

(2013) 07 DEL CK 0512
In the Delhi High Court
Case No : WP (C) 8786 of 2011

Union of India and Others

APPELLANT

Vs

Kiran Lal

RESPONDENT

Date of Decision : 10-07-2013

Acts Referred:

Citation : (2014) 2 SCT 818

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : V.S.R. Krishna and Mr. Kumar Rajesh Singh, for the Appellant;
Kishore Kumar Patel, for the Respondent

Judgement

Pradeep Nandrajog, J.—Deciding WP(C) 2057/1999 Darshan Kumar Sahni vs. UOI on December 14, 2007 a Division Bench of this Court noted para 1303 of the Railway Establishment Code which defined Pay" as under:-

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; and

(ii) Overseas pay special pay and personal pay; and

(iii) Any other emoluments which he may be specifically as pay by the president.

Average Pay - Average pay means the average monthly pay earned during the 12 complete months immediately proceeding the month in which the event occurs which necessitates the calculation of average pay:

Provided that in respect of any period spent on foreign service out of India the pay which the railway servant would have drawn if on duty in India but for foreign service out of India shall be substituted for the pay actually drawn:

Provided further that in the case of railway servant entitled to running allowance, average pay for the purpose of leave salary shall include a fixed component representing pay element in the running allowances as notified by government through administrative instructions from time to time.

(emphasis added)

The Division Bench also noted Rule 49 of the Railway Services (Pension) Rules, 1963 which reads as under:-

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.

2. The Division Bench also noted Note 2, 6 and 8 under Rule 49 of the Pension Rules which read as under:-

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 proceedings on leave.

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

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

3. The Division Bench held that a co-joint reading of para 1303 of Railway Establishment Code and Rule 49 of the Railway Services (Pension) Rules, 1993 made it clear that for purposes of pension it is the pay actually drawn by a Government Railway servant which is to be kept in mind. The Division Bench highlighted the opening sentence of para 1303 of the Railway Establishment Code which, while defining pay, laid emphasis on "the amount drawn monthly by a Government servant". With reference to Note 6 appended to Rule 49 of Pension Rules the Division Bench opined that the only exception to the spirit behind the Rules, which was to fix pension with reference to the pay drawn by a Government Railway servant when he superannuated, would be if the Government Railway servant was in "Foreign Service". The Division Bench noted that Note 6 did not envisage a case of transfer or deputation to an autonomous body which is formed by the conversion of a department of the Railways. Thus, Darshan Kumar Sahni, a Government Railway servant sent on transfer/

deputation to Centre for Railway Information System (CRIS) an organization created from within the Railways was held entitled to pension being fixed with reference to last emoluments received by him when he superannuated which would necessarily include such amount which was paid to him while on deputation with CRIS.

4. The said view taken by the Division Bench would clearly apply to all cases where a Government Railway servant is deputed to work in an office/organization, be it autonomous or otherwise, created/formed by the Indian Railways.

5. The respondent, an employee of the Indian Railways, was sent on deputation in a construction organization (name not disclosed by either party) of the Indian Railways and was receiving a monthly allowance as a part of his emoluments when he superannuated and therefore we agree with the view taken by the Tribunal which follows the law declared by a Division Bench of this Court in Darshan Kumar Sahni's case that while fixing pension the total monthly emoluments being received by the respondent when he superannuated would be the basis whereon his pension would be determined. The writ petition is accordingly dismissed in limine but without any order as to costs.