

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 1071/92.

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DATE OF DECISION: AUGUST 24, 1994.

Shri C. M. Pradhan Petitioner

Shri S. V. Mahadeshwar, Advocate for the Petitioners

Versus

Union Of India & Others, Respondent

Shri S. C. Dhawan, Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M. S. Deshpande, Vice-Chairman.

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1. To be referred to the Reporter or not ? *no*
2. Whether it needs to be circulated to other Benches of the Tribunal ? *no*


(M. S. DESHPANDE)
VICE-CHAIRMAN.

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BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. NO.: 1071/92.

Shri C. M. Pradhan & Others ... Applicants

Versus

Union Of India & Others ... Respondents.

CORAM :

Hon'ble Shri Justice M. S. Deshpande, Vice-Chairman.

APPEARANCE :

1. Shri S. V. Mahadeshwar,
Advocate for the applicants.
2. Shri S. C. Dhawan,
Advocate for the respondents.

ORAL JUDGEMENT :

DATED : AUGUST 24, 1994.

[Per. Shri M. S. Deshpande, Vice-Chairman].

1. By this application, 5 applicants have challenged the order at Annexure-I dated 21.01.1992 vide which they were informed that the pensionary benefits on account of refixation of pay in terms of Board's letter 02.08.1989 will not be granted to them by taking special pay of Rs. 35.00 into account.

2. The five applicants were holding the post of Office Superintendents and Time Keeper at the time of retirement between 01.07.1983 and 01.07.1985. Earlier they had been promoted ~~to~~^{as} Senior Clerks between

13.06.1960 and 01.10.1962. Special Pay was allowed to them at Rs. 35.00 per month on different dates between 01.02.1980 and 01.05.1981. They came to be promoted on different dates between 01.10.1980 and 14.04.1981. The applicants' contention is that by letter dated 27.11.1981, a decision had been taken to take Special Pay of Rs. 35.00 per month into account for fixation of pay on promotion subject to the following conditions, namely, that the incumbent is a substantive holder of the post to which the special pay is attached or that the incumbent on the date of his appointment to higher post is officiating in the lower post to which the special pay is attached, continuously for a period of not less than three years. By letter dated 02.08.1989, pursuant to the decision of this Tribunal, it was decided that the pay of those UDCs who were drawing special pay of Rs. 35/- in terms of this Ministry's letter No. PC-III/79/SP/1/UDC dated 11.07.1979 and were promoted to higher posts prior to 01.09.1985 and who fulfil the conditions mentioned in this Ministry's letter No. PC.III/79/SP/UDC dated 27.11.1987, may be refixed ^{on} notional basis from the date of their promotion by taking the special pay of Rs. 35.00 into account and the actual benefit may be allowed to them only from 01.09.1985 without payment of any arrears. According to the applicants, they were substantive holders of the post and had been promoted to the higher post ^{prior} to 01.09.1985 and they otherwise fulfill the conditions in the Ministry's letter dated 27.11.1987. The applicant's made a representation on 06.06.1991 for reckoning the Special Pay of Rs. 35/- for the purpose of fixation of pay on promotion and

arrears. The respondents vide their reply dated 04.10.1990 informed the applicants that orders for refixation of pay and payment of the arrears had already been issued by the Chief Workshop Manager and the arrears will be paid to them in due course. By the letter dated 10.07.1991 at Annexure A-4, the applicants were informed that since they had retired prior to 01.09.1985 and since they have not actually drawn the increased pay, they are not entitled for any difference of Pensionary Benefits. The applicants made a representation on 24.09.1991 and to that the respondents vide letter dated 21.01.1992 informed the applicants that they were not entitled to the Pensionary Benefits on account of refixation of pay in terms of Board's letter dated 02.08.1989 and that this position has already been advised to them vide letter dated 10.07.1991.

3. The Learned Counsel for the respondents submits that the applicants did not answer the test of eligibility because they were not fulfilling the conditions as laid down by the Board's letter dated 27.11.1987 at Annexure-2. The applicants have however avered in para 5 (i) and (ii) of the application that they were substantive holders of the post and there is no specific denial of this position at page 5 of the written statement. Even in the later correspondence, emphasis by the respondents was only upon the retirement prior to 01.01.1989 and there was no mention of the position that they were ineligible in terms of the Railway Board's letter dated 27.11.1987. The applicants will be

entitled to the benefit of special pay of Rs. 35.00 per month for fixation of their pay upon their promotion on the basis of the test laid down by the respondents themselves. The Learned Counsel for the respondents contends that since the applicants had retired prior to 01.09.1985 and since they have not actually drawn the increased pay, they are not entitled to ~~for~~ any difference of Pensionary benefits. It is clear that it was not necessary that the applicant should have continued in service on 01.09.1985, although the letters at exhibit A-1 and A-3 stipulated that the actual benefit may be allowed to them only from 01.09.1985 without payment of any arrears. Reference was made on behalf of the respondents to Rule 306(i) of the Manual of Railway Pension Rules, 1950, which provides that the railway servant's claim to pensionary benefits shall be regulated by the rules in force at the time when he ceases to be in service. It is difficult to see how this provision would assist the respondents because if any benefit was to be conferred by the post retirement circulars retrospectively, to that extent, these rules also shall have to be regarded as ^{per} rules in force under rule 306(i) of the Railway Pension Rules. I, therefore see no impediment in the way of the applicants claiming the benefit of the aforesaid instructions.

4. With regard to the question of limitation, which was raised by the respondents, it is clear that the applicants have filed the present application within 18 months of the representation which was made and ^{is} remained un-answered. The question ^{is} whether the actual benefit

to the applicant should be made payable from 01.09.1985 or only for a period from one year prior to the filing the present application. The Learned Counsel for the applicant urged that the applicants should be given the benefit in view of the demand which was made in one of the letters sent by the respondents that arrangement was being made for payment of the arrears to the applicant, while on behalf of the respondents, Shri Dhawan submits that since the circulars had been issued in the year 1987 and 1989, the benefit thereof cannot be claimed in the present case. It is obvious that under Section 21 of the Administrative Tribunal Act, relief will be granted only ^{for} one year prior to the filing of the application. That, however, ^{will} ~~did~~ not ^{enlarge} ~~enlighten~~ the period for which the arrears can be sought. To this limited extent, the applicants claim will be restricted to that of one year prior to the date of filing of the application.

5. In the result, the respondents are directed to give to the applicants the benefit of the letter dated 27.11.1987 to 02.08.1989. The pensionary benefits shall be calculated on the basis that the benefits could be allowed only from 01.09.1985, which would mean that the actual pay shall be fixed on that basis for the purpose of working out the pensionary benefits and the pensionary benefits which will have to be fixed on that basis, shall be made available to the applicants from 19.10.1991 onwards. The arrears shall be paid and the pensionary benefits of the applicant will be worked out on that basis and shall be paid within three months from the date of communication of this order.


(M. S. DESHPANDE)
VICE CHAIRMAN.