

General Manager Western Railway

Vs

Y.P. Sharma

Civil Appeal No. 995 of 1995

(Sujata V. Manohar, G.B. Pattanaik JJ)

18.12.1998

JUDGMENT

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MRS. SUJATA V. MANOHAR, J. –

1. The respondents are Ex-servicemen who were re-employed by the Western Railways some time in the year 1990 against 10% quota fixed for Ex-servicemen. They were engaged through the Railway Recruitment Board. The respondents filed an application before the Central Administrative Tribunal, Bombay Bench, being OA No. 1311 of 1992 claiming that they should be given city compensatory allowance and house rent allowance on the basis of their pay plus pension in view of Rule 1712(i) of the Indian Railway Establishment Code. They also claimed privilege passes and P.T.Os. on the basis of their pay as well as pension. This claim was based on Rule 65(1)(b) of the Pass Manual. The Tribunal has granted these claims to the respondents. Hence the present appeal.

2. Rule 1712(i) of the Indian Railway Establishment Code, Volume II is as follows :

"In the case of re-employed pensioner, where pay plus pension exceeds the sanctioned maximum pay of the post, the allowances would be calculated on that maximum; in other cases, the allowances would be calculated on pay plus pension."

3. Under this rule, therefore, all allowances given to re-employed pensioners have to be calculated on the basis of pay plus pension. However, in supersession of all previous orders on the subject the President promulgated the Central Civil Services (Fixation of Pay of Re-employed Pensioners) Order, 1986, under Article 309 of the Constitution. The 1986 Order, therefore, replaced all previous orders. The Railway Board by its letter dated 21.1.1987 addressed to the General Managers of all Indian Railways informed them that the Department of Personnel and Training had now consolidated the existing orders in a single body of orders with a view to rationalise and simplify the procedure governing the initial fixation of pay on re-employment. The 1986 Order was enclosed with this letter and the railways were instructed to bring into force the 1986 Order for all appointments made on or after 1st of July, 1986. Clause 11 of the said Order which deals with allowances is as follows :-

"Allowances : The drawal of various allowances and other benefits based on pay shall be regulated with reference to the pay that is fixed on re-employment. Pay for these allowances and benefits will be the pay fixed before deducting the non-ignorable part of the pension and the pension equivalent of the other retirement

benefits."

4. Therefore, it is Clause 11 which is applicable to the respondents. Under Clause 11 the allowances have to be granted with reference to the pay that is fixed on re-employment. The pay is expressly mentioned as the pay fixed before deduction of non-ignorable part of the pension and the pension equivalent of the other retirement benefits. In the case of Ex-servicemen, since the initial pay is fixed by ignoring the pension which they receive as Ex-servicemen, what will have to be taken into account for fixing of allowance is the pay which they will get on re-employment. Pension cannot be added to this pay for the purpose of calculation of allowances. The Tribunal was, therefore, not right in holding that Rule 1712(i) of the Indian Railway Establishment Code would prevail over Clause 11 of the 1986 Order.

5. The respondents claimed privilege passes and P.T.Os. under Rule 65(1)(b) of the Pass Manual, 1977. Rule 65(1)(b) of the Pass Manual is as follows :-

"65(1)(b) : Non-Railway Government Servants and Employees of Quasi-Government Bodies :

During re-employment the person will be entitled to Privilege Passes and P.T.Os. on the scale as admissible to temporary railway employees under the extant rules as amended from time to time. The class of such Passes and P.T.Os. in the case of staff re-employed in non-gazetted posts will be determined on the basis of the pay in the post in which he is re-employed plus gross pension and/or pension equivalent or other forms of retirement benefits."

6. However, the issue of passes and privilege ticket orders to railway servants for travel by trains is now governed by the Railway Servants (Pass) Rules, 1986 which have been made under Article 309 of the Constitution by the President. Rule 16 of the Railway Servants (Pass) Rules, 1986 which deals with the status of the Pass Manuals is as follows :-

"16. Status of Pass Manuals etc. - The provisions contained in Pass Manuals issued by the respective Railway or any other provisions on Passes contained in any other Manual/Rules etc. shall be valid provided it is not in contravention with the provisions laid down in these Rules."

Therefore, in the case of conflict, the Railway Servants (Pass) Rules, 1986 will prevail over the Pass Manual. Schedule II of the Railway Servants (Pass) Rules of 1986 deals with passes on privilege account framed under Rule 6. In the case of those appointed to railway service on or after 1.4.1987, those drawing pay of Rs. 2301/- or above or if they are in a scale the minimum of which is Rs. 2,000/-, first class passes are permissible as set out in the Schedule. In respect of employees other than these, second class passes are permissible as set out in the Schedule. These are employees in Group 'C'. Employees in Group 'D' are only entitled to a second class pass. Therefore, it is only those employees in Group 'C' who draw pay of Rs. 2301/- or above or those employees who are in a scale the minimum of which is Rs. 2,000/-, who will get first class passes. There is no provision under the Railway Servants (Pass) Rules, 1986 to add pension to the pay for the purpose of determining the category of passes to which the re-employed persons are entitled. Under Rule 2(j) "pay" is defined to mean the amount drawn monthly by a railway servant as (i) basic

pay; and (iii) any other pay which may be specially classified as pay by the President. Under sub-clause (ii) in the case of running staff, basic pay plus 30% thereof or any other percentage of basic pay declared as pay from time to time will also count as pay. Therefore, there is no provision for adding pension to the pay for the purposes of privileges passes and P.T.Os. The Tribunal was thus not right in relying upon the Pass Manual for the purpose of granting relief to the respondents.

7. In the premises the appeal is allowed, the impugned order of the Tribunal is set aside and the original application filed by the respondents before the Tribunal is dismissed.

Appeal allowed.