

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No. 1774/2010**

% **Date of Decision: 18.03.2010**

UNION OF INDIA PETITIONER
Through Mr. Chandan Kumar, Advocate

Versus

S.L. SAXENA RESPONDENT
Through Mr. R.K. Sarkar, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

MOOL CHAND GARG, J.

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CM No. 3521/2010

Allowed subject to just exceptions.

W.P. (C.) No. 1774/2010 & CM No. 3520/2010

1. The short point involved in this matter is as to whether while computing pension of the respondent after the Pay Commission the petitioners were justified in having not taken into consideration the special pay of Rs. 300/- which was made admissible to the respondent while he was officiating as Joint Director, Railway Board at the time of the retirement on 31.01.1981 in the pay scale of 1100-1600 when he was getting special pay of Rs. 300 in lieu of the higher pay scale of Joint

Director. It is not in dispute that at the time of his retirement and even later when the pay was fixed for the purpose of computing the pension of the respondent, the said pay was included in his basic pay for the purpose of fixing the pension but it was only on 05.01.1999 when revised pension was calculated, the special pay of Rs. 300/- drawn by the respondent while working as Joint Director Railway Board, was not taken into consideration.

2. It is this order which was assailed by the respondent by filing a representation protesting against the action of the petitioners which was rejected by the petitioners vide their letters dated 14.12.1992 and 31.08.1992. It is thereafter the respondent filed the Original Application bearing No. 1681/2006 which was disposed of by the Tribunal based upon the judgment delivered by the Tribunal as aforesaid and the matter also came up for consideration before this Court in W.P.(C) No. 96/2003 which was decided on 22.01.2004 when the following orders was passed.

“3. In the result, for the foregoing reasons, OA stands partly allowed. Impugned order is set aside. Matter is remitted back to the respondents to consider revision of pension by extending the benefit of decision in B.R. Agnihotri’s case (supra) by a detailed and speaking order within a period of three months from the date of receipt of a copy of this order. When such a relief is granted, consequences in law would ensue. It is also directed that any consequent order in compliance thereof, if agreed to by the respondents, would also entail consideration of second increment in accordance with law. No costs.”

3. Despite that, representation made by the respondent was rejected by the petitioners. Thus, once again the petitioner filed the Original Application bearing No. 2629/2008 which has been decided by the Tribunal in favour of the respondent vide order dated 04.11.2009. It is this order which has been impugned by the petitioners before us.

4. To appreciate the controversy involved in the matter and the reasoning which have weighed in the mind of the Tribunal, it would be appropriate to reproduce some of the paragraphs of the impugned judgment which are as under:

4. It is not in dispute that the Applicant was holding the post of Joint Director in the Railway Board at the time of his retirement on superannuation. The classified List of Accounts Department of Northern Railway, placed at Annex. A-12, shows the name of the Applicant in the list of Junior Accounts Officer and it has been mentioned against his name that he is "Wkg. As Jt. Dir., Rly. Board." It was so notified in the Gazette of India, Part I, Section-II dated 14.03.1981 (Annex A-13) that "Shri S.L. Saxena, Offg. Joint Director, Railway Board, retired from service w.e.f. the afternoon of 31.1.1981." There can be no doubt that the Applicant, who was in the pay scale of Rs. 1100-1600, was given the special pay of Rs. 300/- in lieu of higher scale of Joint Director. There can be no conceivable other explanation for this.

5. We have no doubt whatsoever that the instant case is squarely covered by the principles laid down in B.R. Agnihotri's case (supra) which, as already stated, has been upheld by the Honourable Delhi High Court also. The respondent has, in fact, raised the same objections in this case, which were raised in B.R. Agnihotri case (supra) and which were disposed of in the order dated 28.02.2002. The learned counsel for the Respondent also could not advance any argument as to how the facts of the instant case are different from B.R. Agnihotri (supra). The argument that the Applicant was getting special pay of Rs. 100/- per month as Deputy Director, which was increased to Rs. 300/- per month, when

he was promoted as Joint Director on ad hoc basis on the basis of the instructions contained in the Memorandum dated 8.02.1978 (R-II), is not acceptable as it is specifically for the post of Additional Director. Even if it is applicable to Joint Director level, it would support the Applicant's case that the special pay is in lieu of higher scale. His special pay was counted towards pension in 1986, as in the case of B.R. Agnihotri (supra). Facts of the cases being identical, the ratio in B.R. Agnihotri would apply to the instant case also for counting the special pay of Rs. 300/- towards pension in the revision undertaken following the recommendations of V CPC.

6. The OA is allowed in the light of the above discussion. The Respondents are directed to re-fix the pension of the Applicant with effect from 01.01.1996 taking into consideration the special pay of Rs. 300/- that the Applicant was drawing up to his retirement on superannuation. The Respondents will work out the arrears and pay the same with simple interest of 8 per cent per month within two months of the receipt of a copy of this order. No costs.

5. During the course of hearing, it has not been disputed by the petitioner that at the time of the retirement the petitioner was officiating as Joint Director Railway Board and at the time of his retirement he was also getting a special pay of Rs. 300/- which admittedly has been taken into consideration for the fixation of his pay till the fifth Pay Commission came into force. The order is sought to be assailed on the basis of a subsequent judgment delivered by this Court in the case of Ramashankar Prasad Vs. Union of India in W.P.(C) No. 7117/2007 decided on 14.05.2009. However, the facts in this case have no application on the facts and issues. Moreover, the special pay admittedly has been taken as part of the salary on account of the higher post at which the respondent was working till his retirement.

6. At this juncture, it may also be observed that B.R. Agnihotri's case which covers the case of petitioners squarely has not been assailed by the petitioners before any higher forum. Another judgment which has been relied upon by the petitioner is the judgment delivered by the Hon'ble Supreme Court in the case of Union of India Vs. S.R.Dhingra & Ors. (2008) 2 SCC 229. A perusal of the said judgment goes to show that certain clerical error was sought to be rectified which had occurred while refusing the notional pay of respondent in that case which is not the issue before us.

7. Accordingly, we do not find any infirmity which calls for any interference by this Court while exercising its jurisdiction under Article 226 of the Constitution of India. The writ petition is therefore, dismissed with no order as to costs

8. All the pending applications are also disposed of.

MOOL CHAND GARG, J.

MARCH 18, 2010

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ANIL KUMAR, J.