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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1084/2001

This the 21st day of November, 2002

Hon'ble Shri Justice V.S.Aggarwal, Chairman
Hon'ble Shri V.K.Majotra, Member (A)

Shri Kursheed Ahemad Khan
s/o Shri Sayeed Khan
Asstt. Station Master
Western Railway
Agra Fort

...Applicant.

(By Advocate: Shri B.S.Mainee)

Versus

Union of India through

1. The General Manager
Western Railway,
Church Gate, Mumbai
2. The Divisional Railway Manager
Western Railway, Kota

...Respondents

(By Advocate: Shri V.S.R.Krishna)

O R D E R (ORAL)

Shri Justice V.S.Aggarwal:

To err is human. The mistake has occurred. It appears that while the judgment was pronounced in open Court and short order dictated, the file was sent to the record room without recording the detailed reasons. Once it has been brought to our notice despite the lapse of considerable time, we deem it necessary to record our reasons in the month of August, 2003.

2. The applicant (Shri Khursheed Ahmed Khan) by virtue of the present application seeks a direction to fix his salary giving protection of pay as per clarification issued by the Railway Board and pay arrears to him.



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3. The relevant facts alleged are that the applicant was appointed as Assistant Station Master on 18.9.1979 in Rajkot Division of the Western Railway. As per the applicant, he was promoted in the grade of Rs.425-640/- and his pay was fixed at Rs.425/-. The applicant was transferred from Rajkot Division to Kota Division at his request. He contends that he was drawing the salary of Rs.1420/- in the grade of Rs.1400-2300/- which was the revised scale of Rs.425-640/-. The applicant had accepted the lower grade of Rs.1200-2040/-. The pay of the applicant was fixed at Rs.1410/- and when he was promoted in the grade of Rs.1400-2300/-, his pay was fixed at Rs.1480/-. When he was transferred from Rajkot Division to Kota Division, he was drawing the pay of Rs.1520/- which should have been protected but it was reduced to Rs.1510/-, ignoring the Railway Board's circular dated 24.2.1995. According to the applicant, the respondents have misinterpreted the rules and reliance is placed on the circular of the Railway Board dated 20.8.1999 in this regard. On these broad facts, the above-said relief is claimed.

4. In the reply filed, it has been contended that the application is barred by time. According to the respondents, the applicant was working in Rajkot Division on the post of Assistant Station Master in the scale of Rs.425-640/-. He applied for inter-divisional transfer to Kota Division at his own request. The applicant had been initially recruited in the scale of Rs.330-560/-. The scale of Rs.425-640/- was an intermediate scale granted on promotion based on seniority-cum-fitness.

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Since he requested for inter-divisional transfer, he was fixed at the bottom of seniority of new Division and his pay was to be fixed in the recruitment grade as per rules. The intermediate grade could not be protected. The applicant joined in Kota Division on 20.3.1988. His pay was fixed at Rs.1380/-. He did not challenge the same at that time and now the said relief is barred by time.

5. On behalf of the applicant, strong reliance was placed on the two circulars of the Railway Board dated 24.2.1995 and 20.8.1999. The same read:-

"Circular dated 24.2.1995

When a Government servant holding the higher post substantively on regular basis seeks transfer from that higher post to a lower post at his own request and the pay drawn in such higher post is less than or equal to the maximum of the scale of pay of the lower post, then the pay drawn in such higher post will be protected.

Circular dated 20.8.1999

R.B.E.No.188/99

Subject: Pay protection to the staff who joined lower post - at his own request.
[No.F(E)II/91/Misc/2, dated 20.8.1999]

In the PNM meeting held on 7th & 8th November, 1997 staff side vide Agenda Item No.51/97 brought to the notice of the Railway Board that instructions regarding protection of pay on request transfer from higher to lower post as envisaged in ACS No.19 circulated vide Board's letter of even number dated 24.2.95 (Bahri's RBO 1995, P.14) are being misinterpreted by some Zonal Railways."

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In the facts of the present case, neither of the circulars would come to rescue of the applicant, the reason being that both the circulars would be prospective in nature. There is nothing on the record to indicate that such circulars have been given retrospective effect or legally could be given a retrospective effect. Therefore, the said plea so raised necessarily has to be rejected.

6. Our attention has been drawn towards the fact that the applicant had prayed for inter-divisional transfer at his request. The intermediate scale granted to him could not be protected because of the said request. Annexure R-II were the instructions issued on the subject and the applicant had not cared to challenge the same. On the contrary, since the year 1988, he continued to draw the pay as was fixed. It is too late in the day for the applicant to challenge the fact that his pay was not fixed properly. The instructions applicable have been made available by the respondents, which read:-

"312. TRANSFER ON REQUEST.- The seniority of railway servants transferred at their own request from one railway to another should be allotted below that of the existing confirmed, temporary and officiating railway servants in the relevant grade in the promotion group in the new establishment irrespective of the date of confirmation or length of officiating or temporary service of the transferred railway servants.

NOTE:-(i) This applies also to cases of transfer on request from one cadre/division to another cadre/division on the same railway.

[Rly.Bd.No.E(NG) I-85 SR 6/14
of 21-1-1986]

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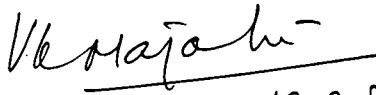
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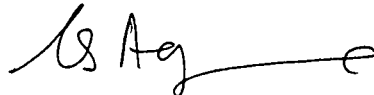
(ii) The expression "relevant grade" applies to grade where there is an element of direct recruitment. Transfers on request from Railway employees working in such grades may be accepted in such grades. No such transfers should be allowed in the intermediates grades in which all the posts are filled entirely by promotion of staff from the lower grade(s) and there is no element of direct recruitment."

Since the applicant, who had been promoted earlier which was an intermediate grade, he had been transferred at his own request. Necessarily, keeping in view the meaning assigned to the expression "relevant grade", his pay had to be fixed accordingly. That in fact was done. Subsequent instructions will not come to his rescue.

7. Resultantly, the OA being without merit must fail and is dismissed. No costs.


(V.K. Majotra) 18.8.2003
Member (A)

/sns/


(V.S. Aggarwal)
Chairman

18/8/2003