

38

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. 1297/94.

Dt. of Decision : 03-06-96.

P. Rajeswara Rao

.. Applicant.

vs

1. The Govt. of India, rep. by the General Manager, SE Railway, Garden Reach, Calcutta-700 043.
2. The Chief Personnel Officer (Admn.) SE Railway, Garden Reach, Garden Reach, Calcutta-700 043. .. Respondents.

Counsel for the Applicant : Mr. A. Krishna Kumar

Counsel for the Respondents : Mr. N.R. Devaraj, Sr. CGSC.

CORAM:

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

..2

ORDER

Oral Order (Per Hon'ble Shri R.Rangarajan, Member (Admn.))

The applicant while he was working as Chief Law Assistant, SE Railway at Calcutta was sent on deputation as Administrative Officer in the Advanced Training Institute, Ministry of Labour, Hyderabad and he took voluntary retirement from railways w.e.f., 02-03-1991. As he had taken voluntary retirement w.e.f., 02-03-1991 his pensionary benefits had to be fixed taking into account the last pay drawn by him on the date of his voluntary retirement. But it is stated that when his service record were reviewed by the associate accounts while granting pensionary benefits it was found that his pay as on 01-01-1984 should have been fixed at Rs. 795/-. But it was fixed erroneously as Rs.830/- on the date. In view of the detection of the above alleged error the pay drawn by the applicant subsequent to 01-01-1984 was also re-fixed taking his pay as on 01-01-1984 as Rs.795/-. In view of the re-fixation his pay on the date of his acceptance of his voluntary retirement i.e., on 02-03-1991 was fixed as Rs.1421/- instead of Rs.1458/-. On the basis that last pay drawn on the date of his acceptance of voluntary retirement as Rs.1421/- his final settlements were effected in accordance with rules. The applicant filed representation to R-2 for keeping his last pay drawn as Rs.1458/- instead of 1421/- as no error had been committed while fixing his pay at the stage of Rs.830/- as on 01-01-1984. He also sent subsequent representations. No reply is reported to have been given to these representations.



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-3-

2. This OA is filed praying for a declaration that the action of the respondents in not settling the retirement benefits (difference of pension, Commutation of pension and DCRG) and other claims after retirement immediately to the applicant as illegal, unjust and malafide and for a further direction to them to pay Rs.57,385/- which includes interest at 24% per annum up to 31-08-1994 and subsequent interest till the date of payment.

3. When this OA was taken up for admission hearing on 11-12-1995 it was observed after going through the reply that at the time of re-fixing his pay at the stage of Rs.795/- w.e.f., 01-01-84 vide order No.P/H-5/8/Retirement dated 13-11-91 (Annexure R-II) no show cause notice was issued to the applicant. It was further observed that no reason has been given for re-fixation as on 1-1-84. Hence a direction was given to the respondents to file an additional affidavit in addition to the affidavit dated 27-10-1995 explaining the reason for re-fixation of pay w.e.f., 01-01-84. But so far no reply has been filed in this connection.

4. The learned standing counsel submitted that one Shri M.R.Das, Sr.Personnel Inspector, SE Railway, Garden Reach attended this Tribunal when the case was heard. He was informed personally by the learned standing counsel that this being an important case the additional affidavit has to be filed at the earliest to dispose of this case. It is also stated that the said Shri M.R.Das assured that the additional reply affidavit will be submitted very shortly. The above was also followed up by the learned standing counsel by sending reminders on 19-05-95 addressed to the Deputy Chief Personnel Officer, Headquarters on 27-06-95, to the CPO, SE Railway,

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Garden Reach on 13-09-95, to Mr. Halder, Deputy Chief Personnel Officer, Headquarters on 30-12-95, to the Chief Administrative Officer, SE Railway and finally again to Mr. Halder on 15-04-95. Inspite of the best efforts taken by the learned standing counsel no additional affidavit has been filed till today. Inspite of repeated adjournments of this case for filing additional affidavit the respondents have not cared to file the additional affidavit and even the records are not produced to substantiate their case in regard to re-fixation. As the applicant had already retired, I am not inclined to grant any further adjournment in this case. The case has to be decided on the basis of the materials available on record as the respondents fail to respond to the direction given by this Tribunal and the efforts made by the learned standing counsel to obtain the necessary instructions had also failed.

5. From the official affidavit filed by the respondents dated October 1995, it is seen that the re-fixation of pay to the stage of Rs.795/- as on 1-1-84 from Rs.830/- was done while reviewing the service record. It is also stated that the service admissible for the applicant for fixing his final settlement is 33 years. The details of the last 10 months pay drawn has also been given in the reply statement. The reply statement does not talk about the reason for re-fixation of pay with effect from 01-01-84. The reply also does not indicate in regard to any prior notice issued to the applicant before issuing the memorandum No.P/H-5/8/Retirement dated 13-11-91 (Annexure R-II).

6. In view of what is stated above the case has to be decided treating his pay as Rs.830/- as on 01-01-84 as correct after setting aside the order re-fixing his pay at Rs. 795/-

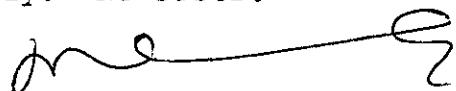


w.e.f., 01-01-84. The pay of the applicant on the date of his voluntary retirement i.e., w.e.f., 2-3-91, on the basis his pay as Rs.830/- as on 01-01-84 has to be fixed. On the basis of the fixation of the pay as on 2-3-91 as indicated above his final settlement dues have to be drawn and paid to him. It is seen from the reply statement that the final settlement dues had already been paid on the basis of the earlier calculation. Hence the applicant is entitled for difference in payment as arrears of pension and other pensionary benefits in view of the present direction as indicated above. A direction is also to be given to the respondents to pay the applicant interest at 10% per annum for the difference of arrears to be paid to him in regard to DCRG, Commutation and Leave salary from the date of filing of this OA i.e., 17-10-94 (this OA was filed on 17-10-94).

7. In the result the following direction is given:-

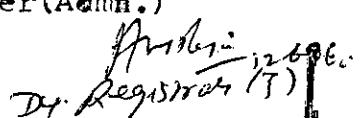
The Memorandum No.P/H-5/8/Retirement dated 13-11-91 refixing his pay at Rs.795/- w.e.f., 01-01-84 in the grade of Rs.700-900/-w.e.f., 01-01-84 is set aside. The applicant's pay as on 01-01-84 in the scale of pay of Rs.700-900/- should be treated as Rs.830/-. His efficiating pay on that basis has to be recalculated as on 2-3-91, the date on which he retired voluntarily. On the basis of the refixation of last pay drawn, the pension and other pensionary benefits have to be recalculated and arrears paid to him. The difference in arrears for DCRG, Commutation and leave salary has to be paid with 10% interest from 17-10-94, the date on which the OA is filed till the date of payment of arrears.

8. The OA is ordered accordingly. No costs.


(R. Rangarajan)

Member (Admn.)

Dated : The 3rd June 1996.
(Dictated in Open Court)


Dr. Registrar 1/2/96.

24/6/96
TYPED BY
COMPARED BY

01/12/97/94
CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : M.R.A.)

DATED: 3/6/96

ORDER/JUDGEMENT

M.A. NO/R.A./C.A. No.

IN
D.A. NO. 1297/94

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDERS AS TO COSTS

No Spare (Copy)

