

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.2220/89

NEW DELHI THIS THE 6TH DAY OF JUNE, 1994.

MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN(J)
MR.B.N.DHOUNDIYAL, MEMBER(A)

Shri Raj Kumar Pathak
Assistant Superintendent
Northern Railway
S/o Shri Nek Ram Pathak
R/o Village & P.O.Rudayan(Sasni)
Distt.Aligarh.

....
APPLICANT

BY ADVOCATE SHRI B.S.MAINEE.

Union of India through vs.
1. The Secretary,
Ministry of Railways(Railway Board)
Rail Bhavan,Raisina Road,
New Delhi.
2. The General Manager
Northern Railway,
Baroda House
New Delhi.
3. The General Manager
Railway Electrification,
Central Organisation,
Allahabad(U.P.)

....
RESPONDENTS

BY ADVOCATE SHRI I.C.SUDHIR.

ORDER(ORAL)

JUSTICE S.K.DHAON:

The respondents in this OA have been duly served. Despite repeated opportunities, they failed to file any counter-affidavit. On 6.6.1990, the respondents were represented by a counsel. The counsel for the respondents prayed for and was granted four weeks to file a counter-affidavit. This Tribunal made it clear that that was ~~the~~ ^{the} last opportunity to the respondents. It was also clarified that if they failed to file the counter-affidavit within the time specified, they will forfeit their right to file the same.

2. Shri I.C.Sudhir, counsel, who appears on behalf of the respondents, states that some time in April, 1990, a counter-affidavit had been filed on behalf of the respondents. No such an affidavit is to be found on record. Probably there is some misconception in the mind of the respondents as is clear from the order dated 6.6.1990 passed by this Tribunal, referred to above. If the counter-

affidavit had been filed sometime in April, 1990, we fail to understand why the learned counsel (Sh. S. N. Sikka), who then represented the respondents, prayed for four weeks on their behalf to file a counter-affidavit, on 6.6.1990.

3. In the absence of any counter-affidavit, the averments made in the OA ~~are~~ ought to be accepted as correct. The material averments are these. The applicant was appointed as Lower Division Clerk in Jagadhri Workshop, Northern Railway. He was transferred to the Railway Electrification, Northern Railway, Aligarh vide order dated 13.2.1973. Since he was working in a project in the Railway Electrification, he retained his lien in his parent department, namely the Jagadhri Workshop. The report of the Third Pay Commission was implemented from 1.1.1973.

4. On 22.2.1984, the Chief Engineer/RE, Allahabad issued a letter, the subject of which was "Railway Services (Revised Pay) Rules 1973-Fixation of pay of Employees who opt for the revised scale of pay from a date subsequent to 1.1.1973." In the said letter there was a reference to the letter No. PCIII/77/RDP-2-22 dated 2.6.1984 issued by the Additional Director, Pay Commission, Railway Board which was circulated amongst all concerned. The subject of this letter is the same as that of letter dated 22.2.1984. The substance of the said letter of the Railway Board dated 2.6.1984, as material, is that the President is pleased to decide that the pay of Railway employees who opt to come over to the revised scales of pay from a date not later than 31.12.1979 in respect of posts held by them on 1.1.1973 may also be fixed under the provisions of Rule 7 of the Railway Services (Revised Pay) Rules, 1973. The employees who want their pay to be fixed in the revised scales from a date not later than 31.12.1979 may be allowed time upto two months from the date of circulation of this decision (by you) to indicate their option in regard to the date from which they want their pay to be fixed in the revised scales. However, the pay of the employees

who exercised their option for the revised scales with effect from any date subsequent to 31.12.1979 shall be fixed in those scales under Rule 9 of the Rules.

5. The applicant's specific case is that the decision of the President was not carried out, in so far as the decision, as conveyed in para 3 of the aforesaid letter of the Railway Board dated 2.6.1984, was not circulated. In any case, the applicant did not acquire any knowledge of the circular. This statement of the applicant has been corroborated by the documents filed in this OA. We may refer to one of them. That is the letter dated 21.1.1988 issued by an officer of the Railway Electrification. The subject of this letter is "Railway Services(Revised Pay) Rules 1973-Fixation of pay of employees who opt for the revised scale of pay from a date subsequent to 1.1.1973." In this letter, it is admitted that the circular was not circulated "in this unit". This expression in the inverted commas indicates that the unit referred to is the unit where the applicant was working. It is also stated in this letter that consequent upon the non-circulation of the circular, the applicant could not gain advantage to opt for refixation of his pay. This resulted in fixation of pay at lower stage whereas he could have got his pay refixed at higher stage. The non-circulation of Railway Board's letter dated 2.6.1984 is an administrative error.

6. The learned counsel for the respondents has orally stated at the Bar that the circular was published through the official ~~Railway~~ gazette. However, he is not in a position to place the same before us. Assuming that the publication took place in the official gazette, that could not fulfil the requirements of the President's decision as conveyed in para 3 of the Railway Board's letter dated 2.6.1984. The idea of the President was that everyone should get due opportunity or a reasonable

.4.

opportunity to make up his mind whether he would opt or not for the revised pay scale. An opportunity was surely not given to the applicant as admitted by the respondents in their letter dated 21.1.1988. It is well-settled that no one should be allowed to suffer for the fault of the third party. Had the applicant been afforded an opportunity, he would have surely opted for the revised pay scale thereby making a substantial financial gain. We are informed that the applicant has retired from service during the pendency of this O.A. This is rather unfortunate.

7. The respondents, it appears, have taken the stand that the power of extension lies with the Railway Board and, therefore, the applicant should approach that Board for seeking an extension. In our opinion, the question of seeking any extension on the part of the applicant does not arise. Under the President's decision, he acquired a legal right to give his option. We have already indicated that he was deprived of the said right for no fault of his. The injury occurred to him when the respondents failed to publish the circular so as to reach him.

8. We direct the authority concerned to permit the applicant to exercise his option now. He shall do so within a period of one month from today. If that is done, whatever financial benefits accrue to the applicant, shall be paid to him within a period of six months from the date of the exercise of option.

9. Necessary changes may have to be effected in the pensionary benefits which shall be payable to him. This shall also be done.

10. With these directions, this O.A. is disposed

of. There shall be no order as to costs.

B.N.D.S.

(B.N.DHOUNDIYAL)
MEMBER (A)

S.K.D.

(S.K.DHAON)
VICE-CHAIRMAN (J)

SNS