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Central Administrative Tribunal
Principal Bench

OA No.1775/2003

New Delhi this the 20th day of May, 2009.

Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Dr. Veena Chhotray, Member (A)

Smt. Sushila Devi, W/o late Shri M.C. Gupta, Vivek Vihar,
Shahpur Tigari Road, Majhola, Moradabad (UP).

-Applicant

(By Advocate Meenu Mainee, proxy for Shri R.K. Shukla, Advocate)

-Versus-

Union of India through:

1. The General Manager, Northern Railway, Headquarters, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Moradabad Division, Moradabad (UP).

-Respondents

(By Advocate Shri Shailendra Tiwari)

O R D E R

Hon'ble Mr. Shanker Raju, Member (J):

This OA is maintained by the legal heirs (LRs) of the deceased railway servant regarding wrong fixation of pension and denial of arrears thereof. The OA filed by the deceased railway servant was dismissed on limitation on 28.7.2003. Writ Petition (Civil) No.9501/2003 filed by the deceased was allowed on 12.12.2007 remanding the case back to the Tribunal but limiting it to the relief of re-fixation of pension.

2. Applicant's husband on being accorded the benefit of restructuring retired from service on attaining the age of superannuation on 30.11.1993. His pension was fixed at Rs.1374/- instead of Rs.1544/-. It is contended that 55% of the

running allowance has not been added, as by an order dated 9.3.1988 the Senior DPO granted the benefit of 30% of pay for working against a stationary post of Guard (Goods) w.e.f. 12.5.1985. Accordingly, it is stated that the applicant has retained the substantive status of Guard (Goods) for which running allowance is applicable to be added for fixation of pension.

3. This has been controverted by the respondents in their reply on the ground that a subsequent letter dated 7.12.2000 of the General Manager as per paragraph 49 of Railway Pension Manual increase in pay, which is not actually drawn, cannot form basis of emoluments. However, it is stated that applicant had sought on his own volition to work as WLA (Sports), as such he is not allowed the benefit of running allowance for the period during which he had worked as WLA (Sports). However, other benefits have been given to him.

4. In the above view of the matter, on careful consideration of the rival contentions of the parties, it is not allowed to the respondents, being a model employer, to reprobate and approbate simultaneously, as ruled by the Apex Court in **Rajasthan State Road Transport Corporation v. Bhikh Nath**, 2005 SCC (L&S) 273. Having passed an order in 1988, holding that the applicant will continue to draw the pay of the parent post, benefit of 30% of the running allowance for working against a stationary post was allowed. As such, they cannot now turn back and deny the benefit of 55% on the ground that the applicant had worked as WLA (Sports) on his own volition, yet he has retained the benefit of the status of Guard (Goods). His pension has to be calculated, adding

this allowance, at Rs.1544/- per month instead of Rs.1374/- per month.

5. Resultantly, for the foregoing reasons, OA is allowed. Impugned order is set aside. Respondents are directed to re-fix the pension of applicant, reckoning the running allowance, at Rs.1544/- p.m. Arrears of pension and family pension w.e.f. 30.11.1993 be also paid to the LRs within a period of 3 months from the date of receipt of a copy of this order. No costs.

Chhotray
(Dr. Veena Chhotray)
Member (A)

S. Raju
(Shanker Raju)
Member (J)

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