

Central Administrative Tribunal

Principal Bench

OA-2338/95

(8)

New Delhi, the 6th August, 1996.

Hon'ble Mrs. Lakshmi Swaminathan, Member (J)
Hon'ble Shri R.K. Ahooja, Member (A)

Shri Ashok Kumar Handa
S/o Sh. Sohan Lal
R/o 75-B, Pocket II
Phase II Mayur Vihar
Delhi.
(Adv. SK Sawhney)

Applicant

versus

1. Union of India through
General Manager,
Northern Railway
Baroda House
New Delhi.

2. Divisional Personnel Officer,
Northern Railway,
DRM Office
Chemsford Road
New Delhi. ..

Respondents

(Adv. Sh. G.P. Khatriya)

ORDER

Hon'ble Shri R.K. Ahooja, Member (A)

The applicant who was initially appointed with the respondents as a coaching clerk in the pay scale of Rs.260-430 temporarily officiated as Enquiry and Reservation Clerk from 27.4.76 to 4.6.79 in the higher scale of Rs.330-560. However,

(9)

his regular promotion as Senior Parcel Clerk came on 15.12.86. The applicant represents that his pay be fixed after giving him the benefit of officiation in the higher scale between 1976 to 1979. The applicant is aggrieved that though this benefit was allowed initially yet the same was subsequently withdrawn by the impugned order dated 13.11.95.

2. The applicant contends that the benefit of officiation was allowed at the time of fixation of pay on regular promotion as per Railway Board's instructions No.3155 dated 30.9.65. The pay scale of Rs.330-560 was equated to that of R.1200-2040 on implementation of Fourth Pay Commission w.e.f. 1.1.86. He had earned three increments in the scale of Rs.330-560 during his earlier officiation. Therefore, on his regular promotion w.e.f. 15.12.86, he was entitled to three additional increments while fixing his pay in the scale of Rs.1200-2040. The applicant also claims that certain other persons similarly placed were granted this benefit as per orders of the respondents dated 3.9.86, a copy of which has been annexed .(Annexure-4 of the LA).

3. The respondents deny the claim of the applicant. They submit that at the time of his reversion to the original grade, the applicant

Qur

(10)

was drawing pay at the stage of Rs.360/- in the grade of Rs.330-560. As such his pay could not be lower than Rs.360/- at the time of his regular promotion. His pay has been fixed at Rs.1260/- because he was drawing pay of Rs.360/- at the time of his reversion which was in accordance with Rule 1320 of Indian Railway Establishment Code 1968. Hence, the applicant has no cause for action.

4. We have heard the learned counsel on both sides. The problem in this case has arisen as the revision of pay scales on account of Fourth Pay Commission has intervened between the time when the applicant was reverted from officiating promotion and his regular promotion. The applicant claims that his case is covered by para 3155 of Indian Railway Establishment Code while the respondents submit that Rule 1320 (F) 26 is applicable in this case. In order to appreciate the rival contention, the two rules are reproduced below:

" 3155 of Circular No.42E/9-III
(EIV) dated 30.9.1965.

Reference Railway Board's letter No.E(S)56CFC/106 dated 30.8.1956 in sub-para(b) of para 1 thereof the Board has conveyed the decision that periods of officiating in higher grade posts for over 14 days falling under sub-para(b) of para 1 of their letter No.No.E(T)53TRE/5, dated

OW

(11)

6.8.1955 should be counted for purposes of
increments.

A question has arisen whether periods of
officiating in a higher grade post without any restriction
of a minimum time limit falling under sub-para (1)
of para 1 of Board letter dated 6.8.1955 referred
to above, as amended from time to time should also
be counted for reckoning increments."

ii. Rule 1320 (FR 26) Reckoning service
for increments.

(b)(i) Service in another post, other
than a post carrying less pay referred to in clause (a)
of Rule 227 (Fr 15) whether in a substantive or
officiating capacity, service on deputation out of
India and leave except extraordinary leave taken
otherwise than on medical certificate shall count
for increments in the time-scale applicable to the
post or posts on which the railway servant holds
a lien as well as in the time scale applicable to the
post or posts if any on which he would hold a lien,
had his lien not been suspended.

Provided that the service rendered in an
ex-cadre post shall not be reckoned for fixation of
pay in another ex-cadre post and the pay in subsequent
ex-cadre post shall be fixed under the normal rules
with reference to pay in the cadre post."

5. The applicant also relies on para 1313 of
the Indian Railway Code which is similar to Fr 22.
The proviso in Fr 22 (Swamy's Fr 52)

du

states as follows:

(2)

" Provided that, both in cases covered by clause(a) and in cases, other than the cases of re-employment after resignation or removal or dismissal from the public service, covered by clause (b), if he -

- (1) has previously held substantively or officiated in
 - (i) the same post, or
 - (ii) a permanent or temporary post on the same time-scale, or
 - (iii) a permanent post or a temporary post (including a post in a body, incorporated or not, which is wholly or substantially owned or controlled by the Government) on an identical time scale; or
- (2) is appointed subject to the fulfilment of the eligibility conditions as prescribed in the relevant recruitment rules to a tenure post on a time-scale identical with that of another tenure post which he has previously held on regular basis; then the initial pay shall not, except in cases of reversion to parent cadre, governed by proviso (1) (iii) be less than the pay, other than special pay, personal pay or any other emoluments which may be classed as pay by the President under Rule 9(21)(a)(iii) which he drew on the last occasion, and he shall count the period during which he drew that pay on a regular basis on such last and any previous occasions for increment in the stage of the time-scale equivalent to that pay. "

per

(13)

6. It is clear that on promotion, the initial pay in substantive promotion will not be less than the pay, other pay, special pay, personal pay etc., which the officer drew on the last occasion and that the Govt. officer will count the period during which he drew that pay on a regular basis on such last and any previous occasions for increment in the scale of the time scale equivalent to that pay. Thus, the applicant is clearly entitled to the benefit of service rendered by him earlier in the higher pay scale of Rs.330-560.

7. However, the problem created by the intervention of the revised pay scale is quite obvious since the rate of increments in the revised scale is higher. The applicant himself has annexed a copy of orders of promotion(Annexure-4) of Senior Parole Licks which was issued on 3.9.86. All of them appear to have been given the advantage of three increments in the pay scale of Rs.330-560 and not in the revised pay scale of Rs.1200-2040. The result will be that if the applicant who has been promoted later is given three increments in the revised pay scale then his pay would be higher than his seniors who were promoted earlier with three increments in the pre-revised scale. This will lead to an anomalous situation.

JK

(A)

8. Considering the various aspects of this case, we conclude that the pay of the applicant has been rightly fixed by the respondents by the impugned order. This order safeguards the grant of three increments and the pay attained by the applicant at the time of his reversion from the time scale. In our view, the benefit of increment in such a case accrues in the same pay scale and not in the revised pay scale which would be higher than the previous one.

9. The application is accordingly dismissed.

No order as to costs.

R. K. Thooga
(R. K. Thooga)
Member (H)

Lakshmi Guaminathan
(Mrs. Lakshmi Guaminathan)
Member (J)