

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.333/88

DATE OF DECISION:08-05-1992.

LALIT CHAND JAITLEY

...APPLICANT

VERSUS

UNION OF INDIA

...RESPONDENTS

CORAM:-

THE HON'BLE MR. P.K. KARTHA, VICE-CHAIRMAN(J)

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

FOR THE APPLICANT

SHRI B.S. MAINEE, COUNSEL.

FOR THE RESPONDENTS

SHRI INDERJIT SHARMA, COUNSEL.

- 1. Whether Reporters of Local Papers may be allowed to see the Judgement? *Yes*
- 2. To be referred to the Reporter or not? *Yes*

I.K. Rasgotra

(I.K. RASGOTRA)

MEMBER(A)

P.K. Kartha
8/5/92

(P.K. KARTHA)

VICE-CHAIRMAN

May 8, 1992.

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

Shri Lalit Chand Jaitly, in this Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985, has challenged the orders of the respondents dated 26.06.1987, revising his pay from Rs.2975/- to Rs.2750/- w.e.f. 4.6.1986 retrospectively vide pay slip dated 26.6.1987 and ordering the necessary recovery on account of over payment from the applicant.

2. The case of the applicant briefly is that he was appointed as Lower Division Clerk (LDC) on Northern Railway w.e.f. 10.10.1952. At about the same time, the Railway Board was in need of strengthening its own clerical cadre and under its Reorganisation Scheme the Board decided to fill up 75% vacancies of the LDCs through direct recruitment and remaining 25% after holding written test followed by interview. The selection ^{was to be held} from amongst the LDCs on the various Railways Zones, having not less than three years working experience of the Railways. The applicant was accordingly selected against 25% quota and appointed as LDC in the Railway Board's office w.e.f. 16.2.1957. The successful candidates

against 25% quota were allowed to retain their lien on their parent Railways till they were finally absorbed and confirmed in the Railway Board's office and were consequently allowed the benefit of proforma promotions on the parent Railways under the Next Below Rule (NBR). The applicant was later promoted and confirmed as Upper Division Clerk (UDC) Rs.330-560 w.e.f. 1.4.1956 on Northern Railway. The benefit of this promotion under NBR was given to the applicant till 30.6.1966 when the applicant alongwith 5 other similarly placed persons was relieved from Railway Board's office to report to the Northern Railway. Since about 40 other persons similarly placed, who are said to be junior to the applicant were continued in the Railway Board's office under identical circumstances, the applicant and 5 others filed a Civil Writ Petition No.569-D/66 in Delhi High Court, challenging the said order of transfer. The Delhi High Court in its judgement dated 30.7.1991 made the following order:-

"As persons on deputation to the Railway Board could not claim any right to remain in the office of the Railway Board the orders of reversion cannot be considered to be invalid. The Railway Board has, however, no objection to cancel the orders of reversion if the petitioners concerned forego their right under the Next Below rule. They have agreed to that. It is therefore expected that after the petitioners concerned give it in writing that they have foregone their rights under the Next Below Rule, the orders of their reversion could be cancelled. It would of course be proper and equitable to even allow these petitioners the benefit of N.B.R. if any other employee in the same position as the said petitioners are allowed to continue to have the benefit of the Next Below Rule. That would also avoid discrimination."

3. The applicant was thus taken back in the Railway Board's office on 7.11.1972 and was to be allowed the benefit of NBR, if granted to any other employee "in the same position as the said petitioners...." The applicant submits that even after Delhi High Court's orders the Railway Board allowed the benefit of NBR in a number of cases. The applicant was empanelled and promoted as Assistants with original seniority w.e.f. 22.1.1973. He was thereafter promoted in the Railway Board's office from the Assistant Grade (Rs.425-800) to Section Officer (Accounts) Rs.550-900 w.e.f. 30.9.1977 and his pay in that grade was fixed at Rs.750/- w.e.f. 2.1.1978 on the basis of the pay of Rs.700/- drawn by him as Assistant. His promotion as Section Officer (Accounts) was from the panel prepared from Assistants etc. who had qualified amongst those who in the Appendix IIIA examination from /were exclusively working in the Railway Board's office. It is, therefore, apparent that his pay was not fixed with reference to his presumptive pay as UDC - the post which he had held at that time on the Northern Railway. Thereafter the applicant was allowed selection grade (Rs.775-1000) in the Railway Board's office as Section Officer (Accounts) from 1.1.1984 and his pay was fixed at Rs.920/- on that date, on the basis of his pay of Rs.900/-, drawn as Section Officer (Accounts). Thereafter he was promoted as Assistant Accounts Officer (AAO) in the Railway Board's office w.e.f. 4.6.1986 in the grade of Rs.840-1200 and his pay as AAO was fixed at Rs.1,080/- reckoning his pay at Rs.1,000/- drawn as Section Officer (Accounts) in the selection grade of Rs.775-1000, which was revised in the Fourth Central Pay Commission scales of pay to Rs.2735-3500 at the stage of Rs.2,975/- vide order dated 31.10.1986 (page 24 of the paperbook). The applicant retired from service on superannuation on

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11

30.6.1987 when he was drawing pay at Rs.3,050/-. As observed earlier, his grievance now is that his pay has been retrospectively revised and fixed at Rs.2,750/- as on 4.6.1986 and Rs.2,825/- as on 1.6.1987. The respondents also deducted Rs.3,065/- from his settlement dues towards recovery of alleged over payment for the period 4.6.1987 to 30.6.1987. He further alleges that consequent to the re-fixation of pay during the last 10 years, the respondents have illegally withheld an amount of Rs.5,000/- from his leave encashment, without giving him any opportunity or giving any show cause notice. The applicant contends that he was substantively appointed in the Railway Board's office w.e.f. 1.11.1982 vide order dated 11.6.1985 (page 25 of the paperbook). His name figures in the said order at srl.No.27 and his date of confirmation as Assistant is indicated as 1.11.1982. Further his name appears in the seniority list at srl.No.238 of permanent Assistants of the Railway Board, issued as on 1.3.1986. To further substantiate that he belongs to the Railway Board's staff, he submits that he was allowed to appear in the Combined Limited Departmental Competitive Examination (Rs.650-1200) held by Union Public Service Commission (UPSC) in 1979, by virtue of his being a confirmed Assistant in the Railway Board Secretariat Service. Further, although the applicant was empanelled and promoted as AAO on Northern Railway he was not allowed to join and he was promoted as AAO in the Railway Board's office w.e.f. 4.6.1986 on the basis of the recommendations of the Departmental Promotion Committee (DPC) held in early 1986 in the Railway Board's office and his pay fixed according to the pay drawn by him in his lower post in the office of Railway Board. He retired from service after attaining the age of superannuation on 30.6.1987 from the office of the Railway

2

(12)

Board. He has prayed for the following reliefs:-

- i) That the Hon'ble Tribunal may be pleased to quash the order reducing the pay of the Applicant from Rs.3,050/- to Rs.2,835/- and direct the Respondents to refund the amounts deducted and withheld from the retirement dues of the Applicant.
- ii) That this Hon'ble Tribunal may be further pleased to direct the Respondents to determine the pension and other pensionary benefits as also leave-encashment and gratuity on the basis of the pay at which the Applicant has retired i.e. Rs.3,050/- and not Rs.2,285/-.

4. The facts of the case, as brought out above, have not been disputed by the respondents. They, however, contend that the benefit of NBR cannot be continued indefinitely. The applicant had enjoyed that benefit for a period of 6 years. The question of NBR, however, is not relevant at this point of time, as this matter had already been decided by the Delhi High Court vide their order dated 30.7.1971. The respondents vide paragraph 10 of their counter-affidavit have not denied that the benefit of NBR was allowed to other employees who were in the same position, as the applicant herein after the judgement of the Delhi High Court.

5. The applicant has filed a rejoinder.

6. We have heard the learned counsel Shri B.S. Mainee for the applicant and Shri Inderjit Sharma for the respondents. It is clear that the pay of the applicant has been fixed from time to time in accordance with the post held by him in the Railway Board, as has been explained by the applicant step-by-step, nor there has

2

been any specific denial from the respondents that the applicant was an employee of the Railway Board after he had been absorbed and confirmed there. In the circumstances it is of no consequence if the Northern Railway continued to maintain the lien of the applicant on their cadre. In fact once the applicant had been selected and appointed in the Railway Board his lien should have been suspended and finally terminated when he was confirmed in the Railway Board. In that view of the matter, the pay of the applicant fixed in the Railway Board from time to time as Section Officer (Accounts) selection grade and AAO cannot be questioned. The pay of the applicant cannot be revised downwards merely because the Northern Railway maintained his lien on its cadre for no rhyme or reason. We also find that the applicant was not given any opportunity to defend his case before the recovery on account of alleged over payment was ordered in violation of the principles of Natural Justice. In this view of the matter, we allow the Application and quash the pay slip No.86/PAO/RB/B/L.C.Jaitly dated 26.6.1987, ordering recovery of the alleged over payment. We further order and direct that the applicant's pension and other pensionary benefits including leave encashment shall be allowed as per the pay/emoluments actually drawn by him in accordance with the Rules. We further direct that the respondents shall implement this order most expeditiously but preferably within 16 weeks from the date of communication of this order.

There will be no order as to costs.

I. K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A) 8/5/92

P. K. Kartha
(P.K. KARTHA)
VICE-CHAIRMAN(J) 8/5/92

May 8, 1992.