

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO. 1360/89

DATE OF DECISION: 11/11/1991

SHRI M. DHANANJAYA RAO

APPLICANT

VERSUS

UNION OF INDIA & ORS

RESPONDENTS

CORAM:

THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI B.S. MAINEE, COUNSEL

FOR THE RESPONDENTS

NONE

(JUDGEMENT OF THE BENCH DELIVERED BY
HON'BLE MR. I.K. RASGOTRA, MEMBER(A))

Shri Dhananjaya Rao, Retired Assistant Engineer Group 'B' (Rs. 650-1200), South Central Railway has filed this application under Section 19 of the Administrative Tribunals Act, 1985 challenging the order No. E(G)508/MDR/309 dated 31st March, 1988 passed by the Chief Personnel Officer, South Central Railways, Sicandarabad (Annexure A-1).

The short question for adjudication is whether the applicant who was sent on deputation to Indian Railway Construction Co. Ltd. (IRCON) in the pay scale of Rs. 1100-1600 and had opted to draw his pay as admissible to him in his parent department plus deputation (duty) allowance as admissible under the provisions of Ministry of Finance, Department of Expenditure OM No. 10(24) F-III(B)/60 dated 27.1.1970 and 13.6.1973, in preference to the alternate option according to which he could draw the pay in the pay scale attached to the new post on being fixed under the normal rules, would be entitled to the benefit of Next Below Rule (NBR) for drawing his pay in the deputation post in IRCON on the ground that his juniors have been promoted in the parent cadre.

2. The facts of the case briefly are that the applicant was promoted as Assistant Engineer, Group 'B' Gazetted in the pay scale of Rs. 650-1200 w.e.f. 5.10.1979. He applied for the post of Deputy Manager in the pay scale of Rs. 1100-1600 in IRCON, in the month of January, 1984 in response to an advertisement issued by the said company. The applicant

post
was selected for the said/and he joined IRCON as Deputy Manager in the scale of Rs. 1100-1600 w.e.f. 24.11.1984. The terms and conditions of his deputation to IRCON are spelt out in the Railway Board's letter No. 83/E(O)II/7/41 Pt. dated 23.2.85 (page 24 of the paper book). The relevant portion dealing with Pay & Allowances reads as under:

"(ii) (a) The officer will draw pay which would have been admissible to him from time to time on the Railways plus deputation (duty) allowance as admissible under the provisions of the Ministry of finance, Department of Expenditure O.M. No. 10(24)FIII(B)/60 dated 27.1.1970 and 13.6.1973 circulated under Board's letter No. F(E) 70/FS/1 dated 25.2.1970 and 3.9.1973 as amended from time to time and the total of pay plus deputation (duty) allowance not exceeding the maximum of the scale of the new post, viz. Rs. 1100-1600/-.

OR

(b) Pay of the new post as may be fixed under the normal rules taking into account the instructions contained in Ministry of Finance O.M. No. F.10(24)/FIII/60 dated 9.8.1964 according as the Officer may elect..

NOTE: Pay for the above purpose does not include special pay if any drawn on the Railways."

2. The applicant as said earlier, opted to draw his pay as admissible to him from time to time in the Railway plus deputation (duty) allowance as admissible under the extant instructions subject to the condition that pay plus deputation (duty) allowance should not exceed the maximum of the scale of the new post. His initial period of deputation of one year was extended by three more years and ultimately the applicant was absorbed in the IRCON as Deputy Manager (Rs. 1100-1600) with effect from 21.11.1988.

The promotion in the railways from the grade of Assistant Engineer, Group 'B' to Senior Scale is regulated vide Respondent No.2's letter No. P/SC/607/SSI/Policy dated 5.10.1987 (Annexure A-6). The Assistant Engineers Group 'B', (Rs. 650-1200) who have rendered three years non-fortuitous service become eligible for promotion to senior scale viz. Rs. 1100-1600. They are promoted on the basis of assessment made by a Committee consisting of three Heads of Departments on the basis of seniority-cum-suitability. The respondent Railway Administra-

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tion promoted five Assistant Engineers Group 'B' on the basis of recommendations of the DPC to Senior Scale vide order dated 19.6.1987 (Annexure A-5). The officers mentioned at S1.No.2 and 3 of the said order are senior to the applicant while the officers at S.No.4, 5 and 6 are said to be junior to the applicant. The applicant's name did not figure in the said promotion order. On receipt of a representation from the applicant the respondent No.2, advised the Managing Director (IRCON) vide letter dated 19.10.1987 that the applicant was "considered suitable by the Committee for adhoc promotion to senior Scale (Grade R. 1100-1600 (R.S.) and had he remained on the Railway, he would have been promoted to officiate in senior scale on adhoc basis w.e.f. 19.6.1987." The promotion of Assistant Engineer Group 'B' to Senior Scale are termed adhoc, till the Group 'B' officer is inducted in the junior scale of the Group 'A' Service. The promotion in Senior Scale ordinarily continues to be termed as adhoc till Group B officer is regularly appointed to the Senior Scale of Class-I service. The claim of the applicant is that since his juniors have been promoted, on the parent Railway, he is entitled to the benefit of NBR proforma fixation of pay as he was eligible and had been found suitable for promotion to senior scale by the DPC.

3. By way of relief the applicant has prayed that the impugned order dated 31.3.1988 (Annexure A-I) issued by the respondent No.2 be quashed with the direction to the respondents to give applicant promotion, proforma fixation of pay in the senior scale w.e.f. 19.6.1987, the date on which his juniors had been promoted and that his pay and retirement benefits be accordingly refixed and consequential arrears paid to him with 18 per cent interest.

4. We observe that the respondents had forfeited their right to file counter affidavit vide Tribunal's order dated 4.12.1989. They were also not represented when the case was heard on 6.11.1991. In the circumstances, we had no alternative but to proceed to decide the case on the basis

of the record on the judicial file; submissions and additional documents filed by the learned counsel for the applicant.

5. Shri B.S. Mainee, the learned counsel for the applicant referring to the impugned order submitted that the promotion of group 'B' officers to Senior Scale on adhoc basis is the normal procedure followed in the Railways. The officers promoted on adhoc basis continue to work in the senior scale till they are regularly inducted in the junior scale of the Group 'A' in consultation with the U.P.S.C. The rejection of the representation of the applicant claiming the benefit of stepping up of his pay to the level of pay drawn by his juniors on the ground that the promotion of his juniors was therefore made on adhoc basis in the parent department is not tenable.

To fortify his case, the learned counsel referred us to:

- (i) (1990) 14 ATC 116 - **Ram Bilas Pandey V. UOI**
- (ii) OA 1621/89 - **P.P. Abdurahman V. UOI**

The case of **Ram Bilas Pandey (supra)** supports the contention of the applicant that the rejection of his representation on the ground that the promotion in the parent department was made on adhoc basis is not sustainable. The case of **P.P. Abdurahman (supra)** decided on 28.2.1990, however, stands on a different footing as it relates to the cases of senior persons who had returned from deputation and who on their return to the parent cadre sought the benefit of NBR with reference to the pay drawn by their juniors who were promoted to next higher grade during the period the applicants were on deputation.

5. We have considered the matter carefully. The scope of the Next Below Rule has been defined in Government of India's Order No.2 under F.R. 30 (Swamy's compilation of FRSR (Part-I) General Rules which reads as under:-

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".....

2. The working rule subjoined to this paragraph may be taken to express the convention which is commonly known as the 'next below rule' as originally approved, and its provisos, the modifications made from time to time. The intention underlying the 'rule' is that an officer out of his regular line should not suffer by forfeiting the officiating promotion which he would otherwise have received had he remained in the original line. The so-called "rule" is not a rule of any independent application. It sets out only the guiding principles for application in any case in which it is proposed to regulate officiating pay by special orders under the second proviso to F.R. 30 (1). The conditions precedent to the application of the 'next below rule' must, therefore, be fulfilled in each individual case before action may be taken under this proviso. **It also follows that the benefit of officiating promotion is to be given only in respect of the period or periods during which the conditions of the 'next below rule' are satisfied.**" (emphasis supplied).

The scope of the rule as is apparent from the above is to protect a senior officer, who at the relevant point of time, when his juniors were promoted is outside his regular line. Further benefit of officiating promotion under the NBR is restricted to the period during which the conditions of NBR are satisfied. The conditions of NBR are satisfied only during the specified period when the officer is outside his regular line and do not extend beyond that. In other words the position of an officer who is outside his regular line is maintained subject to his suitability in his parent cadre as long as he holds a lien in that cadre. This protection safeguards his position on reversion to his cadre in the regular line.

This position ^{is} further crystallised in paragraph 4 of Order No.2 under FR 30, reproduced below:-

"4. It has been held that holders of a special (e.g. tenure) posts such as Secretaryships to a Governor of a State Government should be ready to accept loss of officiating promotion for short periods to posts on higher scale or grade in the ordinary line in consequence of their incumbency and that, when the stage is reached at which their retention involves loss of substantive or lengthy officiating promotion, the proper course is to make arrangements to release them from the special posts rather than to compensate them for the loss of officiating promotion under the 'next below rule'. 'Short periods' should be interpreted as meaning periods not exceeding three months.

.....
If, however, in such a case the conditions of the

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'next below rule' are satisfied, the officer concerned may be granted under the second proviso to fundamental Rule 30(1) the concession admissible under the 'next below rule', but save in exceptional circumstances, such an officer should not be retained in the special post if the pay attached thereto is lower than that admissible to him under the 'next below rule' for more than six months beyond the date from which the 'next below rule' begins to operate."

It will be observed from the above that a senior officer should not be retained in the special posts if the pay attached thereto is lower than that admissible to him under the NBR beyond a period of six months. The benefit of NBR is restricted to that period only. Thus ordinarily, a senior officer who is fit for promotion in the parent cadre is not expected to continue to hold the special post i.e. tenure, deputation, ex-cadre etc. beyond a period of six months from the date the next junior person is promoted. On the other hand he is expected to return to his parent cadre and occupy the appropriate position in his parent cadre. The benefit of NBR is further restricted by the requirement of observance of one-for-one principle. Thus to get the benefit of NBR, the total cadre position has to be seen and NBR has to be granted only on one-for-one principle, i.e. to say that one senior person outside the ordinary line alone shall get the benefit of NBR by the promotion of one junior person in the parent cadre. The next senior person, will have to await the benefit of NBR till the second junior in the parent cadre is promoted.

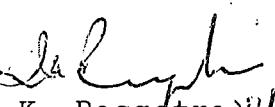
In summary the NBR is designed to protect the pay and status of a senior officer who is holding a post outside the ordinary line against reversion to his parent cadre. The principle of NBR is not applicable in ^a case where it is intended to attain a higher level outside the regular line.

The learned counsel for the applicant laid great stress on the fact that the applicant was drawing pay in IRCON as admissible to him in the parent department plus deputation (duty) allowance and therefore the claim of the applicant is justified. The applicant was, however, doing so in accordance with his own option. He had the option to draw pay in the higher scale viz. Rs. 1100-1600 attached

to the post of Deputy Manager, IRCON, under the operation of normal rules, but he did not choose to do so. This, therefore, cannot be a ground for granting him the benefit of NBR. The next plea taken by the learned counsel was that the applicant was not given option to come back to his parent department, in case he was to be denied the benefit of NBR.

We are not persuaded to accept this argument either. The juniors to the applicant were promoted vide order dated 19.6.87 and the Managing Director, IRCON was advised on 19.10.1987 in response to the applicant's representation that the applicant had been considered suitable for adhoc promotion to senior scale and had he remained on the Railway, he would have been promoted to officiate in senior scale on adhoc basis w.e.f. 19.6.1987. A copy of the said letter dated 19.10.1987 was also endorsed to the applicant. If the applicant was desirous of coming back to his parent department he should have made a suitable request to revert him to his parent cadre. On the other hand, he chose to get absorbed in IRCON which event undisputedly took place on 21.11.1988. In fact his right to claim the benefit of NBR existed only if he returned to the parent department. Once he got absorbed in IRCON, his absorption would have led to the termination of his lien in the parent Department, thereby extinguishing his rights in that department of the Railway.

In the above conspectus of the matter, we do not find any merit in the application, which is dismissed with no orders as to costs.


(I.K. Rasgotra) 11/11/88
Member (A)


(Amitav Banerji)
Chairman