

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A.No. 722/1994

New Delhi this the 28th Day of July 1999

Shri Purshottam Dass Gupta
S/o Shri Kulwant Rai
Chief Booking Clerk
Northern Railway
Tanesar City (Haryana)

Applicant

(By Advocate: Shri B.S. Mainee)

VERSUS

Union of Inida : Through

1. The General Manager
Northern Railway
Baroda House,
New Delhi.

2. The Divisional Railway Manager
Northern Railway
State Entry Road,
New Delhi.

Respondents

(By Advocate: Shri R.L.Dhawan)

ORDER (Oral)

Hon'ble Mr. V. Ramakrishnan, Vice Chairman (A)

We have heard Shri B.S.Mainee, learned counsel for the applicant and
Shri R.L.Dhawan, learned counsel for the Railway Administration.

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2. The applicant who was in the grade of Head Booking Clerk in the pre-revised scale of Rs.425-640 and was promoted to the level of Chief Booking Clerk in the pre revised scale of Rs.455-700 is aggrieved by the action of the respondents in bringing down his pay in the revised scale from Rs.1800 to Rs.1640/-.

3. The brief facts of the case are as follows:

The applicant belongs to the cadre of Booking Clerk and was working as Head Booking Clerk at Railway Station Taneswar City in the grade of Rs. 425-640 as on 31.12.1984. Prior to the implementation of the 4th Pay Commission recommendation, there was a higher scale of pay Rs.455-700 and the designation was Chief Booking Clerk. The recommendations of the 4th Pay Commission were received by the Government some time in September 1986 and the Government thereafter took a decision on the various recommendations. So far as this cadre is concerned, the Government decided to merge the pre revised scale of Rs.425-640 and Rs.455-700 into a common revised scale of Rs.1400-2300. Before the receipt of the Government decision the applicant was promoted to the pre revised grade of Rs.455-700 after selection and his pay was fixed at Rs.620/- in the pay scale of Rs.455-700. When a question arose regarding the fixation of pay in the revised pay scale of Rs.1400-2300. DRM took up the matter by D.O.dated 19.8.87, Annexure A-7 addressed to Headquarters office. We may in particular quote para 3 which reads as follows:

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"In respect of the merged grades as also the grades where classification is hereby changed, any promotions/filling in of vacancies after the crucial dates i.e., (a) 25.9.86 in the case of

merged grades and (b) after the date of issue of this letter in respect of other grades, will be treated as adhoc and will not confer any right on the incumbents promoted/posted as such to hold or continue to hold the said post and regular promotions will be only on the basis of the revised classification as indicated above. Thus promotions/posting made between 1.1.86 and the crucial dates on regular basis in accordance with the classification then in force will stand protected."

D.R.M. proceeded to say that since the right for promotion/posting of the staff promoted between 1.1.86 to 25.9.86 are protected he had inferred that their pay will also be protected in the revised scale on the basis of pay drawn by them in the scale of Rs.455-700. This assumption has been rebutted by the Headquarters Office by letter dated 24.8.1987 at Annexure A-8 in which they have stated that the contention that the staff promoted from grade Rs.425-640 to Rs.455-700 (i.e) between from 1.1.86 to 25.9.86 have got reduction in their emoluments does not appear to be correct, as in no case the pay fixed as on 1.1.86 happens to be less than the one, which they were getting in pre-revised scale on promotion to the grade of Rs.455-700. In this regard, an example has been given assuming that at the time of fixation of pay in the scale of Rs.425-640 the officiating basic pay was Rs.470, pay in the scale 455-700 would be Rs.500/- the total emoluments would work out to Rs.1398.50 and his pay would be fixed in the scale of 1400-2300 and there will be no loss to the concerned Railway servant after fixation of pay. They have further stated if there is any loss in the emoluments to the employees who were drawing pay in the scale of 455-700 in between 1.1.86 to 25.9.86 as compared to the pay fixed in grade Rs.1400-

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2300 (NPS) w.e.f. 1.1.1986, such specific case may be brought to the notice of the Headquarters with concrete example.

In so far as the present applicant is concerned, his pay was fixed at Rs.1800/- and after receipt of clarification his pay was reduced to Rs.1640 after a period of six months. The applicant has filed the present OA challenging this order.

4. Mr. Mainee says that the action of the respondents is unsustainable for a number of reasons. He refers in this connection to the direction of the Supreme Court that fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned official to notice and giving him a hearing in the matter. He says that when the respondents reduced his pay from Rs.1800 to Rs.1640 they ought to have issued a show cause notice to him which was not done. He says that on this short ground this OA should succeed. Learned counsel also says that the illustration of the Headquarters office as reflected in the letter dated 24.8.87 (Annexure A-8) is based on the wrong presumption as it has not added 20% of basic pay which is admissible under the relevant rules for coming over to the revised scale. If this is added the applicants would draw less pay on coming over to 1400-2300. Mr. Mainee also says that this OA is not barred by limitation. It is now well settled in terms of judgment of the Hon'ble Supreme Court in M.R.Gupta Vs.UOI & Ors. ~~Case~~ that where the fixation of pay was not in accordance with the rules, it is a continuing cause for the concerned employee, giving rise to a recurring cause of action each time he was paid salary. He also refers to

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certain decisions of the Tribunal particularly in the case of Mohinder Singh Sharma Vs. General Manager (NR) and Ors. (OA 1423/94) decided on 11.4.1997 by the Principal Bench. He says that in an identical situation the colleagues of the present applicant had approached the Tribunal contending that reduction of pay done by the DRM should be set aside. He states that the present applicant and the applicants in that OA are situated on the same footing as he had also appeared in the same selection and got promotion and pay was fixed by the same orders and also reduced by the same orders. The Tribunal had quashed the order of the respondents in OA 1423/94 and pay of the applicant was restored. This judgment had been rendered by a coordinate Bench. He also says that in another OA (3079/92) decided on 16.3.98 the Tribunal had noted the decision of the Supreme Court in Bhagwan Shukla Vs. UOI & Ors. (1995 (2) SLJ 31) and remitted the matter to the respondents to take further action after issuing show cause notice. Mr. Mainee requests that the present OA may also be remitted back to the respondents to take further action after issuing show cause notice. He says that the judgment of Mohinder Singh Sharma as also other similar cases in which the Tribunal had quashed the order has been implemented by the respondents and if the present OA is remitted back to the respondents, he has every reason to believe that the pay of the applicant will be restored.

5. Mr. R.L. Dhawan forcefully submits that the present OA is barred by limitation as the cause of action, if any, arose some time in the year 1987. He contends that the applicant had submitted a representation dated 29.4.87 and the same was replied by letter dated 21.5.87 and after waiting for a

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reasonable time he should have approached the Tribunal within one year thereafter. He says that in the present case there is no need for giving him any show cause notice. In any case, the applicant's representation was considered and disposed of. He refers in this connection to the decision of the Principal Bench in OA 1548/90 dated 4.9.95 in which the provision of Rule 5 of the Railway Services (Revised Pay) Rules, 1986 was reproduced as below:

"5. Drawal of pay in the revised scales – Save as otherwise provided in these rules, a Railway servant shall draw pay in the revised scale applicable to the post to which he is appointed. Provided that a Railway servant may elect to continue to draw pay in the existing scale until the date on which he earns his next or any subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that scale.

Explanation 1:- The option to retain the existing scale under the proviso to this rule shall be admissible only in respect of one existing scale.

Explanation 2:- The aforesaid option shall not be admissible to any person appointed to a post on or after the 1st day of January, 1986, whether for the first time in Railway Service, or by transfer or for promotion from another post and he shall be allowed pay only in the revised scale."

It is clear from Explanation -2 that the option normally available under the proviso has been denied to persons appointed to a post on or after 1.1.1986, either for the first time or by transfer or by promotion and he shall be allowed pay only in the revised scale. This would necessarily mean that in respect of the applicant, he should be compulsorily brought over to the

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revised scale of pay from 1.1.86 based on the pay drawn by him on 31.12.1985 on the existing scale. Thereafter, in respect of the promotions made after 1.1.86 his pay should be fixed under the normal Fundamental Rules FR 22-C. Mr. Dhawan's stand is that it is open to the respondents to rectify the mistake and this mistake has been corrected within 6 months thereafter. He says that the applicant is claiming his relief on the ground that the same has been granted by the respondents in other cases. He states that unless he has a legally enforceable right a different decision in some other case cannot assist him. According to Mr. Dhawan, for these reasons this OA is devoid of merit and the same should be dismissed.

6. We have considered the rival contentions. As regards the question of limitation, we may quote para 5 of the judgment of Hon'ble Supreme Court in M.R. Gupta's case (supra) which reads as follows:-

“Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim if any, for

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recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claims by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action."

It is clear from the above that a fresh cause of action arises every month when the Government servant is paid his monthly salary. As such, we do not uphold the contention of limitation raised by Mr. Dhawan.

What is crucial to determine is whether the pay fixation has been done in accordance with the rules. Mr. Dhawan draws our attention to Rule 5 of the Railway Services (Revised Pay) Rules, 1986 which has been reproduced (supra). In the present case the applicant was in the scale of Rs.425-640 as on 31.12.1984 and was further promoted to the post of Chief Booking Clerk in the scale of Rs.455-700. As per the recommendations of the 4th Pay Commission vide letter dated 29.9.86 these two posts were merged in one scale of Rs.1400-2300. In this connection he has referred to the judgment of the Principal Bench in the case of Ram Lal Vs. Union of India & Ors. (OA 1548/90) decided on 4.9.95 which deals with the interpretation of the Rule 5 of the Railway Services (Revised Pay) Rules, 1986. A copy of the judgment



is taken on record. We may reproduce paras 11 & 13 of that judgment which reads as follows:-

11. It is thus clear from explanation-2 that the option normally available under the proviso has been denied to persons appointed to a post on or after 1.1.86, either for the first time or by transfer or by promotion and he shall be allowed pay only in the revised scale. This would necessarily mean that in respect of the applicant, he should be compulsorily brought on the 'revised scale' of pay from 1.1.86 based on the pay drawn by him on 31.12.85 on the 'existing scale'. Thereafter, in respect of the promotions made after 1.1.86 his pay should have been fixed under the normal Fundamental Rules FR22C.

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13. It is clear that in this case the applicant has no right of option at all in terms of Explanation (2) under Rule-5. His pay was correctly fixed on 1.1.86 at Rs.1440. On 20.3.86 when he was promoted as Driver 'B', his pay should have been fixed in the revised scale of Rs.1350-2000 under FR-22C. That also would have resulted in fixing his pay at Rs.1520, which was the stage at which his pay was fixed earlier, even though that was done after assuming that it should be fixed by applying the option principle to the pay of Rs.440 drawn by him on that date in the existing scale of Rs.425-640. Hence, no correction was needed."

7. In the present case, the applicant was in the scale of Rs.425-640 as on 31.12.1985/1.1.86 and as such, he should be compulsorily brought over to the corresponding revised scale w.e.f. 1.1.86. The fact that he was given promotion to a post in the pre revised scale of Rs.455-700 does not permit him to exercise an option to come over to the revised scale from a later date.

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This flows from the provisions of Rule 5 which have been interpreted by the Tribunal in Ram Lal's case and this judgment when it has not been reversed by a higher forum is binding on us. In the case of Shri Mohinder Singh Sharma referred to by Mr. Mainee, the Tribunal has not noticed the provisions of Rule 5 nor considered its effect and its decision goes against the statutory provisions. In view of this, the decision of the Tribunal in Mohinder Singh Sharma's case has to be regarded as per incuriam and is not binding on us. We have to proceed on the basis of the statutory provisions contained in Railway Servants (Revised Pay) Rules. As has been stated earlier, once the applicant is compulsorily brought over to the revised scale of Rs.1400-2300 w.e.f. 1.1.1986, the fact that he got a promotion in August 1986 in the pre-revised scale does not give him any benefit as both the pre-revised scales of Rs.425-640 and Rs.455-700 have been merged in the revised scale of Rs.1400-2300. In the absence of a higher revised scale for the pre-revised scale of Rs.455-700, there is no provision for the applicant's pay being fixed at a higher level from August 1986. It is also not the case of the applicant that on coming over to the revised scale of 1400-2300 he got lesser emoluments than ^{what} he got in the pre-revised scale of 455-700 in August 1986.

8. As regards the contention that no notice was given to the applicant before reducing the pay, we take note of the fact that in such situations pay is fixed provisionally in the revised scale pending further verification/clarifications and it is not as if the applicant could have proceeded on the basis that his pay fixation at Rs.1800/- in the revised scale


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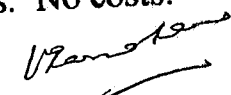
was regular and final. We also notice that his representation had been disposed of. In the circumstances omission to give a formal show cause notice could not have caused any prejudice to him. This contention is rejected.

9. Shri Mainee says that in the case of similarly situated persons the respondents have given benefits of restoring the pay. Shri Dhawan states that if certain action is done in violation of the rules in one case it need not be done in other similar cases and the benefit given to others cannot automatically be extended to the applicant when he has no legally enforceable right. There is force in the submission of Mr. Dhawan.

10. In the light of the above discussion, we hold that the applicant has no legally enforceable right to get the reliefs as prayed for in the OA and the OA is dismissed. However, we note the submission of the learned counsel for the applicant that the respondents had restored the pay in some similar cases and our order in this OA will not preclude the Railway Administration from taking appropriate action in the light of the earlier precedents if they choose to do so.

11. OA is disposed of with the above observations. No costs.


(Mrs. Lakshmi Swaminathan)
Member (J)


(V. Ramakrishnan)
Vice Chairman (A)

Vtc.