

**IN THE HIGH COURT OF JUDICATURE FOR THE STATE OF  
TELANGANA**

\*\*\*\*\*

**WRIT PETITION NO.6003 OF 2019**

**Date: 28.01.2022**

Between:

Union of India,  
Rep.by the Chairman,  
Ministry of Railways, Railway Board,  
Rail Bhavan, New Delhi and others.

..... Petitioners

And

M.A.Veerabhadra Rao,  
s/o. M.V.Sastry, Aged about 62 years,  
Retd.Assistant Director (Vigilance),  
2<sup>nd</sup> respondent New Delhi (while on deputation)  
with lien Hyderabad Division in  
South Central Railway as Traffic Inspector,  
R/o. H.No.1-5-3/2, F-301, Sai Heights,  
V.V.Nagar, Habshiguda, Street No.8,  
Hyderabad and another.

.... Respondents

DATE OF JUDGMENT PRONOUNCED : 28.01.2022

**THE HON'BLE SRI JUSTICE P.NAVEEN RAO**  
**&**  
**THE HON'BLE SMT JUSTICE P.SREE SUDHA**

1. Whether Reporters of Local Newspapers : No  
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**  
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No  
see the fair copy of the Judgment ?

**\*THE HON'BLE SRI JUSTICE P.NAVEEN RAO  
&  
THE HON'BLE SMT JUSTICE P.SREE SUDHA**

**+ WRIT PETITION NO.6003 of 2019**

% 28.01.2022

# Union of India,  
Rep.by the Chairman,  
Ministry of Railways, Railway Board,  
Rail Bhavan, New Delhi and others.

..... Petitioners

Vs.

\$ M.A.Veerabhadra Rao,  
s/o. M.V.Sastry, Aged about 62 years,  
Retd.Assistant Director (Vigilance),  
2<sup>nd</sup> respondent New Delhi (while on deputation)  
with lien Hyderabad Division in  
South Central Railway as Traffic Inspector,  
R/o. H.No.1-5-3/2, F-301, Sai Heights,  
V.V.Nagar, Habshiguda, Street No.8,  
Hyderabad and another.

.... Respondents

!Counsel for the petitioners : Smt Pushpinder Kaur

Counsel for the Respondents: Mr. K.R.K.V. Prasad for respondent no.2

<Gist :

>Head Note:

? Cases referred:

(1997) 8 SCC 372  
(2013) 12 SCC 433  
2007 LawSuit(Del) 2471  
2014 SCC Online Mad 7708  
2019 SCC Online Del 8630  
(2015) 4 SCC 164

**THE HON'BLE SRI JUSTICE P. NAVEEN RAO  
AND  
THE HON'BLE SMT JUSTICE P. SREE SUDHA**

**WRIT PETITION NO.6003 OF 2019**

**ORDER:** *(Per Hon'ble Sri Justice P.Naveen Rao)*

Railways assail the decision of Hon'ble Central Administrative Tribunal, Hyderabad Bench, Hyderabad dated 14.12.2018 in O.A.No.21/50/2015. By this decision, the Tribunal allowed the O.A., and issued directions.

2. Shorn of details, facts to the extent relevant are as under:

When first respondent was working as Traffic Inspector, a post in the scale of Rs.9,300-34,800/-, he was taken on deputation by Union Public Service Commission (UPSC) as Assistant Director (Vigilance), which is Group-A Gazetted Cadre post in the pay band of Rs.15,600-39,100/-. The period of deputation was for three years from 19.09.2007, but was extended till 31.08.2011. On 30.08.2011, the UPSC notified repatriation of respondent w.e.f., afternoon of 31.08.2011, which was his date of retirement on attaining age of superannuation. On the last day of his service while working in UPSC, the respondent was drawing pay of Rs.26,490/-. A certificate to this extent was issued by UPSC.

3. The Railways issued pension payment order on 30.09.2011 by treating the last pay drawn by respondent as Rs.25,830/-. Not satisfied with the monthly pension determination in the above manner, first respondent submitted representation to the Divisional Railway Manager, Hyderabad, on 04.11.2011 to revise the monthly pension based on the last pay drawn in UPSC. The

decision of Railways rejecting the request of first respondent was communicated vide Orders dated 27.11.2012. The escalation of grievance was not fruitful and a reply to this extent was communicated to the first respondent vide proceedings dated 23.07.2014.

4. Aggrieved thereby, first respondent filed the instant O.A. Taking due note of definition of 'emoluments' in Rule 49 of Railway Service (Pension) Rules, 1993 (the Rules), Para-1303 of IREL and the clarification issued by the Chief Personnel Officer (4<sup>th</sup> petitioner herein), the Tribunal found fault with the petitioners in not treating the pay drawn in UPSC as last pay drawn while fixing first respondent monthly pension and allowed the O.A. The Tribunal issued consequential directions. Railways challenge the decision of the Tribunal.

5. By relying on Rule 49(a)<sup>1</sup> of the Rules, Rule 1303 (i)<sup>2</sup> of IREC on what is meant to be emoluments and pay, it is contended by learned counsel for the petitioners that whatever may be the pay drawn by the first respondent in UPSC, respondent's emoluments to determine pension has to be based on the pay he would have drawn in the Traffic Inspector cadre. She therefore justified the decision of petitioners and contended that the

---

<sup>1</sup> **Rule 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;

<sup>2</sup> **Rule 1303 (F.R.9) (21) (a)-Pay:-** Pay means the amount drawn monthly by a Government servant as :- (i) the pay other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity or to which he is entitled by reason of his position in a cadre:

Tribunal grossly erred in directing the petitioners to take the last pay drawn in UPSC.

6. Learned counsel for petitioners placed reliance on **State of Punjab and others vs. Inder Singh and others**<sup>3</sup> and **Union of India and others vs. Bhanwar Lal Mundan**<sup>4</sup> to contend that that the post held or pay drawn while on deputation has no relevance in parent service.

7. According to learned counsel for 2<sup>nd</sup> respondent, an employee can be held as working in foreign service only if pay of a Government Servant is drawn from any source other than consolidated fund. Whereas, pay and allowances of employees working in UPSC are chargeable to consolidated fund. Thus, his tenure in UPSC cannot be called as '**foreign service**'.

8. Learned counsel further submitted that though 4<sup>th</sup> petitioner clarified and advised that as per Rule 33 of Central Civil Services (Pension) Rules, 1972 as defined in FR 9 (21) (a) (i) pension of 1<sup>st</sup> respondent be reviewed, illegally contrary decisions were taken by the subordinate authorities.

9. The issue for consideration is whether first respondent is entitled to seek determination of monthly pension based on the last pay drawn by him while on deputation to UPSC ?

10. The issue for consideration revolves on what is meant by last pay drawn. Thus, it is necessary to consider scope of words '**emoluments**', as defined in Rule 49(a) of the Rules, '**pay**', as defined

---

<sup>3</sup> (1997) 8 SCC 372

<sup>4</sup> (2013) 12 SCC 433

in para 1303 (i) of IREL and '**foreign service**' as defined in FR 9 (21) (a) of Fundamental Rules. Word '**foreign service**' as defined in clause-(1)(f) of Rule 502-A<sup>5</sup> of Railways Services (Liberalized Leave) Rules, 1949 and Note-6<sup>6</sup> of Rule 49 of the Rules, 1993.

11. '**Emoluments**' drawn by an employee before retirement is the basis to determine retirement and death benefits. According to Rule 49(a) of the Rules, '**the emoluments**' means the basic pay a railway servant was receiving immediately before his retirement. '**Basic Pay**' is arrived as defined in Para 1303 (i) of Indian Railway Establishment Code (IREC). According to Rule 1303 (i) of IREC, '**pay**' means amount drawn monthly by an employee in the cadre other than special pay or pay granted in view of personal qualifications. **Note-6** appended to Rule 49 of the Rules holds that irrespective of emoluments drawn by an employee while on deputation, the last drawn emoluments have to be arrived to determine pension based on pay a railway servant would have drawn as if he was working in parent cadre on the date of retirement.

12. Suffice to note at this stage that first respondent's date of retirement was 31.08.2011. On the said date he commenced his work in UPSC, was relieved in the afternoon and could not have reported to Railways as he retired from service on the same day.

---

<sup>5</sup> **Rule 502-A. Definitions:**

(1) (a) to (e) xxxx

(f) "**Foreign service**" means service in which a Railway servant receives his pay with the sanction of Government from any source other than the Consolidated Fund of India or the Consolidated Fund of any State [or the Consolidated Fund of a Union Territory];

<sup>6</sup> **Note-6 of Rule 49.** : 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.

13. This very issue has come up for consideration before the Division Bench of Delhi High Court in **Darshan Kumar Sahni vs. Union of India**<sup>7</sup>. On true construction of Rule 49 of the Rules, para 1303 of the IREC and what is meant by ‘foreign service’, the Division Bench of Delhi High Court held as under:

“11. On a co-joint reading of para 1303 of the Railway Establishment Code(for short, the “Code”) and Rule 49 of the Railway Services (Pension) Rules, 1993, (for short “Pension Rules”), it is clear that what is relevant is the amount of pay actually drawn by a Government Railway servant. The opening words of Pension Rule 1303 clearly states that “pay means the amount drawn monthly by a Government servant.” That amount can, obviously, be only be one figure. Various alternatives are provided for in the Pension Rules and the Code for the determination of the “pay” that has to be taken into account for arriving at the last drawn pay of a railway servant, which in turn is the basis for fixation of his pensionary and other terminal dues. These alternatives are provided to cover various situations that may arise, in which the employee may superannuate or seek voluntary retirement. Therefore, “pay” could mean, *inter alia*, (i) Pay which has been sanctioned for the post held by the railway servant substantively; (2) Pay which has been sanctioned for the post held by the railway servant in an officiating capacity; (3) Pay to which the railway servant is entitled by reason of his position in cadre. The pay that is to be taken into consideration for fixation of the pensionary and other settlement dues means the basic pay as defined in clause (i) of Rule 1303 of the Code, which the railway servant “was receiving immediately before his retirement or on the date of his death”(see Rule 49 of the Pension Rules). It is clear, *inter alia*, from the definition of Average Pay in the Code and notes 2, 6 & 8 to Rule 49 of the Pension Rules, that merely because the pay which has been sanctioned for the post held by the railway servant substantively is lower than the pay which he has in fact been drawing while serving in an officiating capacity, for purposes of fixation of his pensionary and other dues, it is not the lower of the two amounts which would be taken into account. The spirit behind the aforesaid rules is clearly to fix the pensionary and other settlement dues of the railway servant on the basis of the actual pay drawn by him. The only exception to this general rule appears to be where the railway servant is sent on “foreign service”. In that case, the emoluments drawn by him while on “foreign service”, shall not be treated as emoluments for the purpose of fixation of his pensionary and other dues (See the 1st Proviso to the Definition of “Average Pay” in the Code and Note 6 to Rule 49) of the Pension Rules. Therefore, the issue that needs determination is whether the service rendered by the petitioner on deputation with CRIS could be said to be “foreign service” for the purpose of the aforesaid Code and the Pension

---

<sup>7</sup> 2007 LawSuit(Del) 2471

Rules. If it amounts to a “foreign service”, the stand of the respondent would stand vindicated. However, in case the service rendered on deputation with CRIS is not considered to be a “foreign service”, the petitioner would be entitled to the calculation of his pensionary and other settlement dues on the basis of the last pay drawn while serving with CRIS on deputation at Rs. 2450/- per month.”

14. In the said case, the employee was on deputation to Centre for Railways Information System (CRIS), which is autonomous body formed by the conversion of a Department of Railways. Division Bench also looked into Note-8 appended to Rule 49 of the Rules, and held that the service rendered by the employee in CRIS cannot be treated as ‘foreign service’.

15. The Division Bench further held as under:

“12. From Note 8 to Rule 49 of the Pension Rules, it appears that a railway servant when transferred/deputed to a body which has been created as a consequence of the conversion of a department of railways, the emoluments drawn by the railway servant under the autonomous body are treated as emoluments for the purpose of Rule 49. This clearly shows that the “foreign service” talked about in Note 6 of Rule 49 does not envisage the transfer or deputation to an autonomous body which is formed by the conversion of a department of the railways. “Foreign Service”, it appears would mean a service outside the railways or any of its extended arms. CRIS, undoubtedly is an organisation created from within the railways. In fact, the correspondence placed on record and referred to hereinabove shows that the mother organization of CRIS is none other than the Ministry of Railways. The letter head used by CRIS also described it as “An organisation of the Ministry of Railways, Government of India”. From the first proviso to the definition of “Average Pay” also, it appears that “foreign service” is considered to be the service rendered out of India. Looked at from either point of view, the service rendered by the petitioner with CRIS on deputation cannot be said to be “foreign service”. ”

16. The Division Bench also overruled the contention of Railways that as employee continued to hold a lien on the post in the parent cadre, is disentitled to seek computation of his pensionary and other settlements based on the last pay actually drawn by him as erroneous. Paragraph-16 reads as under:



“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.”

17. We are in respectful agreement with the view expressed by the Delhi High Court. However, only distinction in the facts of the case on hand is, while the employee before the Delhi High Court was sent on deputation to an autonomous body carved out from the Department of Railways, in the instant case the employee was on deputation to UPSC. Therefore, in the case of this employee, Note-6 appended to Rule 49 of the Rules is applicable. According to Note-6, pay drawn by a railway servant on **‘foreign service’** should not be treated as emoluments, but the pay which he would have drawn under the Railways, had he not been sent to **‘foreign service’** should alone be treated as emoluments.

18. On a plain reading of word **‘foreign service’** in Clause-(1)(f) of Rule 502-A of the Railway Services (Liberalised Leave) Rules, 1949, it is apparent that an employee is treated as working in foreign service if he receives pay from any source other than the consolidated fund of India or the consolidated fund of any State. Thus, to attract Note-6 appended to Rule 49 of the Rules, an employee on deputation ought not to have drawn his pay from the consolidated fund of India. As asserted by the 1<sup>st</sup> respondent and not denied by the petitioners, the pay and allowances of the employees working in UPSC are drawn from the consolidated fund

of India. That being so, the service rendered by the first respondent while working in UPSC, cannot be treated as '**foreign service**'.

19. Once this mist is cleared, the picture becomes obvious. As elucidated by the Division Bench of Delhi High Court, for the purpose of arriving at appropriate retirement benefits and to determine monthly pension, what is required to be seen is the last pay actually drawn by the employee when he retires, whether in the parent unit or on deputation. The first respondent retired from service while working on deputation in UPSC. On the date of retirement, he was drawing higher pay in UPSC than he would have drawn while in Railways.

20. An employee acquires right to draw retirement benefits and monthly pension for the service rendered by him to the employer. Ordinarily, the pension amount is determined by taking the last pay drawn by the employee. As long as the last pay drawn was by legal means and not by playing fraud or misrepresentation, the said amount cannot be ignored/reduced to deprive little more pension than what an employee would have earned. In the instant case, the difference between the last pay drawn as determined by the petitioners and claimed by the first respondent is approximately Rs.670/-.

21. The Headquarters of Personnel Department, South Central Railway, correctly understood when they communicated their opinion in proceedings dated 31.03.2013. On a reference by the Divisional Office, the Personnel Department opined that as UPSC is a Government Department, the last pay drawn by the first respondent in the UPSC before his retirement should be taken as

emoluments for the purpose of calculating his settlement dues. A contrary opinion is expressed latter by referring to definition of basic pay in clause (i) of Rule 1303 of the Code, and would observe that as substantive post of the first respondent was Traffic Inspector and his position in UPSC is outside normal field of deployment, such post cannot be treated as holding on substantive basis. With respect, we are not in agreement with the subsequent change of attitude and the understanding expressed in the reply dated 23.07.2014 is contrary to the earlier opinion and contrary to the view expressed by the Division Bench of Delhi High Court dealing with the very same provisions.

22. In **Union of India vs. M.Bhagyalakshmi**<sup>8</sup>, somewhat similar issue was considered by the Madras High Court. The employee therein was working in Lower Selection Grade and was given financial up-gradation under Biennial Cadre Review. While he was working as Assistant Sub-Post Master, he was also directed to look after the duties of Higher Selection Grade-I (HSG-I) Sub-Postmaster during various spells. While working in the said capacity, looking after the duties of HSG-I, the employee retired from service on attaining the age of superannuation. He was claiming to compute the pay drawn by her in HSG-I cadre at the time of retirement. As the relief sought was not granted, she filed O.A., before the Administrative Tribunal. The Administrative allowed the claim and issued directions. The Division Bench of Madras High Court concurred with the view expressed by the Tribunal and dismissed the writ petition.

---

<sup>8</sup> 2014 SCC Online Mad 7708

23. In **Union of India and another vs. R.K.Bhatnagar**<sup>9</sup>, same issue has come up for consideration before the Delhi High Court. The employee therein was appointed as Clerk in the Railways. He was deployed to construction organization. There he was promoted as Senior Clerk and further promotion as Office Superintendent-II on 31.03.2009, in which capacity he retired from service. While in service, his pay was revised upwards taking due note of said promotion. Holding that his pay was wrongly fixed with reference to promotion to ex-cadre post, pay fixation was reviewed and fixed at lower stage as applicable to cadre post. By following the earlier decision in **Darshan Kumar Sahni** (supra), the Central Administrative Tribunal allowed the O.A. On a challenge before the Delhi High Court, following the decision in **Darshan Kumar Sahni** (supra), Writ Petition was dismissed.

24. We have gone through the decisions relied by the learned counsel for petitioners. There is no quarrel to the proposition that if an employee is working in any other organization outside his regular employment, such assignment is called as deputation. There is no iota of doubt that first respondent was on deputation to UPSC. The issue for consideration is not on the status of the first respondent while working in UPSC, but whether employer was right in ignoring the last pay drawn by the first respondent while working in UPSC. Therefore, those two decisions do not come to the aid of the petitioners.

25. Finally learned standing counsel sought to rely the decision of the Hon'ble Supreme Court in **Union of India and another vs.**

---

<sup>9</sup> 2019 SCC Online Del 8630

**S.N.Maity and another**<sup>10</sup> to contend that it is not open to the employee to claim protection of status of higher post held in the deputation organization after his repatriation to parent cadre. Again there is no quarrel with the proposition. However, in the instant case, the first respondent was not repatriated and joined in the parent unit. On the day of his retirement he was sought to be repatriated. By the time he was relieved his service came to an end on account of attaining the age of superannuation. Therefore, there was no occasion to report to the employer. The proposition relied upon by the learned counsel would apply if the employee joined back in his parent organization, and he was given suitable posting.

26. We are of the opinion that first respondent is entitled to revision of his retirement benefits and monthly pension based on the last pay drawn by the first respondent on the date of his retirement as paid to him by UPSC.

27. The Writ Petition fails and is accordingly dismissed. Pending miscellaneous petitions if any shall stand closed.

---

**JUSTICE P.NAVEEN RAO**

---

**JUSTICE P.SREE SUDHA**

Date: 28.01.2022  
KKM

---

<sup>10</sup> (2015) 4 SCC 164

**THE HON'BLE SRI JUSTICE P.NAVEEN RAO**  
**&**  
**THE HON'BLE SMT JUSTICE P.SREE SUDHA**

**WRIT PETITION NO.6003 OF 2019**

**Date: 28.01.2022**

KKM