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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 2768/2003

This the ~~21st~~ day of April, 2004

Hon'ble Shri Kuldip Singh, Member(J)
Hon'ble Shri S.A. Singh, Member(A)

Shri S. Bhattacharya,
S/o Late Sh. N. Bhattacharya,
Ex.General Manager,
Diesel Workshop,
Varanasi.

..Applicant

(By advocate: Shri B.S. Mainee)

V E R S U S

Union of India through

1. The Secretary, Railway Board,
Ministry of Railway, Rail Bhawan,
New Delhi-110 001.
2. The F.A. & C.A.O.
Central Railway,
Mumbai C.S.T.
3. The Secretary,
Ministry of Personnel, Public Grievances
and Pensions, Deptt. of Pension & Pensioners'
Welfare, North Block, New Delhi.

(By advocate: Shri Rajinder Khatler)

..Respondents

O R D E R (ORAL)

By Shri Kuldip Singh, Member(J)

This is an OA filed under Section 19 of the AT Act. Applicant has impugned the order dated 01.10.2001 vide which his pensions/family pension had been reduced.

The facts in brief are that the applicant had been working as General Manager, Diesel Workshop, Varanashi. Prior to retirement, the General Managers were getting salary in the pay scale of Rs.7300-8000

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13

and therefore pension was fixed on the basis of pay which was drawn by them at the time of retirement. Applicant had retired prior to 01.01.1996.

3. The 5th Central Pay Commission had recommended that consolidated pension of the officers, who retired prior to 01.01.1996 should be stepped up to 50% of the minimum revised pay scales of the posts which was held by the pensioners. These recommendations were accepted by the respondents and accordingly DOPT issued instructions to the effect that the pension of the retired officers/staff should be revised and in case, the consolidated pension as worked out earlier comes to less than 50% of the minimum of the revised pay scale the said pension should be enhanced to 50% of the minimum of revised pay scale as per Annexure A-3.

4. Based on the DOPT instructions, Railway also issued similar instructions as per their Notification dated 15.1.1999 (Annexure A-4). Accordingly pension of the applicant was also worked out and fixed at 50%/30% of the minimum pay in the revised scale of pay introduced from 1.1.96 for the post held by the pensioners/declared Railway Servants subject to the conditions of their having rendered maximum 33 years.

5. It is further stated that 5th Central Pay Commission had also recommended that the pay scale of

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141

the General Managers need to be improved. Accordingly, they have recommended that the pay scale of General Managers should be revised to Rs.7600-8000 and replacement scale of Rs.24050-26000/- which were duly accepted by Govt. of India. So the pay scale of the General Managers was enhanced w.e.f. 01.01.1986 as 24050-26000. All those General Managers, who have requested for the same were given benefits along with the arrears. According to them, pension was also revised based on the pay scales of Rs.24050-26000 and the pension of the applicant was also fixed accordingly.

6. After having revised pension/family pension of the applicant, Railway Board had issued a circular by way of clarification in terms of which it was stated that the actual connotation of the posts last held by Railway Servants at the time of retirement/death while in service as laid down in Railway Board letter dated 15.1.1999 means that pension/family pension as on 01.01.1996 of pre-1996 retired/deceased shall not be less than 50%/30% of the minimum of the corresponding scale of pay introduced with effect from 01.01.1996 for the post last held by the pensioners/deceased employees subject to condition of maximum 33 years qualifying service. Accordingly the pension of applicant was recalculated in the scale of Rs.24050-26000/- w.e.f. 1.1.96. By means of so called clarification the Zonal railways were directed

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15

to revise pension/family pension suo moto to the detriment of the pensioners/family pensioners including the applicant. It was also advised to endorse revised PPO to pensioner/family pensioners advising them to deposit the so called excess payment made to them, within 30 days from the date of issue of such PPO. Applicant therefore state that the aforesaid circular of the Railway Board is illegal, arbitrary and discriminatory and also in violation of the recommendations of 5th CPC which was accepted by the Government of India, therefore the impugned order is in violation of the Rule 90 of Railway Servants (Pension) Rules, 1993.

7. It is further stated that the Notification dated 15.1.1999 issued by the President, which has in unambiguous terms which refers of the "Post last held" and did not permit any clarification nor can be interpreted as the pay scale last held by the applicants.

8. The respondents are contesting the OA and pleaded that the issue involved is the same as in OA No.2163/2003 which was allowed in merits wherein this Tribunal has upheld the action of thee respondents in revising pension/family pension of the applicants in the pay scale of Rs.22400-26000 (corresponding to the pay of Rs.7300-8000) but as a matter of extreme indulgence to the applicants therein this Tribunal

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directed that the amounts already paid be not recovered. The respondents reiterated that the clarification with regard to the revised scale of pay posts last held as contained in OM dated 17.12.1998 means only to step up of the pensions to the corresponding scale as on 01.01.1996.

9. The learned counsel for the applicant has referred to a Judgement passed in OA-2163/2003 dated 9.2.2004 which was allowed based on the Judgement by Delhi High Court and Supreme Court that the case is fully covered by that Judgement.

10. We have heard the parties and gone through the record.

11. Learned counsel for the applicants has relied upon the judgement delivered by the Delhi High Court in the case of S.C. Prashar Vs. Union of India and Others in CW No.678/2003 wherein similar controversy was there and commenting up the similar clarificatory memorandum, the Hon'ble High Court observed as under:-

"6. A perusal of the clarificatory Memorandum clearly indicates that it has gone well beyond the terms of the original Memorandum with the result that the clarificatory Memorandum virtually overrules a part of the original Memorandum. The Memorandum dated 17th December, 1998 fixed the pension on the basis of the scale of pay of the post last held by the pensioner, while the clarificatory Memorandum dated 11th May, 2001 fixes the pension on the basis of the scale of pay last held by the pensioner or deceased Government servant, regardless of his post. Clearly, therefore, the clarificatory Memorandum inserted into the

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original Memorandum something that was neither intended nor postulated (emphases supplied)."

The court further held that

- "8. We are of the view that the clarificatory Memorandum could not override the original Memorandum for more than one reason. First of all, under the guise of a clarification, the respondents could not have taken away the rights which had accrued to pensioners under the original Memorandum dated 17th December, 1998."

Further it is also observed that

"More importantly, the clarificatory Memorandum creates an artificial distinction between two categories of beneficiaries of the original Memorandum dated 17th December, 1998. It may be recalled that the benefits of the Memorandum dated 17th December 1998 have been conferred not only on pensioners but also on those entitled to family pension. Insofar as pensioners are concerned, their rights are sought to be limited in as much as they have been made entitled to pension of 50% of the minimum scale of pay last drawn by them but insofar as those entitled to family pension are concerned, their pension has been fixed at 30% of the minimum revised scale of pay applicable to the post last held by the deceased Government servant. In other words, the expression "post last held" has been clarified (and restricted) only with respect to pensioners and not with respect to those entitled to family pension. This is made further clear from the last line of the clarificatory Memorandum which states that the other provisions contained in the O.M. of 17th December 1998 will remain unchanged. If the clarification is to hold good, it must be so far the entire range of pensioners (including those entitled to family pension) and not only to a limited class. Quite clearly, the so called clarification is not really a clarification but an amendment of the Memorandum dated 17th December 1998. The Respondents could have retrospectively amended the Memorandum dated 17th December 1998, if they were so empowered in law to do, but they could not amend the said Memorandum under the guise of issuing a clarification."

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12. We have gone through the record and judgement delivered by Delhi High Court. We find that the case of the applicants is fully covered and based on the same facts. We have no option but to hold that the impugned clarificatory memorandum cannot be sustained and is liable to be quashed.

13. Accordingly, we allow the OA and impugned order dated 1.10.2001 (Annexure A-I) is quashed. We further quash order vide which the pension of the applicant was reduced and to make recovery of so-called excess payment. Recoveries if made in pursuance to the order shall also be refunded back to the applicants. This exercise should be completed within two months from the date of receipt of a copy of this order. No costs.


(S.A. Singh)
Member(A)


(Kuldeep Singh)
Member(J)

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