

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 148/2000

Date of Decision : 21st August 2001

S.D.Jeswani Applicant

Shri K.B.Talreja Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Shri S.C.Dhawan Advocate for the
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

- (i) To be referred to the reporter or not? *yes*
- (ii) Whether it needs to be circulated to other *no*
Benches of the Tribunal?
- (iii) Library *yes*

yes / -
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.148/2000

Dated this the 21st day of August 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

S.D.Jeswani,
R/o 71-B, Sindhuwadi,
M.G.Road, Ghatkopar (E),
Mumbai.

...Applicant

By Advocate Shri K.B.Talreja

vs.

1. Union of India through
The General Manager,
Central Railway,
Mumbai CST.

2. The Divisional Railway Manager,
Central Railway,
Mumbai CST.

3. The F.A. & C.A.O.,
Central Railway,
Mumbai CST.

...Respondents

By Advocate Shri S.C.Dhawan

ORDER

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for the direction to the respondents to fix the pension of the applicant as per recommendation of the Vth Pay Commission, keeping in view Rule 33 of CCS (Pension) Note 1 & 4 and Rule 9 (21) of Fundamental Rules, work out the arrears and pay the same along with interest and costs.

2. The applicant was working as Inspector of Works, Thane in the Central Railway, was hospitalised as indoor patient w.e.f. 21.10.1981 to 21.2.1983, was under treatment of Private Doctors till September, 1985. The applicant gave a notice for voluntary Retirement w.e.f. 1.7.1991 vide his application dated 1.4.1991. The applicant has filed OA.NO.630/91 which was decided on 5.1.1993, operative portion of the order is as below :-

"We, therefore, direct that the applicant may be treated as having voluntarily retired from the respondents service with effect from 1.7.1991 and his pensionary benefits and other dues should be settled on that basis. It is also directed that while finalising the settlement dues, whatever type of leave is due to the applicant may be adjusted against his absence from 21.10.1982 till the date of retirement after obtaining, if necessary, the required leave application from the applicant. The medical certificates attached to the application may be accepted for this purpose without insisting on a fresh medical certificate. His qualifying service for pension may be calculated after taking into account such adjusted leave in accordance with the rules. The payment including pensionary benefits may be made within a period of three months from the date of receipt of this order. There will be no order as to costs."

3. The applicant's pension has been worked out on the basis of last 10 months pay which was drawn prior to 1982, the said period has been counted for qualifying service, no notional fixation of his pay has been done, even though the Board vide Annexure-'A-3' has Ex-Post-Facto sanctioned extra ordinary leave from 21.10.1982 to 30.6.1991 which is noted below for ready refernece :-

dy / -

" A copy of Desk Officer/establishment(Genl) Railway Board's letter No. E(G) 95 LE 1-5 dated 10.12.1997 is enclosed herewith for necessary action.

It has been decided with the approval of the President that the entire period of absence i.e. from 21.10.82 to 30.6.91 of Shri S.D.Jeswani, Ex.IOW/Mumbai CST may be treated as Extraordinary Leave, as a special case, in relaxation of rules.

You are requested to take further necessary action at your end under advice to this office."

4. The applicant claims the relief in view of the F.R:9 (21) Rule 33 (1) Note 1, 4 & 7 referred in OA.No.433/92 Santosh Kumar Ch. Majumdar & Anr. vs. Union of India & Ors. decided on 5.3.1993 by CAT, Calcutta Bench, OWP 442/96 decided by Hon'ble High Court of Jammu & Kashmir in case of Kishankant vs. State of Jammu & Kashmir, Rule 49, Note 3 & 4 of Railway Services (Pension) Rules 1993 and OA.377/95 decided on 19.1.1996 V.M.Desai vs. Union of India & Ors.

5. The grievance in brief is that the applicant is entitled to yearly increment as his sickness period has been counted for qualifying service, entitled to proforma promotion, benefits of restructuring, IVth and Vth Pay Commission's benefit.

6. After the decision in OA.No.630/91 as stated above, the applicant filed OA.NO.584/95 before this Bench which was decided on 24.7.1997 and the operative part of the order is noted below:-

Signature

..4/-

" I expect the administration of the Central Railway to pursue the matter vigorously if necessary by fax and other such methods and see that orders of the Railway Board are obtained expeditiously and thereafter orders granting leave are issued and in terms of those orders the pension of the applicant is refixed and on such refixation if any arrears are to be paid the same should be paid to the applicant. Action in this regard should be completed within six months from the date of communication of the order. OA. disposed of in these terms."

7. On perusal of the order passed in OA.NO.433/92 Santosh Kumar CL Majumdar & Anr. vs. Union of India & Ors. decided by CAT, Calcutta Bench, the point for consideration was whether Special Pay can be taken into consideration for fixation of promotion notionally and monetary benefits restricted only from a particular date, same benefits are also available to those who had relieved before the crucial date and the answer is 'Yes' but monetary benefits restricted to the date of first representation. The point involved was entirely different one, has no relevance to the present case.

8. In case of Kishan Lal vs. State of J & K (OWP 442/96 decided by Hon'ble High Court of J & K), the employee who was to retire at the age of 60 years was retired at the age of 55 years, hence it was decided that "Even though the petitioner is right in his submission that he should have been retired at the age of 60 years but only relief which can be given to him is that notionally he would be deemed to have retired on attaining the age of 60 years. He would not be entitled to actual wages".

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9. Railway Services (Pension) Rules, 1993 came in force on 3.12.1993 while the applicant's voluntary retirement is w.e.f. 1.4.1991. The said Rules are not retrospective in operation. Hence, the said Rules are not applicable to the applicant's case.

10. The applicant retired on 1.4.1991 and at the relevant time Manual of Pension Rules 1950 was in force. Rule 306 (1) is as under :-

" A Railway Servant's claims to pensionary benefits shall be regulated by the rules in force at the time when he ceases to be in service."

Hence, it is hereby held that the case of the applicant regarding Pensionary benefits has to be decided in view of Manual of Pension Rules, 1950 and none else.

11. The word "Average emoluments" has been defined in the said Manual which is as under :-

"Average emoluments" means the average of the emoluments calculated with reference to the position of the employee during the last three years of service."

12. The word "Qualifying service" has been defined in Rule 401 of the said Rules which is as under :-

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"401. Qualifying service -- "Qualifying service" is the number of completed six-monthly periods of service which is taken into account for determining the amount of pensionary benefits. If the total qualifying service contains fraction of a day, half-a-day or above will be rounded off to the next full day. Service in excess of a completed six-monthly period in the total qualifying service will, however, be ignored."

13. Rule 420 (i) & (iii) of the Manual is as under :-

"420. Leave--(i) All periods of leave with leave salary taken upto the date of superannuation or the date of extension of service, if any, count as qualifying service.

(ii) -----

(iii) In respect of Railway servants in service on or after 19th April 1968, extraordinary leave may be allowed to count for pensionary benefits at the discretion of the competent authority in the following circumstances -- namely (i) if it is taken on Medical certificate; (ii) if it is taken due to the inability of the person concerned to join or rejoin duty due to Civil commotion or natural calamity provided that he has no other type of leave to his credit; or (iii) if it is taken for prosecuting higher scientific and technical studies."

14. Rule 422 of the Manual is as under :-

"422. The following periods of service of a Railway servant out of those referred to in Para 413 do not count as qualifying service for pensionary benefits :

(i) ----

(ii) ----

(iii) ----

(iv) Extraordinary leave except as provided in Para 420 (iii)."

— J.Y. — ..7/-

15. 1320 (F.R.26) IREL Vol.II - deals with Reckoning Service for increments and perusal of (b) (i) makes it clear that extraordinary leave on medical grounds does not count for increment in time scale which is as under :-

"1320 (F.R.26) Reckoning Service for Increments:

The following provisions prescribe the condition on which service counts for increments in a time-scale :-

Provided that, for the purpose of arriving at the date of the next increment in that time-scale, the total of all such periods as do not count for increment in that time scale shall be added to the normal date of increment.

(b)(i) Service in another post, other than a post carrying less pay referred to in clause (a) of

Rule 227 (F.R.15) whether in a substantive or officiating capacity, service on deputation out of India and leave except extraordinary leave taken otherwise than on medical certificate, shall count for increments in the time-scale applicable to the post on which the Railway Servants holds a lien, as well as in the time-scale applicable to the post or posts, if any on which he hold a lien had his lien not been suspended."

Provided that the service rendered in an ex-cadre post shall not be reckoned for fixation of pay in another ex-cadre post and the pay in subsequent ex-cadre post shall be fixed under the normal rules with reference to pay in the cadre post.

(ii) All leave except extraordinary leave taken otherwise than on medical certificate and the period of deputation out of India shall count for increment in the time-scale applicable to a post in which a Government servant was officiating at the time he proceeded on leave or deputation out of India and would have continued to officiate but for his proceeding on leave or deputation out of India.

Provided that the competent authority may, in any case in which he is satisfied that the extra-ordinary leave was taken for any cause beyond the Railway Servants' control or for prosecuting higher scientific and technical studies, direct that extra-ordinary leave shall be counted for increments under clause (i) or (ii)."

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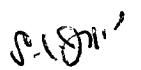
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16. The leave granted to the applicant vide Annexure-'A-3' dated 29.12.1997 is not "with leave salary" or shall be counted for increments under clause (i) or (ii). Hence, it cannot be counted for qualifying service or increment. In case of extraordinary leave, the date of increment is postponed/deferred. As the applicant never joined after the extraordinary leave, the postponement/deferring of the date of increment continues till his retirement, earned no increment and therefore he is not entitled to any increment for the period 21.10.1982 till 1.7.1991:

17. The learned counsel for the applicant relied on 1999 (2) SC SLJ 252, R.P.Kapur vs. Union of India and others which deals with Subsistence Allowance and the case is decided under Railway Services (Pension) Rules 1993, while as held above, the present case is not governed by the said Rules and the matter is not to be decided with reference to subsistence allowance. Hence, the said authority does not help the applicant.

18. The pension of the applicant has been determined by the respondents on 3.2.2000 vide 'R-1' in view of Vth Pay Commission. I do not find any merit in the case advanced by the applicant or error in determination of the pension.

19. In the result, OA. has no merit. It is liable to be dismissed and is dismissed accordingly with no order as to costs.


(S.L.JAIN)

MEMBER (J)

mrj.