

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA 3113/2013
MA 2462/2013

New Delhi this the 1st day of September, 2015

**Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Mr. P.K. Basu, Member (A)**

Shri Surendra Pal
S/o Late Shri Amar Dass
R/o Flat No.302, Anupam Apartments
Arjun Nagar East
Near Karkardooma Courts,
4-CBD-Shahdara,
Delhi-110032

(Through Ms. Sunita Tiwari, Advocate)

Versus

Union of India through:

1. The Secretary
Ministry of Railways
Rail Bhawan, Raisina Road,
New Delhi
2. Railway Board
Through its Chairman
Rail Bhawan,
New Delhi
3. North Central Railway (NCR)
Through the General Manager
Head Quarter, Subedarganj,
Allahabad-211015 (U.P.)
... Respondents

(Through Shri Shailendra Tiwari, Advocate)

ORDERMr. P.K. Basu, Member (A)

The applicant was working as Dy. CSTE with the Railways. He applied for voluntary retirement in December 2006 and was relieved from service on 5.04.2007. His retirement benefits were paid on 28.05.2007. In terms of the judgment of the Hon'ble Supreme Court in Civil Appeal No.92/1997, the respondents appointed several officers to Group 'A' of the Indian Railway Service of Signal Engineers (IRSSE), including the applicant. Thereafter, the applicant along with some other Group 'A' officers was promoted in regular Junior Administrative Grade (JAG) with effect from 29.04.2004 vide order dated 31.07.2008 and subsequently in the Selection Grade with effect from 1.01.2005 vide order dated 1.08.2008. On 11.08.2008, the applicant filed a representation before the respondents for refixation of his pay in JAG with effect from 29.04.2004 and in Selection Grade with effect from 1.05.2005. The applicant states that the respondents issued revised Pension Payment Order (PPO) incorporating the revised pay fixation in JAG but denied him pay fixation and retiral benefits in Selection Grade.

2. The applicant further states that the respondents on 26.03.2010 finally supplied him the details regarding his pay in Selection Grade (page 40 of OA) but failed to act upon the same and withheld payments towards arrears which became due upon the calculation of his revised pay and retiral benefits including

pension in the Selection Grade. Finally he received a communication dated 6.07.2010 stating as follows:

"The matter has been examined in this Ministry and it is to state that in terms of Rule 49 of Railway Services (Pension) Rules, 1993, the "emoluments", for the purpose of calculating retirement and death benefits, means 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. As such, your pensionary benefits will be based on the emoluments actually drawn by you immediately prior to your retirement."

3. In the meantime, the applicant came to know that an officer, namely Shri V.D. Bembi, who was from the same department as that of the applicant and a Group "A" officer, though junior to the applicant, and who was promoted in JAG and Selection Grade vide the same notification and had retired before the issuance of both the notifications dated 31.07.2008 and 1.08.2008, has not only been granted pay fixation in Selection Grade but has also been paid actual retiral and pensionary benefits on the basis of the pay fixed in Selection Grade by the respondents.

4. The applicant filed a representation dated 28.02.2011 pointing out these facts. He received a reply dated 26.05.2011, the text of which is reproduced below for easy reference:

"With reference to your letter dated 28.02.2011, it is to state that you were allowed proforma fixation in SG w.e.f. 1.01.2005 vide this Ministry's letter No.E(O)III-2008/PM/27 dated 1/04.08.2008. In the orders, it had been clearly mentioned that the officers will not be entitled to payment of any arrears for the period before their actual placement in Selection Grade. Therefore, you are not entitled for

any arrears for the period for which you have actually not worked in Selection Grade."

5. The applicant thereafter sought information under Right to Information Act 2005 regarding benefit granted to Shri Bembi and this information was provided to him on 16.12.2011 from which he learnt that the last pay drawn by the said Shri V.D. Bembi was in the Selection Grade i.e. Rs.48,650/- and accordingly his retiral benefits were calculated on this amount and his pension was fixed as Rs.24,325/- per month, whereas the last pay drawn by the applicant was taken to be in JAG i.e. Rs.35,140/- and his pension has been fixed on the basis of this amount to be Rs.17,570/- only, which is much lesser than his junior colleague Shri Bembi. Similarly, the total retiral benefits which Shri Bembi received on his retirement was Rs.23,82,000 (approximately) whereas the applicant got only Rs.17,91,000/- which was lesser than Shri Bembi. Vide their reply dated 16.12.2011 and 7.06.2012, the respondents confirmed this position.

6. Being aggrieved by such action of the respondents, this OA has been filed seeking the following reliefs:

- "(a) direct the respondents to grant the benefit of pay fixation in the Selection Grade to the applicant w.e.f. 1.5.2005 and accordingly refix his pensionary and other retiral benefits including monthly pension payable to him on the basis of his pay in the Selection Grade of Group 'A' officers, with all consequential benefits.
- (b) Pay the arrears of amount due towards his retiral and pensionary benefits upon refixation of his pay in Selection Grade."

7. The only ground argued and adopted by the respondents is that the definition of 'emoluments' under Rule 49 of the Railway Services (Pension) Rules 1993, for the purpose of calculating retirement and death benefits, means 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. Therefore, it is argued that the applicant's pensionary benefits will be based on the emoluments actually drawn by him immediately prior to his retirement and since he took voluntary retirement before he could assume charge in the Selection Grade, he cannot be given the benefit of pay fixation in the Selection Grade.

8. We have heard learned counsel for the parties and gone through the pleadings available on record.

9. The admitted fact is that the applicant was granted proforma promotion in JAG with effect from 29.04.2004 and in the Selection Grade with effect from 1.01.2005. Therefore, clearly his pay was to be revised in the JAG with effect from 29.04.2004 and then again in the Selection Grade with effect from 1.01.2005 and fixed accordingly till the date of his retirement. The applicant has not been paid arrears. If on proforma promotion, the pay is also not notionally fixed, then we fail to understand as to what is the purpose of giving such a proforma promotion. The purpose was clearly that though they will not get arrears as they have not discharged the duties

attached to that post but their pay will be fixed notionally and from the day they take over charge, they will draw the pay. Since the applicant herein retired before he could assume charge of the post in the Selection Grade, his pension will be worked out based on the notional pay. From the facts placed before us of the similarly placed person Shri Bembi, it seems that the respondents have followed this very methodology in his case. In the counter affidavit as also during the course of arguments, the respondents remained completely silent about Shri Bembi's matter. The question of applicability of Rule 49 of the aforesaid Rules and definition of 'emoluments' would arise in a normal case. The orders regarding JAG and Selection Grade have been issued after the applicant has already gone on voluntary retirement from 5.04.2007. Therefore, to now argue that he had not actually drawn Selection Grade is a fallacious argument because both the orders dated 29.04.2004 and 1.01.2005 are only for notional pay fixation. Therefore, pension benefits of the applicant should be worked out based on notional pay fixation. There can be no other interpretation.

10. In view of above discussion, the OA is allowed with the following directions:

- (a) the respondents shall grant the benefit of pay fixation in the Selection Grade to the applicant with effect from 1.05.2005 notionally and accordingly refix his pensionary and other retiral benefits including monthly pension payable to him on the

basis of his pay in the Selection Grade of Group 'A' officers, with all consequential benefits; and

(b) pay the arrears of amount due towards his retiral and pensionary benefits upon refixation of his pay in Selection Grade.

The above exercise should be completed within a period of three months from the receipt of a copy of this order. No costs.

(P.K. Basu)
Member (A)

(Syed Rafat Alam)
Chairman

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