs.1320-2040 with effect from 29.11.1994."

5. Respondents by Annexure A-7 order dated 14.7.2005 issued the letter of authority to the Manager, Canara Bank, Trithala which reads as under :-

" In compliance with the judgment of Hon'ble High Court of Kerala in OP No.4124/2000, the pay of Sr.Narayanan.A.P is refixed as Rs.1470/- w.e.f. 29.11.1994. Consequently, his superannuation pension is revised as below :

1. Rs.719/- plus relief w.e.f. 1.8.1995 up to 31.12.1995

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2. Rs.2194/- plus relief w.e.f. 1.1.1996 up to 31.3.2004 in terms of Rly. Board's letter No.F(E) 111/2001/PNI/60 dated 16.6.2003

3. Rs.3291/- (BP Rs.2194 plus DP Rs.1097) plus relief w.e.f. 1.4.2004

There is no change in the commuted value of Rs.232/- to be deducted from the pensioner.

The arrears of pension w.e.f.1.8.1995 may be worked out and payment arranged to the pensioner after adjusting all previous payments made.

Necessary entries may be made in the BHPPOs on the authority of this letter."

6. The Canara Bank in pursuance of the aforesaid order informed the respondents that in view of the aforesaid order dated 14.7.2005 recovery of Rs.7000/- being excess payment of pension w.e.f. 1.4.2004 was to be made and instructions were sought for the same. Respondents by Annexure A-10 order dated 10.10.2005 informed the Bank that over payment involved due to revision be recovered and send by DD in favour of the respondents. The applicant had made representation dated 28.10.2005 pointing out the error in their calculation and requested the respondents to re-examine the matter. Respondents in reply therefor, by Annexure A-12 order dated 11.11.2005 stated as under :-

" Your representation dated 28.10.2005 has gone through in detail. You are hereby advised that the pension was fixed in scale Rs.1320-2040 (Revised scale 4500-7000) at Rs.2216/- as per Rly. Board's order No.F(E)III/98/PNI/29 of 15.1.1999.

The Rly. Board vide order No.F(E)/III/2001/PNI/60 dated 16.6.2003 advised that the person who retired in scale Rs.1200-1800/- prior to 1.1.1996 is to be fitted in scale Rs.4000-6000/-. While implementing the above orders your pension will be Rs.2194/-. Therefore the pension fixed is in order."

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7. The applicant made further representation dated 12.12.2005 indicating that the respondents have proceeded to work out the pension of the applicant as if he was only in the pay scale of Rs.1200-1800 at the time of his retirement whereas his pay scale was Rs.1320-2040 for which the corresponding replacement scale is Rs.4500-7000 and as such on pro rata basis the applicant is entitled to Rs.2216 as minimum pension. Respondents in their reply dated 4th January 2006 maintained that the recommendation of the 5th Central Pay Commission in regard to replacement scale for Rs.1320-2040 is only Rs.4000-6000 and accordingly no amendment is required. The applicant has challenged Annexure A-7, Annexure A-10, Annexure A-12 and Annexure A-14 orders.

8. Respondents have contested the O.A. According to their order dated 28.2.2001 contains certain modification regarding the extent of pension payable to pre 1.1.1996 retirees. According to the instructions, the sentence "pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised pay scale with effect from 1.1.1996, for the post last held by the pensioner" shall mean that "pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the corresponding scale as on 1.1.1996 of the scale of pay held by the pensioner at the time of retirement/death while in service. By Annexure R-3 order No.P.B.C.No.177/2001 dated 1.10.2001, it was decided by the Railway Board as under :-

" In view of the position emerging out of Board's letter dated 20.8.01, as enumerated in para 1 above, for stepping up of pension/family pension as on 1.1.1996 of the pre 1996 retired/deceased Railway servants, the scale of pay introduced w.e.f. 1.1.1996 should be the one that corresponds to the scale of pay held by the Railway servants at the time of

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retirement/death while in service and not the higher replacement scale of pay introduced w.e.f. 1.1.1996 or thereafter. In all cases where the pension and family pension have been stepped up to 50% and 30% respectively of the minimum pay in the higher replacement scale of pay in terms of Board's letter dated 9.9.1999, immediate action should be taken to revise the same with reference to the minimum of the corresponding scale of pay as on 1.1.1996, for the scale of pay held by the Railway servant at the time of retirement/death while in service."

9. By Annexure R-4 the Railways have decided not to enforce recovery of the excess payment made.

10. Counsel for the applicant argued that as per order dated 1.10.2001 the pension and family pension have been stepped up to 50% and 30% respectively of the minimum pay in the higher replacement scale of pay in terms of Board's letter dated 9.9.1999 and not 'higher replacement scale' of pay introduced with effect from 1.1.1996 or thereafter. The term 'higher replacement scale' contained in the order has been wrongly construed by the respondents inasmuch as while the earlier scale recommended for Rs.1320-2040 was only Rs.4000-6000 it was by Railway Board's order at a later stage that replacement scale of erstwhile Rs.1320-2040 underwent the revision of Rs.4500-7000. According to the counsel, this is an erroneous interpretation. There was no higher replacement scale. After 5th Central Pay Commission recommendations were accepted the term higher replacement scale should mean that in some cases (as spelt out in para 1 of the rejoinder), before effecting the replacement scale under the 5th Central Pay Commission recommendation certain pay scales were replaced originally to a higher pay scale under the pre revised scales and subsequently their corresponding replacement scale was effected. To quote an example, the scale of pay of Assistant Station Master which was

Rs.1600-2660 underwent a change prior to the new pay scale came into existence and the revised higher pay scale was Rs.1640-2900 for which the replacement scale was Rs.5500-9000. If it were allowed to remain at Rs.1600-2660 the replacement scale would have been Rs.5000-8000 and it is only in such cases that pre 1.1.1996 retirees were to be paid pension at half the minimum scale of pay in the revised pay scale in respect of the erstwhile pay scale of Rs.1600-2660. According to the counsel, there has been no such revision of pay scale under the pre revised pay scale in respect of Boiler Maker Gr.I. The "pay scale" earlier also had remained with Rs.1320-2040 and without undergoing any revision in the pre revised scale, its replacement scale had been stipulated as Rs.4500-7000. It could have been a different matter had originally the applicant was in scale Rs.1200-1800 scale in which event the replacement scale would be Rs.4000-6000. That is not the case here. It is a clear case of Rs.1320-2040 replacement scale of which is Rs.4500-7000 and the Hon'ble High Court has never made any change in regard to the payment of pension. Thus the counsel argued that the decision of the respondents in reducing the monthly pension available to the applicant and consequent recovery thereof is illegal.

11. Counsel for the respondents argued that the Railways have properly interpreted the provisions of Railway Rules.

12. Arguments were heard and documents perused. Admittedly, all those who were in erstwhile pay scale of Rs.1320-2040 were given the replacement pay scale of Rs.4500-7000 with effect from 1.1.1996 itself. Accordingly, anyone who retired within one year of his switching over to the

new pay scale and in whose case the initial pay was the minimum in the pay scale of Rs.4500-7000 would be eligible for getting pension of Rs.2250 for full service of 33 years if there be any deficiency with the corresponding deduction in his pension. By virtue of Railway Board circular dated 24.11.1998 pay scale of skilled artisans Gr.I right from 1.1.1996 was enhanced to Rs.4500-7000. All the retirees retired from 2.1.1996 were to get minimum pension of half the minimum pay. The same concession was extended to pre 1996 retirees. The spirit behind the aforesaid rule is that pensioners form a homogeneous class and hence, there cannot be a class within a class as held by the Apex Court in the celebrated case of D.S.Nakara Vs. Union of India (1983 [1] SCC 305). Thus the applicant's erstwhile pay scale being Rs.1320-2040 and the same having been replaced with effect from 1.1.1996 to Rs.4500-7000 the minimum pension available to the applicant is Rs.2250 (and corresponding pension for lesser period of service). This is what exactly the calculation made by the respondents themselves vide Annexure A-5. No matter that initially the respondents have accepted the Pay Commission recommendation and prescribed a common pay scale of Rs.4000-6000 for the erstwhile pay scales of Rs.1200-1800 and Rs.1320-2040. It could have been a different matter had the pay scale of Rs.4500-7000 been from a prospective date beyond 1.1.1996. That is not the case here.

13. In view of the above discussion, the **O.A is allowed**. It is declared that the applicant is entitled to minimum pro rata pension of half the basic pay of the minimum of the pay scale of Rs.4500-7000 which works out to Rs.2216 as rightly calculated vide Annexure A-5. Consequently Annexure A-7, Annexure A-10, Annexure A-12 and Annexure A-14 orders are hereby

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quashed and set aside. Respondents are directed to cause instructions issued to the Bank concerned to offer the pension as per PPO dated 3.2.2000 (Annexure A-5) and if any recovery has been effected, the same be also refunded to the applicant. Such an order should be passed within a period of eight weeks from the date of communication of this order. No costs.

(Dated this the 14th day of June 2007)



K.B.S.RAJAN
JUDICIAL MEMBER

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