

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 257/ 2002

Date of decision: 24/3/04

CORAM:

**Hon'ble Mr. J.K. Kaushik, Judicial Member
Hon'ble Mr. A.K. Bhandari, Administrative Member**

Laik Ahmed s/o Mohd. Azim, Ex Diesel Assistant Driver, Loco Shed, W/Rly., Phulera Jn.

...Applicant

(Rep. By Advocate Mr. P.N. Jatti, for the applicant)

V e r s u s

- (1) Union of India through General Manager (E), W/Rly, Churchgate, Mumbai.
- (2) Divisional Rly. Manager, W/Rly., Jaipur.
- (3) Divisional Mechanical Engineer, W/Rly, Jaipur.

...Respondents

(Rep. By Advocate Mr. S.S. Hasan, for the respondents)

**ORDER
PER HON'BLE MR. J.K. KAUSHIK**

Applicant, Laik Ahmed, has inter-alia prayed for quashing the order dated 26.2.2001 (Annexure A/1) and has prayed for revision of his pension as per recommendations of 4th & 5th Pay Commission by according fixation of pay in the revised scale of pay w.e.f. 1.1.86 and 1.1.96 respectively along with interest on 12% per annum.

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2. With the consent of the learned counsel for the parties, the case was heard for final disposal at the admission stage. We have carefully perused the pleadings and the records of the case.

3. The undisputed facts, which are material in resolving the controversy involved, in this case are that the applicant was initially appointed in the Railway on 14.2.59 and enjoyed his further promotions to the posts of Diesel Assistant and Driver. He was allowed voluntary retirement w.e.f. 19.9.86. Prior to his voluntary retirement he was on Earned Leave for 14 days from 6.9.84 to 19.9.84, which was duly sanctioned by the Loco Foreman. He applied for extension of leave upto 31.12.84. On expiry of the leave he reported for duty on 1.1.85 but he was not taken on duty and was told that he has been treated absent.

4. The applicant was issued with a charge-sheet alleging absence from duty. An oral inquiry was ordered and conducted ex-parte. The inquiry report was submitted to DME, W/Rly. The disciplinary authority did not proceed further in the matter in accordance with Rule-10. Subsequently, the said charge sheet was dropped on 27.5.86 and the applicant submitted a notice for voluntary retirement on 11.6.86 and was relieved on said retirement on 19.9.86.

5. That without passing any order the applicant was treated as absent from 6.9.84 to 19.9.86 and he has been sanctioned

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pension on the basis of emoluments drawn by him prior to 6.9.84. He has not been allowed the revised pay fixation in pursuance of 4th Pay Commission and he has been given revised pension on the basis of pension fixed as per pay, which he was drawing before 6.9.84, as per the recommendations of the fifth pay commission.

6. As regards the variances, it has been averred in the reply that the applicant remained absent from 12.12.83 to 19.9.86. He has not produced any document or record to prove that he has not been taken on duty and there is nothing on record to show that the applicant ever reported for duty. SF-5 was cancelled without any prejudice and question of concluding or supplying the inquiry report did not arise. The applicant has been sanctioned the pension on the basis of emoluments last drawn by him as on 11.12.83. It is also averred that as per Railway Board's order, pension of the employees who retired prior to 31.12.85 shall be fixed notionally on the basis of last pay drawn and their pension shall not be fixed as per the recommendations of the 4th Pay Commission came into effect w.e.f. 1.1.86. The benefits of the revised pay as per the recommendations of the Fourth Pay Commission, which was given effect w.e.f. 1.1.86, cannot be allowed to the applicant. The grounds raised in the Original Application have been generally denied.

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7. Both the learned counsel for the parties have reiterated their pleadings. The learned counsel for the applicant has drawn our attention towards revised pay rules and has submitted that since the applicant has retired after the recommendations of the 4th Pay Commission came into effect, he was entitled to get his pay fixed in the revised pay scale and ought to have been allowed the pension on the basis of revised pay. He also submitted that the applicant was not taken on duty by the respondents themselves and the intervening period should have been treated as duty. He has also tried to persuade this Tribunal that nothing was found against the applicant in the inquiry but the respondents used the disciplinary proceedings as a shield and made the applicant to take voluntary retirement and this position can be inferred from the sequence of the events if they are taken together. As per the scheme in force and the revised rules, the applicant was very much entitled to get the pay fixation done up as per the 4th Pay Commission report and then only his pension could have been fixed and revised accordingly but it has not been found expedient for the respondents to adhere to the rules and given the due fixation to the applicant on the pretext or the other.

8. On the contrary, the learned counsel for the respondents has taken us to the grounds of defence as set out in their reply. He has tried to counter the submissions made on behalf of the applicant. It has been vehemently submitted that since the

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applicant has not worked even for a day after the recommendations of the 4th Pay Commission, the question of revising his pay pension did not arise and no fault can be fastened with the respondents. The action of the respondents is very much in consonance with the rules in force and the Original Application sans merit and substance and therefore no interference is called by this Bench of the Tribunal.

9. We have considered the rival contentions put forward by the learned counsel for the parties. A short question is involved in the instant case. The basic issue that arises for our consideration is as to how the pension of the applicant would be fixed in such cases. It is admitted that the applicant was unauthorised absent from duty during the period from 6.9.84 to 19.9.86 and he was allowed to voluntarily retire from service with effect from 6.9.96. His pension has been fixed on the basis of emolument drawn by him during last ten months when he was on effective duty i.e. prior to 6.9.84. We have traced out the relevant rule position and in such cases the pension is required to be fixed as under: -

"If during last 10 months of service, a Railway servant is absent from duty or on extraordinary leave (without salary) or has been under suspension, the period whereof does not count as qualifying service, the aforesaid period of leave or suspension should be disregarded, an equal period before 10 months, being included.

The stagnation increment should be treated as pay for calculating average emoluments.

[R.B.'s No. PC-IV/87/Increment/3 of 25.9.90, Bahri's 166/90.]"



The mere perusal of the aforesaid rule would reveal that the respondents have correctly fixed his pension and there is no arbitrariness in their action to that extent.

10. Now the next question to be answered by us would be as to whether the applicant would be allowed the revision of pension as per the recommendations of fourth pay commission. The answer may not be very complicated and has to be in positive. The reason is obvious. Had the applicant retired from service in the year 1984 itself, he would have been allowed the revision of pension and similar position emerges out here. The relevant portions from the pay Rules at Annexure A/3, are extracted as under:-

"Definitions: In these rules, unless the context otherwise requires:

- (1) "basic pay" means pay as defined in Rule 2003 (21) (a) (i) [FR 9 (21) (a) (i)] of the Indian Railway Establishment Code, Vol.II;
- (2) "existing scale" in relation to a Railway Servant means the present scale applicable to the post held by the Railway servant (or as the case may be, personal scale applicable to him) as on the 1st day of January, 1986 whether in a substantive or officiating capacity.

Explanation: In the case of a Railway servant, who was on the 1st day of January, 1986 on deputation out of India or on leave or on foreign service, or who would have on that date, officiated in the or more lower posts but for his officiating in a higher post, "existing scale" includes the scale applicable to the post which he would have held but for his being on deputation out of India or on leave or on foreign service or, as the case may be, but for his officiating in a higher post."

The terms of 'emolument' has been defined as under:



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

Provided that the stagnation increment shall be treated as emoluments for calculation of retirement benefits."

In Rule 1303 (FR 9) (21) (a) of the Indian Railway Establishment Code Vol.II 'Pay' defined as under:

"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; and*
- (ii) overseas pay, special pay and personal pay; and*
- (iii) any other emoluments, which may be specially classified as pay by the President."*

A perusal of the aforesaid provisions reveals that the applicant he shall be entitled for the revision of pension sanctioned on the basis of half of the last 10 months average emoluments. He is to be fixed in the revised scale prescribed by the pay commission for the post which was held by him subject to the minimum of Rs. 375/- and 1275/- as prescribed by the fourth and fifth pay commissions, respectively. The applicant belongs to running category and a prescribed element of running allowance shall be added to his pension, which undisputedly must have been allowed along with his initial pension

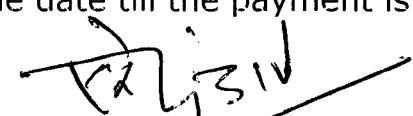


11. We are not impressed with the submissions made on behalf of the respondents that the applicant cannot be allowed the revision of pension as per the recommendations of fourth pay commission. It is very strange that the respondents have fixed the pension of the applicant correctly on the basis of half of the average of emoluments drawn during last ten month (while on effective duty) and refused to revised the same as per recommendation of 4th Pay Commission. But they have revised the pension so fixed as per the recommendations of fifth pay commission. If he was required t be allowed revised pension as per fifth pay commission, why not for the revised pension as per the recommendations of 4th pay commission. We did not get any satisfactory answer to this from the respondents. Otherwise also the pension is to be revised as and when new pay commission 's recommendations are to be implemented and this is done despite the fact that once does not remain in the employment during the period prior to the date of such revisions.

12. The upshot of the aforesaid discussion is that the aforesaid Original Application merits acceptance in part and the same is allowed accordingly. The impugned order dated 26.2.2001 (Annexure A/1) is hereby quashed and the respondents are directed to revise applicant's pension as per the recommendations of 4th Pay Commission and also further revise his pension so fixed in implementation of the recommendations

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of the 5th Pay Commission. The applicant shall be entitled to all consequential benefits and the arrears on account of this order shall be payable along with interest @ 8% per annum from the due date till the payment is made. No costs.



**(A.K. Bhandari)
Adm. Member**



**(J.K. Kaushik)
Judl. Member**

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