

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 296
~~XXXXXX~~

1991

DATE OF DECISION 27.4.92

A Pushkaran, Quilon Applicant (s)

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

Versus

UOI., through the General Respondent (s)
Manager, Southern Railway,
Madras-3, and another

Smt. Sumathi Dandapani Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. NV KRISHNAN

ADMINISTRATIVE MEMBER

The Hon'ble Mr. N DHARMADAN

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

SHRI N DHARMADAN, JUDICIAL MEMBER

A retired Railway employee, who is compelled to approach this Tribunal because of the technical stand taken by the Railways in regard to the interpretation on Annexure I order of the Labour Court in CP-20/84(C), filed this application under Section 19 of the Central Administrative Tribunals Act, 1985 for a direction to the respondents to pay the enhanced rate of pension determined in Annexure A1.

....2/-

Recd
on 11/5/92
M
115/102

2. The Railway challenged the order of the Labour Court, Quilon in CP-20/84 Annexure A1, before this Tribunal in OAK-482/88. This Tribunal considered the same and dismissed ^{in case 4} as per Annexure-A2 judgment dated 26.3.90. After his retirement in 1981, the applicant filed an application under Section 33 (C)(2) of the Industrial Disputes Act, 1947, claimed that he is entitled to a minimum pension of Rs.455/- fixing his emoluments average monthly ~~/xxx~~ at Rs.500/-, at a time when the Railway had fixed the average ^{monthly emoluments} ~~/xxx~~ of the applicant as ~~to~~ Rs.452/- and paid him a monthly pension at Rs.402/-. The difference of of pension due to him was calculated as follows:

"Average emoluments based on Rs.500/- pay from 1.1.1981 to 30.10.1981 = 500 + 27% = 635.
Pension 50% (39 years of qualifying service)
= 317.50 Relief @ 42.5% = 137.70 = Total Pension Rs.455.00 (rounded off) paid at present
= 282 + 119.85 = 402.00 (rounded) Difference due per month - Rs.53.
Money due from 12/82 to 10/84 as arrears 23 months = 1219.00:-"

In the petition he ^{made the} ~~claimed~~ upto October, 1984 and requested for a direction to disburse the arrears of difference of Rs.1219/-. This was awarded by the Labour Court, but, it was challenged by the Railways before this Tribunal. Ultimately, the said application was dismissed as per Annexure A2 judgment. The applicant was paid the arrears based on the decision

of the Labour Court which was upheld by this Tribunal. Therefore, the applicant filed the Annexure-III representation stating that the decision of the Tribunal was rendered on 26.3.90

and he is entitled to get his pension at the rate of Rs.455/- taking into consideration ² of his emoluments average ~~xxx~~ at Rs.500/-. *This was wh disposed of: 2*

3. Accordingly, the applicant has filed this application with the following prayers.

"To direct the respondents to pay the enhanced rate of pension determined in Annexure A1/A2 from November, 1984 with 12% interest per annum on the arrears payable."

4. The respondents filed a reply affidavit in which they have taken the stand that the applicant is not entitled to get the pension on the basis of the order of the Tribunal in CP-20/84, Annexure-A1. He is entitled to the pension at the rate of Rs.455/- only upto October, 1984 and this view has been upheld by this Tribunal in OAK-482/88.

Accordingly, the benefit of the judgment of the Tribunal has been fully complied with. Hence, this application is liable to be dismissed.

.....²/-

5. Having heard the matter we are of the view that the Railways has taken ²every technical view in this case. The order of the Labour Court, Quilon Annexure-A1 was interpreted by the Railways as decision with regard to the rate of pay of the applicant applicable only for a limited period between ^{the 2}claim and it is inoperative thereafter.

This is a technical view and cannot be upheld.

The decision of the Labour Court clearly lays down the correct rate of the average monthly ^{emoluments} ~~pay~~ and pension ^{of this applicant 2} based on proper calculations made in this

behalf. In fact the applicant approached the

Labour Court for enhancement of the pension based on

correct calculation extracted as above. It can be

seen from the order of the Labour Court that the

very basis for fixing the average monthly ^{emoluments} ~~pay~~ followed

by the respondents was wrong. This has been rectified

by the Labour Court, in CP-20/84. There is an

observation in the judgment in para 8 that the

applicant is entitled to get ^{revised pension. It states: 2}

"the pension of the petitioner was fixed on the basis of his pay at Rs.452/-."

He is entitled to get the same based on pay at Rs.500/- per month."

The Labour Court has found on facts after hearing

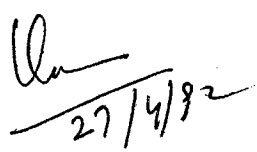
²the Railways that the applicant is entitled to Rs. 500/-

the Railways that the applicant is entitled to fix his basic pay at Rs.500/-. This fixation cannot be restricted to be applied and followed for the period between 12/82 and 10/84 as contended by the Railways. The restricted interpretation given ^{by} ~~the~~ the Railways to the wording contained in the order of the Labour Court cannot be upheld. We are rejecting the contention of the Railways in their reply statement.

6. Having regard to the facts and circumstances of the case we hold that the applicant is entitled to get his average monthly ^{emoluments} ~~pay~~ fixed at the rate of Rs.500/- per month and he is also entitled to the difference of the amount as per the correct calculation of his pay fixed on that basis. Accordingly we allow this application and direct the respondents to enhance the rate of pension payable to the applicant on the basis of Annexure A1 determination of his pension and disburse the difference to the applicant within a period of two months from the date of receipt of the copy of the judgment. It goes without saying that the applicant is entitled to get his pension in future also on the ^{same} ~~same~~ basis. No order as to costs.


(N. DHARMADAN)
JUDICIAL MEMBER

27.4.92


(NV KRISHNAN)
ADMINISTRATIVE MEMBER