

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT : HYDERABAD

O.A.No. 712 of 1987

Date of Order: 12-2-1990

Between:-

S.Chandra Mohan .. Applicant

And

1. The General Manager
South Central Railway
Rail Nilayam
Secunderabad-371.

2. The Chief Personnel Officer
South Central Railway
Rail Nilayam
Secunderabad-371. ..

Respondents

APPEARANCE

For the Applicant : Shri Anand Mohan, Advocate

For the Respondents : Shri N.R.Devraj, Standing Counsel
for Railways..

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HONOURABLE SHRI D.SURYA RAO, MEMBER (JUDICIAL)

AND

HONOURABLE SHRI D.K.CHAKRAVORTHY, MEMBER (ADMN.)

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(JUDGMENT OF THE BENCH DELIVERED BY HON'BLE SHRI D.SURYA RAO,
MEMBER (JUDICIAL))

(O.A.No. 712 of 1989)

1. The applicant is a retired employee of the South Central Railway. Before joining the Railways, he was in Military Service. His service in the Army was from 5-2-1948 to 3-10-1971 when he retired as Havaldar Dental Hygienist. He states that his substantive pay on 3-10-1971 in the Army was Rs.172/-p.m. on which he was paid a pension of Rs.91/-p.m. and a disability pension of Rs.10/-. He joined the Railways as a Junior Clerk on 9-10-1974 ^{his pay} and was fixed at the minimum of the scale of Rs.260--400. This scale of Rs.260--400 was the revised scale from 1-1-1973 corresponding to the pre-revised scale of Rs.110--180. As the applicant felt that he was posted at a lower stage than what he occupied before discharge from the Defence Service and also paid a lower pay than what he was drawing before discharge from the Army on 3-10-1971, he made several representations. Those were rejected in November 1979. On 16-10-1982 he made another representation. He was retired on 28-2-1983 in the Railways. Thereafter on 27-8-1983, the Railways refixed his pay with effect from 20-9-1978 at Rs.290 + 5 (pp) instead of Rs.284/- actually drawn by him. Corresponding increases were given year to year till 30-1-1982. The applicant made further representations that fixation at Rs.295/- from 20-9-1978 was not correct and that the ^{pay} ought to have been fixed at Rs.350/- in 1974 at the time of initial re-employment. By an order No.P.713/Optg., dated 19-5-1987 from the General Manager, South Central Railway, he was informed that the matter had been referred to the Railway Board, who had confirmed that the fixation of pay in 1974 and 1978 were in order and thereby rejected the claims of the applicant. This is the order sought to be impugned in the present application. The reliefs sought by the applicant are as follows:-

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- " (a) to declare that the action of the 1st and 2nd respondents appointing him at the minimum stage at Rs.260/- was illegal and contrary to the rules that were applicable to the Ex-Servicemen who were re-employed;
- (b) to direct the 1st and 2nd respondents to fix ~~up~~ the pay of the Applicant as on 9-10-74 at Rs.350/- in the pay scale of Rs.260--400 and consequently;
- (c) to direct the payment of arrears of pay payable to the applicant from 9-10-74 on the basis of the pay fixed at Rs.350/- till the date of his retirement on 28-2-83;
- (d) to direct the respondents to grant all incidental and consequential benefits as to seniority, increments and other benefits allowable under law consequent to the fixation of pay of the applicant at Rs.350/- as on 9-10-74;
- (e) to direct the respondents to fix ~~up~~ his pension from 28-2-83 consequent on the fixation of his pay at Rs.350/- on 9-10-74; for the following
- (f) to direct the respondent to refund the disability pension of Rs.1150/- received by the respondent;
- (g) to direct the respondent to issue complimentary passes to the applicant.

2. The respondents have filed a counter denying the claims of the applicant. A preliminary objection is raised that the claim of the applicant to higher fixation in 1974 was rejected in 1979 and that the applicant, if aggrieved, should have questioned the said order then itself. The subsequent order of 1987 is only a repetition of the earlier decision and will not give the applicant a fresh cause of action. The application

is, therefore, barred by limitation under section 21 of the Administrative Tribunals Act. On the merits, it is stated that the relevant rules governing fixation of pay on re-employment in the Railways are ~~continued~~ ^{given} in Railway Board's letter No.E(G)58 EMI-27, dated 31-3-1989. His pay was fixed under these rules at the minimum of the time scale of Rs.200--400. The total emoluments paid to him come to Rs.400/- plus the pensionary benefit equivalent of gratuity paid to him by the Army. The gross emoluments on the date of his discharge from the Army was Rs.457-20. It is stated that there is no substantial difference between what was paid while in Army Service and at the time of re-employment. It is stated that with effect from 20-9-1978, his pay was revised to Rs.295/- from Rs.284/- in accordance with the Railway Board's letter dated 31-3-1959 and subsequent instructions dated 20-9-1978. This was further revised to Rs.303/- with effect from 20-9-78 and further increments permitted by a later order dated 5-2-87 on receipt of information that the interim relief paid in the Army was Rs.33/- and not Rs.25/-. It is stated that there are no merits in the claim since the fixation was done in accordance with the instructions contained in the letter dt.31-3-59, which provides that the initial pay on retirement should not exceed the last pay drawn prior to retirement.

3. We have heard the learned counsel for the applicant. Shri Anand Mohan and Sri N.R.Devraj, Additional Standing Counsel for the Railways. The main claim or grievance of the applicant in his application was that he had retired in 1971 on a basic pay of Rs.172/- and that this basic pay was drawn under the old scales prior to fixation of pay under the 1973 Revised Pay Rules, that the ~~corresponding~~ ^{for a p} basic pay ~~is~~ ^{of} Rs.172/- after revision of scales with effect from 1-1-1973 ^{the corresponding pay is} ~~is~~ Rs.350/-, that, therefore, his pay should have been fixed at the stage of Rs.350/-

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in the scale of Rs.260--440 in 1974 and not at the minimum of Rs.260/-. The applicant has, however, not been able to show any rule or instruction that employees, who retired prior to 1-1-1973 and re-employed thereafter, should be given the corresponding pay in the revised scale equivalent to the pre-revised scale. The respondents have stated that fixation should be done in accordance with the instructions contained in Railway Board's letter No.E(G)58 EMI-27, dated 31-3-1979. The applicant has not been able to show that his pay should be fixed on the basis of any other order or instruction. According to the instructions in the letter dated 31-3-1979, the minimum of the scale of the re-employed person should be the minimum stage of the scale prescribed for the post in which he is re-employed. Where there is likely to be hardship, ~~there~~
^{however, if} the pay can be fixed at a higher stage by allowing one increment for each year of service before retirement in a post not lower than that in which he is re-employed. After fixation as above, the re-employed Government servant should be allowed to draw any pension sanctioned to him and any other form of retirement benefit like Provident Fund, Gratuity, Commuted Value of Pension, etc.. However, there is a maximum prescribed viz., the total pay (including the benefit of one increment for each year of service) plus the pension and/or pension equivalent of retirement benefits should not exceed the pay which the employee drew before retirement. In the instant case in the counter it is averred that the total emoluments drawn by the applicant in the Army was Rs.457/- p.m. and that as a result of fixation of pay at the minimum of ^{in scale} Rs.260--440 in 1974, the applicant was drawing, together with allowances, pension and pension equivalent of gratuity, almost an identical amount. This was not denied by the applicant. When the applicant cannot say that the total emoluments were less than what he drew before ^{retirement - if} settlement, he cannot have any grievance

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as the fixation is in accordance with the instructions dated 31-3-1959. An alternative contention was put forth viz., that the applicant's basic pay should have been fixed at Rs.303/-p.m. in 1974 and not in 1978. It is not shown on what basis viz., under what rule he could get this higher basic pay. If the basic pay was fixed at Rs.303/- in 1974, then obviously after adding the allowances, pension of Rs.101/- and pension equivalent of gratuity, his total emoluments would exceed Rs.457/- i.e. what he was drawing before retirement and this would be contrary to the instructions dt.31-3-1959. The applicant has not been able to show that other employees, who retired before 1-1-1973, were given higher basic pay in accordance with the revised pay rates and that there was any discrimination meted out to him. Hence we see no substance in the contentions that the applicant's basic pay should have been fixed at Rs.350/- or Rs.303/- in 1974 when he was first appointed as a Junior Clerk in the Railways.

4. A further contention put forth by the learned counsel for the applicant was that in 1974 the applicant should have been given one increment for every year of service in the Army ie. since he had put in 23 years of service, he should have been given 23 increments or the maximum of Rs.400/- in the scale of Rs.260--400 in 1974. The basis for this claim is O.M.No.F.6.(8)E-III/63, dated 11-4-1963 issued by the Ministry of Finance. This order was considered by the Hon'ble Chairman Sri Justice K.Madhava Reddy in T.A.No.936/1986 (M.C.Venkatesam vs. General Manager, S.C.Railways & 3 others) and relief was given to the employee, who was an ex-Army employee. However, the order in T.A.936/1986 makes it clear that it applies to Combatant Clerks only. The applicant herein was admittedly working as a Havaldar Dental Hygienist and not a Combatant Clerk. He has

not ~~provided~~ ^{produced} any evidence that the post held by him was equivalent to that of a Combatant Clerk. Hence no relief can be granted even on this contention.

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5. We have not gone into the question of limitation as even on merits we find no valid reasons have been ~~made~~ ^{put forth} for grant of the reliefs prayed for. The applicant has by way of an amendment petition claimed that he should be given complimentary passes. This is a continuing right and if all other retired railway employees are eligible to receive such passes, the applicant also should be given the same benefit. The respondents are directed to examine this issue and grant relief to the applicant if eligible. Apart from this direction, there are no ~~merits in~~ ^{merits in} ~~excess~~ to the other claims of the applicant.

The application is accordingly dismissed but without costs.

D. Surya Rao
(D.SURYA RAO)
MEMBER (J)

D. K. Chakravorthy
(D.K.CHAKRAVORTHY)
MEMBER (ADMN.)

DATED: 12th February 1990

S. Venkateswara
DEPUTY REGISTRAR (J) 12/2/90

TO:

1. The General Manager, south central railway, Rail Nilayam, NSR Sec'bad.-371.
2. The Chief personnel officer, south central railway, Rail Nilayam, Sec'bad-371.
3. One copy to ~~Mr. Ananda Mohan Rao, Adv.~~ Mr. R. Ananda Mohan Rao, Adv., H.No.1-4-886/1/12, New Sakaram, Hyderabad-500 380.
4. One copy to Mr. N. R. Devaraj, SC for Rlys., CAT, Hyderabad.
5. One spare copy.

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V. S. Rao
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