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Central Administrative Tribunal
Principal Bench
....

OA No. 1694/91

New Delhi, this the 6th day of Dec., 1995

Hon'ble Mrs. Lakshmi Swaminathan, Member (A)
Hon'ble Sh. R.K. Ahooja, Member (A)

Shri O.P. Gupta s/o Shri Manak Chand,
D-272, Govindpuri,
Modinagar- 201 201,
Distt. Ghaziabad (UP).

...Applicant

(By Shri D.N. Moorli, Advocate)

Versus

Union of India through
General Manager,
Northern Railway,
Baroda House,
New Delhi.

..Respondent

(By None)

O R D E R (DRAL)

delivered by Hon'ble Shri R. K. Ahooja, Member (A):

The applicant in this case joined Railway Department as Typist on 29.2.1956 in the Delhi Division of Northern Railway. On passing the selection test for promotion as Stenographer, he was posted as such in the grade of Rs. 130-300 on 17.9.1959. On 5.9.1967, the applicant was assigned to work with a senior scale officer who was entitled to a stenographer in the higher grade of Rs. 210-425/-. The applicant's claim is that in terms of Railway Board's letter dated 22-23/1/1965 (Annexure A-1) further clarified by the letter dated 19.4.1965 (Annexure A-2), he became entitled to the grade of Rs. 210-425/- w.e.f. 1.4.1965.

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The applicant submits that with a view to fixing the seniority of stenographers and to give equal opportunity to eligible persons, both in headquarters as well as the divisional offices, the Railway Board issued a circular dated 27.9.63 (Annexure A-3) directing that there should be a combined cadre of stenographers in grade of Rs. 130-300/330-560 for the purpose of promotion to the post of stenographer in the grade of Rs. 210-425/425-700. This order resulted in the upgradation of 34 posts w.e.f. 1.4.1965. A regular selection for the post of stenographers in grade Rs. 210-425/- was held in 1969 on the basis of the combined seniority and based on that a panel of stenographers was declared vide their letter dated 23.12.1969 (Annexure A-5) wherein the name of the applicant appeared at serial No. 61. In pursuance of the declaration of this panel, promotion orders were issued on 29.12.1969 whereby the applicant was posted at Delhi Division.

The applicant further submits that he fell in the category of those who had been working against upgraded posts in the grade of Rs. 210-425/- and had been subsequently regularised by way of the regular promotion and was, therefore, entitled to fixation of his seniority in the grade of 210-425/425-700 w.e.f. 1.4.1965 i.e. the date on which 34 posts of stenographers were upgraded. In support of this claim, the applicant relies on a letter issued by the Railway Board on 25.3.1980 (Annexure A-7) which lays

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down that the seniority of stenographers should be re-cast on the basis of non-fortuitous service in the grade of Rs. 130-300(AS) out of the persons already selected for promotion to the grade of Rs. 425-700.

The applicant states that in pursuance of the Railway Board's circulars of 23.1.1965 and 19.4.1965 respectively, his pay was re-fixed and he was granted proforma fixation and arrears of salary due to him ~~were~~ paid vide pay statement dated 24.8.1972 (Annexure A-8) in terms of the upgradation of the posts w.e.f. 1.4.1965. The applicant further states that certain persons aggrieved by the Railway Board's order dated 25.3.1980, filed a Writ Petition in the Delhi High Court which was subsequently transferred to the Principal Bench of Central Administrative Tribunal as T.A No. 621/85 and was withdrawn by the petitioners on 1.8.1986. The orders of the Tribunal took note of the fact that a fresh seniority list had been placed on record. The applicant, who was one of the respondents in that application, was given the right to make a representation, if he was aggrieved by the said seniority list. The applicant alleges that the fresh seniority list (Annexure A-11) issued on 10.3.1987 is not correct and he is aggrieved that his seniority has been fixed at Sr. No. 96 showing him working in the higher grade w.e.f. 27.12.1969. The applicant states that he made a representation against this provisional seniority list, which representation

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was, however, rejected by the respondents vide their letter dated 31/5/1991 (Annexure A-23).

The present application has been filed seeking certain reliefs based on quashing of the impugned seniority list and re-fixation of his seniority on the basis that he was regularly promoted in the grade of Rs. 210-425/- w.e.f. 1.4.1965. Alternatively, he wants that his seniority may be fixed in the provisional list above Sh. J.S.Gupta who was appointed as stenographer in the grade of Rs. 130-300 on 19.9.1961 i.e. after the date on which the applicant was so appointed.

When the case came up for hearing today, no one appeared on behalf of the respondents, even ^{when} ^{or} called twice. Since this is an old case of 1991, we ~~have~~ ^{have}, in the circumstances, had no choice but to decide it on the basis of the arguments of the learned counsel for the applicant as well as the records of the case which included pleadings on behalf of the respondents.

The learned counsel for the applicant based his arguments entirely on Annexure A-7 i.e. letter of the Railway Board dated 25.3.1980 which conveyed their decision that the seniority of stenographer should be re-cast on the basis of non-fortuituous service in the grade of Rs. 130-300/-. He submitted that the applicant had been regularly drawing the pay of Rs. 210/- w.e.f. 1.4.1965 as is established by Annexure A-9 of the paper book.

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This statement shows that the applicant got a pay of Rs. 160/- on 6.9.1964 in the scale of Rs. 130-300/- and he was granted the higher pay scale of Rs. 210'-425 w.e.f. 1.4.1965. This is also admitted by the respondents in para No. 4.11 of their reply in which they clarified that the applicant was given only proforma fixation of pay w.e.f. 1.4.1965 but the arrears were made payable only w.e.f. 1.11.1972 the date from which he officiated on purely adhoc basis and the same has been stated in the pay statement at Annexure A-9.

Learned counsel for the applicant submits that the applicant having been regularly promoted as stenographer w.e.f. 1959, having been paid in the scale of Rs. 210-425 w.e.f. 5.9.1967 and the proforma fixation of pay having been granted w.e.f. 1.4.1965, he is also entitled to seniority from the earliest date from which upgraded posts became available i.e. w.e.f. 1.4.1965.

We have perused the reply of the respondents which is a sketchy one and has not ^{even} been properly verified. Their first counter is that the Railway Board's directions of 1980, relied upon by the applicant, were clarified by the Board's letter of 1985 (Annexure R-1). This has been perused by us and shows that the 1980's directions were clarified to state that in case selections to the higher grade had been made on different dates than those who ^{were} selected in earlier panel were to ^{en bloc} rank/senior to those who came in the

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later panel. The claim of the respondents appears to be that the applicant appeared in a selection test in 1965 but did not succeed; however, he was selected for the post of Stenographer in ^{the} grade of Rs. 210/425/- in the selection held in 1969 on the basis of the combined seniority list. Thus, in view of the respondents, the applicant was to be ranked below those who had passed the test held in 1965. It is also stated that S/Shri Tassham Lal and Shri C.J. Paul, over whom the applicant claims seniority, had passed the test in 1965 in which the applicant had failed.

We have considered the arguments advanced by the learned counsel for the applicant and the points taken by the applicant as well as by the respondents in the pleadings. It has not been controverted by the respondents that the applicant had been promoted as a stenographer in the grade of Rs. 130-300 w.e.f. 17.9.1959. It is also not controverted that the Railway Board issued a letter on 25.3.1980 conveying their decision that the seniority of the stenographers would need to be recast on the basis of non-forfeiture of service in the scale of Rs. 130-300 out of the persons already selected for further promotion. The claim of the respondents that they issued a subsequent letter in 1985 clarifying that the decision of the 1980 was circumscribed to the extent that inter-se seniority in the scale of 130-300 would be effected to the extent that those who are

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selected to higher grade earlier would rank enbloc senior to those who are selected later, has not changed the situation when it is seen in conjunction with their own orders in respect of proforma fixation of pay of the applicant which orders were issued in November, 1972. The respondents have themselves in 1972 fixed the pay of the applicant in the grade of 210-425 w.e.f. 1.4.1965. It is not the stand of the respondents that these orders were cancelled or changed or modified in the context of the clarification issued by them in 1985. Thus, for all purposes, the applicant would be deemed to have been regularly appointed to the grade of Rs. 210-425/- w.e.f. 1.4.1965. The said pay statement of 1972 also states that he continues to receive his increments in the aforesaid grade on a regular basis and there was no interruption even though it was stated that arrears of pay will not be given prior to 1972. The question of arrears from 1967 onwards does not arise in the present case because the application had been receiving his pay in that grade on having been appointed to serve with a senior scale officer. In these circumstances, the plea of the applicant that his seniority in the higher grade has to be determined in terms of the Board's letter of 1980 has to be accepted.

In view of what has been stated above, we direct that the applicant's seniority in the grade of stenographer/confidential assistant should be fixed on the basis of inter-se seniority in the grade of stenographer in the pay scale of Rs. 130-300. The applicant has already obtained the arrears of pay from 1972 and

notional fixation of his pay in the grade of Rs. 210-425 w.e.f. 1.4.1965. In case, however, the applicant becomes entitled to promotion to higher grade from an earlier date ^{than} when he was actually promoted on the basis of his re-fixed seniority, respondents will consider him for the same and grant him all the consequential benefits including pensionary benefits. He will, however, not be entitled to any arrears of pay on the basis of this re-fixation of seniority. The respondents are directed to comply with the direction as expeditiously as possible but in any case within six months from the date of receipt of copy of this order.

In view of the facts and circumstances mentioned above, the application is disposed of leaving the parties to bear their own costs.

R. K. Ahooja
(R.K. Ahooja)
Member (A)

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Member (J)

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