

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

01.10.2013

OA No. 349/2009

Mr. Ashwini Jaiman, Counsel for applicant.
Mr. Anupam Agarwal, Counsel for respondents.

Heard learned counsel for the parties.

The OA is disposed of by a separate order.

Anil Kumar

(Anil Kumar)
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO. 349/2009

Jaipur, the 01st day of October, 2013

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Sarafat Ali son of Shri Shamsheer Ali, aged about 61 years, resident of Opposite Baddrudin Carpenter, NBC Road, Hasanpura A, Jaipur (Rajasthan). Last employed on the post of Fireman Grade II in Loco, Northern Western Railway, Jaipur Division, Jaipur.

... Applicant

(By Advocate: Mr. Ashwini Jaiman)

Versus

1. Union of India through General Manager, Northern Western Railway, Jaipur (Rajasthan).
2. Divisional Railway Manager, North Western Railway, Jaipur Division, Jaipur.

... Respondents

(By Advocate: Mr. Anupam Agarwal)

ORDER (ORAL)

Earlier the applicant had filed OA No. 349/2009 praying for the following reliefs:-

- (i) That the impugned order dated 30.04.2009 (Annexure A/12) rejecting the case of applicant may please be quashed and the respondents may please be directed to fix/calculate the pension, gratuity, commutation and other pensionary benefits of the applicant as per 5th pay commission and arrears of pension may also be paid to the applicant. The respondents may please be further directed to pay the interest on delayed payment. The Original Application may please be allowed with all consequential benefits.
- (ii) That the respondents may please be directed to grant the revision of pay scale, which has taken place during his suspension period and further they may please be directed to pay arrears of pay on account of revision of pay.
- (iii) Any other order/direction/relief(s) may be passed in favour of applicant which Hon'ble Court may be

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deemed fit, just and proper under the facts and circumstances of this case.

- (iv) That the cost of this Original Application may be awarded."

2. This OA was dismissed by this Tribunal vide order dated 21.04.2011. The applicant being aggrieved by the decision of the Tribunal filed a DB Civil Writ Petition No. 12934/2011 before the Hon'ble High Court of Rajasthan, Jaipur Bench, Jaipur. The Hon'ble High Court vide its order dated 25.02.2013 quashed the order of the Tribunal dated 21.04.2011 and the matter was remanded back to the Tribunal for fresh adjudication according to the law taking note of the observation made by the Hon'ble High court in this order. The Hon'ble High Court directed both the parties to appear before the Tribunal on 08.04.2013.

3. In compliance of the order of the Hon'ble High Court, the learned counsel for both the parties in the OA were heard again. Learned counsel for the applicant placed reliance on the judgment of the Hon'ble Supreme Court in the case **R.P. Kapur vs. Union of India & Others**, 1999 SCC (L&S) 1440. In this case the appellant, a railway employee, was placed under suspension on 21.01.1982 and he was compulsorily retired by way of penalty with effect from 25.11.1992. The Railway authorities computed the appellant's pension on the basis of average emoluments drawn by him during the ten months proceeding the period of his suspension that is 21.01.1982. The respondents' contention, however, was that

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such subsistence allowance drawn by him during the ten months preceding his compulsory retirement should be taken as his emoluments for the purpose of computing his pension. The respondents took this stand because his pay was revised notionally with effect from 01.01.1986 and he was granted subsistence allowance @ 75% of the revised pay. Such commutation was beneficial to him. The Hon'ble Supreme Court while allowing the appeal, held that where compulsory retirement affect during suspension, the subsistence allowance drawn during the ten months proceeding such retirement, held on facts, to be taken as the emoluments for computation and not that preceeding the suspension. The period of suspension in that order was allowed to count as qualifying service for pension and for no other purpose. The Hon'ble Supreme Court in view of the Railway rules applicable in this case, held that subsistence allowance drawn @ 75% of the basic pay in the revised pay scale applicable with effect from 01.01.1986 to be taken as emoluments for computation of pension. The Hon'ble Supreme Court also held that the amount determined by the Railway authorities on the basis of average emoluments drawn by the appellant prior to his suspension was not correct.

4. The learned counsel for the applicant submitted that the facts of the case **R.P. Kapur vs. Union of India & Others**, 1999 SCC (L&S) 1440 (supra) are similar to the facts & circumstances of the present case. In the present OA, the applicant was deemed suspended from 01.10.1985 to 17.01.1996. He was compulsorily retired from service with

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effect from 17.01.1996 by way of punishment and the period of deemed suspension from 01.10.1985 to 17.01.1996 was treated as suspension but the said period was treated as qualifying period for the purpose of pensionary benefits. The copy of the order of the Appellate Authority has been filed as Annexure A/5.

5. However, the respondents did not fix the pension of the applicant and he was not given the benefit of the 5th Pay Commission. The learned counsel for the applicant submits that in view of the decision of the Hon'ble Supreme Court in the case of **R.P. Kapur vs. Union of India & Others**, 1999 SCC (L&S) 1440 (supra), the respondents be directed to fix the applicant's pension following the ratio decided by the Hon'ble Supreme Court.

6. The learned counsel for the respondents graciously agreed to the submissions made by the learned counsel for the applicant that the facts & circumstances of **R.P. Kapur vs. Union of India & Others**, 1999 SCC (L&S) 1440 (supra) are similar to the facts & circumstances of the present OA and that this OA can be disposed of in terms of the ratio decided by the Hon'ble Supreme Court in the case of **R.P. Kapur vs. Union of India & Others**, 1999 SCC (L&S) 1440 (supra).

7. I have carefully perused the facts & circumstances of the case of **R.P. Kapur vs. Union of India & Others**, 1999 SCC (L&S) 1440, (supra) and the facts & circumstances of the

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present OA and I am of the opinion that the facts & circumstances of the case of **R.P. Kapur vs. Union of India & Others**, 1999 SCC (L&S) 1440 (supra) are quite similar to the facts & circumstances of the present OA. In the present OA also, the respondents have calculated the pension of the applicant on the basis of 10 months salary drawn by the applicant prior to 01.10.1985 i.e. the date on which was placed under suspension, whereas the Hon'ble Supreme Court in the case of **R.P. Kapur vs. Union of India & Others**, 1999 SCC (L&S) 1440 (supra) has held that the applicant's pension should be computed on the basis of the average emoluments drawn by him during the 10 months preceding his compulsory retirement. In the case of **R.P. Kapur vs. Union of India & Others**, 1999 SCC (L&S) 1440 (supra), the pay of the employee was revised notionally with effect from 01.01.1986 by the respondents (perhaps due to the implementation of the 4th Pay Commission). In the present OA, the applicant is claiming that since he was compulsorily retired on 17.01.1996, therefore, he should be entitled for the benefit of 5th Pay Commission which came into effect from 01.01.1996.

8. Therefore, I direct the respondents to revise the pension of the applicant in accordance with the ratio decided by the Hon'ble Supreme Court in the case **R.P. Kapur vs. Union of India & Others**, 1999 SCC (L&S) 1440 and to refix the pension and other retirement benefits as applicable according to the provisions of law within a period of three months from the date of receipt of a copy of this order. It is made clear that

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if the applicant is aggrieved by the decision taken by the respondents, he will be at liberty to redress his grievances by filing substantive OA.

9. With these observations, the OA is disposed of with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

AHQ