

Central Administrative Tribunal, Mumbai Bench

OA 449/2000

Mumbai this the 25th day of June, 2001

Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mrs. Shanta Shatry, Member (A)

1. Mrs. Sharayu B. Chirmule
R/o 5, Mrityunjay Colony,
Sukhshanti Apartments,
Kothrud,
Pune-29.
2. Shri Y.G. Patwardhan, retired
Chief Engineer,
Western Railway,
Ulhas,
Plot No.11, Bharatkunj Society No.2,
Erandwana, Pune-411 038.Applicants

By Advocate: M/s Devakar and Co. for applicants.

Versus

1. Union of India through the Ministry
of Railways,
Rail Bhawan,
New Delhi-110 001.
2. The Secretary,
Railway Board,
Rail Bhavan,
New Delhi-110 001.
3. The General Manager,
Western Railway,
Churchgate,
Mumbai-400 020.Respondents

By Advocate: Shri V.S. Masurkar.

ORDER

Hon'ble Mr. Kuldip Singh, Member (J)

This is an OA filed under Section 19 of the Administrative Tribunal's Act, 1985 filed by the two former employees of the Western Railway who want that their basic pension is required to be revised at Rs.11200/- per month with effect from 1.1.1996 being 50% of the minimum pay in the revised scale of pay introduced w.e.f. 1.1.1996 for the post last held by them as the Principal Head of the Department (hereinafter referred to

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PHOD) and seek a direction to the respondents for fixation of the pension accordingly as well as basic family pension in accordance with the said rules.

2. It may be mentioned that during the pendency of the OA applicant No.1 had expired and his legal heirs have been brought on record.

3. The short facts which are necessary for the adjudication of this OA are as under.

4. Applicant No.1 was working as Chief Electrical Engineer, Western Railway and retired from the service of Indian Railway Service of Electrical Engineers on 31.10.1987 and at the time of his superannuation he was drawing a salary of Rs.6700/- per month in the pay scale of Rs.5900-6700 ~~at the time of his superannuation~~. The scale of Rs.5900-6700 had been fixed by the 4th Central Pay Commission w.e.f. 1.1.1986. It is stated that prior to 1.1.1986 there were two categories of HODs one HOD in the Senior Administrative grade level in the scale of Rs.2500-2750 and other as Additional Head of the Department in the level 2 in the pay scale of Rs.2250-2500. But on the recommendations of the 4th Pay Commission both these grades were merged into single scale of Rs.5900-6700 which became effective from 1.1.1986. Since PHOD and Additional PHOD were merged so there was some resentment in the cadres. The Railway Ministry reviewed the Gazetted cadres of Group "A" with a view to restructuring and strengthening the set up and as a result of review, it was decided that 48 existing SA

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Grade post of PHODs should be placed in the grade of Rs.7300-7600 and notification to this effect was issued on 25.8.88. The duties of the PHOD w.e.f. 25.8.88 continued to be the same as it existed on 1.1.1986 and such ^{juries} were being performed by the applicants while they were in service. Vide notification dated 25.8.88 the Railways protected only the interest of serving employees without giving any benefit to the retirees.

5. Subsequent to this the 5th Central Pay Commission recommended a revision in pension and on the basis of which a decision was taken on 15.1.1991 that w.e.f. 1.1.1996 pension of all the pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of the pay introduced w.e.f. 1.1.1996 of the post last held by the pensioner so the applicants submit that the last post last held by them was that of PHOD, the scale of which has been revised from Rs.7300-7600 to Rs.22400-24500 whereas the other HODs are fixed in the scale of Rs.18400-22400 so the applicants say that as they were holding the post of PHODs ^{they} were entitled to 50% of the basic pension should be Rs.11200/- and their basic family pension of Rs.6720/-. Thus they claim that their basic pension should be refixed.

6. The respondents who are contesting the OA admit that the applicants were working as PHODs as on the respective date of retirement i.e. on 31.10.1987 in respect of applicant No.1 and 30.4.88 in respect of applicant No.2 but as regards their fixation of pension in the pay scale of Rs.7300-7600 and revised pay scale of

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Rs.22400-22600 is concerned, the respondents had rejected their representation on the plea that at the time of retirement the applicants were working in the grade of Rs.5900-6700. On review of the cadre, the posts were upgraded by the Railway Board w.e.f. 25.8.88, i.e., after the retirement of the applicants as such it is submitted that the applicants never worked in the higher pay scale and since both the applicants have never worked in the upgraded pay scale of Rs.7300-7600 so they cannot be given the benefit of 50% of the pension in the revised pay scale of Rs.22400-2600 which is a replacement scale of Rs.7300-7600.

7. It is also submitted by the respondents that the upgradation though ordered by the Railway Board on 25.8.88 but the same was prospective and it was never intended to have retrospective effect. Besides that it is also pleaded that the incumbents who are posted to the upgraded post of Rs.7300-7600 would be posted after a positive act of selection by the Appointments Committee of the Cabinet (ACC). Therefore duties, workload and responsibilities have also been increased when this scale was upgraded, hence it is submitted that the applicants are not entitled to the benefit of upgradation.

8. In the rejoinder the applicants do admit that after the upgradation, the cases of those upgraded officers were placed before the ACC but the same was a formality in case of PHODs who are empanelled for posting and the onus of these formalities lies with the Railway Board and the applicants maintain that the restructuring was done in order to maintain a difference between HOD

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and PHOD and the applicants though have retired a little earlier than the date of issue of the order but they had held the post of PHOD on the date of superannuation and since the seniority of PHODs has been revised to the scale of Rs.7300-7600 and further revision to Rs.22400-2600 so the applicants are entitled to get their pension revised ~~to~~ the 50% of the scale of Rs.22400-26000 and family pension at 30% of the revised pay scale.

9. We have heard the learned counsel for the parties and gone through the records of the case.

10. The short question in this case is whether the applicants who had retired before the post had been upgraded can be said to have held the post at the time of their superannuation in the pay scale of Rs.7300-7600 (revised scale of Rs.22400-2600) and are they entitled to the same merely because of the fact that the post held by them was also of a PHOD and the revision of scale of PHOD came into effect after the upgradation of scale of Rs.7300-7600 to Rs.22400-26000. We have given our thoughtful consideration to the matter. Admittedly at the time when the applicants had superannuated though they were holding the post of PHOD but the same was in the pay scale of Rs.5900-6700 and the respondents plead that after the upgradation of the post in the pay scale of Rs.7300-7600 again a positive act of selection was followed in each case and approval had also been obtained from the ACC, which fact has not been controverted by the applicants in the rejoinder. The applicants in their rejoinder have merely stated that obtaining the approval of the ACC was merely a formality and since the process

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of upgradation was going on for a long time so the respondents could have placed their cases also before the ACC and it was the onus on the part of the respondents to place the cases of the applicants before the appropriate authorities.

11. To our mind this contention of the applicants does not hold good because once it is found that after the upgradation a positive act of selection was followed up to give an upgraded scale to the PHODs so that had to be maintained and applicants having retired earlier to that, so there was no question of applicants undergoing the selection process for grant of scale in the grade of Rs.7300-7600.

12. Besides that the averment of the respondents with regard to giving higher duties and responsibilities to the PHODs after the upgradation is also not controverted by the applicants. So we find that since the applicants had never been selected by a positive act of selection for being granted a pay scale of Rs.7300-7600 as by that time they had already retired nor they had been vested with higher duties and responsibilities nor they performed those duties as such they cannot claim now that they are entitled to get their pension refixed by virtue of some recommendation of the Pay Commission because the cases of the applicants are not covered even under that because even at the time of superannuation the applicants were drawing pay scale of Rs.5900-6700 and not Rs.7300-7600.

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13. Hence we are of the considered opinion that the OA is devoid of any merits and the same is dismissed.

No costs.

Shanta F
(Mrs. Shanta Shastray)

Member (A)

Kuldeep
(Kuldeep Singh)
Member (J)

Rakesh