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

Date of Decision: 14.05.2019

+ **W.P.(C) 9236/2015 & C.M. No.21153/2015**

UNION OF INDIA & ANR.

..... Petitioners

Through: Mr.J.K. Singh, Adv. with Mr.Varun
Bhadola, Adv., Mr.Madhulika
Agrawal, Adv. & Mr.Saurabh
Sharma, Adv.

versus

R.K. BHATNAGAR

..... Respondent

Through: Mr.K.K. Patel, Adv.

AND

+ **W.P(C) 9243/2015 & C.M No.21166/2015**

UNION OF INDIA & ANR.

..... Petitioners

Through: Mr.J.K. Singh, Adv. with Mr.Varun
Bhadola, Adv., Mr.Madhulika
Agrawal, Adv. & Mr.Saurabh
Sharma, Adv.

versus

GOVIND SINGH

..... Respondent

Through: Mr. K.K Patel, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide this common judgment, two writ petitions filed by the Northern Railway under Articles 226 & 227 of the Constitution of India, assailing the common order dated 26.02.2015, passed by the Principal Bench, Central Administrative Tribunal New Delhi (hereinafter referred to as 'the Tribunal') in OA 472/2014 & 474/2014, are being decided. The respondents had preferred the aforesaid Original Application (OA) being aggrieved by the petitioner's failure to grant them pensionary benefits on the basis of their last drawn pay at the time of their superannuation.

2. For the sake of convenience the facts of WP(C) 9236/2015 are being referred to hereinafter. The respondent having been initially appointed as a Clerk in the Northern w.e.f. 12.07.1972, upon being deployed with the Deputy Railway Manager, Moradabad, was promoted as a Senior Clerk in the Construction Organization of the Northern Railways on 1.8.1973. The respondent earned all his subsequent promotions in the construction organization and on 31.05.2009 superannuated from the post of Office Superintendent-II to which post he had been promoted on 31.3.2009.

3. While the respondent was still in service, the Senior Engineer (Construction) vide his order dated 28.05.2008 by placing reliance on Railway Board's instructions dated 17.08.1998 re-fixed his pay on the premise that upon his promotion as an Office Superintendant Grade-II in the ex-cadre post in the construction organisation, his pay had been erroneously fixed with reference to his ex-cadre post whereas it

should have been fixed with reference to his cadre post upon his superannuation. The respondent's pension was also fixed with reference to the pay of the cadre post on which the respondent's lien was stated to be continuing despite him being deployed in construction organisation.

4. Aggrieved by the re-fixation of his pay and consequential fixation of his pension by ignoring the actual pay drawn by him in the last ten months preceding his retirement, the respondent preferred the aforesaid OA. Before the Tribunal, the respondent placed reliance on the decision dated 14.12.2007 of this Court in ***Shri Darshan Kumar Sahni Vs. Union of India*** passed in WP(C) No.2057/1999 as also on various decisions of the Tribunal wherein the claims of identically placed employees had been allowed.

5. The petitioners on the other hand opposed the OA by contending that the respondent was entitled to receive pensionary benefits only on the basis of the last pay which he would have drawn, had he continued to serve in his parent cadre in the Northern Railways and not on the basis of the pay actually drawn by him in the ex-cadre post.

6. Upon consideration of the rival stand of the parties, the Tribunal vide its impugned order allowed the OA by placing reliance on the decision of this Court in ***Darshan Kumar (supra)***. The Tribunal also placed reliance on its earlier decision dated 26.07.2005 in ***Shri Girwar Singh Vs. Union of India & Ors.*** passed in OA No.2786/2003 and the decision dated 02.12.2019 ***Jagdish Singh Vs. Union of India & Ors. through Chairman, Railway Board***, in OA

No.2698/2008. In these circumstances, the present writ petitions have been filed.

7. Mr.J.K. Singh, learned counsel for the petitioners in support of his plea that the impugned order is liable to be set aside, submits that while granting relief to the respondent, the Tribunal has ignored the subsequent decision of the Supreme Court in ***Union of India & Ors. Vs. Bhanwar Lal Mundan (2013) 12 SCC 433*** which deals squarely with the issue arising in the present case. He submits that the Supreme Court has categorically held that the pay fixation and pension of an employee has to be done only in accordance with the cadre post held by him and, therefore, contends that the petitioners were fully justified in re-fixing the pay of the respondent as per the pay scale of the cadre post in his parent cadre, on which he continued to have his lien even while working in an ex-cadre post with a higher pay scale. He submits that merely because the respondent retired as Office Superintendent Grade-II, an ex-cadre post, he could not claim pension as per the pay attached to the said ex-cadre post and that too when he had been specifically informed that his appointment as Office Superintendent Grade-II in the construction organization, would not confer upon him any right to claim seniority and promotion over his seniors in future.

8. On the other hand, Mr.K.K. Patel, learned counsel for the respondent while supporting the impugned order, submits that the respondent having worked continuously for decades together in the construction organization of the Northern Railways, could not be

denied pension commensurate with the pay of the post from which he had superannuated.

9. Having considered the submissions of learned counsel for the parties and perused the record, we are unable to find any infirmity with the conclusions arrived at by the Tribunal. In the light of the admitted position that the respondent upon being posted in the Construction Organisation of the Northern Railways, continued to serve there right from 02.11.1981 till his superannuation on 31.03.2009, in our view, his claim for grant of pensionary benefits commensurate with the pay drawn by him, during the last ten months preceding his superannuation, was fully justified. In fact this issue is squarely covered by the decision of this Court in ***Darshan Kumar Sahni*** (supra) wherein this Court in an almost identical fact situation had set aside the Tribunal's order rejecting the claim of the petitioner therein for grant of pension on the basis of his last drawn pay in the ex-cadre post. This Court while allowing the claim of the petitioner therein, had observed as under:-

15. In our view, therefore, the service rendered by the petitioner with CRIS on deputation cannot be considered to be foreign service for the purpose of the pension rules.

16. We are also not impressed by the argument that merely because the petitioner continued to hold a lien in his parent cadre, it disentitled him from seeking the computation of his pensionary and other settlement dues on the basis of the last pay actually drawn by him while on deputation with CRIS, immediately prior to his voluntary retirement from the Railways and absorption with CRIS. As aforesaid, there is no basis to support this submission in the Code or the Pension Rules, which, in

fact emphasis the relevance of the last drawn pay, irrespective of it being on a substantive post or on an ad hoc post.

20. For the reasons aforesaid, we are of the view that the decision of the Tribunal is laconic and liable to be set aside and the petitioner is entitled to the relief as prayed for by him in the Original Application. Accordingly, we set aside and quash the decision of the Tribunal in OA No.2109/97 dated 24.12.1998 and direct the respondent to recalculate the retirement and other settlement dues of the petitioner on the basis of his basic salary of Rs.2,450/- in the scale of Rs.2000-3200 on the date of his voluntary retirement i.e.30.11.1993. The computation of the arrears of pension and other settlement dues to which the petitioner is entitled be made within three months and the arrears be paid to him within one month thereafter. In case, the arrears are not calculated and paid as aforesaid the petitioner shall be entitled to interest at the rate of 6% per annum from the date of filing of the Original Application before the Tribunal till realization. The respondents are further directed to start paying the petitioner his pension dues in future on the basis of his last drawn basic pay of Rs.2,450/- and to pay to him his pension and other dues calculated on that basis henceforth. The petitioner shall be entitled to costs quantified at Rs.10,000/-.”

10. We have also considered the decision of the Supreme Court in ***Bhanwar Lal*** (supra), heavily relied upon by the learned counsel for the petitioner, but find that the same is not at all applicable to the facts of the present case. In the said decision, the Supreme Court was dealing with a case of an employee who had returned to his parent cadre much before superannuation but was still claiming pay and pension attached to the ex-cadre post held by him earlier. This was

not found permissible. In the present case, the respondent had superannuated from the Construction Organisation and had drawn the pay of Office Superintendant Grade-II in the said organisation till his superannuation and, therefore, it will be highly unjust and unfair to deprive him, of the pensionary benefits attached to the said post.

11. For the aforesaid reason, we have no hesitation in concurring with the decision of the Tribunal. The writ petitions being meritless are dismissed along with the pending applications.

(REKHA PALLI)
JUDGE

(VIPIN SANGHI)
JUDGE

MAY 14th, 2019

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