

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.370/92

DATE OF DECISION : 26-7-93

P.J.Thomas,
Pelayur House,
PO Velur Trichur,
Trichur District.

.. Applicant

Mr. P.Sivan Pillai

.. Advocate for applicant

V/s

1. Union of India through the
General Manager,
Southern Railway,
Madras.

2. The Chief Personnel Officer,
Southern Railway,
Madras.

.. Respondents

Mr. M.C.Churian

.. Advocate for respondents

CORAM:

The Hon'ble Mr. N.Dharmadan, Judicial Member.

JUDGEMENT

MR. N.DHARMADAN, JUDICIAL MEMBER

Applicant is a retired Assistant Signal and Telecommunication Engineer (ASTE for short) from the Railways. He is aggrieved by the short payment of his pensionary benefits and rejection of his representation by the impugned orders at Annexures-A1 & A7.

2. There is no dispute regarding the facts. Applicant while working as Chief Signal Inspector (Special) in the scale of Rs.2375-3500 was seconded to the RITES, Iraq. He returned and joined Southern Railway in 1987. When he returned to Southern Railway in 1987 he was posted as Chief Signal Inspector (Spl.) in the Railway Electrification at Salem in the interest of the administration. While working

at Salem he was promoted to the Group-B service on an adhoc basis with effect from 30.5.1988. He assumed charge as ASTE on 30.5.88 as is evident from Annexure-A2. His pay was thereafter fixed in the higher time scale as per Annexure-A3 office memorandum dated 4.10.1988, with effect from 30.5.88. This fixation was made under FR 22-C of the Fundamental Rules. He continued to officiate as ASTE and drew his annual increments from time to time. While so, on account of personal reasons, he tendered resignation for voluntary retirement. The second respondent vide Annexure-A4 letter sanctioned the acceptance of voluntary retirement with effect from 1.7.91 as ad-hoc ASTE/RE/SA. It was communicated to the applicant as per Annexure-A5 letter. In accordance with Annexures-A4 & A5 the applicant relinquished the charge by Annexure-A6 memo dated 1.7.91. The applicant was drawing a pay of Rs.3500/- in the scale of pay Rs.2000-3500 attached to the post of ASTE. He is entitled to get pensionary benefits taking into consideration the last pay. Since there was no settlement of the pension he filed repeated representations and the applicant was allowed pensionary benefits on the basis of his pay in the substantive post of Chief Signal Inspector at Rs.3300/- vide Annexure-A7 letter dated 13.12.92 which is extracted below:-

"The following pensionary benefits have been passed for payment and have been credited to your SB Account No.88/79/Indian Overseas Bank, Kecheri, Trichur Pin 680501:-

- | | |
|----------------------------|---|
| 1. Pension | : Rs.1631 + Relief (inclusive of commutation amount). |
| 2. DCRG | : Rs.54450/- less Rs.9579/- towards Schoter Advance & interest. |
| 3. Commutation of Pension. | : Rs.76433/- |

Further representation filed by the applicant was rejected as per Annexure-A1 letter dated 13.2.92 which reads as follows:-

. 3/-

" You were transferred to RE Project as CSI in grade Rs.2375-3500 and you held lien in S.Rly. over that post only. Your adhoc promotion as ASTE was done by RE Project on a local arrangement and that cannot be taken into consideration for payment of settlement dues.

Adhoc promotion asd ASTE according to seniority is not considered on this Railway and you did not also volunteer for selections as and when arranged. "

The applicant is challenging the above said letters in this application filed under Section 19 of the Administrative Tribunals Act with a prayer for a direction to the respondents to revise the pension and other retirement benefits in accordance with the pay which he was drawing in the post of ASTE at the time of his retirement and acceptance of his voluntary retirement.

3. Even though the respondents filed a detailed counter affidavit, they have accepted all the contentions of the applicant but raised a technical objection on the ground that on his return from Iraq he was posted to Railway Electrification Wing at Egmore in the scale of Rs.2375-3500 (Group 'C' Service) keeping his lien in Southern Railway. According to them the Railway Electrification project is a separate organisation and it is controlled by a separate General Manager at Allahabad. For giving promotion to the applicant to Group 'B' service he must undergo a written examination followed by viva-voce. ~~The~~ The applicant never volunteered for such selection. However, in 1988 the applicant was promoted on adhoc basis to Group 'B' service as ASTE without consulting General Manager, Southern Railway where the applicant's lien is maintained. Applicant's promotion was purely a local arrangement. His pay was also fixed in the scale of ASTE post and he was allowed to continue as ASTE (adhoc)

for more than three years. The Chief Personnel Officer, Southern Railway, Madras has accepted his voluntary retirement with effect from 1.7.91 when he was drawing a pay of Rs.3500/- as adhoc ASTE. But he was allowed pensionary benefits on the basis of his pay in the substantive post namely Chief Signal Inspector, Southern Railway, on a pay of Rs.3300/- in the scale of Rs.2375-3500 (Group 'C' Service).

4. The applicant also filed rejoinder denying the statements of the respondents for sustaining the impugned orders.

5. The only question emerges for consideration in this case is whether the applicant is entitled to pensionary benefits on the basis of his last pay received by him in the grade of ASTE on adhoc basis.

6. In accordance with para 5.2 of the Railway Board's letter No.PC-IV/87/Imp/PN/1 dated 15.4.87 pension shall be calculated based on 50% of average emoluments. 'Emoluments' in terms of para 4.1 of the same circular reads as follows:

"Emoluments for the purpose of calculating various retirement and death benefits shall mean basic pay as defined in rule 2003(21)(a)(i) (FR.9(21)(a)(i)-R.II which the railway servant was receiving immediately before his retirement or on the date of his death. Similarly, the term 'Average Emoluments' shall be determined with reference to emoluments drawn by a railway servant during the last ten months of his service."

Rule 2003(21)(a)(i)-R-II as incorporated in the IREC Vol.I

Rule 103(35)(i) reads as follows:-

"Pay means the amount drawn monthly by a Railway 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."

7. Relying on the above said rules, the learned counsel for the applicant submitted that the emoluments for the purpose of calculating pension may be the amount drawn by a railway employee which has been sanctioned for the post held by him either substantively or in an officiating capacity immediately before the date of his retirement. There is no dispute by the Railway that the ~~post~~ held by the applicant was ~~ASTE~~ and the pay drawn by him in that post was Rs.3500/- p.m. The applicant was allowed to draw that salary for more than three years whether he was holding the post adhoc, temporary or as a stop gap arrangement. In support of the argument that Railway employees who held posts on adhoc basis were given pensionary benefits on the basis of the last pay in spite of the fact that such employees were holding adhoc posting, the applicant has produced Annexure-A9, a counter affidavit filed by the Railway in OA 1026/92. The applicant also produced Annexures-A10 & A11, the office order by which the Chief Signal Engineer posted the applicant in the scale of Rs.2375-3500 immediately after his return from foreign assignment in 1987 and a further letter of the General Manager, Railway Electrification to the General Manager, Southern Railway, dated 15.11.91, to establish that the applicant was posted in the administrative exigencies and not on any other consideration. Hence, he is entitled to count his pensionary benefits on the basis of his last pay in the post of ASTE.

8. The documents Annexures-A9, A10 & A11 will give additional support to the case of the applicant. These documents have not been disowned by the railway nor have they denied the averments of the applicant in the rejoinder and M.P.486/93 for production of additional documents.

9. The case of the railway that the applicant's promotion to Group 'B' service as ASTE is purely a local arrangement and it cannot weigh with the railway for correct fixation of his pensionary benefits cannot be accepted in the light of Annexure-A2^{order} permitting the applicant to assume charge as ASTE/RE/SA with effect from 30.5.88 and Annexure-A3³; fixing his pay in that cadre under FR 22-C under the relevant rule of the railway for correct fixation of the salary. If the promotion was irregular, the respondents would have taken steps to cancel the promotion before accepting his offer for voluntary retirement, as per Annexures-A4 & A5 proceedings. After allowing the applicant to retire voluntarily on 1.7.91 from the post of ASTE/RE/SA, the Railway cannot be heard to say that he was working in a separate wing and the relevant rules quoted above have no application in the matter of fixation of his pensionary benefits. Admittedly, at the time of acceptance of his resignation the applicant was getting the emoluments for his job to the tune of Rs.3500/-. It is immaterial whether he was working in Railway Electrification wing or under the Southern Railway. The rules extracted above did not make any distinction between employees working in the Railway Electrification wing under a separate General Manager at Allahabad and persons working under the General Manager, Southern Railway, Madras. The whole consideration for fixing the pensionary benefits after retirement of a railway employee is the calculation based on 50% of the average emoluments. Since there is no dispute regarding the average emoluments drawn by the applicant in the post of ASTE, the Railway cannot escape from the liability of making correct fixation of pay when the applicant has claimed the same after Annexure-A6 relinquishment of the office.

10. For the reasons mentioned, the technical contentions raised by the respondents to sustain the impugned orders so as to avoid them to make the correct fixation of pensionary benefits cannot be sustained. Having regard to the facts and circumstances of the case, I am of the view that the applicant has a genuine grievance and the impugned orders are unsustainable. Accordingly, I quash the same and direct the respondents to revise the pension and other retirement benefits ^{to be paid} to the applicant in accordance with the emoluments received by the applicant in the post of ASTE at the time of his voluntary retirement and relinquishment of post as per Annexure-A6. The same shall be fixed and disbursed to the applicant within a period of six months from the date of receipt of a copy of the judgment.

11. The application is allowed as above. There will be no order as to costs.


(N.DHARMADAN)
JUDICIAL MEMBER

26/7/93.

v/-

LIST OF ANNEXURES:

1. Annexure-A1 .. Copy of letter No.P(B)500/T134/91-92 dated 13.2.92 from CPO, SR, Madras.
2. Annexure-A7 .. Copy of letter No.P(B)500/PA/91/Hd. Qrs./39 dt.13.12.91 from CPO, SR.
3. Annexure-A2 .. Copy of charge assumption letter dt. 30.5.88 of the applicant.
4. Annexure-A3 .. Copy of O.M. dt. 4.10.88 fixing the pay of the applicant.
5. Annexure-A4 .. Copy of letter dated 19.6.91 of CPO according acceptance of voluntary retirement.
6. Annexure-A5 .. Copy of letter dt. 25.6.91 from CPM/RE/MS communicating the acceptance of voluntary retirement of applicant
7. Annexure-A6 .. Copy of relinquishing charge letter of the applicant dt. 1.7.91.
8. Annexure-A9 .. Copy of counter affidavit filed by Railway in OA 1026/92.
9. Annexure-A10 .. Copy of posting order of the applicant to CEE/RE/MS in the scale of Rs.2375-3500.
10. Annexure-A11 .. Copy of letter dated 15.11.91 from Chief Engineer, RE to Chief Engr, SR.

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