

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

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O.A. No. 9/1988
~~XXXXXX~~

~~XXXX~~

DATE OF DECISION 7.12.1990

G.S. Kang	Petitioner
J.C. Singhal	Advocate for the Petitioner(s)
Versus	
Union of India through Secretary, Railway Board and Others	Respondent
P.H. Ramchandani	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. S.P. Mukerji, Vice Chairman

The Hon'ble Mr. T.S. Oberoi, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*

ORDER

(Hon'ble Shri S.P. Mukerji, Vice Chairman)

In this application dated 4th January, 1988 filed under Section 19 of the Administrative Tribunals Act, the applicant who retired from the Railway service on 31.12.85 after holding the charge of the newly established Rail Coach Factory, Kapurthala has prayed that for holding the charge of that Coach Factory as Officer on Special Duty from 18.9.85, he should be given the grade of the post as sanctioned in the Ministry of Railway's letter of 8.8.85 at Annexure.A.5 ie., Rs.3000-100-3500 till his superannuation on 31.12.87 and his retiral benefits should be refixed on that basis. The brief facts of the case are as follows:

2. The applicant was appointed as Assistant Mechanical Engineer, Class I with effect from 1.8.53 and after a distinguished career in the Railways was selected for the post of Officer on Special Duty for setting up the Rail Coach Factory at Kapurthala. The grievance of the applicant is that even ^{though} ~~if~~ the post was created in the scale of General Manager ie., Rs. 3000-3500 which was revised to the scale of Rs. 7300-8000, in ~~the~~ impugned order at Annexure.A.1 dated 18.9.85 he was appointed to the post on a fixed pay of Rs. 3000 per month and was given the ^{corresponding} revised scale of Rs. 7300-7600 after 1.1.86. According to him, officers senior to him and borne ^{on} the panel of General Manager were promoted as General Managers with effect from 1.1.86 but he was continued in the lower grade even though the responsibilities, duties and financial powers that he enjoyed as O.S.D. were the same and ^{sometimes} have been more than ^{those} of the General Manager. According to him he was given verbal assurance that he will be given the grade of the General Manager but ^{in spite} ~~in view~~ of his brilliant performance as O.S.D. as a result of which the tight deadline for the Coach Factory to go into production was ^{met} ~~made~~, his representation which he submitted on 28.10.87 (Annexure.8) was rejected by the Railway Board in their letter dated 18.12.87 (Annexure.A.2) in a very summary fashion. The applicant has compared the charge of the Kapurthala Coach Factory ^{with} that other Railway production

units at Annexure.A.4 to indicate that in spite of his heavier charge in Kapurthala, he was given a lower grade of Rs. 3000 while in other units of similar ^{or lighter} charges the Heads of those units were given the grade of General Manager. His further contention is that by the principle of equal pay for equal work he is entitled to the sanctioned grade of Rs. 3000-3500 (revised to Rs.7300-8000 from 1.1.86) against the post of O.S.D. held by him.

3. The respondents have indicated that having accepted the posting as O.S.D. with a fixed pay of Rs. 3,000/- as at Annexure.A.1 he is estopped from claiming higher pay retrospectively. According to them the applicant ^{deliberately} waited till the fag end of his career and submitted a representation on 28.10.87 just two months before his superannuation as he was afraid that if he had represented earlier he would have been shifted from the post. They have also indicated that the applicant was considered but was not selected for appointment as General Manager by the competent authority which further decided "that the applicant should be allowed no increments in the grade Rs.7300-200-^(revised) 7500-250-8000/till his seniors are appointed to that grade" and "that he should be allowed increments in the grade Rs. 3000-3500 since revised to Rs.7300-200-7500-250-8000 only after his seniors have been appointed to that grade". There-
fore, Shri Satish Behl who was senior to the applicant

was appointed as General Manager with effect from 1.11.1987. The respondents have denied any verbal assurance given to the applicant and have stated that the achievement in the Rail Coach Factory cannot be attributed only to the applicant in his individual capacity.

4. In his rejoinder, the applicant has stated that Government cannot justify the wrong committed against him by stating that the applicant had not protested. The applicant is not demanding that he should be posted as General Manager but be given the sanctioned pay of O.S.D, which he was holding. He has further argued that the respondents' stand that it was decided not to give any increment to the applicant in the grade of Rs.3000-3500~~0~~ or Rs.7300-8000 till his seniors are appointed to that grade is illegal as stoppage of increments is a penalty under the Discipline and Appeal Rules and cannot be imposed without following the prescribed procedure. By ^{violating} ~~following~~ the principle of equal pay for equal work on the ground that his seniors have not been given the grade to which the applicant was appointed, the respondents' stand is unconstitutional and illegal.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. It is admitted that the applicant was appointed to the post of Officer on Special Duty which

is the same as was created^{at}/Annexure-A.5 in the scale of Rs. 3000-3500. Accordingly, it is the statutory and constitutional right of the applicant to be given that scale of pay and revised scale corresponding to that pay scale with effect from 1.1.86. The respondents have taken the stand that the competent authority decided that the applicant should not be allowed increments ⁱⁿ ~~for~~ the unrevised scale of Rs. 3000-3500 and the revised scale of Rs. 7300-8000 so long as his seniors are not appointed to that grade. The respondents have not indicated anything documentary or otherwise to show that the post of O.S.D. in the scale of Rs. 3000-3500 was down-graded to that in the fixed scale of Rs. 3000 so long as it is held by the applicant. The stand taken by them is that the post held by the applicant continued in the scale of Rs. 3000-3500 till 31.12.85 and carried revised pay scale of Rs. 7300-8000 but the applicant was not given any increment because his seniors had not been appointed to that grade. This stand is profoundly illegal and indefensible. The incumbent to ^a ~~the~~ post is entitled statutorily to the pay scale of the post inclusive of the periodical increments. These increments are earned after rendering service for ^{the} specified period ^{of} ~~so~~ one^{year} or two years and these increments cannot be denied except by an

order passed as a measure of penalty after going through the procedure laid down in the Discipline and Appeal Rules.

6. The learned counsel for the respondents argued that a conscious decision was taken to allow the fixed pay of Rs. 3000 to the incumbent of the post of O.S.D. till the Coach Factory at Kapurthala goes into production. This argument is not very convincing because the order at Annexure.A.5 creating the post reads as follows:

"Sanction of the Railway Ministry is communicated to the creation of a work-charged post of Officer on Special Duty in the Grade of Rs.3000-100-3500 for a period of two years from the date of operation, chargeable to the Estimate for setting up a new Rail Coach Factory in Punjab."

(emphasis added)

When we remember that this order was issued when the Coach Factory at Kapurthala was still at the drawing board stage and the post was chargeable to the estimate for setting up of the Factory at cost ^{it goes} without saying _{then} that the intention of the aforesaid order was to have the post in the running pay scale with increments even during the period of setting up of the Factory.

7. The learned counsel for the respondents, ^{then} ~~now~~ _{he} ~~over~~ _{he} argued that since the applicant was not senior enough he could not be allowed the running pay scale of Rs. 3000-3500 which is equivalent to that of General Manager. If that was the reason the post should have been down-graded during the tenure of the applicant but nothing in this direction was done. On the other hand the applicant was selected amongst a number of

other competitors as the most suitable person for holding the post. In case the post is to be filled up by selection, seniority is not the determining factor^{for pay} and once a person is selected for the post and the post is not down-graded he is entitled to get the pay and increments attached to the post irrespective of his seniority ~~and~~ untrammelled by the fact ~~that~~ whether any of his seniors are getting similar grade or not.

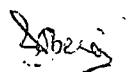
8. We are also not very much impressed by the argument of the respondents that the applicant having accepted the post on a fixed pay of Rs. 3,000 is estopped from claiming the higher grade. The Hon'ble Supreme Court in Sushil Kumar Yadhunath Jha Vs. Union of India and another, AIR 1986 SC 1636 and in State of U.P. and others Vs. J.P. Chaurasia and others, AIR 1989 SC 19 has observed that an employee is not in a bargaining position to protect his basic rights vis-a-vis the Government. Thus, the principle of estoppel cannot be ~~stretched~~ ~~applied~~ against the applicant.

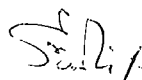
9. In the conspectus of facts and circumstances, we allow the application, set aside the impugned order at Annexure-A.1 in so far as it allows a fixed pay of Rs. 3000/- to the applicant and direct the respondents to re-fix the applicant's pay, allowances and retirement benefits as if he was appointed as Officer on Special Duty, new Rail Coach Factory, Kapurthala on the running

13

-87-

scale of Rs. 3,000-100-3500 till 31.12.85 and Rs.
7300-200-7500-250-8000 with effect from 1.1.1986 till
his superannuation. There will be no order as to
costs.


(T.S. Oberoi)
Member (Judicial)


(S.P. Mukerji)
Vice Chairman

7.12.90

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