

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.Nos. 492/94 + 979/93

Date of Order: 28.11.96

O.A.492/94:

BETWEEN:

1. M.F.Ansari

AND

1. Union of India, rep. by its Secretary, Ministry of Rlys., New Delhi.
2. Secretary, Railway Board, Rail Mantralay, New Delhi.
3. General Manager, S.C.Rly., Rail Nilayam, Secunderabad
4. Divisional Railway Manager (M.G.) Hyderabad Division, S.C.Rly., Secunderabad.



.. Respondents.

O.A.No. 979/93 :

Between;

B.Nagaraj

.. Applicant.

AND:

1. Union of India, rep. by the Secretary, Ministry of Rlys., New Delhi.
2. Secretary, Railway Board, Rail Mantralay, New Delhi.
3. General Manager, S.C.Rly., Secunderabad.
4. Divisional Railway Manager (MG/HYD), Secunderabad.

.. Respondents.

Counsel for the Applicants

.. Mr.S.Lakshma Reddy

Counsel for the Respondents in OA.492/94

.. Mr.J.R.Gopal Rao

in O.A.979/93 .. Mr.N.V.Ramana.

CORAM:

HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

HON'BLE SHRI B.S. JAI PARAMESHWAR : MEMBER (JUDL.)

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the add-on element of 3 months will be added to calculate the pensionary benefits. Thus the running supervisor who retired after 31.10.93 will be given full add-on element and thus they will get more pension compared to the applicants herein. Thus the senior officials are not rewarded where as junior officials are rewarded handsomely, submits the learned counsel for the applicant. They further submit that a sort of differentiation has been made in the same harmonious cadre of loco Running Supervisor which is not warranted. They state that irrespective of the period they served after getting the add-on element between the period 1.1.93 to 31.10.93 the pension should be decided taking the full effect of the add-on element of 10 months. Thereby the differentiation as indicated above can be neutralised.

8. It appears that the applicants have not submitted any representations in regard to their above grievance so far.

9. These two OAs are filed praying for a declaration that clause 5(5) of the impugned instructions of the respondents 1&2 contained in proceedings No.E(P&A)11/83/RS-10(IV), dt. 25.11.92 fixing a cut-off date to 1.1.93 and 10 months completed service from 1.1.93 for grant of 30% add-on element of basic pay for fixing the pensionary and other retirement benefits as totally arbitrary, discriminatory and violative of Articles 14, 16, 39(1) (d) and 300-A of the Constitution of India and for a consequential direction to the respondents to fix and pay the pensionary and other retirement benefits to the applicant taking 10 months average emoluments as on the date of his retirement after 1.1.93 as Senior loco Supervisor in the grade of Rs.2375-3500 with all consequential benefits, arrears of pay, interest etc.

10. From the above relief two prayers are discernable. They are (1) the cut-off date of 1.1.93 is arbitrary and has to be set aside (2) the add-on element should not be restricted to pro-rata service during the said period and it should be added fully for

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w.e.f. 1.1.93, Whereas for the Power Controller/Crew Controller a special pay to the extent of Rs.300/- p.m. is granted. The relevant para 5.5, 5.6, 6.1. and 6.2 which are under consideration in this are reproduced below for clarity:-

- 5.5 For the purpose of pensionary benefits, the basic pay shall also include, with effect from 1.1.1993, an add-on element of 30% of basic pay in the case of Loco Inspectors. If a Loco Inspector retires before completing a period of 10 months under this scheme, he shall be permitted the benefit of add-on element to basic pay on a pro-rata basis depending on the actual period of service under the Scheme. The benefit of add-on element to basic pay shall not be admissible for any purpose other than computation of pensionary benefits.
- 506 No other special allowance sanctioned specifically only for staff in running categories will be admissible unless granted by an express order of Railway Board.
- 6.1 Power Controller/Crew Controller in both the grades shall be entitled to a Special Pay to the extent of Rs.300/- per month with effect from 1.1.1993 for the duration they work as such. The benefits envisaged in para 5 admissible to Loco Inspectors shall not be available to Power Controllers/Crew Controllers.
- 6.2 The Special Pay as indicated supra shall not be reckoned for the purpose of Dearness Allowance, House Rent Allowance, Compensatory (City) Allowance, Pensions and other retirement benefits, etc. as per extant rules.

7. From the above it is evident that the incentive is applicable to them from 1.1.93 and that incentive is to be taken into account for purpose of deciding the amount of pension. It is stated in the relevant paragraphs, the add-on element of basic pay as indicated in para supra is to be added on pro-rata basis upon purpose of computation of pension. This would mean that those who retired between 1.1.93 and 31.10.93, the add-on element will be restricted to the number of months they served after getting the incentive as above before retirement. For example if a Loco Inspector ~~was~~ retired on 31.3.93, the add-on element of basic pay to the extent of 30% will be given for three months only, i.e. the 10 months pay drawn by him prior to 31.3.93 plus

to be noted in this case are:

(1) The Loco Supervisory officials retired on or after 31.10.93 would get more pension than the seniors who retired between 1.1.93 and 31.10.93. The seniors who are in the same grade N.2375-3500 will get less pension because of the stipulation of adding **only** the pro-rata pension of the add-on element. There is force in the submission of the applicants that by the above method a differentiation is created between the homogenous set of staff and who are also posted as Loco Supervisor from the same feeder category and who had worked more number of years than the juniors who retired on or after 31.10.93.

(2) The Loco Supervisor cadre is a small cadre. In railway like South Central the number ~~number~~ ^{employees retired in that Category} of people retired during the period i.e. between 1.1.93 and 31.10.93 will be very limited. Sri Thyagarajan, C.P.O. Administration who was present in the Court on 27.11.96 estimated the retirement during the said period as about 5 or less than 5. On that basis the number of Loco Inspectors who would have retired in the whole of Indian railways will be of the order of about 50 or less. When that number is so small the expenditure on this account for payment of pensionary benefits without restoring to pro-rata addition of add-on element appears to be meagre. Hence the applicants may be justified in saying that such a meagre amount should not stand in their way in a huge organisation of railways to pay them same extra pensionary benefits ^{to make} who had put in long years of service over 30 years and discharged their duties faithfully, diligently and ^{to the} with full satisfaction of their superiors. There appears to be some reasoning in this contention.

(3) The incentive scheme was designed to attract talented drivers to come to this cadre of loco running supervisors. Such an incentive scheme should be an encouraging one for the others to come to this field. If a little bit concession is given that

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10 months for purpose of deciding the pensionary benefits.

11. at the time of hearing
The learned counsel for the applicants/family submitted that he is not insisting in regard to prayer No.1 as indicated above. He submits that the cut-off date 1.1.93 is reasonable and he does not have any grouse in fixation of that cut-off date.

prayer indicated above.

12. We have asked the learned counsel for the respondents to get the reply filed by R-1 and R-2, as the reply filed by R-3 is not sufficient as this is a matter to be decided by the Rly. Board. The learned standing counsel, though did not file a reply on behalf of R-1&2, produced a letter No.CP 648/OA 492/94, dt. 19.11.96 wherein it is stated that "as per the pension rules the average emoluments for computing the pension of a retired railway employee shall be the emoluments drawn by a railway servant during the last 10^{months} of his service. It is in this context the period of 10 months has been prescribed in the above scheme. A person who retired prior to 10 months would be allowed the benefit of the scheme for the number of months he had worked after the scheme had come into effect." For the above submissions the respondents rely on rule 50 of Railway Pension Rules. On that basis the learned standing counsel submit ^{under} instructions from his clients who are R-1&2 to state that the pro-rate addition of the add-on element for deciding the quantum of pension is in order. The railway cannot ^{go} beyond what is provided for in the rules.

13. We have heard both sides. The Railway Board has formulated a scheme and granted the pro-rate pension ^{on the add-on element} for those who retired between 1.1.93 and 31.10.93 solely depending on the rule provision as referred to above. It looks that they have not

17. ... As the applicants have not represented their case ^{earlier} to the respondent authorities we are of the opinion that this is a fit case to remit it back to R-1 and 2 to decide the issue taking note of points mentioned above.

18. In the result, the following direction is given:-

R-1 and R-2 should reconsider the scheme especially the payment of pro-rata pension on the add-on element as provided for in paras 5.5, 5.6, 6.1 and 6.2 in the light of observations made by us as above. Time for compliance is six months from the date of receipt of a copy of this order.

19. When a decision is taken the same should be informed to the applicants in these OAs.

20. Both the OAs are ordered accordingly. No costs.

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will definitely go a long way in providing the necessary incentive to the future entrants to this cadre. Railway is undertaking lot of welfare activities and spending crores of rupees for satisfying the railway employees. An important section of the category like the present applicants in this OA if they get a little bit more advantage will definitely be a welcome relief to the employees especially to those who spend both day and night on the foot plate even at the cost of their health.

14. Restricting the pensionary benefits to the applicants herein in terms of para 5(5) is decided solely on the basis of the pension rules. But the points as annumerated under para supra appears to have gone out of sight. We are of the opinion that these points also must be taken into account and a decision after considering the above issues should be taken in regard to the restriction of the pension on pro-rata basis on the add-on element.

15. It is stated that if the restriction of pro-rata calculation of the pension on the add-on element is removed it will be contrary to the rule 50 of Railway Pension Rules. But on the circumstances indicated in para 13(i) to 13(3) above it is to be considered by the competent authority whether a departure from the rule is necessaru or not. In number of cases when it is necessary the railway makes an one time departure. In view of the position as explained above the departure from the rule as an one time-exception may be appropriate. *not be out of place*

16. Sri Thyagarajan, CPO, Administration who was present in the court on 27.11.96 fairly submitted that these points also need consideration. However he expressed his helplessness to consider it at the railway level as a decision has to be taken only by the Railway Board. However he submitted that a reference in this connection will be made to the railway board soon after the receipt of the judgement in these OAs.

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