

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O. A. NO. 270/1999

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New Delhi this the 5th day of April, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

M. R. Gupta S/O Lal Chand,
R/O 831, Laxmibai Nagar,
New Delhi-110023.
Examiner of Patents & Designs,
Patent Office Branch,
M.M. Building, IIIrd Floor,
Karol Bagh,
New Delhi-110005.

... Applicant

(In person)

-Versus-

1. Union of India through
Secretary, Ministry of Railways
Rail Bhawan, New Delhi.
2. General Manager,
Northern Railway,
Baroda House, New Delhi.
3. Secretary, Ministry of Industry,
Department of Industrial Development,
Udyog Bhawan,
New Delhi-110001.
4. Joint Controller of Patents & Designs,
Patent Office Branch,
Municipal Market Building,
IIIrd Floor, Karol Bagh,
New Delhi-110005. ... Respondents

(By Shri R.P. Aggarwal, Advocate)

O R D E R (ORAL)

Shri V.K. Majotra, AM:

The applicant joined service in the State of Punjab as Demonstrator in Government Polytechnic in 1967. Thereafter he joined the Railway service on 7.7.1978. The applicant has challenged the pay fixation done by the Railways as being incorrect and not in accordance with FR 22-C [now FR 22(I)(a)(1)]. In the State Government the applicant was appointed in the scale of Rs. 700-1200 (revised). In July, 1978 he

was receiving a basic pay of Rs.800 + Rs.50 special pay as Demonstrator. His next increment of Rs.30 in the State Government was due on 1.8.1978. According to the applicant, on being offered the post of Senior Chargeman (Mechanical) in July, 1978 in the Railways he was entitled to the benefit of pay fixation under FR 22(I)(a)(1), i.e., for his pay fixation in the post of Senior Chargeman taking into account the notional pay in the post of Demonstrator held by him together with the increment due to him on 1.8.1978, i.e., Rs.30. Thus, if the applicant had continued in the State Government he would have got the basic pay of Rs.830 + Rs.50 as special pay as on 1.8.1978, i.e., basic pay of Rs.880. To this, he claims that he is entitled to add one increment of Rs.30 (Rs.880 + 30 = Rs.910) as on 1.8.1978 which was due to him on that date and which should have been taken into account by the respondents while fixing his pay on 1.8.1978. The applicant was promoted to the post of Foreman (Diesel) w.e.f. 8.7.1983 in the scale of Rs.700-900. According to the applicant, he was selected through UPSC and joined on 6.10.1983 as Examiner of Patents and Designs in the Patents Office. His pay was erroneously fixed with reference to the last pay drawn by him in the Railways. Ultimately, the pay of the applicant was fixed in the scale of Rs.550-750 [Senior Chargeman (Mechanical)] and in the scale of Rs.700-900 [F.O. (Diesel)] vide order dated 12.8.1985 (Annexure A-1). The applicant alleges that no payment was made in accordance with Annexure A-1. He was paid salary at the minimum of the scale of Rs.550-750 w.e.f. 7.7.1978.

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2. Feeling aggrieved by Annexure A-1, he filed O.A. No.1809/89 in this Tribunal contending that he was entitled to initial pay fixation from 1.8.1978 and consequential benefits and he be treated as promoted to the post of F.O.(Diesel) w.e.f. November, 1981 in the scale of Rs.700-900. The Tribunal upheld the objection relating to limitation, among others, vide order dated 22.5.1992. The applicant filed SLP (Civil) No.9969/93 before the Hon'ble Supreme Court which remitted the matter to the Tribunal for fresh consideration. The Tribunal vide order of 6.5.1997 allowed the application partly regarding refixation of the applicant's pay on his joining the services of the respondent Railways from 7.7.1978, from the date claimed by him, i.e., 1.8.1978 in accordance with the relevant provisions of FR 22(I)(a)(1). The Tribunal also held that the claim for arrears of difference of pay on such refixation would be with effect from 1.12.1989, i.e., three months from the date of filing of the application. The applicant challenged the Tribunal's order dated 6.5.1997 in O.A. No.1809/89 by filing Writ Petition No.4580/98 before the Delhi High Court. He also filed a contempt petition being C.P. No.304/97 in O.A. No.1809/89 alleging non-compliance of the orders of the Tribunal dated 6.5.1997. Vide order dated 15.12.1997 (Annexure A-5) the Tribunal suggested to the respondents that the correct implementation of the order would be to fix applicant's pay in the scale of Rs.550-750 at Rs.620/- and add 42% D.A. and arrive at the amount as Rs.880/-. Giving benefit of one increment, another sum of Rs.30/- was to be added to the State Government scale. Thus the basic pay Rs.880/- would rise to

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Rs.910/-.. Applicant filed another contempt petition being C.P. No.26/98 before the Tribunal. The Tribunal observed that the order of the Tribunal has been substantially complied with and if the applicant wanted to dispute the correctness of calculations, he could file a fresh application and not by continuing with the contempt proceedings. Hence, the present O.A.

3. According to the applicant, the Tribunal was misled by the respondents' statement, "That in compliance with the orders dated 15.12.97 of this Hon'ble Tribunal passed in the above case, the calculations regarding refixation of pay of the applicant have been revised and the pay of the applicant has been fixed at Rs.923 per month as on 1.08.1978." Actually the applicant's pay was fixed at the minimum of the scale, i.e., Rs.550/- with personal pay of Rs.100 on 1.8.1978. Thus virtually no increment was accorded during service under the Railways instead of Rs.910 + and normal increments for each years of service. The applicant has averred that on his appointment as Examiner of Patents and Designs in Patents Office w.e.f. 6.10.1983 his pay should have been fixed at Rs.1150/- (795 + 35 + 299 (PP) = 1120 as next stage in scale is Rs.1150 and on revision of pay scale w.e.f. 1.1.1986 and 1.1.1996. The applicant has sought direction to the respondents to comply with the order dated 6.5.1997 in O.A. No.1809/89 passed by this Tribunal and to re-fix applicant's pay from 1.8.1978 as per directions given by the Tribunal in its order dated 15.12.1997 within a

stipulated period. He has also claimed interest @ 18% compounded on refixation of pay.

4. In their counter, the respondents have contended that the pay scale of Rs.550-750 of the Central Government has an element of merged D.A. at 200 CPI. Thus the pay of the applicant was to be fixed in the Central Government pay scale prescribed for the post, that is, Rs.550-750 after taking out the element of D.A. of 201-320 CPI points already merged in the Punjab government scale, whereafter the pay is to be fixed at lower stage by protecting the pay with personal pay to be absorbed in future increments. According to respondents 1 and 2, the applicant has been given benefit of FR 22-C in compliance with the order dated 6.5.1997 in O.A. No.1809/89. Respondents 3 and 4 vide their counter denying to have neglected the orders of the Tribunal and endorsing the fixation of pay done by respondents 1 and 2, stated that all dues have been paid to the applicant. The applicant has filed a rejoinder as well.

5. The applicant was heard in person. The learned counsel for respondents was also heard. All the material available on record was examined by us.

6. The learned counsel for the respondents reiterated the point that the respondents were within their right as per rules to exclude the element of D.A. which had already been merged in the Punjab Government scale while fixing the applicant's pay in the Central Government pay scale prescribed for the post i.e. Rs.550-750. He referred to Government of India's

instructions below FR 22 contained in O.M. No. 19/1/86-PP.II dated 14.8.1987 in support of non protection of pay to persons who are appointed in the Central Government. The applicant drew our attention to order dated 6.5.1997 in O.A. No. 1809/89 contending that all important aspects of the matter have been taken into consideration by the Tribunal and the respondents were directed to re-fix the applicant's pay from 1.8.1978 in accordance with FR 22(I)(a)(1) within a period of three months from the date of receipt of a copy of that order. The claim of arrears of difference of pay on such re-fixation was allowed w.e.f. 1.12.1989, i.e., three months from the date of filing of the application. The applicant also drew our attention to order dated 15.12.1997 in C.P. No. 304/97 wherein the Tribunal had calculated the applicant's basic pay on 1.8.1978 to be Rs. 910/-.

He drew support ^{from} PS No. 6447 circular No. 831-E/123-IV(EIV) dated 27.1.1976 regarding the application of FR 22-C to State Government servants on appointment to higher posts under the administrative control of Railway Board. In such a case, it has been clarified in the circular that the initial pay of the official in the Central Government post should be fixed under FR 22-C with reference to his basic pay. The term "basic pay" would mean only the basic pay in the State scales after revision on the pattern of the recommendations of the Pay Commission for Central Government employees.

7. As per notice dated 26.12.1997 after taking out the element of D.A. on 201-=320 CPI points which had already merged in the Punjab Government scale, the

pay of the applicant was fixed on 7.7.1978 at Rs.880 [Rs.550+70(PP)=260(DA) @ 42%]. From 1.8.1978 onwards the pay was fixed as under :

7.7.78 = 550+70pp+260(DA @ 42%)=880.00	880.00
1.8.78 = 550+100pp(70+30 increment) + 273(DA @ 42%)	923.00
1.8.79 = 570+80pp+315 (DA @ 48-1/2%)	965.00
1.8.80 = 590+60pp+393 (DA @ 60-1/2%)	1043.00
1.8.81 = 610+40pp+510 (DA @ 78-1/2%)	1160.00
1.8.82 = 630+20pp+608 (DA @ 93-1/2%)	1258.00"

8. Vide order dated 6.5.1997 (Annexure A-3) the Tribunal had given cognisance to the fact that the applicant had higher responsibilities in the Central government. Thus, his pay as on 1.8.1978 was to be fixed in accordance with the provisions of FR 22(I)(a)(1) within a period of three months from the date of receipt of the copy of that order. The claim for arrears of difference of pay on which re-fixation was allowed w.e.f. 1.12.1989, i.e., three months from the date of filing the application. The contention of the respondents to take out the element of DA already merged in the Punjab Government scales while fixing the applicant's pay in the Central Government pay scale cannot be given cognisance at this stage when after considering all pros and cons of the matter, the Tribunal had decided vide order of 6.5.1997 in O.A. 1809/89 to re-fix applicant's pay taking into consideration his basic pay under the provisions of FR 22(I)(a)(1). Order dated 15.12.1997 in C.P.304/97 had clarified the matter further observing that the correct implementation of the order would be to fix the pay of the applicant in the scale of Rs.550-750 at Rs.620/- + 42% DA and arrive at the amount of Rs.880. Another Rs.30/- was to be added to the State

Government's scale. The applicant was also held entitled to Rs.50/- as special pay again in the scale of the State Government w.e.f. 1.8.1978. In this manner, the basic pay of Rs.880 became Rs.880+30, namely, Rs.910/-. It was further clarified that Rs.910/- not being within the existing scale of Rs.550-750 was to be calculated on notional basis to include the D.A. component of the State scale and that had to be considered as a deemed point in the pay scale and as personal pay. This was undertaken on behalf of the respondents in C.P.304/97 that they would comply with the aforesaid directions. Lest there is any confusion, even now we are recording below how the applicant's pay has to be fixed under FR 22(I)(a)(1) :

"1. IN SCALE RS.550-750

(Basic Pay as on 01.8.78 = 910 Personal Pay = 910-620=290 Stage next to Rs.620 in the said Scale is Rs.630). He will be paid as under :

From 01.8.78 630(Basic)+290(pp)+DA+HRA+Other Allowances.
-do- 01.8.79 650 -do- +290 -do- + -do- + -do-
-do- 01.8.80 675 -do- +290 -do- + -do- + -do-
-do- 01.8.81 700 -do- +290 -do- + -do- + -do-
-do- 01.8.82 725 -do- +290 -do- + -do- + -do-
Upto 07.7.83 725 -do- +290 -do- + -do- + -do-

2. From 08.7.83 in the Scale of Rs.700-900 (725+25=750, Next stage in the scale is Rs.760)

From 08.7.83 760(Basic)+290(pp)+DA+HRA+Other upto 31.7.83 Allowances

From 01.8.83 TO 05-10-1983

(750+25=775, Next stage in the scale is Rs.795)

From 01.8.83 795(Basic)+290(pp)+DA+HRA+Other upto 5.10.83 Allowances"

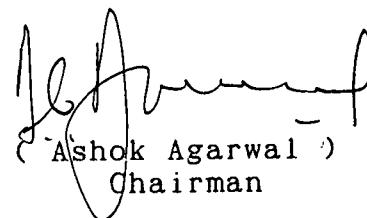
9. In the light of the above discussion, the respondents are directed to re-fix applicant's pay within a period of three months from the date of receipt of a copy of this order under the provisions

of FR 22(I)(a)(1); to pay arrears of difference of pay and allowances on account of such re-fixation within a period of another two months, and also to pay interest at the rate of 12% per annum on the said amount w.e.f. 1.12.1989, i.e., three months from the date of filing of O.A. No.1809/89.

10. The O.A. is accordingly allowed in the aforesated terms. There shall, however, be no order as to costs.

V.K. Majotra

(V. K. Majotra)
Member (A)


(Ashok Agarwal)
Chairman

/as/