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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD.

O.A.No.1052/93.

Date of Judgement : 21/6/95

P.Venkatramaiah
(Retd) Traction Assistant,
Vijaywada .. Applicant

Vs

1. General Manager,
S.C.Rly., Rail Nilayam,
Secunderabad.
2. Financial Adviser &
Chief Accounts Officer,
S.C.Rly., Rail Nilayam,
Secunderabad.
3. Sr. Divl. Personnel Officer,
S.C.Rly., Vijaywada Divn.,
Vijaywada .. Respondents

Counsel for the Applicant : Shri S.Ramakrishna Rao

Counsel for the Respondents: Shri N.V.Ramana, SC for Rlys.

C O R A M

Hon'ble Shri A.B.Gorthi : Member (Admn)

J u d g e m e n t

X As per Hon'ble Shri A.B.Gorthi : Member(Admn) X

The Applicant, who proceeded on voluntary retirement w.e.f. 14.7.86, is aggrieved in the matter of fixation of pension, D.C.R.G. and amount due on account of leave encashment. His claim is that he is entitled to Rs.744/- p.m. as Residual Pension, Rs.17,903/- towards difference of D.C.R.G. and Rs.18,560/- as encashment of leave.

2. The Applicant, at the time of retirement, was a Traction Assistant in the Operative (Running) Department. As per service certificate dt. 21.8.86, the rate of pay on leaving service was Rs.320/- p.m. This was revised to

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Rs.1,250/- p.m. w.e.f. 1.1.86 on the implementation of the IV Pay Commission recommendations. Consequently his pay on leaving service was refixed as Rs.1,275/- p.m. The foremost claim of the Applicant is that he is entitled to 75% of Basic Pay as Running Allowance (K.M.Allowance), as was held by the Ernakulam Bench of the Tribunal in O.A.No.K-269 of 1988. This part of the claim was, however, not pressed before me by the Applicant's counsel, as the judgement in the said O.A. was stayed by the Supreme Court. The Respondents calculated 55% of the Basic Pay as K.M.Allowance for the purpose of retirement benefits as per Railway Board's letter No.PC/IV/86 IMP/24 dt. 24.4.87, which was effective from 1.1.86. The Applicant cannot therefore have any grievance in this regard. Should the Supreme Court finally uphold the judgement in O.A.No.K-269 of 1988 on the file of the Ernakulam Bench of the Tribunal, the claim of the Applicant also can appropriately be reconsidered by the Respondents.

3. Initially the pension of the Applicant was fixed at Rs.663/- p.m. which after commutation was reduced to Rs.485/- p.m. Vide letter dt. 31.7.87 issued by the Sr. Divl. Accounts Officer, S.C.Rly., it would be apparent that the pension was revised from Rs.663/- to Rs.743/- and consequently the Residual Pension after commutation was fixed as Rs.536/- p.m. This was subsequently rescinded and vide impugned order dt. 8.4.88 the Applicant's pension was refixed at Rs.667/-p.m w.e.f. 15.7.86.

4. As the Applicant has challenged the correctness of the Respondent's calculations, it is therefore necessary to critically examine the Respondent's explanation. At the very outset, the Respondents clarified that the qualifying service

64

to the credit of the Applicant was 28 years and 6 months, and not 28 years and 9 months as claimed by the Applicant. This was because a period of 3 months and 19 days was to be reckoned as non-qualifying service. Further the Respondents stated that the Applicant was on leave without pay for 29 days in April, 1986, 10 days in May, 1986, 30 days in June, 1986 and 12 days in July, 1986. Consequently the actual emoluments drawn by him during the period of 10 months preceding his voluntary retirement are as follows:-

<u>Month.</u>	<u>Months- Days.</u>	<u>R/Pay.</u>	<u>Pay.</u>	<u>DA+ADA</u>	<u>IR.</u>	<u>Total.</u>	<u>Mileage.</u>
Jun 85.	0-6	314/-	62.80	140.32	22	225.12	34.55
Jul 85.	1-0	314/-	314.00	701.60	110	1125.60	1036.20
Aug.85	X 3-0	314/-	942.00	2152.80	330	3424.80	X
to X							X
Oct.85							X
Nov.85	X 2-0	314/-	628.00	1467.20	220	2215.20	X
to X							X
Dec.85							X
Jan.86	X 3-0	1250/-	3750.00	-	-	3750.00	2062.50
to X							
Mar.86							
Apr.86	0-1	1250/-	41.85	-	-	41.85	22.95
May 86	0-21	1250/-	875.00	-	-	875.00	483.45
Jul 86	0-02	1275/-	85.00	-	-	85.00	46.75
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10-00						-----	

5. In view of the above facts, the average pay and allowances would be Rs.1174.23 and average K.M.allowance Rs.368.64. Thus, the total average emoluments for the purpose of pension would be Rs.1542.88. His pension was therefore calculated as under:-

$$\frac{771.42 \times 28.5}{33} = 667$$

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- 4 -

6. Shri S.Ramakrishna Rao strongly contended that the Applicant's claim for pension @ Rs.744/- p.m. should be accepted. After hearing the learned counsel for the Applicant and after carefully perusing all the material before me, I find that the Respondent's explanation as to how they fixed the pension of the Applicant at Rs.667/- is unassailable. The claim of the Applicant for pension @ Rs.744/- p.m. is therefore hereby rejected as unsubstantiated.

7. Another issue raised by the Applicant's counsel is that the downward revision of pension of the Applicant was effected without prior notice. Ordinarily on this count the impugned order could be set aside with a direction to the Respondents to revise the pension after issuing the notice. In the instant case, as the matter was examined thoroughly on merits it would not be proper to set aside the order impugned on the technical plea of non-issuance of notice.

8. The Applicant's claim for a higher quantum of D.C.R.G. seems to be based on his calculation of his qualifying service. The Respondents clarified that the qualifying service of the Applicant came to only 23 years and 6 months, and that he was given weightage of 5 years. In view of this the quantum of D.C.R.G. seems to have been correctly calculated by the Respondents and there is nothing on record to substantiate as to how the Applicant based his claim for payment of Rs.14,437/- towards D.C.R.G.

9. As regards the amount due to the Applicant towards leave encashment, the Respondents reiterate that he had no leave to his credit at the time of his voluntary retirement. This assertion of the Respondents is sufficiently supported by the entries in annexure R-4 to the counter affidavit which shows that the absence of the Applicant


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67

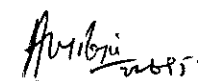
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during June and July, 1986 could not be adjusted against any kind of leave and had to be shown as leave without pay. In view of this, the bald contention of the Applicant that he is entitled to encashment of 8 months leave cannot be accepted.

10. In the result, I find no merit in the O.A. and the same is hereby dismissed. No costs.


(A.B.Gorthi)
Member (Admn).

Dated: 24 June, 1995.


Deputy Registrar (Judl.)

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Copy to:-

1. General Manager, South Central Railway, Rail Nilayam, Secunderabad.
2. Financial Advisor & Chief Accounts Officer, S.C.Rlys, Railnilayam, Secunderabad.
3. Sr. Divl. Personnel Officer, S?C.Railways, Vijayawada Division, Vijayawada.
4. One copy to Sri. S.Ramakrishna Rao, advocate, Cat, Hyd.
5. One copy to Sri. N.V.Ramana, SC for Rlys, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare copy.

Rsm/-