

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

No. F(E)III/2002/PN1/1.

NEW DELHI

Dated: 7.08.2003

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

**Sub: Judgement dt. 24.3.2003 of CAT/Chandigarh dismissing O.A. No.
1169/HR/2001 filed by Shri Surinder Singh & Others.**

A copy of judgement dt. 24.3.2003 of CAT/Chandigarh dismissing O.A. No. 1169/HR/2001 filed by Shri Surinder Singh & Others, for taking into account the element of Special Pay along with their notional pay for revising their pension/family pension w.e.f. 1.1.1996, 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 and 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.
45/86/97-P&PW(A).**

19/2
Date received 19/2/03
Copy U/d 15 of 19/2/03
CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

D.A.NO.1169-HR-2001

March 24, 2003

CORAM : HON'BLE MR.JASBIR S.DHALIWAL, MEMBER (JUDL.) &
HON'BLE MR.C.S.CHADHA, MEMBER (ADM.)

1. Surinder Singh S/o Shri Narinder Singh, aged 67 years, Chargeman (Retired), House No.972, Ward No.2, Vishnu Nagar, Jagadhari Workshop, Yamuna Nagar (Haryana).
2. Amar Singh S/o Sh.Krishan Singh, aged 77 years, Chargeman (Retired), House No.5-A, Prithvi Nagar, Farrukapur, Jagadhari (Haryana).
3. Didar Singh S/o Shri Fauja Singh, Chargeman (Retired), aged 77 years, Quarter No.135/C, Railway Colony, Jagadhari Workshop, Yamuna Nagar (Haryana).

Applicants

By : Mr. D.R. Sharma, Advocate.

Versus

1. Union of India through Chairman, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
2. Chief Works Manager, Northern Railway, Jagadhari Workshop, Yamuna Nagar (Haryana).

Respondents

By : Mr.Yogesh Putney, Advocate.

O R D E R (ORAL)

JASBIR S.DHALIWAL.JM

Three applicants have joined in this D.A. pleading that they are pre - 1986 retirees from Railways from the posts, under Production Control Organisation, as Chargeman. On promotion they were drawing special pay



which they claim, was treated as part of their emoluments. Applicant No.1 retired w.e.f. 14.10.1985. Applicant Nos.2 and 3 retired w.e.f. 31.12.1982 and 28.2.1982 respectively. They plead that this special pay should be treated as part of their pay for computing their pension and other retiral benefits. In PCO special pay was granted @ 10/15% of the basic pay in lieu of incentive benefits. As per Annexure A-3, a Railway Board letter, this special pay has to be counted for purpose of retiral benefits. They plead that when they retired, in view of Annexure A-3, said special pay drawn by them was duly taken into account for determining their pension and other retiral benefits. On recommendations of 4th Central Pay Commission, pay structure of employees was revised w.e.f. 1.1.1986 and thus even pensions of Pre-1986 retirees were revised. After 5th CPC the same have been revised w.e.f. 1.1.1996 in respect of pensions. Government of India issued OM dated 27.10.1997 which has been adopted by the Railway Board with a direction to revise pension/family pension of all existing pensioners in terms of para 4 of OM w.e.f. 1.1.1996. The same has been reproduced in the O.A. The 5th CPC Recommendations, as adopted by the respondents, had the basic objective of bringing parity between pre-1986 and post-1986 pensioners. Annexure A-4

issued by Government of India as OM dated 10.2.1998 has also been adopted by Railway Board prescribing the manner of revising pension of pre-1986 pensioners. It was to be done by notional fixation of their pay as on 1.1.1986 by adopting same formula as applied to the serving employees and thereafter for consolidation of their pension/family pension as on 1.1.1986 to treat them alike with post-1.1.1986 retirees. Annexure A-4 was subsequently modified vide OM dated 7.12.1998 providing for grant of pension to be not less than 50%/30% respectively of the minimum pay in the revised scale of pay introduced w.e.f. 1.1.1996. Respondents actually revised the pension of the applicant details of which have been given by them in par 4 (vii). For applicant no.1 pension consolidated w.e.f. 1.1.1996 comes to Rs.3341 + 82 as personal pension; for applicant no.2 Rs.3936/- and for applicant no.3 to Rs.3000/-. They plead that as per annexure A-3, element of special pay was to be continued to be accounted for computing the pension and to see that there is no disadvantage to the applicants due to revision of pension.

2. Their grievance is that in view of Annexure A-4, respondents have fixed notional pay of the applicants as on 1.1.1986 without taking into account the element of

special pay which they drew on the date of their retirement. By the action of respondents, their actual pension got reduced as applicant no.1 was fixed at Rs.3254/-, No.2 at Rs.2673/- and no.3 at Rs.2732/- vide orders, Annexures A-5, A-6 and A-7. They claim that if element of special pay had been taken into account while re-fixing the pension, it would have been much higher than the pension now fixed. They approached the respondents through representations, Annexures A-8 and A-9 but the same have been rejected vide Annexure A-1 dated 22/27.12.2000, informing them that element of special pay is not countable towards emoluments for revision of pension. They rely upon a clarification, Annexure A-2, as to how special pay is to be treated. They have reproduced the same and finding same to be relevant, we are also reproducing as under :-


"Treatment of special pay;

The element of special pay will only be taken into account for notional pension as on 1.1.1986 in those cases where the IVth CPC has recommended the replacement of the applicable pre-revised scale with special pay, by a revised scale without special pay. Since special pay ceased to be reckoned for the purpose of pensionary benefits after 1.1.86, this element has to be excluded for the purpose thereafter and as such should not be included for updating the pension of pre-86 retirees."

3. Association of Retired Railway Employees took up the matter with the respondents through Annexures A-10 and A-11 mentioning that Non-practising Allowance

paid to Doctors has been taken into account with notional pay for working out consolidated pension while special pay drawn by technical staff like applicants is being ignored. They have thus prayed for quashing the orders at Annexures A-1 and A-2 and any other instructions to the extent these prohibit counting of special pay alongwith notional pay w.e.f. 1.1.1986 for determining their revised pension/family pension w.e.f. 1.1.1996. They pray for further direction to revise their pension/family pension w.e.f. 1.1.1996 by taking into account the element of special pay along with notional pay with all the consequential benefits of arrears with interest @ 18% per annum.

4. Respondents have filed detailed reply contesting the case of the applicants. They have placed on the file Railway Board letters, Annexures R-1, R-2 and R-3 in support of their action, mentioning that special pay being drawn by them at the time of their retirement has been taken into account for granting them pension which is treated as personal to them which in the case of the applicant no.1 was Rs.82/- per month, and has been paid to him alongwith basic pension and other reliefs on it. They plead that recommendations of 5th CPC were implemented w.e.f. 1.1.1996 correctly.



Representation of applicant for the claim made by them now was rejected on 25.11.1998. Present O.A. is, therefore, barred under the law of limitation (having been filed on 12.11.2001). Annexure A-1 is only a subsequent intimation on their further representation which does not extend period of limitation. O.A. is not maintainable as applicants are challenging Annexure P-2 issued by Public Grievances & Pensions Department of Pension & Pensioners' Welfare through the Ministry which has not even been impleaded as a party. They are also estopped from challenging the recommendations of 5th Pay Commission. Under all these orders, Annexures R-1 and R-2 it has been specifically provided that special pay is not to be taken into account in determining payable pension. Under para 1303 of Indian Railway Establishment Code, emoluments have been defined for calculation of retirement benefits and under it special pay does not fall within the meaning of emoluments. There has been no loss to the applicants in receipt of pension, under the OMs. issued and adopted by the Railway Ministry, as mentioned above. When some loss was noticed being caused to the applicants on revision of pension, the same was withdrawn and as per the option of the applicant the pension has been revised as per their request. As per Railway Board letter dated 20.4.1987, the element of

personal pension is to be continued separately and not to be merged with the pension.

5. They also plead that even w.e.f. 1.1.1986, monthly pension was fixed by grant of personal pension in addition to special pension, which has been continued. It was not to be merged into the pension under various orders of the Government of India as adopted by the Railway Board as shown by letter dated 20.4.1987. Applicant No.1 continued receiving special pension and his first representation was dated 21.5.1993 regarding an error in calculation of pension but it was considered and disposed of vide letter dated 28.5.1993 with intimation to him that pension being received by him of Rs.1104/- plus personal pension of Rs.812/- w.e.f. 1.1.186 was correct. Applicant apparently was satisfied and did not challenge it. After implementation of recommendations of 5th CPC pension of applicant was revised on his option dated 4.4.1998 vide PPO dated 1.11.1998 fixing his pension at Rs.3254/- and Rs.1650/- being 30% of the minimum of the revised grade w.e.f. 1.1.1996. Since applicant was drawing pension of Rs.334/- plus Rs.82/- as personal pension, he represented on 6.11.2000 to re-examine his case with the plea that revised pension should not be

disadvantageous. Thus, revised PPD mentioning pension of Rs.3284/- was withdrawn vide orders dated November, 2000, with a copy to the applicant with permission to him to keep drawing earlier pension of Rs.3341/- plus personal pension. He made further representations, which have been disposed of vide Annexure A-1. There is no loss caused to the applicant. No rejoinder has been filed by the applicants. We have heard Mr. D.R. Sharma, Advocate for the applicant and Mr. Yogesh Putney, Advocate, for the respondents.

6. The basic point in issue is as to whether personal pension given to the applicants on the basis of special pay being received by them at the time of their retirement can be treated as part of their emoluments on which the pension is to be revised or as to whether this has to be treated as a separate element. It is apparent that even w.e.f. 1.1.1986 pension plus personal pension was separately worked out under the relevant Government of India instructions adopted by the Railways. Applicant had continued receiving it as separately as personal pay. His first representation against this was filed on 21.5.1993 and disposed of vide orders/letters dated 28.5.1993. This has never been challenged by the applicant. Any claim thus not to treat

Limitation for this purpose. Same question cannot be allowed to be re-open merely on the ground that the DA is barred under point of law.

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of special pay and its benefit after their retirement being treated as personal pension in addition to pension worked out on their emoluments. It is the emoluments minus special pay which was to be taken into account for fixing their notional pay as on 1.1.1986 by treating them at par with regular employees on this date. Any disadvantage caused to applicants in revision w.e.f. 1.1.1996 has been corrected by issuance of withdrawal of modified PPO so that they keep receiving the pension at a higher rate which was at their own option.

7. Annexure R-1 is a copy of letter issued on the basis of recommendations of 5th CPC relating to grant of PCO Allowance (known as Special Pay prior to IVth CPC Recommendation) to staff of production control organisation. Para 5 is being reproduced below being relevant for the present controversy :-

"5. The PCO allowance will not be reckoned for any benefit such as DA HRA, CCA, pension gratuity and fixation of pay on promotion." Similarly, Annexure R-2 is an OM issued by the

Government of India and para 2 of the same is reproduced

below :-

"2. Treatment of special pay

The element of special pay will only be taken into account for notional fixation as on 1.1.1986 in those cases where the IVth CPC has recommended the replacement of the applicable pre-revised scale with special pay by a revised scale without special pay. Since special pay ceased to be reckoned for the purpose of pensionary benefits after 1.1.86,

