

**GOVERNMENT OF INDIA (BHARAT SARKAR)
MINISTRY OF RAILWAYS (RAIL MANTRALAYA)
(RAILWAY BOARD)**

No. F(E)III/2000/PN1/62.

NEW DELHI

Dated: 2.02.2003

**The General Managers & FA&CAOs,
All Zonal Railways & Production Units.**

Sub: Judgement dt. 8.4.2003 of CAT/Chandigarh dismissing O.A. No. 829/PB/2000 filed by Shri Baldev Krishan and 106 Railway pensioners.

A copy of judgement dt. 8.4.2003 of CAT/Chandigarh dismissing O.A. No. 829/PB/2000 filed by Shri Baldev Krishan and 106 Railway Pensioners seeking complete parity in pension/family pension of all the pre-1996 retirees including pre-1986 retirees with post 1996 retirees by notional fixation of pay as on 1.1.1996 in the revised scale of pay corresponding to the post held by them at the time of retirement and to compute their pension/family pension accordingly, is circulated herewith for information and guidance. It is desired that similar cases, if any, being contested by your Railway may be contested/finalized on the same lines.


(S. SREERAM)
Dy. Director Finance (Estt.) III.,
Railway Board.

DA: As above.

Copy to:-

EDPC-I, DPC, EDV(E), DS(D), EDE (Res), EDE, JS, JS(G), JS(E), E(G), ERB-III, E(O)I, II, III & (CC), PC-III, IV, V, E(P&A)I, II & ERB-I.

Copy to:-

Smt. Ganga Murthy, Director (PP), Department of Pension & Pensioners' Welfare, 3rd Floor, Lok Nayak Bhavan, Khan Market, New Delhi with reference to their case No. 38/3/2000-P&PW (A).

सी. ए. टी./चण्डीगढ़ के दिनांक 8.4.2003 के आदेश की प्रति सूचनाई स्वयं मार्गदर्शन के लिए इस पत्र के साथ संलग्न की जाती है। कृपया इसी तरह के अन्य केसों में इस आदेश/निर्णय को कोर्ट/सी. ए. टी. के समक्ष रखकर केस को खारिज करने का निवेदन किया जाय।

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

O.A. 829/PB/2000

Date of order: April 8, 2003

Coram:

Hon'ble Mr. Jasbir S. Dhaliwal, Member (J)
Hon'ble Mr. C.S. Chadha, Member (A)

Baldev Krishan s/o Ganga Ram Retd. Driver Mail Exp. Juc.
r/o 459/6, West Guru Nanak Pura, Jalandhar City
and 106 others (as detail given in the cause-title)

...Applicants

(By : Sh. A.L. Vohra, Advocate)

versus

1. Union of India through the Chairman, Railway Board, Ministry of Railways, Rail Bhawan, New Delhi.
2. Secretary to Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Deptt. of Pension and Pensioners' Welfare, New Delhi.
3. Divisional Railway Manager, NR, Ferozepur Division, Ferozepur Cantt.
4. Divisional Railway Manager, Ambala Division, Northern Railway, Ambala.
5. Divisional Railway Manager, Allahabad Division, Northern Railway, Allahabad.
6. Divisional Railway Manager, Northern Eastern Railway, Lucknow Division, Lucknow.

...Respondents

(By Shri G.S. Sathi, Advocate)

ORDER

(Hon'ble Mr. C.S. Chadha, AM)

.....

This O.A. has been filed by 107 pensioners, who were working in the Railways before their retirement, feeling aggrieved by the scheme of Govt. of India by which different yardsticks have been laid down for computing the pension/family pension of those retired prior to 1.1.1986, those who retired between 1.1.1986 and 31.12.95, and those

who retired after 1.1.1996. They have given detailed calculations as to how the retirees of pre-1986 are getting far less than those who retired prior to 1.1.1996, but after 1.1.1986. It has been claimed on their behalf that the formula for computing their revised pension should be the same as is applicable to the pensioners retired after 1.1.96 and if at all a differentiation has to be made, on the recommendations of the 5th Pay Commission, the yardsticks used for those who retired between 1.1.86 and 31.12.95 should also be applicable to those who retired prior to 1.1.86. As per para 4.1 of DoP & PW O.M. F. No. 45/86/97-Part I dated 27.10.1997 (applicable to Railway Pensioners), (Annexure A-3) the existing pension/family pension of existing pre-1996 pensioners/family pensioners will be consolidated w.e.f. 1.1.96 by adding together:-

- i) The existing pension/family pension.
- ii) Dearness relief upto CPI 1510.
- iii) Interim relief-I
- iv) Interim relief-II
- v) Fitment weightage @ 40% of the existing pension/family pension.

subject to minimum of Rs. 1250/- and maximum of 50% of the highest pay as on 1.1.1996.

Further as per Railway Board's letter No. F(E)III/98/PNI/29 dated 15.1.99 (Annexure A-5) with effect from 1.1.1996, full pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the revised minimum pay in the revised scale of pay introduced w.e.f. 1.1.1996 of the post last held by the Pensioner/deceased Railway Servant. Similarly w.e.f. 1.1.1996 Family Pension shall not be less than 30% of the minimum pay in the revised scale of pay introduced w.e.f.

(1) B. S. e

1.1.1996 of the post last held by the pensioner/deceased Railway servant. Pre-1.1.1986 retirees are to be treated alike those who have retired on or after 1.1.1986. Accordingly pay of all those Government employees who retired prior to 1.1.1986 and were in receipt of pension as on 1.1.1986 and also in cases of those Central Government/Railway employees who died prior to 1.1.1986, in respect of whom family pension was being paid on 1.1.1986, will be fixed on notional basis in the revised scale of pay for the post held by the pensioner at the time of retirement/death of Government employee, introduced subsequent to retirement/death of the Government employee consequent upon promulgation of re-vised pay rules on the recommendation of the successive pay commissions till Fourth Pay Commission and made effective from 1.1.1986. The notional pay so arrived at as on 1.1.1986 shall be treated as average emoluments for the purpose of calculation of Pension & Family Pension. The pension/family pension so calculated as per the pension formula then prescribed, shall be consolidated as on 1.1.1996 in accordance with the provisions contained in Department of Personnel and Pensioners' Welfare Memorandum No. 45/86/97-P&PW (A) Part-III dated 10.2.1998, adopted by Railway Board RBE No. 55/98.

After having given detail of calculations as to how the three categories mentioned above are treated differently, the applicants have placed reliance on the judgment in the case of V.Kasturi vs. Managing Director, State Bank of India, Bombay and another - 1999 SCC (L&S) 78, wherein it was held that "where the amendment enhanced the pension or provided for a new formula of computation of pension, even the earlier retirees who at the time of

[Handwritten signature]

retirement were eligible for pension and survived till the amendment, would be eligible for the benefit of such amendment from the date it came into effect. It was argued on behalf of the applicants that in terms of the judgment cited above, all the pensioners were entitled to the same benefit. If the same benefits were not given, it is violative of the principles of equality enshrined in the Constitution. We cannot agree with this argument because a

careful perusal of that judgment clearly mentions that if pensions are revised, the revision would be applicable to all retirees from the date of revision applicable to any one category. It does not mean that monetarily the same benefit has to be given. In the present case, the formula

itself was different and made applicable to all retirees from 1.1.1996. On the other hand, the respondents' case is covered by the judgment of the Apex court in the case of Union of India vs. P.N. Menon and others - (1994) 4 SCC 68.

It was held in that case:

"Whenever the Government or an authority, which can be held to be a State within the meaning of Article 12 of the Constitution, frames a scheme for pensioners who have superannuated from service, due to many constraints, it is not always possible to extend the same benefits to one and all, irrespective of the dates of superannuation. As such any revised scheme in respect of post-retirement benefits if implemented with a cut-off date, which can be held to be reasonable and rational in the light of Article 14 of the Constitution, need not be held to be invalid. Whenever a revision takes place, a cut-off

date becomes imperative because the benefit has to be allowed within the financial resources available with the Government."

Therefore, it is clear from the above that any revised scheme in respect of post retirement benefits, if implemented with a cut-off date need not be held to be invalid. Whenever the revision takes place, the cut off date becomes imperative because benefit has to be allowed within the financial resources available with the Govt. This is what exactly the respondents are arguing. According to the respondents, the Govt. cannot afford to pay the same increased pension to all pensioners irrespective of their date of retirement. A rational cut-off date has to be adopted. In the present case, there is a rationale behind the cut-off dates which match with the implementation dates of the 4th and 5th Pay Commissions and we see no reason to hold that the Govt. should extend the new benefits to all retirees, even those who retired prior to 1.1.1986. This argument is further bolstered by the judgment in the case of D.R.Nim v. Union of India - AIR 1967 SC 1301, in which it was held as under:

"No scheme can be held to be foolproof, so as to cover and keep in view persons who were at one time in active service. As such the concern of the court should only be, while examining any such grievance, to see, as to whether a particular date for extending a particular benefit or scheme, has been fixed on objective and rational considerations.

If the stand of the respondents is to be accepted that the scheme contained in the O.M. should have been made available, without there

being a cut-off date, to all including those who have retired even 20 to 25 years before the introduction of the scheme, then, the whole scheme shall be unworkable, because it is linked with the payment of dearness allowance, which is based on the level of price index."

Therefore, we have no doubt in our mind that the Govt. has to keep in mind its resources while giving benefits of increased pension to earlier retirees. However, it should keep in mind that the particular date for extending a particular benefit of the scheme has been fixed on an objective and rational consideration. As mentioned above, we are clear in our mind that the Govt. has used a rational consideration for distinguishing between the three categories of pensioners mentioned above, keeping in mind the financial crunch faced by it. We, therefore, find no merit in the argument that all pensioners must get identical increases of pension or the same formula should be used for computing their revised pension. In terms of the judgments cited above, such differentiation can be made by the Govt. We are not going into the details of the difference in family pension worked out by the applicants in their efforts to show that they have been discriminated very badly, specially for family pension, because the argument that applies for pension also applies for family pension.

In view of the above, we find no merit in this OA and it is, therefore, dismissed, leaving the parties to bear their own costs.

(C.S. Chadha)
Member (A)

(J. D. D. D.)
Member (A)