

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

J A I P U R.

G.A. No. 1165/92

Date of decision: 18.10.94

BHOLA SINGH

: Applicant.

VERSUS

UNION OF INDIA & ORS

: Respondents.

Mr. D.P. Garg

: Counsel for the applicant.

Mr. Manish Bhandari

: Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice D.L. Mehta, Vice-Chairman

Hon'ble Mr. N.K. Verma, Administrative Member

PER HON'BLE MR. JUSTICE D.L. MEHTA, VICE- CHAIRMAN:

Heard the learned counsel for the parties.

2. It is an admitted position that the ACPO, Western Railway, Bombay vide his telegram dated 21.7.84 (Annexure A/1) directed to DFM, Ajmer as under:-

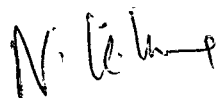
"As a matter of grace, Shri Bhola Singh is treated having completed the penalty of reduction as on 16.7.1984. He may be posted to pre-reduction post of DYM (Dy. Yard Master) from 16-7-1984. Pay on restoration shall be not less than what he draws prior to reduction with adjustment as may be necessary for increase of pay and allowances during this period for that post."

3. The case of the applicant is that the respondents have not implemented this order and he is entitled for his posting as Dy. Yard Master from 16.7.84 and his pay will have to be restored and it cannot be less than what he was drawing prior to reduction with adjustment as may be necessary for increase of pay and allowances during this period. The respondents have submitted the reply and this fact has been admitted by them, that these directions were issued. It was submitted that the applicant has failed to interpret the provision 501 of the Railway Pension Rules. It was further submitted that in fact for the purpose of determining the pension, the last pay scale of the employee is material. However, the employee should get such pay scale minimum for 22 days. Mr. Manish Bhandari, the learned counsel for the respondents, submits that the Railway Pension Rules are not available. Unless

the rule is before us, we cannot interpret the rule in the proper way and failure to produce the rules by the Railway Counsel is sufficient to draw the adverse inference against them.

4. In the facts and circumstances, we direct that the letter, Annexure A-1, should be implemented in toto. The applicant should be considered as Dy. Yard Master from 16.7.1984 and the pensionary benefits arising because of increase in the status and expiry of the reduction period should be given to him. Pension should be revised afresh and all consequential benefits should be given to the applicant. Annexure A-1 is very specific that pay on restoration shall be not less than what he draws prior to reduction with adjustment. This clearly shows that the applicant is entitled for the benefit of pension on the pay which has been restored in toto. The objection of limitation will not survive particularly in a pension case and apart from that it is a case of recurring nature - how the pension should be calculated and counted and every day the cause of action arises.

5. The O.A. stands disposed of accordingly, with no order as to costs.



( N.K. VERMA )  
Administrative Member



( D.L. MEHTA )  
Vice-Chairman