

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH.

O.A. NO. 33/2001

New Delhi this the 4th day of March, 2001.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S.R. ADIGE, VICE-CHAIRMAN (A)

Shri Hari Singh Ahluwalia
Head Train Clerk
Northern Railway
Delhi Cantt.

... Applicant

(By Shri B.S. Maine, Advocate)

-versus-

1. Union of India
Through the General Manager
Northern Railway
Baroda House
New Delhi.

1 Divisional Railway Manager
Northern Railway
Bikaner. ... Respondents

(By Shri P.M. Ahlawat, Advocate)

O R D E R (ORAL)

S.R. Adige:-

Applicant seeks a direction to the respondents to fix his pay by protecting his salary which he was drawing as Head Train Clerk, at the time when he had opted for reversion in accordance with the clarification given by the Railway Board instructions dated 2.12.1996 with all consequential benefits. He also seeks a direction to the respondents to refix his salary as Head Train Clerk on repromotion as Head Train Clerk in the year 1997 in accordance with law and rules.

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2. Respondents vide their letter dated 18.7.1995 invited applications for filling up 51 posts of Guard Goods (Rs.1200-2040) through selection from amongst eligible categories including Senior Train Clerks (Rs.1200-2040), and Train Clerks (Rs.950-1500), if no applications were received from Senior Train Clerks. It was made clear in that letter that options for the posts of Guards Goods would be final and those promoted as Guards Goods would not be allowed to go back to their parent cadre.

3. Applicant who was working as Head Train Clerk applied for reversion as Senior Train Clerk vide application dated 19.7.1995, although as a result of selection for the post of Chief Train Clerk, by order dated 3.7.1995 he already stood empanelled provisionally for the post of Chief Train Clerk (Rs.1600-2660).

4. Vide respondents' letter dated 11.8.1995, in continuation of letters dated 12.7.1995 and 26.7.1995, Head Train Clerks were invited to apply by 31.8.1995 for unconditional reversion to enable them to appear for the selection post of Guard, but it was made clear that if they failed in the selection as Guard they would have no right for promotion for the period of one year to the grades from which they were reverted and after expiry of one year they would, however, be promoted on availability of a vacancy and being found fit for the same, and meanwhile, those juniors who

were promoted in the higher grade would rank senior to them.

5. Vide respondents' letter dated 11.9.1995, applicant's reversion from Goods Train Clerk to Head Train Clerk was accepted for seeking advancement as Guard. This letter made it clear that those seeking reversion were debarred from future promotions in higher grades of Train Clerks and would have to wait in grade of Rs.1200-2040 till they were selected as Guards and could not be considered for promotion as Head Train Clerk (Rs.1400-2300) in future.

6. On 21.11.1995, applicant sought repatriation back as Head Train Clerk, but the same was rejected by impugned order dated 30.11.1995. Applicant does not deny that thereupon he participated in the selection for the post of Guard Goods, and appeared for the written test on 16.12.1995, but failed to qualify in the same.

7. Thereupon, applicant was appointed as Head Train Clerk on 16.6.1997.

8. Applicant's counsel Shri B.S.Mainee states that at the time of applicant's reversion from the post of Head Train Clerk to that of Senior Train Clerk, he was drawing a basic pay of Rs.1800/- per month in the scale of Rs.1400-2300, and the same should be protected upon his reversion as Senior Train Clerk in the scale of Rs.1200-2040.

9. Respondents challenge the aforesaid position and Shri P.M. Ahlawat, learned counsel appearing on their behalf has invited our attention to Advance Correction Slip No.19 issued by the Railway Board's letter dated 24.2.1995 (Annexure C-2), wherein it has been laid down that when a Government servant seeks transfer to a post from which he was promoted, it will be treated as a case of reversion and his pay will be fixed ^{which} at a stage ~~that~~ he would have drawn had he not been promoted. In the light of the aforesaid letter dated 24.2.1995, Shri Ahlawat states that the applicant is not entitled to pay protection. That apart, Shri Ahlawat has also invited our attention to OA No.1445/1996 filed by the applicant in which he had challenged order dated 30.11.1995 and sought restoration as Head Train Clerk (Rs.1400-2300) with consequential benefits. The aforesaid OA was dismissed by an order passed on 20.2.1998 (Annexure C/1). He contended that the present OA is, therefore, squarely hit by the principles of res judicata.

10. We have considered the rival contentions. In this connection, Shri Maine has contended that the present OA is not hit by res judicata, because in OA No.1445/1996, the applicant had sought restoration as Head Train Clerk which is not a prayer contained in the present OA and furthermore, the orders which have been impugned in the present OA are not those which were impugned in OA No.1445/1996.

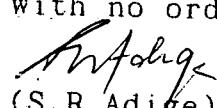
11. That apart, Shri Maine has also invited our attention to Railway Board's circular dated 20.8.1999 which after referring to ~~the~~ earlier circular dated 24.2.1995 contained in Advance Correction Slip No.19, lays down that in the case of an employee holding a higher post on regular basis and has completed a minimum period of 24 months in that higher post and seeks transfer on his own request to a lower post, fixation of his pay in the lower grade would be done at the stage equal to the pay drawn by him in the higher post subject to the maximum of the lower post not being exceeded. In the light of this circular dated 20.8.1999 which has been issued in clarification of the earlier circular dated 24.2.1995, Shri Maine contends that the applicant is entitled to the relief claimed in the present OA.

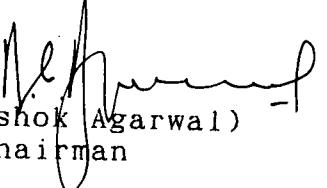
12. In the light of the foregoing, we dispose of this OA with a direction to the respondents to consider applicant's claim for pay ~~fixation~~ ^{protection} in the grade of Senior Train Clerk in the scale of Rs.1200-2040. by means of a detailed, speaking and reasoned order in accordance with rules and instructions under intimation to the applicant within three months from the date of receipt of a copy of this order. While doing so, they will specifically examine the applicability of aforesaid circular dated 20.8.1999 read with FR 22 to the facts and

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circumstances of the present case and in the event they conclude that the applicant is not entitled to pay protection, they will record detailed and specific reasons for the same.

13. OA is disposed of in the aforesated terms with no order as to costs.


(S.R. Adige)
Vice Chairman (A)


(Ashok Agarwal)
Chairman

/sns/