

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10662 OF 2024

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Union of India, through the
General Manager, Central Railway,
Mumbai CST & Ors.

... Petitioners

V/s.

Rajiv Kundlik Manjardekar

... Respondent

Ms. Neeta Masurkar for the petitioners – Union of
India.

Mr. Samir Singh i/by Mr. Joe D'Souza for the
respondent.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ &
AMIT BORKAR, J.**

DATED : JULY 30, 2024

P.C.:

1. Rule. Rule made returnable forthwith.
2. With the consent of learned counsel for the parties, the writ petition has been taken up for final disposal.
3. Heard Ms. Masurkar, learned advocate representing petitioners as also Mr. Singh, learned advocate representing the respondent and perused the record available before us on

this writ petition.

4. By instituting these proceedings under Article 226 of the Constitution of India, a challenge has been made by the petitioners to the judgment and order dated 15 December 2023 passed by the Mumbai Bench of the Central Administrative Tribunal (CAT), whereby Original Application No.807 of 2022 filed by the respondent has been allowed, and the petitioners have been directed to fix the pension of the respondent on the basis of last pay drawn of Rs.72,100/-, and accordingly release all pensionary benefits.

5. The respondent was appointed with the railways on the post of Junior Booking Clerk on 14 November 1988. With the introduction of computerization of various jobs in the railways, by means of a circular dated 15 February 1993 it was provided that the personnel relating to computer operations in the Passenger Reservation System (PRS) shall be posted from amongst the graduates volunteering from user departments of the concerned units. Accordingly, the respondent was posted in February 1999 as Returned Supervisor, Database. Working on the said post, he was promoted in this department in March 2008 on the post of Database Supervisor, and

thereafter he was again promoted in this very stream on 11 May 2015 on the post of Database Superintendent. While working on the said post of Database Superintendent in PRS Computer Center, the respondent retired on attaining the age of superannuation on 31 October 2021.

6. However, while fixing his pension, the last pay drawn by the respondent, while working on the post of Database Superintendent in PRS Computer Center, was not taken into account; rather the pension was fixed on the basis of last pay which he would have drawn had he not been deputed to PRS Computer Center.

7. As a matter of fact, in the month when the respondent retired on attaining the age of superannuation the payslip given to him depicted basic salary of Rs.66,100/-; whereas a month before, the payslip given to the respondent depicted the basic salary of Rs.72,100/-. It is, thus, that the pension of the respondent was fixed on the basis of last pay drawn at Rs.66,100/- and not on the basis of Rs.72,100/-.

8. The aforesaid fixation of pension led the respondent to file original application before CAT bearing Original Application No.807 of 2022, which has been allowed by means of

judgment and order dated 15 December 2023 by the CAT. It is this judgment and order dated 15 December 2023, which is under challenge before us in this writ petition.

9. It has been argued by the learned counsel for the petitioners that the judgment rendered by the CAT is against the provisions of Rule 49 of the Railway Services (Pension) Rules, 1993 (Pension Rules) as also against Clause 1 of Rule 1303 of the Indian Railway Establishment Code (IRE Code). It is her submission that in terms of the provisions contained in Rule 49, since the respondent was working in an ex-cadre post at the time of his retirement, as such he is not entitled to the pension to be calculated on the basis of last pay drawn by him while working in the ex-cadre post; rather he is entitled to draw the pension to be calculated on the basis of last pay which he would have drawn had he been working in his parent cadre. It has also been argued on behalf of the petitioners that in the PRS Computer Center the respondent was not working in substantive capacity; rather he was officiating in the said post and the pension is, thus, to be paid which is to be calculated on the basis of last pay drawn by an employee while working in substantive capacity. Hence, the judgment of the CAT cannot be sustained.

10. Our attention has been drawn by the learned counsel for the petitioners to a circular dated 22 November 2007 issued by the Railway Board whereby the demand of caderisation of the employees working in the PRS Computer Centers was rejected; however, it was provided that such employees who are working on deputation in the PRS Computer Centers shall be entitled, as one-time measure, to be promoted to the next higher post in the cadre at the PRS Computer Center.

11. On the basis of the aforesaid circular dated 22 November 2017, it has been argued that since the benefit of caderisation of the employees posted in the PRS Computer Center was denied by the Railway Board, as such, such an employee will be entitled to pension which is to be calculated on the basis of last pay which he would have drawn had he been working against a post in his parent cadre. Our attention has also been drawn to paragraph 13 of the impugned judgment passed by the CAT, wherein while allowing the original application the order dated 8 April 2022 has been set aside. It is the submission of the learned counsel for the petitioners that order dated 8 April 2022 is an order passed by the CAT earlier in a previous original application filed by the respondent bearing Original Application No.265 of 2022

whereby the original application was dismissed with the observations that it was premature for the reason that no decision by the Railway Authorities was taken on the representations made by the respondent on 8 November 2021 and 8 December 2021. It has been argued that in a subsequent proceeding, the CAT cannot set aside an earlier order passed in a previous original application filed by the respondent.

12. On the aforesaid counts, it has been urged by the learned counsel for the petitioners that the writ petition be allowed.

13. Opposing the prayers made in the writ petition, learned counsel representing the respondent has vehemently argued that payment of pension and calculation thereof are governed by the statutory Rules known as Railway Services (Pension) Rules, 1993. His submission is that any circular issued by the Railway Board contrary to the said Rules will not thus hold the filed. He further states that in terms of the provisions contained in Pension Rules, pension is to be calculated on the basis of last pay drawn by the government employee, and as per Rule 49 of the Pension Rules, pay would mean the amount

drawn monthly by a government servant, both, while working in substantive capacity against a substantive post or even working in an officiating capacity. His submission is that since at the most the respondent can be said to be working in officiating capacity in the PRS Computer Center, as such the last pay drawn by him while working in the said establishment is to be taken into consideration for the purposes of calculating his pension. It is further his submission that so far as clause 1 of Rule 1303 of the IRE Code is concerned, the same, firstly is not statutory in nature; and secondly, it is in tune with the provisions contained in Rule 49 itself. According to him, there is no contradiction between clause 1 of Rule 1303 of the IRE Code and Rule 49 of the Pension Rules. In his submission, he urged that the writ petition be dismissed at the threshold.

14. Having considered the submissions made by the learned counsel representing respective parties, we are not convinced with the submissions made on behalf of the petitioners. It is not in dispute that the respondent was initially appointed on a substantive post of Junior Booking Clerk on 14 November 1988. It is also not in dispute that he was sent in the PRS Computer Center in February 1999 on the post of Returned

Supervisor, Database. It is also not in dispute that while working on the establishment of PRS Computer Center, he was given further promotions, firstly on the post of Database Supervisor, and thereafter on the post of Database Superintendent. He, thus, retired from the post of Database Superintendent on 31 October 2021 and the last pay drawn by him while working on the post of Database Superintendent has to be, thus, taken to be Rs.72,100/-. It is argued on his behalf that the salary slip given to the respondent in the month he retired depicts basic pay of Rs.66,100/- which is absolutely arbitrary and, hence, on that basis any fixation of pension would be illegal.

15. Rule 49 of the Railway Services (Pension) Rules, 1993 is extracted hereinbelow:

"49. Emoluments: - *The expression - (a) "emoluments", for the purpose of calculating various retirement and death benefits, means the basic pay as defined in clause (i) of rule 1303 of the Code which a railway servant was receiving immediately before his retirement or on the date of his death:*

Provided that the stagnation increment shall be treated as emolument for calculation of retirement benefits;

(b) "pay" in these rules means the pay in the revised

scales under the Railway Services (revised pay) Rules, 1986;

Provided that 'pay element' of Running Staff shall also include fifty-five per centum of the basic pay for reckoning emoluments.

Note 1.: *If a railway servant immediately before his retirement or death while in service had been absent from duty on leave for which leave salary is payable or having been suspended had been reinstated without forfeiture of service, the emoluments which he would have drawn had he not been absent from duty or suspended shall be the emoluments for the purposes of this rule:*

Provided that any increase in pay (other than the increment referred to in Note 4) which is not actually drawn shall not form part of his emoluments.

Note 2.: *Where a railway servant immediately before his retirement or death while in service had proceeded on leave for which leave salary is payable after having held a higher appointment. Whether in an officiating or temporary capacity, the benefit of emoluments drawn in such higher appointment shall be given only if it is certified that the railway servant would have continued to hold the higher appointment but for his proceeding on leave.*

Note 3.: *If a railway servant immediately before his retirement or death while in service had been absent from duty on extraordinary leave, or had been under suspension, the period whereof does not count as service, the emoluments which he drew immediately before proceeding on such leave or being placed under suspension shall be the emoluments for the purposes of this rule.*

Note 4.: *If a railway servant immediately before his retirement or death while in service, was on earned leave and earned an increment which was not with-held, such increment though not actually drawn, shall form part of his emoluments:*

Provided that the increment was earned during the currency of the earned leave not exceeding one hundred and twenty days, or during the first one hundred and twenty days of earned leave where such leave was for more than one hundred and twenty days.

Note 5.: *Pay drawn by a railway servant while on deputation to the Armed Forces of India shall be treated as emoluments.*

Note 6.: *Pay drawn by a railway servant while on foreign service shall not be treated as emoluments, but the pay which he would have drawn under the railway, had he not been on foreign service shall alone be treated as emoluments.*

Note 7.: *Where a pensioner who is re-employed in railway service elects in terms of clause (a) of sub-rule (1) of rule 33 or clause (a) of sub-rule (1) of rule 34 to retain his pension for earlier service and whose pay on re-employment has been reduced by an amount not exceeding his pension, the element of pension by which his pay is reduced shall be treated as emoluments.*

Note 8.: *Where a railway servant has been transferred to an autonomous body consequent on the conversion of Department of the Railways into such a body and the railway servant so transferred opts to retain the pensionary benefits under the rules of the railway, the emoluments drawn under the autonomous body shall be treated as emoluments for the purpose of this rule."*

16. It is to be seen that pension of any railway employee has to be fixed on the basis of last pay which he draws at the time of his retirement. "Pay" in Rule 49 has been defined to mean the amount drawn monthly by an employee, other than special pay or pay granted in lieu of his personal qualification, which has been sanctioned for a post held by him substantively or in an officiating capacity. Thus, the amount drawn monthly by an employee which is sanctioned for a post held by such an employee either substantively or in officiating capacity will mean the pay. For the purposes of pension, the amount drawn monthly by an employee while working substantively or in officiating capacity are not distinguishable. In fact, the Rule does not make any distinction between the amount drawn by an employee while working substantively or while working in officiating capacity. Such view is supported by the judgment of the Hon'ble Delhi High Court in **Darshan Kumari Sahni v. Union of India**, Writ Petition No.2057 of 1999 decided on 14 December 2007. It is also to be seen that the Hon'ble Delhi High Court has considered Rule 49 as also clause 1 of Rule 1303 of the IRE Code and has come to the conclusion that pay would mean (i) pay sanctioned for the post held by the railway servant substantively; (ii) pay

sanctioned for the post held by the employee in an officiating capacity; and (iii) pay to which the railway servant is entitled by reason of his position in cadre.

17. We are in complete agreement with the view taken by the Hon'ble Delhi High Court in Darshan Kumari Sahni (supra) and accordingly it is to be noted that pay would include the pay sanctioned for the post held by the railway employee even in officiating capacity.

18. It is also to be noted that the respondent was sent to work in the PRS Computer Center initially in the year 1999 and officiated in the said establishment since 1999 till 2021, i.e. till the date he was superannuated. It is also to be noticed that while working in the establishment of the PRS Computer Center, the respondent was promoted on higher post of Database Supervisor and thereafter on the post of Database Superintendent. At the most, thus, it cannot be said that the respondent was working in officiating capacity in the PRS Computer Center, and accordingly in view of the provisions contained in Rule 49 of the Pension Rules read with Rule 1303 of the IRE Code, we are of the opinion that the pay drawn by the respondent while working in officiating capacity in the PRS

Computer Center has to be taken into account for the purposes of calculating the pension to be paid to him. Only because the demand for caderisation in the establishment of PRS Computer Center was not acceded to by the authorities, it will not disentitle the respondent of the benefit to which he is otherwise entitled to in terms of the provisions contained in Rule 49 of the Pension Rules. The Tribunal, while considering the matter, has taken the said view and we, thus, do not find any error or illegality in the impugned judgment rendered by the Tribunal.

19. In so far as the submission of the learned counsel for the petitioners in respect of the observations made in paragraph 13 of the impugned judgment are concerned, we may only observe that the order dated 8 April 2022 passed by the Tribunal in an earlier original application filed by the petitioners could not have been set aside. This appears to be an inadvertent error. However, we may, at this stage, observe that the order dated 8 April 2022 does not come in the way of the claim of the respondent, for the reason that earlier original application was dismissed vide order dated 8 April 2022 only on the ground that the original application, at that relevant time, was premature for the reason that no decision

had been taken by the Railway Authorities on the representations preferred by the respondent, dated 8 November 2021 and 8 December 2021. Thus, the order dated 8 April 2022, even if it was not set aside, would not come in the way of the claim of the respondent which has correctly been decided by the Tribunal while passing the impugned judgment and order.

20. For the reasons aforesaid, we do not find any good ground to interfere with the impugned judgment passed by the Tribunal.

21. The writ petition is, thus, dismissed, However, there will be no order as to costs.

22. Rule is discharged.

23. At this juncture, learned counsel for the petitioners prays that the costs imposed against the petitioners may be waived. Having regard to the facts and circumstances of the case, we waive the costs imposed by the Tribunal while passing the impugned judgment and order.

24. We have also been informed at the Bar that some contempt petition for non-compliance of the judgment and

order dated 15 December 2023 passed by the Tribunal is pending. In view of dismissal of the instant writ petition, we thus direct that the judgment of the Tribunal dated 15 December 2023 shall be complied with within a maximum period of six weeks' from today.

25. This order shall be communicated by the learned counsel representing the petitioners to all concerned.

(AMIT BORKAR, J.)

(CHIEF JUSTICE)