Pension

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

No. F(E)III/99/PN1/20. **NEW DELHI** **Dated: 2.6.2003**

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

Sub: Implementation of Government's decision on the recommendations of the Vth CPC – Clarification regarding Post/Scale of pay held by the retired Railway servant.

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In continuation of Board's letter of even number dt. 12.12.2002 circulating CAT/PB/New Delhi judgement dt. 20.9.2002 in O.A. No. 480/2001 filed by Shri S.C. Parasher Retired DDG, AIR Vs. UOI; another judgement of similar nature dt. 7.1.2003 of CAT/PB/New Delhi dismissing the O.A. No. 2594/2000 filed by Shri R.N. Soni, Ex-Adviser (Finance), Railway Board for re-fixation of his pension w.e.f. 1.1.1996 in the revised Vth CPC scale of the post of Adv.(F) is circulated herewith for information and guidance. It is desired that if any similar application is being contested by your Railway before CATs/Courts or to be filed in future, the contents of the present judgement should be brought to the notice of the CATs/Courts praying for dismissal of the application on the basis of this judgement.

Please acknowledge receipt.

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

DA: **As above.**

Copy to:

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

Copy to Smt. Ganga Murthy, Director (PP), Department of Pension & Pensioners' Welfare, 3rd Floor, Lok Nayak Bhavan, Khan Market, New Delhi-110 003.

बोर्ड के दिनांक 12.12.2002 के समरूपक पत्र के क्रम में सी.ए.टी./पी.बी./ दिल्ली के दिनांक 7.1.2003 के आदेश की प्रति सूचनार्थ और मार्ग-दर्शन 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 जाये ।

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2594/2000

New Delhi, this the 7th day of January, 2003

HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE MR. C.S. CHADHA, MEMBER (A)

Shri R.N. Soni,
Ex-Adviser (Finance),
Railway Board,
R/o B-124, Anand Vihar,
Delhi - 110 092

(By Advocate : Shri V.K. Mehta) ..... Applicant

Versus

1. Union of India,
through Secretary, Railway Board,
Ministry of Railways,
Rail Bhavan,
Rafi Marg,
New Delhi - 110 001

2. Union of India,
through Secretary,
Deptt. of Pension & Pensioners' Welfare,
Ministry of Personnel, P.G. & Pensions,
North Block,
New Delhi-110 001

3. The General Manager,
Northern Railway,
Baroda House,
New Delhi - 110 001

... Respondents

(By Advocate : Shri B.K. Aggarwal)

ORDER

By Hon'ble Mr. C.S. Chadha, Member (A):

The brief facts of the case are that the applicant was working as a Financial Adviser and Chief Accounts Officer in the Northern Railways in the pre-revised scale of Rs.5900-6700/- (revised to Rs.18400-22500) and because of having reached the top of the scale, i.e. Rs.6700/-, he received two stagnation increments and was at Rs.7100/- in the pay scale of Rs.5900-6700/- when he was ordered to officiate as

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Adviser (Finance) in July 1994. By virtue of this officiation, he was given Rs.300/- as officiating allowance/charge allowance instead of Rs.500/- as was normally given to those officers who were asked to officiate in the pay grade of Rs.7300-7600/- because the pay drawn at the time of ordering of officiation (Rs.7100/-) together with the charge allowance should not exceed the pay that would have been admissible had it been fixed under FR 22-C. Under FR 22-C his pay could have been fixed at Rs.7400/- and, therefore, he was granted a charge allowance of only Rs.300/- making the total emoluments to Rs.7400/-. He sought voluntary retirement w.e.f. 30.05.1995. As a result of his retirement, the applicant's pension was fixed at Rs.3710/- on the basis of the average of the last 10 months' pay which worked out to Rs.7420/-. However, due to the coming into force of the recommendations of the 5th Pay Commission, the pension of the applicant was fixed at half the minimum of the time scale which was the corresponding time scale of Rs.5900-6700 to which he had been holding a lien. He claims that he held the post of Adviser (Finance), performed all the duties of the said post and, therefore, his pension should be fixed at 50% of the minimum of the time scale of the post of Adviser (Finance), which was Rs.7300/- before revision and Rs.22,400/- after revision as on 01.01.1996. Accordingly, his claim is that his pension should be refixed at Rs.11,200/- and not at Rs.9200/- (being half of minimum of the revised scale of Rs.18400-22400/- corresponding to Rs.5900-6700/-).

Delhi Bench, New Delhi

2. The learned counsel for the applicant stressed a great deal the fact that in accordance with the Circular of 12.08.1987, the benefit of the charge allowance was not to be given for the purposes of pension, however, that Circular was superseded by another Circular dated 23.06.1995 (Annexure A-5) which clearly lays down that the charge allowance should be counted towards the calculation of pension, gratuity etc. Therefore, he argued that the applicant was getting a higher pay than the minimum of the corresponding old scale of Rs.7300-7600/-. The learned counsel, therefore, argued that the applicant now gets a lower pension than that corresponding to half of the last pay drawn. His argument was that the benefit given by the Circular of 23.06.1995 cannot be withdrawn after the recommendations of the 5th Pay Commission came into force, specially because, he argued, that the applicant had held the post of Adviser (Finance) for all purposes.

3. In their short reply, the respondents have pointed out that the applicant continued to hold a post and pay scale of Rs.5900-6700/-, substantively, even after he was given the charge of the post of Adviser (Finance). It was argued on behalf of the respondents that although the applicant officiated in the post of Adviser (Finance), he was never given that scale. As a proof of this fact, the learned counsel for the respondents raised two arguments. Firstly, that all appointments to the pre-revised scale of Rs.7300-7600/- required the approval of the ACC which was never received in the applicant's case and, as a result of which, no

order promoting him to the scale of Rs.7300-7600/- was ever issued. Secondly, the mere fact that he was given a charge allowance in addition to his basic pay shows that he was holding substantively the grade of Rs.5900-6700/-. It was also pointed out that merely drawing more pay than the minimum of the scale of Rs.7300-7600/- does not entitle him to the scale of Rs.7300-7600/-. In fact, it is pertinent to point out that even with the scale of Rs.5900-6700/-, the applicant was drawing, by virtue of two stagnation increments, more than Rs.6700/-. He was actually drawing Rs.7100/- despite being in the scale of Rs.5900-6700/- at the time he received an order to officiate as Adviser (Finance). This further went up due to the grant of the charge allowance.

4. What is to be seen in this case is the application of the provisions for fixation of pension with respect to the recommendations of the 5th Pay Commission as accepted by the Government of India. These recommendations, as accepted by the Government of India, merely state that pensioners who retired prior to 01.01.1996 have to be given pension at 50% of the minimum of the time scale in which they were placed prior to retirement. Despite the lengthy and vehement arguments of the learned counsel for the applicant that the applicant being Adviser (Finance) had held the post of the pre-revised scale of Rs.7300-7600/-, there is no doubt in our minds that although he officiated as Adviser (Finance) he was never awarded the scale attached to the post. An important fact is that he accepted, when he began to officiate as Adviser (Finance), the pay he was

last drawing plus officiating allowance. without any demur. He never raised the issue that he should have been directly placed in the grade of Rs.7300-7600/-. We cannot, therefore, agree with the argument raised by the learned counsel for the applicant that since he officiated in the post of Adviser (Finance), he should draw pension at 50% of the minimum of the equivalent pay scale after revision of pay, i.e., Rs.22400-24500/-. The learned counsel for the applicant drew our attention to the Circulars of the Railway Ministry which lay down that the pension should not be less than 50% of the minimum pay introduced w.e.f. 01.01.1996 of the "post last held by the pensioner". His argument that he held the post of Adviser (Finance) cannot be agreed to for the simple reason that the post substantively held by him was not in the pre-revised grade of Rs.7300-7600/- and, therefore, not in the revised scale of Rs.22400-24500/-. The substantive post held by him remained in the old scale of Rs.5900-6700/- and as a result of which his pension has rightly been fixed at 50% of the minimum of the new scale of Rs.18400-22500/-.

5. The learned counsel for the applicant argued at length regarding the fixation of the pay of the applicant before his retirement by drawing our attention to the provisions of FR-35, FR-22 etc., but pay fixation prior to his retirement has nothing to do with the pay scale he held at the time of retirement which can be the sole basis of fixation of his pension. There is no doubt, in our minds, that he was in the pay scale of Rs.5900-6700/-

at the time of retirement in May 1995 though drawing a higher pay by virtue of firstly, two stagnation increments and secondly, his officiation in the higher post. That is why he was given a charge allowance. We are, therefore, of the opinion that since his pay scale at the time of retirement was Rs.5900-6700/-, which was altered to be Rs.18400-22500/- after 01.01.1996, his pension was rightly fixed at Rs.9,200/- per month.

6. The learned counsel for the applicant also argued that there could be a case of a person having been promoted to the grade of Rs.7300-7600/- prior to 01.01.1996 who, by virtue of his pay at Rs.7300/- per month would draw pension after 01.01.1996 at the rate of Rs.11,200/-, i.e., more than the applicant who had actually been drawing more than Rs.7300/- at the time he retired. Apart from this, being a hypothetical case, the fact remains that such a person who was actually promoted to the scale of Rs.7300-7600/- would have had a higher claim than the applicant because the applicant's promotion to that grade was never approved by the ACC.

7. In view of the aforesaid discussions, we are of the opinion that the applicant, though ordered to officiate in the higher post of Adviser (Finance), continued to hold the pay scale of Rs.5900-6700/- substantively together with certain allowances for stagnation as well as charge allowance. This did not automatically place him in the pay scale of

Rs.7300-7600/- (pre-revised). As a result, his pension was rightly fixed and the OA has, therefore, no merit and is accordingly dismissed.

No order as to costs.

(C.S. CHADHA)
Member (A)

(SHANKER RAJU)
Member (J)

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Judicial Desk