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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./~~TX~~XX No. 562 of 1995 Decided on: 20-5-96

Dr. K.S. SagarApplicant(s)

(By Shri P.M. Ahlawat Advocate)

Versus

U.O.I. & AnotherRespondent(s)

(By Shri B.K. Aggarwal Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI

1. Whether to be referred to the Reporter 7
or not?

2. Whether to be circulated to the other 8
Benches of the Tribunal?


(K. MUTHUKUMAR)

MEMBER (A)

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 562 of 1995

New Delhi this the 30th day of May, 1996

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Dr. K.S. Sagar
S/o Shri Bhopal Singh
R/o Bungalow No.M-2,
Railway Colony, Hapur,
District Ghaziabad (U.P.).

...Applicant

By Advocate Shri P.M. Ahlawat

Versus

1. Union of India through
The Chairman,
Railway Board and Ex-Officio
Principal Secretary to the
Government of India,
Ministry of Railways,
Rail Bhawan,
New Delhi-110 001.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi-110001.

..Respondents

By Advocate Shri B.K. Aggarwal

ORDER

The applicant, who is a Senior Divisional Medical Officer under the respondent No.2 is aggrieved that the respondents have not correctly fixed his pay by taking into consideration his past service under Central Government and he has prayed that the respondents may be directed to fix his pay correctly and also to allow him arrears of

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pay consequent on such refixation. He has also prayed that he may be paid salary for one day, i.e., on 8.7.1993 treating the applicant on duty.

2. The facts in this case are that the applicant was initially working as Assistant Medical Officer in the grade of Rs.700-1300 in Gun and Shell Factory, Calcutta under the Ministry of Defence with effect from 5.9.1977 to 10.4.1979. He was subsequently appointed as Medical Officer in the same grade under the C.G.H.S., Ministry of Health and he worked there with effect from 11.4.79 to 7.7.1983. His pay was fixed at Rs.740/- in the scale of Rs.700-1300 with effect from 11.4.1979 and he drew increments from time to time. Consequent on his appointment to the Indian Railway Medical Service, he was relieved from his previous post after accepting his technical resignation from that post with effect from 7.7.1983 and he reported for duty. He was, however, appointed in the scale of Assistant Divisional Medical Officer (ADMO) in the Railways with effect from 8.7.1983(A/N). At the time of joining as ADMO in the scale of Rs.700-1600, he was in receipt of pay of Rs.900/- in the lower scale on 7.7.83 under the C.G.H.S.

3. The respondents by their letter dated 1.1.1987 fixed the pay of the applicant at Rs. 700/- plus personal pay of Rs.200/- from 9.7.1983, at Rs.740/- plus personal pay of Rs.160/- from 1.7.84, at Rs.780/- plus personal pay of Rs.120/- from 1.7.1985 and at Rs.820/- plus personal pay of Rs.80/- from 1.7.1986. The

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applicant represented against this fixation of pay and claimed that he was entitled to have his pay refixed at Rs.900/- with effect from 8.7.83, i.e., with effect from the date of joining the duty with subsequent increments as he was already drawing Rs.900/ in his previous post under the Ministry of Health. The respondents have, however, turned down his representation by their impugned letter dated 2.11.1994. The applicant has, therefore, moved this Tribunal by filing this application.

4. The applicant contends that he is eligible for the benefit of past service for fixation of pay treating his resignation in the previous post as technical formality. He further contends that he is eligible for the benefit of fixation of pay in terms of the Government of India O.M. dated 17.6.1965 as he had secured the appointment after applying through proper channel and his resignation from his previous post was only technical resignation which was accepted by the respondents in terms of the extant orders and, therefore, he would be entitled to have his past service reckoned for the purpose of fixation of pay in the scale of Rs.700-1600. As he was also drawing a pay of Rs.900/-p.m. in his previous department, he should be entitled to have his pay fixed at that rate on his appointment in the Railways as ADMO. The applicant has also contended that in similar circumstances and in identical case of Vinay Kumar Chadha Vs. U.O.I. - TA No. 788 of 1986 the applicant was allowed the

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benefit by the Tribunal. A copy of the judgment in the aforesaid case is also annexed by the applicant at Annexure A-6 to the application.

5. The respondents have contested this application and have averred that the applicant was given the benefit of fixation of pay in terms of Railway Ministry's Circular dated 21.9.78 annexed as Annexure A-1 to the counter-reply in terms of which, the applicant's pay had been correctly fixed. The respondents submit that the applicant was appointed as ADMO in the scale of Rs.700-1600 with effect from 9.7.1983 and before joining the Railways, he was working in the C.G.H.S. in the lower scale of Rs.700-1300 and he was drawing pay of Rs.900/-. Respondents contend that in terms of the instructions contained in the Railway Board's letter dated 21.9.1978 annexed as Annexure R1, the pay of the probationers who have held the post in quasi-permanent capacity or have completed 3 years of continuous service is to be refixed in terms of Rule 2018A(i)(b) equivalent to FR 22B(i)(b). They also contend that the scale of the post held by the applicant in the Railways is not identical as that held by the applicant in C.G.H.S. and the grade in the C.G.H.S. was in the lower scale. However, the applicant was given the protection of his pay already drawn by him in his previous department in terms of the aforesaid orders dated 21.9.1978. They also contend that there was no technical formality and the judgment relied upon

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by the applicant will not be applicable in this case. In the light of this, the respondents contend that this application has no merit and is liable to be rejected.

6. I have heard the learned counsel for the parties and have also perused the record.

7. It is an admitted position that the applicant was in the scale of Rs.700-1300 under the C.G.H.S. before joining the Railway Medical Service and he was drawing Rs.900/- in that scale. The respondents have relied on the Railway Board's circular dated 21.9.78. This circular deals with case of fixation of pay of a probationer who had previously held the post in quasi-permanent capacity or completed 3 years of continuous service in an identical scale of pay. The relevant paragraph of the aforesaid circular is extracted as under:-

".....Some of the probationers who were declared quasi-permanent in their previous employment prior to joining Railway Service have represented for protection of pay last drawn in an identical time scale in the previous post, during the period of probation in the Railways.

2. The Ministry of Railways have considered the matter in consultation with the Ministry of Finance and decided that in the case of a Probationer who had previously held a post in quasi-permanent capacity or completed three years continuous service in an identical time scale his pay should be fixed at the minimum of the time scale of the service according to Rule referred to above but he may also be allowed the pay last drawn in quasi-permanent capacity or on completion of three years continuous service, as personal pay, during the probationary period. After completion of probation and on confirmation in the service, his pay should be refixed in terms of Rule 2018(10(b) (FR 22B(i)(b)) treating the quasi-permanent pay or pay drawn on completion of three years continuous service in the previous post as substantive pay".

8. In terms of the aforesaid Notification, it is clear that during the period of probation under the Railway Medical Service, the applicant is entitled to have his pay fixed in the manner outlined in the first part of para 2 above. But the essential condition is that the probationer should have held the previous post in quasi-permanent capacity or completed or should have completed 3 years of continuous service in an identical time scale of pay and if so, his pay should be fixed at the minimum of the time scale and he may be allowed to get difference in pay and pay last drawn as personal pay during the period of probation and on completion of probation, his pay will be refixed under Rule 2018(1)(b) of the IREM (equivalent to FR 22B(1)(b)). From the facts which are admitted, the applicant although had completed 3 years of continuous service in the previous post, his service was not in an identical time scale but was in lower time scale and, therefore, the applicant will not be entitled for refixation under Rule 2018 A(i)(b) or FR 22B (i)(b) on his confirmation. However, the respondents have apparently treated the scales as identical and have brought his case under the purview of their Circular dated 21.9.1978 and have protected his last pay by grant of personal pay from time to time.

9. A similar matter was already considered by the Tribunal in the case of Vinay Kumar Chadha Vs. U.O.I. It was held that in this case, the instructions contained in the Government of India

G.I.M.F. O.M. No.3379E-III (B) 65 dated 17.6.1965 which were also circulated by the Railways in their circular No.831E/123IV(E.iv) dated 17.12.1967, would be applicable. In terms of the aforesaid circular it was held that where the Government servant applies for the post in the same or other Government department through proper channel and on selection, he is asked to resign the previous post for administrative reasons, the benefit of past service may, if otherwise admissible under the rules, be given for purposes of fixation of pay in the new post treating the resignation as a technical formality and the pay in such cases was to be fixed under FR 27. As pointed out above, the instructions contained in Railway Board's circular dated 21.9.78 will not be applicable in this case inasmuch as the applicant had not served in an identical time scale but was in the lower scale of pay as averred by the respondents. Besides, there is nothing on record to indicate that this was not a technical resignation as the applicant resigned from his previous post and joined the post under the Railways after being selected on application through proper channel by the U.P.S.C., the next day. Further, the Government of India instructions dated 17.6.1965 which was adopted by the Railway Board in the aforesaid circular dated 17.12.1967 provides for fixation

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of pay in such cases under FR 27. In regard to the prayer for salary for one day, i.e., on 8.7.1983 treating the applicant on duty since he was present in the office on that day, the respondents have stated in reply that the applicant resumed duty only on 9.7.83(F/N) and was on training for one month in the Northern Railway Divisional Office, Moradabad. On the basis of the joining report issued by the Divisional Medical Officer, Moradabad filed at Annexure R2, he can be considered to have taken the appointment only on that date. This contention of the respondents is not acceptable. It is evident from Annexure A2 that on acceptance of offer of appointment, the applicant was directed for training under DMO, Moradabad. The said copy of the order was also endorsed to the applicant in office. From this, it appears that the applicant has reported to the Headquarters office on 8.7.83 and he was put on training at the Divisional Office, Moradabad where he reported on 9.7.83 and, therefore, from the point of view of appointment, he should be deemed to have been appointed on 8.7.83 and, therefore, to this extent, the prayer is justified and is allowed.

10. In the light of the foregoing, this application is disposed of with the direction to the respondents to refix the pay of the applicant taking into consideration his past service under the Central Government under FR 27 in terms of the O.M. dated 17.6.1965 and Railway Board's circular

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dated 17.12.1967(Supra) with the further direction to treat the applicant as having joined the appointment on 8.7.83 when he reported in the Headquarters office. The arrears of pay and allowances if any arising out of such refixation, should be paid within a period of 3 months from the date of receipt of a copy of this order.

11. In the circumstances, there shall be no order as to costs.



(K. MUTHUKUMAR)
MEMBER (A)

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