

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.
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(10)

Date of Decision: 29.04.92

DA 1522/91

G. H. SWAMI

... APPLICANT.

Versus

UNION OF INDIA & ANR.

... RESPONDENTS.

CORAM:

THE HON'BLE SHRI J.P. SHARMA, MEMBER (J).

For the Applicant ... Shri B.S. Mainee,
Counsel.

For the Respondents ... Shri R.L. Dhawan,
Counsel.

1. Whether Reporters of local papers may
be allowed to see the judgement ? *Yes*

2. To be referred to the Reporters or not ? *Yes*

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J).)

The applicant, Ex-Superintendent (Personnel
Branch), H.Qs. Office, Northern Railway, New Delhi,
filed this application aggrieved by the non-calculation
of retirement benefits in accordance with the salary
drawn by him while on deputation to Construction Wing

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of Northern Railway. While working in the Construction Wing of the Northern Railway on deputation on an Ex-cadre post, the applicant had again gone on deputation to IRCON. The applicant was absorbed in Ircon on 4.10.88. The Chief Administrative Officer (Construction) had fixed the salary of the applicant at Rs.2525/- w.e.f. 1.8.1988 in terms of their letter dated 27.3.1989 (Annexure A-1). The respondent No.1, General Manager(P), Headquarters Baroda House, New Delhi, by the letter dated 12.8.1991 (Annexure R-1) cancell the aforesaid letter dated 27.3.1989 (Annexure A-1) and fixed the salary of the applicant at Rs.2120/- on 1.6.1988. The applicant is aggrieved by this refixation of his salary.

2. The applicant claimed the relief that the respondents be directed to pay to the applicant Rs.39097.65 which has been paid less to the applicant on account of Rs.6682.50 in DCRG and Rs.32415.15 pension and commutation. The applicant also claimed the interest @ 18% p.a. on the aforesaid amount.

3. The facts in brief are that the applicant on 30.8.1969 was transferred from H.Q. Office Northern Railway to Construction Wing Northern Railway from his parent department i.e. Northern Railway HQ Office, Personnel Branch, Baroda House, New Delhi. While working in the Construction Wing, the applicant was given an ad-hoc promotion as Head Clerk in 1971.

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He had been given various promotions in the Construction Wing and he was promoted as Assistant Superintendent on 26.8.1982 in Construction Wing. However, he was empanelled as an Assistant Superintendent in the Personnel Branch i.e. in the parent department w.e.f. 1.1.1984 by the order dated 6.4.1985. He was given ad-hoc promotion as Superintendent in the Construction Wing on 29.6.1984. While he was in the Construction Wing he was transferred on deputation to Ircon and posted as Superintendent in October, 1986. His promotion was regularised as Superintendent in the Personnel Branch i.e. parent department w.e.f. 8.6.1987 by the order dated 24.8.1987. The Chief Administrative Officer, Construction Wing, by the letter dated 27.3.1989 wrote to the Deputy Manager (Establishment), Ircon regarding the settlement dues of the applicant. The pay of the applicant was fixed as follows :-

1. Rs.2375/- w.e.f. 1.8.1986
2. Rs.2450/- w.e.f. 1.8.1987
3. Rs.2525/- w.e.f. 1.8.1988.

His pay has been fixed on the basis of ad-hoc promotion as Superintendent/Personnel Branch in the scale of Rs.2000-3200 regularised with effect from 18.6.1987 by the order dated 24.8.1987. Thus, the applicant claims the terminal benefits on the pay so fixed i.e. Rs.2525/-. The date of absorption and the various

dates of promotions given to the applicant on the ad-hoc or regular basis in the parent department has not been disputed. As early as on 13th August, 1987, the Deputy Manager, Ircon was informed by the H.Qs. Office, Northern Railway that the pay of Shri Swami in regular cadre has been fixed as Rs.1900/- p.m. w.e.f. 1.1.1986 and Rs.1950/- w.e.f. 1.1.1987 vide Annexure R-2. By another letter dated 30.10.1987, Deputy Manager, Ircon was informed on the representation dated 31.8.1987, that the same has been rejected vide Annexure R-3. The pay of the applicant in Grade of Rs.2000-3200 was fixed w.e.f. 8.6.1987 at Rs.2060/- p.m.

4. The case of the applicant is that his pay has been reduced to six stages below i.e. Rs.2060/- as a result of regularisation which is absolutely in the contravention of the Rules framed by the Railway Board. The case of the applicant is that the pay of an employee transferred on deputation to Ircon from Construction Organisation and holding lien in various branches (including Personnel Branch) of Northern Railway HQs. Office, was never refixed by SPO HQs. & it has been done only in his case. The applicant further stated that he has officiated satisfactorily on ad-hoc in various grades cannot be reverted without following the Disciplinary And Appeal Rules Procedure. Further, in case of ad-hoc promotion followed by regular promotion without any break pay is

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required to be fixed retrospectively w.e.f. the date of initial appointment.

5. The respondents, in their reply contested the application and stated that the applicant held his lien in Personnel Branch HQs. Office, Northern Railway and was placed on deputation with Indian Railway Construction Company Limited (IRCON) w.e.f. 4.10.1986. Later, at his request he was permanently absorbed in the said organisation with effect from 4.10.1988 and due to the same he was deemed to have retired from Northern Railway from 3.10.1988. The applicant on his retirement from Northern Railway has correctly been paid his settlement dues as admissible to him under the rules. The Chief Administrative Officer (Construction), Northern Railway, New Delhi had no jurisdiction to issue letter dated 27.3.1989 and the same has been cancelled vide letter dated 12.8.1991. The respondents have also taken the plea of limitation as the applicant has been paid his retirement dues in September-October, 1989 and the applicant has filed this application in July, 1991. It is further stated that the applicant was approved for deputation to IRCON and he was deemed to have been repatriated to his parent cadre. Before joining the said organisation on 4.10.1986 the applicant was also posted at his request outside his parent cadre under the Chief

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Engineer (Construction), Northern Railway in 1969. The applicant was promoted as Superintendent Grade 2000-3200 (RPS) in his parent cadre w.e.f. 8.6.1987 under Next Below Rules from which date his junior was promoted to the aforesaid post. There was no point in calling the applicant to the local officiating arrangement as Superintendent in his parent cadre, when he was already working as Supdt. on adhoc officiating basis in the Construction Organisation from an earlier date. The pay of the applicant in the Supdt. grade was correctly fixed as Rs.2060/- w.e.f. 8.6.1987 under Next Below Rule in the Supdt. grade 2000-3200, his pay was never reduced by six stages as alleged by the applicant. This pay fixation of the applicant was advised by letters dated 13.8.1987 and 30.10.1987 (Annexure R-2 & 3). It is further stated by the respondent No.1 that respondent No.2 has no jurisdiction to issue letter dated 27.3.1989 and rightly the same has been cancelled by respondent No.1 by the letter dated 12.8.1991 (Annexure R-1). The settlement dues of the applicant has therefore been rightly worked out on pay as Supdt. admissible to him at Rs.2060/- w.e.f. 8.6.1987 and at Rs.2120/- w.e.f. 1.6.1988. Thus, it is stated that DCRG and the commuted value of the pension have been rightly

calculated and given to the applicant as stated in para 4.23 of the counter.

6. I have heard the learned counsel for both the parties at length and have gone through the records of the case. While the applicant was on deputation to the Construction Wing of the Northern Railway since 1969 he has gone in October, 1986 on deputation to IRCON and was posted there as Superintendent. The Deputy Manager of IRCON was informed about the regulation of the pay in regular cadre of the applicant by the memo No.724E/5005 EIIIA dated 13.8.1987 and his pay has been fixed as Rs.1900/- on 1.1.1986 and 1950/- w.e.f. 1.1.1987. This memo was sent in supersession of the earlier letter dated 27.7.1987. The applicant made a representation on 31.8.1987 which has been replied by the memo dated 30.10.1987 (Annexure R-3). The applicant had made another representation on 18.1.1988 on the same lines. It appears that the Chief Administrative Officer (Construction) issued a letter to the General Manager (Establishment), IRCON on the permanent absorption of the applicant in IRCON. This appears to have been issued in supersession of the letter dated 30.10.1987 (Annexure R-3). The Chief Administrative Officer, therefore, has rightly pointed

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out by the respondents in their counter had no authority for issuing this letter because the applicant had his permanent lien on the Northern Railway HQs., Baroda House New Delhi. On the basis of this letter dated 27.3.1989 (Annexure A-1), the applicant has been allowed to draw his emoluments from IRCON. It was when the applicant has been absorbed w.e.f. 4.8.1988 after completion of two years on deputation, the Personnel Branch calculated the retirement benefits on the basis of the promotion of the applicant on Next Below Rule as Superintendent w.e.f. 8.6.1987 with respect to his junior Shri Hari Singh vide order dated 24.3.1987 (Annexure A-10). The contention of the learned counsel for the applicant is that though the applicant has been regularised as Supdt. on a clear vacancy w.e.f. 8.6.1987, though juniors to the applicant had locally been officiating as such from an earlier date and the applicant has been ignored. The learned counsel for the respondents has submitted that in the local officiating arrangement as Supdt. the applicant could not have been called as he was already officiating in the construction organisation from an earlier date. The applicant has gone on deputation to IRCON on 4.10.1986. At that time the applicant has already been working as Supdt. on ad-hoc

basis in the Construction Wing w.e.f. 1.8.1984. The applicant has not stated in the application that as to ^N when the promotion on ad-hoc basis to the post of Supdt. has been accorded to his junior on ad-hoc basis. Unless more details, the pay of the applicant has to be calculated at every stage when any of the junior to the applicant has been promoted though on ad-hoc basis and the fixation of that pay shall only be given because the applicant has already been working in the higher grade of Supdt. in the Construction Wing. In fact, the pay of the applicant to to determine his settlement dues has to be fixed firstly in the scale of Assistant Supdt. and then in the scale of Supdt. because he has been regularised as Supdt. after he had already gone on deputation to IRCON.

7. The grievance of the applicant is that since his salary has been fixed by the order dated 27.3.1989 (Annexure A-1) then subsequent deduction or revision the fixation of pay should have been done after notice to the applicant. Rightly or wrongly the Chief Administrative Officer (Construction), Northern Railway fixed the salary of the applicant in supersession of the earlier order issued by the Principal Branch SPO dated 30.10.1987. Though the representation dated

18.1.1988 was addressed to the General Manager, HQs. Office, Northern Railway but how the order dated 27.3.1989 has been passed by the Construction Wing is not evident from the record. Be that it may be the pay of the applicant cannot be revised without a notice to him to his detriment. The learned counsel for the applicant has relied on the authority of Pavithran Vs. State of Andhra Pradesh, reported in 1988 ATR (1) CAT Page-26, where it has been held that cancellation of an earlier order favourable to a government servant without issuing him show cause notice could have violation of principles of natural justice and would be illegal and liable to be set aside. A similar view was taken in the case of Satpal Bareja Vs. UOI & Ors. 1991 (1) SLJ CAT Page-25 Principal Bench, where it is held that the vested right cannot be taken away without following the principles of natural justice.

8. Firstly, it has to be ascertain^{ed}/whether order dated 12.8.1991 is actually the order passed in supersession of the earlier order dated 27.3.1989. Secondly, the fixation of pay done in the letter dated 17.8.1991 has been in accordance with the Next Below Rule i.e. a senior should not get lessor pay than that of a junior. Thirdly, what is the basis of fixation

of pay on 1.1.1986 when the applicant was working on the post of Supdt. in the Construction Wing though on ad-hoc basis and was already empanelled as Asstt. Supdt. in the Personnel Branch in the parent department on 6.4.1985 w.e.f. 1.4.1984. All these facts are necessary to be gone into before fixing the pay of the applicant on the date of absorption in IRCON in October, 1988. This has also to be done after giving opportunity to the applicant.

9. The learned counsel for the applicant has also referred to the case of one Shri R.L. Arora. The said Shri Arora was working as Estimator on the open line and he was not accorded any benefit to his working as ad-hoc AEN on MTP but ultimately he was granted the benefit by the order of the Railway Board No.E(REP)III-88 RES/5-8 dated 1.8.1986 on the subject of payment of DCRG to Shri R.L. Arora, Ex-Officiating AEN/MTP New Delhi. This was addressed to the General Manager, Northern Railway, New Delhi and was issued by the Deputy Director (Establishment), Railway Board (Annexure R-II), which was followed by another letter dated 18.9.1986. However, under what authority these letters are issued is not clear & appears to be an exceptional case on its own facts.

10. In view of the above discussion, the application is partly allowed and the respondents are directed to

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consider refixation of the pay of the applicant on 1.1.1986, on 4.10.1986 and ultimately on 4.10.1988.

The revised fixation should be on the lines indicated above according to the extant rules and instructions of the Railway Board. The settlement dues be recalculated and the applicant be paid the balance amount, if any found due, along with 10% interest till the date of payment. The applicant shall be given due opportunity to represent his case for refixation of pay while on deputation to Construction Wing & also to IRCON and even personal hearing, if necessary. The respondents to calculate the settlement dues within a period of six months from the date of receipt a copy of this order. If the applicant is still aggrieved, he can seek remedy, if so advised, in proper forum.

In the above circumstances, parties are left to bear their own costs.

J. P. Sharma
29.4.92
(J.P. SHARMA)
MEMBER (J).