

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 20.4.2001

OA No.580/1994

Deeki Nandan s/o Shri Padma Mohan, ret'd. Chargeman 'B' FCO Loco Workshop, Ajmer, resident of 13/129, Satya Narain Street, Holi Dhara, Ajmer.

.. Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Chief Mechanical Engineer, Western Railway, Churchgate, Mumbai.
3. The Chief Works Manager, Loco Workshop, Western Railway, Ajmer.

.. Respondents

Mr. Shiv Kumar, counsel for the applicant

Mr. U.D.Sharma, counsel for the respondents

CORAM:

Hon'ble Mr.A.K.Mishra, Judicial Member

Hon'ble Mr. N.P.Nawani, Administrative Member

Order

Per Hon'ble Mr. N.P.Nawani, Administrative Member

In this Original Application filed under Section 19 of the Administrative Tribunals Act, the applicant, Chargeman Ticket N.60894, seeks quashing the letter dated 31.8.1994 (Ann.A1) and a direction to the respondents to restore the pay of the applicant at Rs. 2200/- on his posting in FCO in September, 1991 and at Rs. 2250/- on 1.6.1992. In the alternative, any shortfall in the pay of the applicant on his transfer between FCO and Shop Floor be protected as Personal Pay in terms of Railway Board's (for short RB) letter dated 16.5.1973 (Ann.A5) and Tribunal's judgment dated 12.4.1993 (Ann.A15) alongwith 15% Special Pay. It has also been prayed that the respondents be directed to refund wrong recovery of

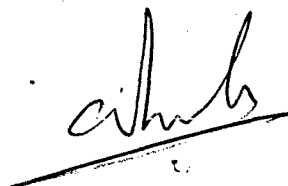
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Rs. 19,117/- approx. made from his DCRG and also to recalculate the pension and other retiral benefits on his correct emoluments, paying the difference with 18% interest.

2. We have heard the learned counsel for the parties and have perused all the material on record.

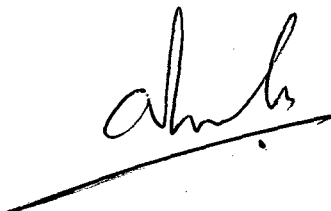
3. On consideration of the rival pleadings, we feel that the core of the controversy in this OA lies in the question, whether the applicant was entitled to Personal Pay as prayed, inclusion of Special Pay @ 15% in computation of pension and recalculation of his pension/retiral benefits on the basis of his such pay.

4. It appears that the applicant retired from Production Control Organisation (for short, PCO) on superannuation on 31.3.1993 (Ann.). He worked on deputation in the PCO between 8.7.1973 to 19.8.1989 and again from 10.9.1991 to 31.3.1993. In the intervening period 20.8.1989 and 9.9.1991, the applicant worked in his parent organisation, the Shop Floor, from where he was taken on deputation to the PCO. It is contended by the applicant that on his transfer to Shop Floor vide Ann.A3, he with others filed OA No. 192/89, Amer Singh and ors. v. Union of India, and while deciding the said OA on 5.3.1990, the Tribunal directed the respondents to give an option to all the applicants to either continue in Shop Floor or continue on the same post in PCO which they were holding prior to their transfer to Shop Floor, but the Apex Court accepted the appeal filed by respondents against the said decision of the Tribunal vide Ann.A4. It has also been stated by the applicant that despite of his transfer to Shop Floor, he was continued to be paid salary of Rs. 2200/- p.m. till Sept. 91 as no option was given by him in terms of Railway Board letter dated 13.9.1984 (Ann.A2) and consequently he should be deemed to have remained in PCO. He,



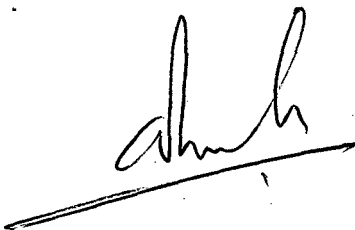
therefore, contended that reduction of his pay to Rs. 1800/- in October, 91 without affording any opportunity to him was wrong. It is also alleged that special increment of Rs. 50/- granted as a loyal worker was also withdrawn. It has also been averred by the applicant that in case the benefit of FCO optee is not allowed to the applicant in the grab of the judgment of the Apex Court, pay and allowances as per Shop Floor viz. Rs. 1770/- (Rs. 1720/- pay on Shop Floor plus Rs. 50/- special increment as loyal worker) plus Rs. 330/- as Personal Pay should be given to him on protection of his pay vide RB letter dated 16.5.1973 (Ann.A5) as also the judgment dated 12.4.1993 of this Tribunal in OA No. 20/93 as given to other staff (Ann.A11 refers). It is further contended that recovery of Rs. 19117/- for August, 89 to September, 1991 from the DCPG of the applicant was arbitrary, illegal and against the spirit of the judgment of the Supreme Court reported in (1994) 27 ATC 121, Shyam Babu Verma v. Union of India and the applicant has filed this OA in terms of direction dated 13.10.1994 (Ann.A14).

5. By filing their reply, the respondents have opposed the OA. It has been stated that on being posted to FCO vide letter dated 2.4.91 (Ann.A9) the pay of the applicant, the ex-Chargeman, has correctly been fixed in the scale of Rs. 1400-2300 at Rs. 1760/- as on 1.6.1990 in tune with his junior Shri Rajendra Kumar and further at Rs. 1800/- on 1.6.1991, Rs. 1850/- on 1.6.1992 and Rs. 1850/- on 31.3.1993 (Ann.A1). This final fixation was consequent to the judgment of the Apex Court (Ann.A4). They have, inter-alia, contended that the pay fixation of the applicant had attained finality in 1991 itself and he cannot be allowed to reopen it under the guise of challenging order dated 31.8.1994 (Ann.A1). As regards the question of option, it has been clarified by the respondents that it was applicable to employees posted in FCO before 22.4.1963 and not thereafter. Since the applicant had joined FCO for the



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first time only w.e.f. 8.7.1973, he cannot claim any benefit on the ground of his having not opted out of PCO. It has also been clarified on behalf of the respondents that on completion of his tenure in PCO the applicant was repatriated to his parent cadre in Shop Floor and his pay was fixed with reference to his junior Shri Rajendra Kumar vide order dated 2.4.1991 (Ann.A9) which resulted in reduction of emoluments and this did not involve issuance of any show-cause notice. It has also been stated that after two years, the applicant was again posted to PCO on the same post in the pay scale of Rs. 1400-2300 plus Special Pay @ 15% as per rules and had received in an ex-cadre post earlier. The respondents have denied that the advance increments of Rs. 8/- and Rs. 12/- given to him as loyal workers were ever withdrawn and there was no question of grant of and withdrawal of Rs. 50/- special increment to him. The respondents have also stated that under rules 49 of the Manual of Pension Rules, the expression 'emoluments' means the pay as defined in clause (i) of Rule 1303 of Indian Railway Code (Vol.II) which the Railway servant was receiving immediately prior to his date of retirement and under Rule 1303 (i) 'pay' means the amount drawn monthly by a government servant as the pay other than special pay or pay granted, inter-alia, on his personal qualification etc. and consequently the Special Pay has been specifically excluded from calculating the pensionary benefits. The respondents have also denied the allegation that Rs. 19,117/- has been deducted and stated that consequent on the acceptance of their appeal by the Supreme Court, the pay of the applicant was re-fixed and his pension and other retiral benefits had accordingly been computed resulting in payment of Rs. 925/- p.m. as pension plus relief thereon and ~~no~~ amount of Rs. 19,117/- has been recovered from his DCRG as can be seen from Ann.F2 and further that the PPO was also issued within a very reasonable time.



6. We have carefully considered the rival contentions. We find that while the applicant is depending on RB's letter dated 13.9.1984 (Ann.A2) for pay protection, the respondents are denying pay protection to the applicant primarily on the ground that the said letter of RB is applicable to only those staff who had been posted in the PCO before 22.4.1963 and since the applicant was posted in the PCO w.e.f. 8.7.1973, he was not entitled and was consequently not required to exercise any option in any case. We have perused the said circular of the Ministry of Railways, copy at Ann.A2. Relevant portions of the said circular as extracted hereunder:-

"2. The question regarding further streamlining of the staffing pattern of P.C.O. in the workshops on the Indian Railway and Production Units has been engaging the attention of the Ministry of Railways for quite some time. Pursuant to negotiations with the staff side in the Departmental Council of the Ministry of Railways under the JCM scheme, the Ministry of Railways have decided as under in partial modification of the orders (emphasis supplied) contained in their letters dated 22.4.1963 and 9.6.1973 quoted above" and goes on to provide as under:-

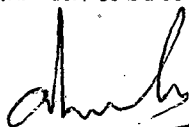
"(i) xxx

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(ii) The staff from shop floor shall be transferred to the P.C.O. in the same grade, no staff should be transferred to P.C.O. on promotion.

iii) The tenure of posting in P.C.O. will be five years which should be strictly adhered to. But if in any exceptional circumstances, or for unavoidable reasons, staff is to be retained in the P.C.O., beyond five years, maximum two extensions of six months each may be



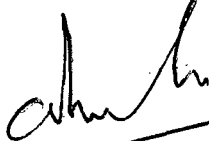
given the first extension will be allowed with the personal approval of the CME/CWE and the CFO and the second with the personal approval of the General Manager.

iv) to viii) xxx xxx

ix) such of the staff as had gone on promotion to PCO may be given an opportunity to exercise an option either for the pay in his cadre in the shop floor plus special pay as admissible on posting to PCO or to continue to draw pay in higher grade in the PCO without special pay. Such option will be exercised within two months of the date of circulation of these orders by the workshop authorities concerned. The option will be effective from the date the same is exercised in each individual case. In the absence of any option, the staff will continue in the scale of pay in PCO. Options once exercised will be final. Fresh option will, however, be allowed when a person is due NER certificate in respect of any higher grade in the parent cadre while still in PCO.

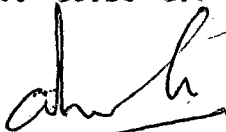
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The first thing to note is that this letter has consolidated all the provisions with regard to deputation to PCO and is in partial modification to orders contained in letters dated 22.4.1963 and 9.6.1978 (Ann.A5) ^{and these} ~~are~~ therefore, overlaid by this and cannot help the applicant in any manner. Even Ann.A12 cannot help the applicant because it refers to the letter dated 9.6.1978, in modification of which letter dated 13.9.1984 Ann.A2 has been issued by Ministry of Railways. A plain reading of the provisions of the above letter of the Ministry of Railways, which enjoys statutory force, will reveal that it nowhere stipulates that the provisions contained in it will be applicable to only employees who joined PCO



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prior to 22.4.1963. All it say in its "preamble" within para 2 is that "the Ministry of Railways have decided as under in partial modification of the orders contained in their letters dated 22.4.1963 and 9.6.1978" and, therefore, this by itself cannot be read to mean that all the "modified provisions as contained in the said letter are applicable only on employees who have joined PCO before 22.4.1963" as contended by the respondents. These provisions, inter-alia, provide for a tenure of 5 years in PCO extendable in special circumstances by two extensions, each of 6 months. In the instant case, the applicant was kept in PCO for as long as 16 years during his first posting in PCO between 8.7.1973 to 19.8.1989. It not only appears that the applicant was almost indispensable for PCO but also points to the situation wherein the applicant obtained a large number of annual increments in PCO in the pay scale of Rs. 1400-2300 raising his salary to Rs. 2200/- p.m., much above than his counterparts in his parent organisation, the Shop Floor. In such a situation, when the applicant was "repatriated", he was required to go down to a lower level in the same pay scale leading in certain personal hardship and all that respondents did to mitigate his hardship was to grant him the pay i.e. Rs. 1680/- p.m., the same as was being drawn by his junior, Sri Rajendra Kumar. Such reading will also reveal that para 2(ix), on which the learned counsel for the applicant heavily relied comes into play only when an employee goes to PCO on promotion. We, therefore, do not find ourselves in a position to help the applicant. He would have been eligible for exercising an option under Para 2(ix) of the said letter of the RE (Ann.A2) if he had gone on promotion to PCO. But the applicant appears to have been posted to PCO in the same pay scale and the applicant has not been able to either aver or establish that he had gone to PCO on promotion. Therefore, the question of an option being available to the applicant does not arise and in the result he is neither

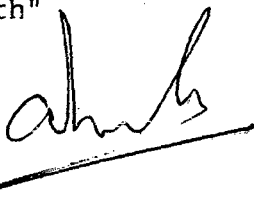


eligible for pay in his cadre in the Shop Floor plus Special Pay as admissible on posting to PCO or to continue to draw pay in higher grade in the PCO without Special Pay. The fact also remains that the applicant remained in his parent cadre from 20.8.1989 to 9.9.1991 and again got posted to the PCO from 10.9.1991 till 31.3.1993 when he retired. He could not, therefore, claim the pay he had last drawn two years' back in an ex-cadre post; he has to start all over again from his salary being drawn in the parent cadre i.e. Shop Floor and get the special pay in addition.


7. We may now examine the question whether the Special Pay being drawn by the applicant in PCO prior to his retirement from PCO itself would be included in the emoluments for the purpose of calculating various retiral benefits. The respondents in para 14 of their reply have stated that rule 49 of the Manual of Pension Rules, the expression "emoluments" for the purpose of calculating various retiral benefits means the pay as defined in clause (i) of Rule 1303 of the Indian Railway Establishment Code (for short Code) Vol.II and have denied the inclusion of Special Pay on the ground that the definition of 'pay' under Rule 1303 (i) excludes the Special Pay. It will be useful to extract rule 49 of the Railway Services (Pension) Rules, 1993 as contained in Bahari's Railway Services Pension Manual and rule 1303 of the Code, 1990 Edition:-

"49. Emoluments

The expression - (a) "Emoluments", for the purpose of calculating various retirement and death benefits, mean the basic pay as defined in clause (i) of rule 1303 of the Code which a railway servant was receiving immediately before his retirement or on the date of his death"



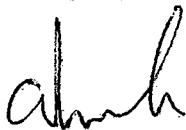
1303. (F.R.9)(21)(a)-Pay.- Pay means the amount drawn monthly by a Government servant as:-

(i) the pay other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity or to which he is entitled by reason of his position in a cadre: 

A plain combined reading of these two rules will indicate that under rule 49 of Pension Rules emoluments means the basic pay as defined in clause (i) of Rule 1303 of the Code ^{and the} special pay has been excluded from the definition of pay under (i) of Rule 1303 of the Code. The applicant has, however, annexed as Ann.A13 a photocopy containing note No.4 under the heading '103. Admissibility of Pension' without indicating as to from which rule/manual such extract has been taken. The said note No.4 carries the authority of Board's letter No. F(E) III.86-PNI/9 dated 15.5.1986. The contents of the note No.4 are extracted as under :-

"Special pay drawn by an employee who is reverted back to Shop Floor from the Production Control Organisation for the period he has drawn the special pay in the P.C.O. during the last ten months of his retirement could count for the purpose of calculating the average emoluments for pensionary benefits in terms of Para 2545. R11. [B's letter No. F(E)III-86-PNI/9 dated 15.5.1986.]

The note above appears to be in contravention with the provisions of rule 1303 of the Code which has been reprinted in 1990 and is supposed to ^{be} embodying correction slip up to No.4 issued

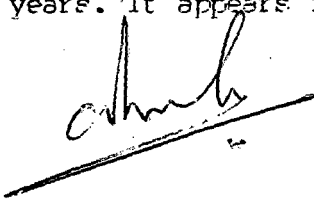


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upto 2.2.1990. As mentioned, the authority for note No.4 as extracted above is Board's letter dated 15.5.1986 but does not appear to have been incorporated in the definition of the pay as contained in Rule 1303 of the Code. The respondents have also not been able to ^{tell} tell us whether the said note under the authority of the Railway Board letter as quoted under the note is still operative or not. In the absence of clear pleadings, we are not able to give any finding on the issue of inclusion or otherwise of Special Pay in the emoluments when a railway employee like the applicant is posted to PCO from Shop Floor and retires from PCO having served there for more than 10 months prior to their retirement.

8. As regards allegation of withdrawal of advance increments and recovery, we find no reasons to disbelieve the respondents when they state in their reply that no advance increments sanctioned to the applicant as loyal worker were withdrawn and that no recovery of any amount, much less the amount of Rs. 19,117/- as alleged, was made from the DCRG amount of the applicant. It may also be mentioned at this juncture that the judgment in OA No. 20/93, Kanhya Lal v. Union of India decided on 12.4.1993 (Ann.A15) and Shyam Baku Verma v. Union of India and ors. (cited supra) are also of no help to the applicant; the former because the Apex Court in its judgment dated 18.2.1994 (Ann.A4) has clearly laid down the law that the respondents therein, same class of employees as the applicant, continued to have their lien in the parent Shop Floor from which they were sent on deputation to PCO and the latter being distinguishable on the facts and circumstances of the two cases.

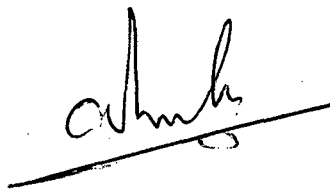
9. The applicant has also prayed that he should be paid interest at the rate of 18% because his pay and DCRG were settled after a delay of more than 1½ years. It appears from the authority issued



from FARCO (Ann.F3) that the Pension Payment Order (PPO) has been issued in favour of the applicant only on 31.11.1994. It can, therefore, be easily presumed that the pension and the DCEG was actually disbursed to the applicant only after 30.11.1994. If that be so, there has been delay of almost 1 year and 8 months in pension and DCEG having actually been paid to the applicant. Such a delay of more than 30 months in payment of pension and DCEG cannot be accepted. In fact, all that the respondents have stated in defence of such delay is that "PPO was also issued within a reasonable time". At the most two months grace period can be permissible from the date of retirement for finalisation of pension and retiral benefit. In the circumstances, we are of the opinion that respondents are liable to pay reasonable interest to the applicant from a date two months after the retirement of the applicant to the date payment was actually made to the applicant.

10. We, therefore, partly accept the OA with following directions;

- i) The respondents may re-examine the fixation of the pension of the applicant keeping in view rule 49 of the Railway Services Pension) Rules, 1993, Rule 1302 of the Indian Railway Establishment Code Vol.II and Railway Board's letter No. F(E)-III-86-PNH dated 15.5.1986 and decide whether the pension of the applicant is required to be revised.
- (ii) On the amount of pension and DCEG already paid to the applicant, respondents shall pay interest at the rate of 12% per annum for the period 1.6.1993 to the date when the payment was actually paid to the applicant.
- (iii) In case the pension and retiral benefits of the applicant are revised upwards after re-examination to be carried out in terms of direction (i) above, the respondents will also pay




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interest at the rate of 12% on the arrears of pension and
retiral benefits that would become payable from 1.6.1993 to
the date of actual payment.

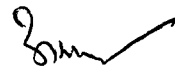
These directions may be implemented within a period of 4
months from the date of receipt of a copy of this order.

Parties to bear their own costs.



(N.P.NAWANI)

Adm. Member



(A.K.MISHRA)

Judl.Member