

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A. NO. 449/1989.

DATE OF DECISION: 3-12-89

Shri Ruderasy Sharma ... Applicant.

Versus

Union of India through
General Manager,
Northern Railway and Ors. ... Respondents.

CORAM:

THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.
THE HON'BLE MR. B.N. DHUNDIYAL, MEMBER(A).

For the Applicant. ... Shri R.L. Sethi,
Counsel.

For the Respondents. ... Shri O.N. Moolri,
Counsel.

(Judgement of the Bench delivered by
Hon'ble Mr. Justice Amitav Banerji, Chairman)

This O.A. has been filed by the applicant, Shri Ruderasy Sharma for refixing his pension on the basis of the promotion ordered by the competent authority on 14.1.1986 and, secondly, for leave encashment for 240 days. The applicant claimed that he had been inducted in the Railway Service as a Luggage Porter in Northern Railway at Delhi Main on 27.9.1949. He had been promoted as Goods Marker and then as Booking Clerk Grade-I and finally as Booking Clerk Grade-II (i.e. Head Booking Clerk in the scale of Rs.1200-2040). He retired from service w.e.f. 31.5.1987. His grievance is that although he had been correctly designated as Head Booking Clerk, his pension was calculated on the basis of his substantive appointment of Booking Clerk Grade-1 and he was denied benefit of promotion to the post of Booking Clerk Gd-II (Head Booking Clerk).

ordered by respondent No.1 vide letter dated 14.1.1986.

He also stated that he had been likewise denied the benefit of leave encashment admissible and due on the accumulation of 240 days leave on average pay. Since his prayer had failed, the applicant had served through his counsel legal notice dated 31.8.1988 under Section 80 C.P.C. on the respondents.

Nothing has been heard from them.

In the reply to the O.A., the respondents have taken the stand that the applicant was promoted to the post of Senior Booking Clerk Grade Rs.1200-2040 vide letter dated 1.4.1987 (Annexure R-I) and that he retired as Senior Booking Clerk and not as Head Booking Clerk. The applicant was promoted only a month before his retirement to the post of senior Booking clerk vide letter dated 1.4.1987 and he retired on 31.5.1987 and did not shoulder higher responsibility in higher grade. Secondly, the pension is calculated on the basis of last ten months' average pay drawn by the employee prior to his retirement and not on the basis of grade as alleged. In the matter of encashment of leave, it was urged that the applicant did not have any leave at his credit at the time of his retirement, and in support thereof, leave account of the applicant was filed. On the above basis, it was stated that claim of the applicant was misconceived and was liable to be rejected.

We have heard learned counsel for the parties.

The applicant was given promotion on 1.4.1987 to the post of Senior Booking Clerk vide order of the D.P.O. Annexure R-I to the reply shows that 1 Booking Clerks including the

applicant in the grade of Rs.260-430 were appointed to officiate in Grade of Rs.330-560 (RS). The applicant, however, claim that he is entitled to the pay scale of Rs.1200-2040 from 14.1.1986 and he be paid salary and allowances as admissible for that post from 14.1.1986 to 31.5.1987.

There is thus dispute as to the date from which the applicant was promoted to the post of Senior Booking Clerk in the grade of Rs.1200-2040. No material has been produced by the applicant to show that he had been promoted on 14.1.1986. The respondents have on the contrary produced exhibit Annexure R-I along with the written statement to show that he was promoted with effect from 1.4.1987 along with many others.

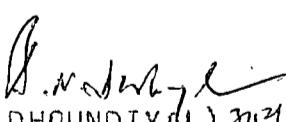
On behalf of the applicant it was, however, stated that even in the letter dated 24.11.1987 sent by the Asstt. Divisional Accounts Officer, Northern Railway, New Delhi to the Manager, Punjab National Bank, Ghaziabad, copy of which was endorsed to him, the applicant's designation has been mentioned as ex H.B.C., i.e., Head Booking Clerk.

Learned counsel for the applicant stressed that if the original record was summoned then this will be evident. The burden was on the applicant to assert and to prove that he was promoted on a particular date. His assertion is there but the proof is not there. The respondents on the other hand has denied the promotion on 14.1.1986 and they have produced a paper which shows that promotion took place on 1.4.1987. The applicant has not been able to produce any order dated 14.1.1986.

It is a question of fact and we are satisfied from the material on the record before us that the applicant was promoted with effect from 1.4.1987. Consequently, his claim for refixing his pay etc. with effect from 14.1.1986 as Head Booking Clerk and to pay him accordingly is not tenable.

On the question of leave encashment, the respondents' stand is that the applicant has no leave at his credit and, therefore, there was no question of any encashment. In support thereof the respondents have filed the leave account of the applicant. It does not show any balance at his credit. The leave account - Annexure R-2 shows that no leave on average pay was due to him upto 29.3.1987. The column in respect of leave of Half Average Pay showed 23 days leave but that is not encashable under the Rules. Consequently, the applicant's stand that he was entitled to leave encashment is also not tenable.

In view of the above, we are not satisfied that any case has been made out for grant of any of the reliefs prayed for by the applicant. The O.A. is dismissed but there will be no order as to costs.


(B.N. DHOUNDIYAL) M.A.,
MEMBER (A)


(AMITAV BANERJI)
CHAIRMAN