

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.1699/87

DATE OF DECISION: 28.1.1992

SHRI PREM SINGH VERMA ...APPLICANT

VERSUS

UNION OF INDIA ...RESPONDENTS

CORAM:

THE HON'BLE MR. JUSTICE RAM PAL SINGH, VICE-CHAIRMAN

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

FOR THE APPLICANT SHRI B.S. MAINEE, COUNSEL.

FOR THE RESPONDENTS SHRI ROMESH GAUTAM, COUNSEL

1. Whether Reporters of the local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? *yes*

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)
28/1/92

Ram Pal Singh
(RAM PAL SINGH)
VICE-CHAIRMAN(J)
28.1.1992

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

Shri Prem Singh Verma has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, assailing the order in terms of which his pay has been reduced from Rs.620 to Rs.580 per month in August, 1986.

2. The undisputed facts of the case are that the applicant was working as Senior Signaller in the grade of Rs.330-560 at Aligarh Junction, Northern Railway when he was awarded the punishment of withholding of increments temporarily for two years without cumulative effect w.e.f.

1.10.1983. During the currency of the penalty the applicant became entitled to promotion from the post of Senior Signaller to the Head Signaller in the pay scale of Rs.425-640 w.e.f. 1.9.1984 in accordance with the Railway Board's order restructuring the cadre.

3. The only issue that emerges for adjudication is whether on expiry of the currency of the penalty of W.I.T. for two years on 1.10.1985, the pay of the applicant should be fixed at Rs.620 per month or should it be at the stage of Rs.580 per month?

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The applicant's contention is that his pay was correctly fixed at Rs.620 p.m. initially in the pay scale of Rs.425-640 as under:-

- | | | |
|-------|-------------------------------------|--------------------------------------|
| i) | Pay on 30.9.1983 | Rs.545.00 |
| (ii) | Increment due on 1.10.1983 | Rs. 15.00 |
| (iii) | Pay on promotion w.e.f.
1.1.1984 | Rs.560 + Rs.15 = Rs.575
(FR 22-C) |
| | Next stage in Gr.
Rs.425-640 | Rs.580.00 |
| (iv) | Pay on 1.1.1985 | Rs.600.000 |
| (v) | Pay on 1.1.1986 | Rs.620.00 |

According to him therefore the pay fixed as on 1.1.1986 at Rs.620 per month was the correct fixation and there was no occasion for the respondents to reduce it to Rs.580 per month. He further submits that his pay was reduced without any notice to him and without issue of any written order. He came to know of the reduction in the pay only when he actually draw the pay for the month of August, 1986. He made a representation to the respondents on 11.9.1986 and followed up by another one on 16.1.1987. He further lodged a complaint with the General Manager, Northern Railway vide his letter dated 12.2.1987. Having failed to elicit any reply from the respondents, he filed this O.A.

By way of relief the applicant prays that the order of the respondents, fixing his pay at Rs.580/- as on 1.10.1985 be quashed and his salary restored to the stage of Rs.620/- w.e.f. 1.1.1986.

4. The stand of the respondents in their counter-affidavit is that the pay of the applicant was fixed wrongly at Rs.620/- w.e.f. 1.1.1986 by allowing him promotion w.e.f. 1.1.1984 and the said mistake when detected was correctly rectified by reducing his salary at Rs.580/- per month w.e.f. 1.10.1985. The respondents

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further state that on receipt of the representation from the applicant, his case was examined and the position is explained in Annexure R-1 (page 26 of the paper book). A perusal of annexure R-1 which is a letter from the Senior D.P.O., Allahabad addressed to the headquarters office, Northern Railway too does not shed any more light as it does not elaborate as to how the pay was to be fixed as on 1.10.1985 in accordance with the rules.

5. We have heard the learned counsel for both the parties and perused the material placed on record carefully. The applicant was admittedly punished for a period of two years whereby his increments were withheld temporarily without cumulative effect. The said penalty was imposed w.e.f. 1.10.1983 - the date on which his increment was due in the pay scale of Rs.330-560. The period of punishment expired on 30.1.1985 and the applicant became entitled to be fixed in the scale of pay as if he had not undergone the punishment of W.I.T. for two years. Since the penalty was not to operate to postpone future increments the applicant is to be fixed notionally at the stage which he would have reached had the said penalty not been imposed on him. In the meantime, the applicant became entitled to promotion w.e.f. 1.1.1984. This promotion was not given effect during the currency of the punishment (Railway Board's letter No.E(D&A)71RG6-23 dated 1.6.1971 and 22.11.1971). After the elapse of period of punishment on 1.10.1985, however, the applicant became entitled to be fixed in the pay scale of Rs.425-640 w.e.f. 1.1.1984 and progressed notionally (without payment of arrears) and fixed in the scale of pay of Rs.425-640 w.e.f. 1.10.1985. The respondents seem to have taken the view that the applicant cannot be promoted w.e.f. 1.1.1984, as he was undergoing punishment at that point of time and that promotion can be allowed only after the currency of the

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punishment expired. This, however, is a view which cannot be sustained. Rule 11 of the CCS (CCA) Rules, 1965 lists the following penalties:

- i) censure;
- (ii) withholding of promotion;
- (iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;
- (iv) withholding of increments of pay;

Withholding of promotion itself is a minor penalty. If alongwith the withholding of increments promotion also is to be withheld it would tantamount to imposition of double penalty and would result in double jeopardy. The respondents' view point, therefore, is not tenable in law. Accordingly, we are of the view that the applicant not only would stand restored to his original position after the currency of the minor penalty of W.I.T. expired but would also be entitled to promotion w.e.f. 1.1.1984 although he would draw the pay in the scale of Rs.425-640 in which he has to be fitted from 1.1.1984 w.e.f. 1.10.1985 only. Further promotion to the higher scale of pay of Rs.425-640 was not a normal promotion but was caused due to restructuring of the cadre leading to bulk upgradation of the posts. In that view of the matter also it will be untenable to deprive the application notional fixation of pay in the higher grade.

Accordingly, we are of the view that the pay of the applicant should have been fixed at Rs.580/- as on 1.1.1984 (as shown in para 3 above) in the scale of Rs.425-640 and at Rs.600/-, on 1.1.1985 and at Rs.620 w.e.f. 1.1.1986 etc. We order accordingly. We further direct that the arrears of pay due to the applicant on account of the fixation of pay, as due, shall be paid to him most expeditiously but

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preferably within 8 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) 28/1/92

Ram Pal Singh
(RAM PAL SINGH)
VICE-CHAIRMAN(J)