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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH : NEW DELHI

O.A. NO. 2336/2002

NEW DELHI THIS. <sup>30<sup>th</sup></sup> DAY OF JUNE 2004

HON'BLE SHRI KULDIP SINGH, MEMBER (J)  
HON'BLE SHRI S.A. SINGH, MEMBER (A)

Shri Mohan Lal,  
S/o Sh. Ganga Singh,  
Working as Technician Grade-II  
Under Senior D.E.E./TRS/TKD  
Token No.335. ....Applicant.  
(By Advocate: Sh. K K Patel)

VERSUS

1. Union of India through  
General Manager, Western Railway,  
Church Gate, Mumbai.
2. Divl. Railway Manager,  
Western Railway,  
Kota.
3. Sr.Divl.Electrical Engineer,  
TRS, Tughlakabad, New Delhi.
4. Divisional Railway Manager (Administration),  
Western Railway, Kota.

.....Respondents

(By advocate: Shri V.S.R.Krishna with Shri Rajinder Khatter)

O R D E R

BY HON'BLE SHRI S.A. SINGH, MEMBER (A)

Applicant seeks a direction to fix the pay in the light of Railway Board's instructions dated 4.10.1994 (Annexure P/2) and further direct the respondents to pay all the arrears and benefits along with interests by setting aside the impugned orders dated 16.4.2002 and 29.8.2002 (Annexure P/1 colly).

2. The applicant was working as Traction and Control Fitter Grade-III in Diesel Component Works, Patiala in the grade of Rs.950-1500. He was promoted in Grade-II on 1.1.1992 in the grade of 1200-1800. He requested the respondents for transfer to Tughlakabad Electric Loco Shed in the grade of Rs.950-1500 (RP) and he joined with respondent no.3 on 26.6.1992 in the lower scale. Before



transfer he was reverted to scale 950-1500 i.e. initial grade on 27.4.1992 and his pay was fixed Rs.990 and the applicant joined the Electric Locoshed Tughlakabad in this grade where his pay was fixed accordingly. The applicant had been drawing the basic pay of Rs.1200 prior to joining with respondent no.3. Thereby his pay was not protected.

3. The applicant has relied upon the Railway Board's instructions dated 4.10.1994, which reads as under:

"The matter regarding protection/fixation of pay of staff seeking transfer on request from a post in higher grade to that in a lower grade, has been under consideration in consultation with DOPET for a long time. Now DOPET in consultation with the Ministry of Finance have clarified the position as under that:-

i) if the concerned employee has been holding the higher post substantively on regular basis and the pay drawn in such higher post is less than or equal to the maximum of the scale of pay lower post, then only the pay drawn in such higher post will be protected."

4. The applicant urges that in terms of the above instruction his pay in the higher grade should have been protected as this was allowed as the pay he was drawing was lower than maximum of the lower scale. In support, he has quoted the cases of Shri Harjeet Singh S/o Shri Hari Singh and Shri Tejinder Singh S/o Shri Mohinder Singh, who had been transferred to the DCW Patiala, from a higher grade to lower grade, ~~on~~ their own request and their pays were protected. He has placed reliance on the judgements of CAT Principal Bench in the case of

*[Signature]*

R.K.Chaudhary Vs. UOI and Ors. decided on 7.8.2000 in OA 1974/97 and in the case of Shyam Babu vs. UOI and Ors. decided on 11.4.2001 in OA 35/2000.

5. Needless to say the respondents have strongly contested the case. The applicant was transferred on his own request on 26.6.1992 whereas the Railway Board's <sup>were</sup> instructions were issued on 4.10.1994. They incorporated under para 604 IREM Vol.I 1989 by amendment dated 24.2.1995. These instructions are only applicable to persons who were transferred after 24.2.1995. As the applicant was transferred in 1992, he cannot take benefit of these instructions. The respondents further added that even these instructions were deleted by the respondents vide letter dated 18.7.1995. Copy of the same placed as R-I and as per these instructions only those who had worked in the next higher grade for 24 months on regular basis (substantive scale) were eligible for pay protection. The applicant only worked for three months in the higher grade of Rs.1200-1800 i.e. w.e.f. 14.1.96 to 26.4.92. He was thus not entitled even if the instructions were applied retrospectively for this protection. They relied upon the judgement of this Tribunal dated 21.11.2002 in OA 1084/2001 in the case of Kursheed Ahmad Khan Vs. UOI and another. According to the respondents, the present OA was covered under the judgement and the ratio was completely applicable and as such the applicant was not entitled to pay fixation as prayed for in the relief.

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6. Respondents also have made preliminary objections that as the applicant has not challenged the policy decision issued in the Correction Slip No.19 to the IREM . VOL.I (1989 Edition) dated 24.2.95, he has no case and as such it should be dismissed on this short ground. They have also taken objection on territorial jurisdiction as his case is governed by Western Railway and the impugned order was issued by the Western Railway. Hence correctly the jurisdiction of the case lies within the territorial jurisdiction of Jaipur Bench of this Tribunal.

7. The respondents have strongly contested the claim of the applicant stating that order dated 4.10.94 Correction Slip No.19 dated 24.10.95 were applicable prospectively i.e. from 24.2.95. The applicant had sought transfer in the year 1992 and as such these orders were not applicable and he could not, therefore, claim pay protection. They relied upon the judgement dated 21.11.02 of this Tribunal in the case of Khurshid (supra) wherein it was held that the circular dated 24.2.95 was only be given prospective effect.

8. Having heard the learned counsel of the parties and gone through the documents, we find that the short question before the Tribunal is whether the applicant would be covered under Railway Board Circular dated 24.10.94 and ~~is he~~ eligible for pay protection accordingly.



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9. As far as the question of jurisdiction is concerned, the applicant is posted in Tughlakabad, which is within Delhi, hence it would be within his right to file the case at Delhi, Principal Bench.

10. The applicant cannot take advantage of the cases of S/Shri Harjeet Singh and Tejinder Singh as he has not impleaded them as parties nor has he impleaded DCW, Patiala.

11. In the case of Shyam Babu (supra) the issue was applicability of the order dated 4.10.94 as para 604 IREM, Vol-I (1989 edition) was amended only on 24.2.95 whereas the applicant had sought transfer on 16.2.95 i.e. before the amendment of the IREM. But after the issuing of Railway Board instructions dated 4.10.94. It was held that these instructions would apply on the basis of Board's circular dated 4.10.94. The case of the applicant is distinguishable as he sought transfer before the circular was issued.

12. In the case of R.K.Chaudhary Vs. Union of India in OA 1974/97 the question before the Tribunal was whether respondents could refix his pay in the lower grade after a lapse of seven years. This case is also therefore distinguishable from that of the applicant.

13. In the case of Kursheed Ahmed Khan (supra), this Tribunal had held that the applicant could not rely upon the circular dated 24.10.95 (4.10.94). As the

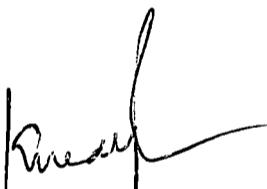


(6)

circular could not come to the rescue of the applicant for the reason that they would be prospective in nature and there was nothing on record to indicate that the circulars have been given retrospective effect or legally could be given a retrospective effect. Therefore, the plea had necessarily to be rejected.

14. In the case of applicant, the situation is similar, he has been transferred on his own request to Tuglakabad Locoshed in the lower grade in the year 1992 whereas the circular was issued in 1994 as such it would take prospective and not retrospective effect in view of the ratio laid down in the case of Kursheed Ahmed Khan (supra).

15. In view of above, we find that the OA has no merit and the same is dismissed.

  
(S.A. Singh)  
Member (A)  
(Kuldip Singh)  
Member (J)

/kdr/