

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1809/89 199
T.A. No.

DATE OF DECISION 6-5-97

Shri M.R. Gupta

Petitioner

Shri V.K. Rao

Advocate for the Petitioner(s)

versus

UOI through Secy. M/O Railways Respondent
 and others.

Sh.P.S. Mahendru, learned counsel
 through proxy counsel Sh.D.S. Mahendru

Advocate for the Respondent(s)

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The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble

1. To be referred to the Reporter or not? *yes*

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

Lakshmi Swaminathan
 (Smt. Lakshmi Swaminathan)
 Member (J)

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Central Administrative Tribunal
Principal Bench

O.A. 1809/89

New Delhi this the 6th day of May, 1997

Hon'ble Mrs. Lakshmi Swaminathan, Member(J)

M.R. Gupta,
S/o Shri Lal Chand,
R/o 831 - Type-IV,
New Delhi.

...Applicant.

By Advocate Shri V.K. Rao.

Versus

1. Union of India,
Ministry of Railways,
through Secretary,
Rail Bhawan,
New Delhi.
2. General Manager (P),
Northern Railways,
Ministry of Railways,
Baroda House,
New Delhi.
3. The Secretary,
Ministry of Industries,
Department of Industrial Development,
Udyog Bhawan,
New Delhi.
4. Assistant Controller of Patents & Designs,
Patent Office Branch (Govt. of India),
Municipal Market Building,
IIIrd Floor, Karol Bagh,
New Delhi. ... Respondents.

By Advocate Shri D.S. Mahendru, proxy for Shri P.S. Mahendru,
Counsel.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

This case has been remitted by the Supreme Court by order dated 21.8.1995 (SLP (Civil) No. 9969 of 1993) to examine the applicant's claims on merits. The Supreme Court has held that so long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to the rules and the question of limitation does not arise, excepting on the question of recovery of

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arrears for the past period. In other words, while it was held that with regard to proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action, the other reliefs including the arrears, if any, has to be considered and decided in accordance with law.

2. The brief facts of the case are that the applicant had joined service in the State of Punjab as Demonstrator in the Government Polytechnic in 1967. Thereafter, he had joined the Railway service on 7.7.1978. The applicant has challenged the pay fixation done by the Railways in the order dated 12.8.1985 as being incorrect as it is not in accordance with the FR 22-C (replaced by FR 22(I)(a) (1) - Rule 2018 of N.R.S.N. In the State Government, the applicant was appointed in the pay scale of Rs.700-1200 (revised). According to him in July, 1978, he was receiving basic pay of Rs.800/- plus Rs.50/- special pay as Demonstrator in Government Polytechnic. According to him, his next increment of Rs.30/- in the State Government was due on 1.8.1978. On his selection by respondents 1 and 2, he was offered the post of Senior Chargeman (Mechanical) in July, 1978. Shri V.K. Rao, learned counsel for the applicant, has submitted that the applicant was entitled to the benefit of pay fixation under FR 22(I)(a)(1), i.e. for his pay fixed 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, which in this case would be Rs.30/-. Therefore, he submits that if the applicant had continued in the post of Demonstrator with the State Government, he would have got the basic pay of Rs.830/- + Rs.50/-

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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 which should have been taken into account by the respondents while fixing his pay under Rule 2018 as on 1.8.1978. The learned counsel submits that the respondents have not protected the pay of the applicant while fixing his pay incorrectly, by the impugned order dated 12.8.1985. He further submits that the applicant had also exercised his option within one month of his appointment to have his pay fixed under FR 22(I)(a)(1), previously FR 22-C. He also submits that in the impugned pay fixation order, the respondents have fixed the pay of the applicant as Rs. 610/- w.e.f. 28.2.1979 instead of fixing it from 1.8.1978. The learned counsel has further submitted that the respondents have fixed the applicant's pay in terms of the instructions contained in PS 6447 which is the same as Rule 2018. He submits that Circular No. 6447 issued by the Railway Board refers to certain clarifications regarding application of FR 22-C to State Government servants on appointment to higher posts under the administrative control of Railway Board. ^{He states that} This itself shows that the applicant was appointed to a higher post from the post he held in the State Government when he was selected as Senior Chargeman.

3. The second grievance of the applicant is that he has not been considered for promotion to the post of Foreman Diesel when his junior Shri Avtar Singh was promoted to this post initially on ad hoc basis w.e.f. November, 1981 and later regularised from that date. The applicant

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has submitted that both he and Shri Avtar Singh were working in the Railways i.e. Delhi Division and the applicant was transferred to Ludhiana only in January, 1982. He, therefore, claims that he being senior to Shri Avtar Singh should have been considered for promotion in 1981 ~~instead~~ ~~By XXXXXXXXX~~ and the respondents having failed to do so he should not be penalised. He, therefore, claims that he should be treated as promoted to the post of Foreman Diesel w.e.f. 21.11.1981 in the pay scale of Rs.700-900 with all consequential benefits including payment of arrears of pay and pay fixation.

4. The respondents have filed their reply and Shri D.S. Mahendru, learned proxy counsel for the respondents has also been heard. The respondents have submitted that they have correctly fixed the pay of the applicant when he was appointed through the Railway Service Commission as Senior Chargeman in 1978. The details of the pay fixation have been given in para. 4 of the reply. They have also submitted that the fixation has been done as per the instructions contained in P.S. 6447 in grade Rs.550-750= 620+42% D.A. (260/-) = Rs.880/-. They have further submitted that since his pay had to be fixed at par with the pay he was drawing in the State Government at Rs.850/- p.m. he had to be fixed at the stage of Rs.610/- + 42% D.A. which was equal to Rs.866/-. The learned counsel for the respondents has also produced the photo copy of the service record of the applicant in which it has been stated that he was appointed on 7.7.1978 and posted as Senior Mechanical Chargeman in the grade of Rs.550-750. Shri D.S. Mahenderu, learned proxy counsel, has submitted that

the applicant's pay has been correctly fixed in terms of FR 22(I)(a)(2) as the new post did not involve the assumption of duties and responsibilities of greater importance. It may, however, be added here that the respondents have nowhere explained as to how they have fixed the pay of the applicant at Rs.610/- in the scale of Rs.550-750 w.e.f. 28.2.1979 when they had themselves admitted that he had joined the railway service on 7.7.1978. With regard to the ad hoc promotion given to Shri Avtar Singh in 1981, the respondents have submitted that there was a change of division and as the applicant was not interested at that time, Shri Avtar Singh, who was in Delhi division, was given promotion, whereas the applicant was in Ferozepur division. As mentioned above, this fact has been denied by the applicant who claims that both of them were in the same division at the relevant time in 1981. The respondents have submitted that after Shri Avtar Singh was appointed as Foreman Diesel on ad hoc basis in 1981 he was regularised in that post on the basis of the modified selection as per the orders of the Railway Board in 1984. They have also submitted that the applicant did not represent against the ad hoc promotion of Shri Avtar Singh in 1981 or thereafter till 1989 because it involved the change of division as the applicant was working in Ferozepur division and the ad hoc promotion given to Shri Avtar Singh was in Delhi division. It is relevant to mention here that the applicant has not given any reason for condonation of the delay in agitating the matter regarding promotion. In the circumstances, the respondents have submitted that the applicant's claim for refixation of his pay is not tenable. These facts, however, have been denied

by the applicant who has submitted that Shri Avtar Singh and he were in the same Delhi division in 1981 and his claim for promotion has been wrongly overlooked by the respondents.

5. I have carefully considered the pleadings and lengthy submissions of both the learned counsel.

6. In the impugned order fixing the pay of the applicant dated 12.8.1985 the respondents have stated that his pay has been fixed at par with his pay in the State Government i.e. Rs.850/- p.m. in grade Rs.550-750. On this calculation, they have submitted that he has been fixed at the stage of Rs.610+42% D.A which is equivalent to Rs.866/- and that he will earn annual increment as Senior Chargeman (Mech.) in the grade of Rs.550-750 showing Rs.610/- w.e.f. 28.2.1979. The learned proxy counsel for the respondents was unable to explain as to how the date of 28.2.1979 has been taken in fixing the pay of the applicant at Rs.610/- in the scale of Rs.550-750. Admittedly, it is seen from the photo copy of the service record of the applicant submitted by the respondents that the applicant has been appointed on 7.7.1978. If so, the fixation of the applicant's pay at Rs.610/- w.e.f. 28.2.1979, neither supported by any documents nor the rules is, therefore, untenable. The subsequent fixation of the applicant's pay at Rs.630/- w.e.f. 1.2.1980, Rs.650/- w.e.f. 1.2.1981 and so on, and Rs.700/- w.e.f. 1.2.1983 shows that the respondents have taken the date of annual increment from 1980 as the first of February whereas in 1979 the date is shown as the end of February. These varying dates have also not even been attempted to be explained by the respondents in their reply and the consequential fixation of the applicant's pay cannot be supported.

7. Another factum mentioned by the respondents as the basis for their calculation and fixation of the applicant's pay which is also strongly relied upon by the applicant is the instructions contained in PS 6447. These instructions issued by the Railway Board deal with the fixation of pay under the administrative control of the Ministry of Railways. In particular, reference has been made to the Railway Board's letter dated 2.12.1966 regarding application of FR 22-C to State Government servants on appointment to higher posts under the administrative control of the Railway Board. The clarification given in this circular is with regard to the term 'basic pay only' which would mean the basic pay in the State Scales after first revision on the pattern of the recommendations of the second Pay Commission for Central Government employees and not the basic pay after the second or subsequent revisions of the State Scales, if any. The circular no doubt refers to the application of FR 22-C, revised FR 22(I)(a)(1), when a State Government employee is appointed to a higher post under the administrative control of the respondents. There is force in the submissions made by the learned counsel for the applicant that when admittedly the respondents have applied the principles enunciated in Circular No. 6447 to the applicant's case in fixation of his pay on his appointment from State Government to the post under them, then it would mean that the post of Senior Chargeman is a higher post. FR 22(I)(a) provides the method of fixation of the initial pay of a Government servant who is appointed to a post ~~carrying executive work~~.

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carrying duties and responsibilities of greater importance than those attaching to the post held by him earlier which includes fixation of his initial pay in the time scale of the higher post at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty five only, whichever is more. According to the applicant, he has also exercised the option provided under this sub-section within the prescribed time limit to have his pay fixed under this Rule from the date of his appointment with the respondents. The respondents have, however, denied that the applicant is entitled to the increment in the lower post held by him with the State Government which is, therefore, contrary to the provisions of FR 22(I)(a)(1). In the facts and circumstances of the case, therefore, the applicant is entitled for refixation of his initial pay from the date of his appointment with the respondents on 7.7.1978 in accordance with the provisions of FR 22(I)(a)(1).

8. Regarding the second claim of the applicant for promotion as Foreman Diesel w.e.f. November, 1981 when he claims that his junior Shri Avtar Singh was promoted, it is seen that neither of the parties has placed any material on record to arrive at the conclusion whether these two persons were or were not working in the same division, namely, Delhi division at that time. This is a question of fact which is in controversy. However, it is seen that Shri Avtar Singh has been promoted to the post of Foreman Diesel only on ad hoc basis w.e.f. 21.11.1981 from which date the applicant also claims that he should be promoted as Foreman Diesel and be given arrears and other consequential benefits. The respondents have

also submitted that later he was regularised by selection in accordance with the modified instructions for selection in 1984. The respondents have submitted that by these instructions, the mode of selection had been modified and instead of written test and viva voce test, the same was done by scrutiny of confidential reports and record of service. The applicant has himself stated that he was also selected and promoted as Foreman Diesel in the DPC meeting held in 1983 w.e.f. 8.7.1983.

9. The Supreme Court in the order dated 21.8.1995 (supra) has held as follows:

"...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 period. In other words, the appellant's claim, if any, for 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 reliefs claimed 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".

10. From the above, it is seen that the Supreme Court has left open the question of relief relating to promotion, etc. which would be subject to the defence of laches and delay which would disentitle the applicant to those reliefs.

The O.A. has been filed in September, 1989 after considerable delay which has not at all been satisfactorily explained. If the applicant was aggrieved by the promotion of his junior Shri Avtar Singh w.e.f. November, 1981 on the basis of which he claims that he should also be promoted, he should have agitated this matter well in time in the appropriate forum. As observed by the Supreme Court quoted above, the consequential relief claimed by him for refixation of his pay on promotion in 1981 is squarely barred by delay, laches and limitation. It is also relevant to note that as the applicant claims that he ought to have been promoted as Foreman Diesel w.e.f. 21.11.1981, then the cause of action has also arisen more than three years prior to the constitution of this Tribunal under the Administrative Tribunals Act, 1985 and it is also barred under Section 21 of the Act. Therefore, applicant's claim for promotion with consequential benefits of refixation of his pay relating to the promotion of Shri Avtar Singh with effect from 1981 is rejected on the grounds of being barred by limitation and jurisdiction.

11. The learned counsel for the applicant has also made a submission that the respondents may be directed to complete the applicant's service record and transfer the Provident Fund to the present employer, i.e. Respondent 4. With regard to this claim, the respondents have submitted a letter dated 24.5.1996 issued by Respondent 4. This letter refers to an amount of Rs.5525/- as the balance of PF amount of the applicant which was transferred only on 20.2.1992 to them on which the interest is also payable along with the principal amount of Rs.5525/-. The respondents 1 and 2 are directed to transfer the due amounts

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and settle this issue with Respondent 4 in accordance with the rules and instructions expeditiously, and in any case within three months from the date of receipt of a copy of this order.

12. In the result, this application is partly allowed regarding refixation of the applicant's pay on his joining the services of Respondents 1 and 2 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 respondents are directed to refix the pay accordingly within three months from the date of receipt of a copy of this order. However, the claim for arrears of difference of pay on such refixation will be w.e.f. 1.12.1989 i.e. three months from the date of filing of this application. The claim for promotion as Foreman Diesel w.e.f. November, 1981 with consequential benefits is rejected.

In the facts and circumstances of the case, the claim for interest on the arrears amount does not appear to be justified and it is rejected.

13. The Original Application succeeds as given in paragraphs 11 and 12 above. No order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member(J)

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