

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

OA No. 3006/92

New Delhi, this the 2<sup>nd</sup> day of July, 1998

HON'BLE SHRI S.R.ADIGE, VICE CHAIRMAN (A)  
HON'BLE SHRI T.N. BHAT, MEMBER (J)

(14)

In the matter of:

Shri K.L.Khanna  
S/o Late Sh. S.R.Khanna,  
agedd 58 years Retiredd as  
Chief Comml. Inspector & R/o C2B/93A,  
Janakpuri,  
New Delhi. .... Applicant  
(By Advocate: Sh. O.P.Khokha)

Vs.

1. Union of India through  
Railway Board, Rail Bhawan,  
New Delhi.
2. The General Manager,  
Central Rly. Head Quarters,  
Bombay V.T.
3. Div. Railway Manager (P)  
C.Railway, Jhansi .... Respondents  
(By Advocate: None)

O R D E R

delivered by Hon'ble Shri T.N.Bhat, Member (J)

The applicant in this OA is a retired Railway employee who was at the time of his retirement on 31.10.92 working as Chief Commercial Inspector at Faridabad. In the year 1986 he was working as Head Booking Clerk in the ordinary grade of Rs.425-640 and the next higher post was that of selection grade Head Booking Clerk in the grade of Rs.455-700, which was also the grade of the next promotional post of Commercial Inspector. Promotion to the aforesaid post was to be on the basis of selection. Accordingly, the applicant was called to a written test on 10.5.86 followed by viva voce on 7.8.86. The result was declared only on 17.10.86 consequent to which a panel

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consisting of 59 persons was declared and the applicant's name was included in the panel at Serial. No.27. In the meantime, however, the applicant had been promoted to the higher pay scale of Rs.455-700, though on ad hoc basis, by the order dated 20.6.86 issued by Resp. No.3 and his pay was fixed at Rs.640/- from June, 1986. After the implementation of the 4th Pay Commission recommendations the applicant's pay was fixed at Rs.1900/- from June 1986 in the revised pay scale of Rs.1400-2300.

2. The grievance of the applicant in this OA is that his pay was abruptly reduced from Rs.1950/- to Rs.1800/- from August 1987 and his post retiral benefits were also computed accordingly. The applicant made several representations but he was informed by the impugned orders dated 30.3.88, 5.4.88 and 2.11.92 that his request for restoration of his pay @ Rs.1950/- could not be acceded to, the reason being that he had not been promoted to the grade of Rs.455-700 on regular basis and, therefore, his pay was not protected.

3. It is averred by the applicant that the ordinary grade and the selection grade were merged into one common grade of Rs.1400-2300 w.e.f. 25.9.86. The Railway Board issued a letter dated 5.2.87 conveying some decisions taken on the subject of classification of posts as selection and non-selection as also merger of different grades. The applicant relies upon para V of the aforesaid letter of the Railway Board which states that promotions/postings made between 1.1.86 and the crucial date of 25.9.86 on regular basis in accordance with the

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classification then in force will stand protected. The applicant's contention is that since he had already passed the selection and had also been promoted before the crucial date, though on ad hoc basis, the aforesaid clarification issued by the Railway Board would protect the applicant's pay.

4. The respondents have filed a detailed reply statement, though we must remark that the replies contained therein are vague and unclear. However, the essential facts have been admitted. The only ground on the basis of which the applicant's claim is resisted is that the applicant had not been promoted on regular basis before 25.9.86, and that therefore his pay was not protected under the Railway Board's letter dated 5.2.87, as at Annexure A-5.

5. We have given our careful consideration to the rival contentions raised by the parties in their pleadings. We have also heard the learned counsel for the applicant. However, the learned counsel for the respondents was not available and none appeared for the respondents on 13.4.98 nor on 16.4.98 when this case was called out, being already on the board.

6. It must be conceded at the very outset that a person is not entitled to appointment or promotion merely on the ground that he has found a place in the panel prepared for the same. However, it has also to be borne in mind that there should be reasons for rejecting

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the claim of such a person. In the instant case there appears to have been an unexplained and long delay of nearly 3 months in declaring the panel. As already indicated, the written test for the selection was held on 10.5.86 and the viva voce was held on 7.8.86, but it took the respondents more than 2 months further time to declare the panel on 17.10.86. In the meantime there was an important development, namely, merger of the two grades of Rs.425-640 and Rs.455-700. Not only that, the classification of the posts was also changed. While earlier the post in the grade of Rs.455-700 was a selection post the merged grade of Rs.1400-2300 was now changed to non-selection. This decision came into operation from 25.9.86, when the applicant had already appeared in the selection and had also been appointed/promoted, though on ad hoc basis, to the selection post in the grade of Rs.455-700. The delay made by the respondents in declaring the panel could not, therefore, adversely effect the interest of the applicant.

7. That apart, the letter dated 5.2.87, taking away the rights already vested in an employee could not be operated retrospectively. In this regard, we may again refer to para V of the aforesaid letter which says that in respect of merged grades as also the grade where classification has been changed by the said letter any promotion/filling in of vacancies after the crucial dates, i.e., 25.5.86 will be treated as ad hoc and will not confer any right on the incumbents so promoted to hold or continue to hold the said post and that regular promotions

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will be made only on the basis of the revised classification. It may be mentioned here that by the aforesaid letter dated 5.2.87 the posts were reclassified for the first time and accordingly the effect of reclassification should have been only prospective. Fixing of an earlier date viz. 25.9.86 for operation of the reclassification, so far as it adversely affected some people in whom rights had already vested cannot in the peculiar circumstances of this case held to be valid.

8. We are convinced that the applicant has succeeded in establishing his case for modification of the impugned orders so far as he is concerned. We do not know whether any other person similarly situated has approached the Tribunal or not, nor do we intend to treat the instant case as a precedent for others. But so far as the applicant is concerned, we are inclined to partly allow the OA and to grant him the relief which in the circumstances of the case would be admissible to him. In this regard we may point out that the applicant has not exhibited promptness in coming to the Tribunal. The first order impugned in this OA was issued on 30.3.88. Applicant, therefore, ought to have come to the Tribunal within one year from the date of receipt of the aforesaid order. However, he continued to dilly-dally and to put in fruitless representations before the respondents. Therefore, we would restrict the relief in this case to refixation of the applicant's pension from the date of his superannuation and payment of the arrears of pension only from that date onwards.

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9. In the result, this OA is partly allowed, the impugned orders rejecting the applicant's claim set aside and the respondents are hereby directed to refix the pension of the applicant on the basis that he was drawing Rs.1900/- (and not Rs.1800/-) as his basic pay in the month of June 1986. The arrears of pension so calculated shall also be paid to the applicant. This process shall be completed within a period of 2 months from the date of receipt of a copy of this order, failing which the respondents shall be liable to pay interest on the unpaid amount @ 12% p.a. till the date of actual payment.

10. There shall be no order as to costs.

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( T. N. BHAT )  
Member (J)

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( S. R. ADIGE )  
Vice Chairman (A)

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