

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA No.13/90

DATE OF DECISION: 19.9.1991.

SHRI C.S. ROKDEY

APPLICANT

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS

CORAM:

THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN

FOR THE APPLICANT

SHRI G.D. BHANDARI, COUNSEL

FOR THE RESPONDENTS

SHRI B.K. AGGARWAL, COUNSEL

J U D G E M E N T

This Original Application has been filed by Shri C.S. Rokdey, who is aggrieved that the Northern Railway, where he is currently employed had not fixed his pay properly inasmuch as other employees, similarly placed and situated have all been fixed at a higher scale of pay and have also been paid the arrears of pay etc., under Section 19 of the Administrative Tribunals Act, 1985.

It will be necessary to state the relevant facts which will indicate the cause for the grievance of the applicant.

The applicant was appointed as Assistant Inspector of Works (AIOW) , Western Railway, through Railway Service Commission, Bombay, in the scale of Rs. 205-280(AS) on 7.9.1972. He was declared surplus as AIOW and absorbed in alternative category as clerk in the grade of Rs. 260-400 (AS) from 18th September, 1975 to 2.12.1976 and subsequently sent for Train Examiner (TXR) training from 1.12.1976 to 29.3.1977. By an order dated 24th March, 1977, the applicant with several other surplus AIOWs/IOWs Grade-III, in the grade of Rs. 425-700, working in the alternative category of clerk as well as those who were undergoing training for the post of Appr. TXRs, were directed to be relieved and directed to report to the

GM (P), Northern Railway, Baroda House for their eventual  
Asstt. Permanent Way Inspectors absorption as (APWIs) on Northern Railway. The applicant  
was sent to Northern Railway to be absorbed as apprentice  
PWI in the above grade on 30th March, 1977 and after  
completion of training at Chandausi, to work as PWI Grade-  
III from 7.4.1977 in Bikaner Division. When he joined  
the Bikaner Division, he was given a pay of Rs. 440/-  
per month in absence of service record. His service  
as Clerk in TXR training was not included although it  
was treated as continuous for the purpose of increment.  
The applicant in one of his representations Annexure  
A-19 has stated that he was drawing Rs. 1760/- per month,  
which should have been Rs. 2150/- per month w.e.f. 1.3.1989.

The details are as follows:

DDA	7.9.1972	as AIOW
425/-	1.3.1973	
440/-	1.3.1974	
455/-	1.5.1974	One Advance Increment being loyal to administra- tion during strike of May 1974 worked at H.Qrts. office W.Rly. Churchgate, Bombay.

470/-	1.3.1975
485/-	1.3.1976
500/-	1.3.1977
515/-	1.3.1978
530/-	1.3.1979
545	1.3.1980
560/-	1.3.1981
580/-	1.3.1982
600/-	1.3.1983
620/-	1.3.1984
640/-	1.3.1985

660/-	1.5.1985	Special increment-Vide DPO/ BKN's No.PEN/726 E/Engg. Rokdy dt. 16.9.1985.
1900/-	1.1.1986	
1950/-	1.3.1986	
2000/-	1.3.1987	
2050/-	1.3.1988	
2150/-	1.3.1989	

He also requested that his pay be fixed at Rs. 2000/- p.m. and arrears may also be drawn at an early date. In the same representation, he referred to the case of Shri Lal Lachwani, PWI Grade-III, NDLS and stated that in his case fixation was done by an order dated 20th January, 1984. The applicant has reiterated the same in another representation at Annexure A-21 that his pay has not been properly fixed and he has suffered continuously from 1.3.1975. He further stated that he has been promoted to the scale of Rs. 1600-2600, PWI-Grade-II and had drawn Rs. 1850/- on 1.3.1989. He was actually entitled to draw Rs. 2100/- per month from 1.3.1989. He made several representations but no relief has been granted to him and he has filed this OA and has prayed:

- (a) to direct the respondents to grant pay protection to the applicant in terms of letters dated 6.4.77 (A-6), 29.4.68 (A-7) and 4.6.76 (A-9) as has been done in the case of similarly situated employees (A-18) and further in terms of the statutory provisions and FR 22C, and fix his pay on the basis of last pay drawn as AIOW when he was declared surplus; and
- (b) to direct the respondents to make expeditious payment of arrears, thus accruing with compound penal interest of 18% per annum.

(R)

2. The respondent railways have filed a reply in which it is stated that the applicant had joined Northern Railway from Western railway on transfer. On the basis of particulars furnished now by the applicant, his service record has been reconstructed and sent for vetting and verification to the Western Railway. For this purpose, staff has been specially deputed to complete the job as early as possible. The case of the applicant for pay protection on his absorption in the Northern Railway shall be finalised as soon as the verification by the Western Railway is completed. The facts in paragraph 31 and 32 of the OA are not denied and it is reiterated that as soon as the verification of the record from Western Railway is received, action will be taken and whatever is due to the applicant, in accordance with the rules, will be paid. Two technical pleas were taken - (1) that the cause of action arose within the jurisdiction of the Jodhpur Bench, as the applicant was at Bikaner and could not move the OA without having obtained the permission of the Chairman under Section 25 and (2) the Western Railway has not been made a party.

It is significant to note that this reply was filed on the 29th August, 1990. It is almost a year and there is no further development nor any further instructions to the learned counsel for the respondents has been given to indicate as to what has happened since the filing of the reply. It has also not been stated whether the verification of the information submitted by the applicant has been done or not, nor is it stated by the learned counsel for the respondents that the service record of the applicant from the Western Railway has been received or not. I take it, therefore, that there has been no progress since the filing of the counter affidavit and the position remains where it was on that date.

The respondents have admitted that they have not been able to fix the pay of the applicant in view of the absence of the service record of the applicant, while he was in the Western Railway. The applicant was transferred to the Northern Railway in 1977 and it is rather queer that in the last 14 years the respondents have not been able to lay their hands on the service record of the applicant kept with the Western Railway. It is not denied that similarly placed persons who were also declared surplus and later on absorbed and transferred to the Northern Railway, their pay fixation etc. was completed in 1984. It is, therefore, clear that the respondents have clearly failed to deal with the grievance of the applicant duly and promptly in all these years from 1977.

Shri B.K. Aggarwal, the learned counsel for the respondents stated that the applicant is entitled to his pay protection and fixation of pay but the respondents were helpless in passing an order in the absence of service book of the applicant. A question arises as to how long should an employee await the availability of the service record. He cannot wait indefinitely or till he superannuates. He is entitled to higher pay. He is also entitled to the difference in pay between what was due and the sum paid to him. The respondents have failed to take proper steps in this case and I find the applicant's case acceptable to make the following directions:

- (a) the respondents are directed to fix the pay of the applicant in accordance with the rules within three months from the date of receipt of a copy of this order, regardless of the fact whether the service record of the applicant from the Western Railway is found or not;

(b) the applicant shall be paid the difference in the pay and allowances between what has been paid to him and the sum that is due to him, in accordance with the rules, within the same period of three months as mentioned above;

(c) We further direct that since the matter has been pending with the respondents for such a long period, the applicant shall be paid interest on the difference of pay drawn and pay due at the rate of 6% from 1977 till the date of filing of the OA, i.e. 1.1.1990 and thereafter at the rate of 12 per cent till the period indicated in (a) above. In case the amount is not paid by that date, the rate of interest will increase to 18 per cent per annum from the expiry of the period indicated in (a) above on the entire amount till the date of actual payment.

The OA is allowed accordingly. Parties to bear their own costs.

  
(Amitav Banerji)

Chairman