

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A. NO.1659/92

Date of Decision : 19.3.93

Smt. Rita R.Pancholi
Vs.
Union of India & Ors.

...Applicant
...Respondents

CORAM

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Shri B.S. Mainee

For the Respondents

...Shri H.K. Gangwani

JUDGEMENT

The applicant was appointed in Western Railway on 19.8.1974 and she was working in the grade of Rs.1400-2300 as Head Clerk, Commercial Department, Headquarters office and applied for her transfer on 27.4.1989 to the Northern Railway headquarter, New Delhi on account of her husband being settled at Delhi. In the application for transfer filled by herself on the same date, she has given an undertaking to abide by and accept the seniority as admissible under the rules for transfer; shall accept bottom seniority under the rules; shall accept posting at any station office unit of the Northern Railway and further that she shall not be entitled to any Railway quarter out of turn. She has also appended a note in her own handwriting, which reads as follows :-

"I am prepared to accept seniority as Senior Clerk in the scale of Rs.1200-2040 below all permanent, temporary and officiating Senior Clerks in the ~~new~~ unit on the date of my posting there."

On the basis of her own request for transfer, the transfer order was issued by the order dt. 21.8.1989 that Smt. Rita

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R.Pancholi, Head Clerk, scale Rs.1400-2300 (RP) working in Commercial (Claims) Department, Headquarters office, CCG is transferred to Northern Railway as Senior Clerk in the scale of Rs.1200-2040(RP). She reported to Northern Railway headquarter on 4.9.1989 and was posted as Senior Clerk in the pay scale of Rs.1200-2040 in the claims branch. Her pay was fixed as Rs.1380 w.e.f. 1.9.1989 in the grade of Rs.1200-2040 by the order dt.8.2.1990 (Annexure A6). The grievance of the applicant is that her pay has been wrongly reduced from Rs.1420. She filed this application on 27.6.1992 and prayed for quashing of the order dt.29.5.1991 rejecting her representation for protection of her pay. She has further claimed to restore the seniority of the applicant which she was getting in Western Railway prior to her transfer with all consequential benefits.

2. The respondents contested this application and in the reply stated that the applicant came on transfer from Western Railway by seeking reversion from the post of Head Clerk to the post of Senior Clerk on acceptance of bottom seniority. She is, therefore, entitled for fixation of her pay which she should have drawn as Senior Clerk in the scale of Rs.1200-2040 had she not been promoted as Head Clerk in the scale of Rs.1400-2300 (RPS) and accordingly her pay was correctly fixed as Rs.1380 in the grade of Rs.1200-2040 and the question of pay protection in the grade of Rs.1400-2300 does not arise.

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3. In the rejoinder, the applicant has only reiterated the contentions averred in the OA, further stating that she had only agreed to accept bottom seniority as Senior Head Clerk and never agreed to accept lower salary ~~that~~ she was drawing.

4. I have heard the learned counsel for both the parties at length and have gone through the record of the case. The learned counsel for the applicant could not show as to under what provision of law, the applicant is entitled for protection of her pay when she has herself opted for a lower scale of pay of the post of Senior Clerk. She was getting higher pay because she was working as Head Clerk in a higher scale of Rs.1400-2300. The undertaking she has given on the application form for transfer clearly goes to show that at any cost she was prepared to join her husband at Delhi, even by seeking reversion to the lower scale of pay. The question of protection of pay in such a case does not arise in view of the fact that the applicant has to be placed at the bottom of the seniority and if her pay is fixed in the scale of pay which she was drawing before her transfer in Western Railway, Bombay, then the person who is just senior to her would be getting lesser pay obviously because the applicant has been working in the higher scale of pay of Rs.1400-2300 and the person at the bottom of the seniority either on officiating basis or temporary would be only getting the salary in the scale of Rs.1200-2040. The Fundamental Rule is that a senior should

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not draw lesser pay than his junior. In the event of her fixation of pay by giving her protection of pay of the post of Head Clerk, she will be getting more in the scale of the post of Senior Clerk and which shall be discriminatory and against ~~quota~~ equity.

5. The contention of the learned counsel for the applicant that the applicant has never given her consent for accepting lower pay is not based on any cogent reason. When she has herself opted to revert to the post of Senior Clerk, then obviously she has opted for the scale of the same post and her pay has to be fixed in that scale commensurate with the length of her service which she would have drawn if she had been posted in Western Railway, Bombay.

6. The learned counsel for the applicant also referred to the fact that no show cause notice was given to the applicant because her pay has been reduced. Firstly, it is not a case of reduction of pay, but it is rather a case of fixation of pay on the option exercised by the applicant herself. The authorities relied by the learned counsel for the applicant- ATR 1988 (1) p-26, ATR 1989 (2) p-23 and ATR 1990 (1) p-205 do not apply to the case of the applicant. In the case of ATR 1988 (1) p-26, an earlier order was cancelled without giving any opportunity to the aggrieved person. In the other two authorities cited above, there was a modification/rectification of an earlier order to the

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detiment of the aggrieved person and the case of the applicant is not covered at all. Thus the authorities cited by the learned counsel for the applicant have no application to the present case.

7. The learned counsel for the respondents has highlighted the fact that firstly, the applicant has herself moved in for transfer and inspite of the fact that the intermediate Railway transfers in the intermediate grade, there is no element of direct recruitment are not ^{permissible} punishable under the extant Rules. The case of the applicant was sympathetically considered as her husband was living at Delhi. When the case of the applicant was favourably considered on her own undertaking, now it is not open to her to claim the protection of pay on the principle of estoppel.

8. In view of the above facts and circumstances, the present application is devoid of merit and is dismissed leaving the parties to bear their own costs.

J. P. SHARMA
18.3.53
(J.P. SHARMA)
MEMBER (J)

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