

Central Administrative Tribunal
Jabalpur Bench

OA No.1170/05

Jabalpur, this the 29th day of November 2006.

CORAM

Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Mr.A.K.Gaur, Judicial Member

S.R.Sable
s/o Shri B.R.Sable
R/o 270/1, Bhawani Sadan
Sharda Colony, Ukhari Road
Jabalpur.

Applicant

(By advocate Shri V.Tripathi)

Versus

1. Union of India through
Its Secretary
Ministry of Communication
Department of Post
New Delhi.

2. The Chief Post Master General
MP Circle
Hoshangabad Road
Bhopal.

3. The Superintendent
Rail Mail Services
Jabalpur.

Respondents.

(By advocate Shri A.P.Khare)

O R D E R

By A.K.Gaur, Judicial Member

This Original Application is directed against the wrong calculation of pension and retiral dues of the applicant. The applicant who entered service as Sorting Assistant in 1965, retired as Supervisor BCR on 30.4.2005. It has been stated in the OA that the applicant was posted as HSG-I w.e.f.1.2.2004 on officiating basis in the office of Head Record Officer, Jabalpur. After officiating promotion as HSG-I,

the basic pay of the applicant was fixed as Rs.7900/- in the pay scale of Rs.6500-10500. He worked as officiating HSG-I from 1.2.2004 to 31.1.2005. The applicant worked as Supervisor BCR from 1.2.2005 to 30.4.2005. His basic pay was fixed on 1.2.2005 as Rs.7700/-. It has been alleged that the pension and DCRG of the applicant was calculated on the basic pay of Rs.7550/- and his pension was calculated as Rs.5697/- which, according to the applicant, is incorrect.

2. Learned counsel for the applicant submitted that the pension should be calculated on the basis of the emoluments of last 10 months as per Rule 34 of CCS (Pension) Rules. The applicant received Rs.7700/- as basic pay for the last 3 months and Rs.7900/- for 7 months and, therefore, according to him, his pension should have been calculated as under:

$$\begin{aligned}
 (i) \quad 7700+3850 &= \text{Rs.}11550 \times 3 = 34650.00 \\
 (ii) \quad 7900+3950 &= \text{Rs.}11850 \times 7 = 82950.00 \\
 &\quad 117600.00
 \end{aligned}$$

As per 117600.00 = 11760

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11760 = 5880.00

5880.00

3. As per the aforesaid calculation, the applicant should be paid Rs.5880/- as monthly pension. Instead he is being paid Rs.5697/- as monthly pension. Feeling aggrieved by the wrong calculation of pension and retrial dues the applicant made a series of representations, but no heed was paid by the respondents. Hence, the applicant has filed this OA seeking a direction to respondents to recalculate the pension on the basis of last 10 months emoluments and also for a direction to the respondents to pay difference of pension and other dues with 18% interest.

4. The respondents have filed reply contending that the applicant was working on the norms-based LSG post up to 31.01.04. Shri T.R.Samtani, a regular HRO HSG-I, retired on superannuation on 31.01.2004 and the applicant being senior most LSG (notionally) was ordered to officiate on temporary adhoc basis till the regular posting of HSG-I HRO, on circle basis, vide letter dated 29.1.04. He took the

charge of HRO (HSG-I) from Shri T.R.Samtani on 31.01.04 and officiated on the post from 1.2.04 to 23.11.04 and thereafter proceeded on leave w.e.f. 24.11.04. He remained on leave up to 31.01.05 during which he remained drawing higher scale of pay up to 31.01.05 in officiating capacity. Thereafter this arrangement was terminated on joining of the regular incumbent HSG-I cadre w.e.f. 1.2.05 and he worked as LSG Stg. Asstt. upto 30.4.05 i.e. the date of retirement. The pension case of the applicant was submitted to DA(P) Bhopal vide SRM, Jabalpur letter dated 16.2.05. While calculating pension/entitlement benefits the average payment drawn during last preceding 10 months were taken as under:

Period	Pay+DP	Total	Month	Product
01.06.04 to 31.12.04	7900 +	11850	7	82,950
01.01.05 to 31.01.05	3950	
01.02.05 to 30.04.05	HPL 7700 + 3850	11550	3	34,650
			10	1,17,600
A.E., 1,17,600/10=1,17,600				
Pension = 11760/2=5880 p.m.				

However, the DA(P) Bhopal did not agree with the above calculation of average emoluments. He calculated the pension entitlement on the basis of pay of BCR cadre as given below:-

Period	Pay + DP	Total	Month	Product
01.06.04 to 31.12.04	7550 +	11325	7	79275
01.02.05 to 30.04.05	3775 7700 + 3850	11550	3	34650
			10	1,13,925
A.E. 1,13,925/10=11392.50				
Pension=11392.50/2=5696.25 i.e.Rs.5697/-				

5. Having heard the learned counsel for the parties, we are of the considered opinion that the pension of the applicant has not been calculated in accordance with the provisions of Rule 34 of CCS (Pension) Rules. The pension of the applicant should have been calculated on the basis of the emoluments of last 10 months. The applicant has received Rs.7700/- as basic pay for the last three months

and Rs.7900/- for the last seven months. According to the applicant, his pension should have been calculated as follows:

$$\begin{aligned}
 \text{(iii)} \quad 7700+3850 &= \text{Rs.}11550 \times 3 = 34650.00 \\
 \text{(iv)} \quad 7900+3950 &= \text{Rs.}11850 \times 7 = 82950.00 \\
 &\quad 117600.00
 \end{aligned}$$

As per 117600.00 = 11760

$$\begin{array}{r}
 10 \\
 \hline
 11760 = 5880.00 \\
 \hline
 \text{Mf} 2
 \end{array}$$

6. Learned counsel for the applicant has placed reliance on a decision of this Tribunal reported in 1993 (23) ATC 859 - Anil Kumar Biswas vs. Union of India and others, wherein, in similar situation, the pension of the employee was calculated on the basis of the emoluments of last 10 months. This Tribunal, after careful analysis of the facts of the case, observed as under:

"6. Examining the case on merits, it is seen that the applicant having been found suitable in a test held on 4.11.1985 was put to officiate as Chargeman, Gr.'B' in the scale of Rs.425-700/. His subsequent reversion was not on account of any misconduct or inefficiency but due to the fact that some trainee chargemen became available to function as Chargeman, Gr.'B'. The reversion order in any case has not been given effect to on account of the interim order passed by the Hon'ble High court. Admittedly, therefore, the applicant continued in the post of Chargeman, 'B' and performed the duties in that post. It is further apparent that even after dismissal of the T.A. in November 1990, the applicant was not reverted but was allowed to continue as Chargeman, 'B' in the basic pay of Rs.1720/- till the date of his retirement. In view of these facts, the learned counsel for the applicant vehemently argued that there was nothing wrong with the manner in which the pension of the applicant was initially fixed. The fact remains that the applicant was holding the post of Chargeman, 'B' and was in receipt of pay at the rate of Rs.1720/- per month during the 10 months that preceded his superannuation. His pension was initially correctly fixed at Rs.860/- per month. The respondents' decision to treat the pay of the applicant as Rs.1600/- was arbitrary and uncalled for."

7. We have carefully considered the plea taken by the respondents, which appears to be too technical. Undoubtedly, the applicant was officiating as HSG-I w.e.f.1.2.2004 upto 31.1.05. This officiating

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period cannot be ignored for the purpose of calculating his pension and pensionary benefits.

8. In our considered view, this is a fit case in which a direction is required to be issued to the respondents to re-calculate the pension and other ~~retirement~~ dues of the applicant on the basis of the emoluments of the last 10 months which the applicant has actually drawn, in terms of Rules 34 of the CCS (Pension) Rules. We direct accordingly. We also direct the respondents to pay the difference of pension and other arrears due to the applicant with 6 percent interest per annum upto the date of payment, within a period of three months from the date of receipt of this order.

A.K. Gaur
(A.K. Gaur)
Judicial Member

Gopal
(Dr. G.C. Srivastava)
Vice Chairman

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प्राप्तिकर्त्ता सं. ओ/व्हा..... जखलपुर, दि.....
प्रतिक्रिया वापरे विवर:-
(1) राशिय, उपराज्यकार्यालय वापरे विवर, जखलपुर
(2) अधिकारी वापरे विवर, जखलपुर
(3) उत्तराधि वापरे विवर, जखलपुर
(4) योग्यतावाल, वापरे विवर, जखलपुर
सूचना एवं वापरावाल विवर, जखलपुर

V-Tripathi) D.V.
A.P.Khare) D.B.B

उप रजिस्ट्रार

28/12/06
on 5/12/06
BB