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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 94/92

DECIDED ON : February 9, 1992

B. K. Batra

... Applicant

Vs.

Union of India & Anr.

... Respondents

CORAM : THE HON'BLE MR. P. C. JAIN, MEMBER (A)

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

Applicant in person

Shri Ramesh Gautam, Counsel for Respondents

JUDGMENT

Hon'ble Shri P. C. Jain, Member (A) :-

The applicant was initially appointed as Guard on 1.2.1955 in Northern Railway, Delhi Division. He was promoted as Guard Grade-B in the scale of Rs.150-240 w.e.f. 4.2.1970 and while he was officiating as Section Controller grade Rs.470-750 (RS) he was spared on 10.9.1974 to work as Instructor in the Chandausi Training School where he joined on 16.9.1974. This is an ex cadre post. He was promoted to officiate as ^{c. lenu} Deputy Chief Controller in the grade of Rs.700-900 (RS) under Next Below Rule while ^{c. l.} continued to work in Chandausi. His name was placed on the panel for the post of Chief Controller in the pay scale of Rs.840-1040 (RS) (Rs.2375-3500 (RPS) vide letter dated 11.2.1988 (Annexure A-6). Six persons stated to be junior to the applicant were also similarly empanelled vide the same letter. The contention of the applicant is that he was neither spared to avail of his promotion as Chief Controller nor his pay was fixed in this grade under Next Below Rule and he continued to work as Instructor, Zonal C. L.

Training School, Chandausi on administrative grounds. It may be stated here that what has been placed on record is only the letter by which his name was placed on the panel; his actual promotion orders have not been placed on record. Inclusion of the names of six persons junior to the applicant in the aforesaid panel is not disputed by the respondents and there is no averment in the counter reply that the applicant's junior was not promoted to the post of Chief Controller. From a perusal of Annexure A-8 dated 22.7.1988, a letter from Principal, Zonal Training School, Chandausi it appears that the order of the promotion of the applicant to the grade of Rs.840-1040 was issued on 11.3.1986 but he was not spared on promotion due to the fact that a substitute in his place was either not posted or did not join. The applicant was spared from Chandausi on 16.5.1988 and he joined the office of the Senior Divisional Personnel Officer, DRM's Office, Northern Railway on 27.7.1988 but took over independent duty of the post of Chief Controller only on 16.9.1988. He has since retired on 31.10.1990. At the time he was spared from Chandausi he is said to have been drawing pay at the stage of Rs.2900 in the scale of Rs.2375-3500. His contention is that his pay was fixed at the stage of Rs.3200 in the above scale in October, 1990, and though he has been sanctioned DCRG, leave encashment and pension on the basis of pay of Rs.3200, the arrears of pay and allowances admissible thereon have not been paid to him for the period February, 1986 to October, 1988. Hence, this O.A. under Section 19 of the Administrative Tribunals Act, 1985 in which the applicant has prayed for the following reliefs :-

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"(i) The order AB No. P 67 LE dated 16-10-1990 passed by Senior Divisional Personnel Officer, Northern Railway, New Delhi, and AB No. P 124 A Dated 18-2-1991 passed by Senior Divisional Personnel Officer, Northern Railway, New Delhi whereby his pay was fixed at Rs.3200/- in scale Rs.2375-3500 (RPS) be extended and arrears of difference of pay and other consequential benefits be arranged on the basis of this fixation. ,

(ii) Direct the Respondents to arrange payment of difference of arrears of pay and other consequential benefits from February, 1986 to October, 1990.

(iii) Direct the Respondents to pay interest on the amount of difference of pay and allowances from Feb.,86 to October, 1990 as the said amount has been withheld by respondents as a deposit.

(iv) Any other relief which this Hon'ble Court deems fit.

(v) Award the cost of this application as the applicant is a retired employee."

2. The respondents have contested the O.A. by filing a reply to which a rejoinder has also been filed by the applicant. As the pleadings in this case were complete, it was decided with the consent of the parties to finally dispose of this case at the admission stage itself. Accordingly, we have perused the material on record and also heard the applicant who argued his case himself and the learned counsel for the respondents.

3. The first question which falls for determination in this case is whether the applicant is entitled to fixation of his pay on promotion to the post of Chief Controller in the scale of Rs.2375-3500 (RPS) with effect from the date from which the applicant now claims, i.e., February, 1986, or from the date he assumed independent charge of the post of Chief Controller on 16.9.1988. There is nothing on record to show that while the applicant was working on an ex cadre tenure post in Zonal Training School, Chandausi, his lien on his

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substantive post in his line had been terminated or suspended. That his name was placed on the panel for promotion to the post of Chief Controller vide orders issued in February, 1986 is also not in dispute. That names of juniors to the applicant in his cadre were also similarly placed in the same panel is also not disputed. However, the pleadings of the parties do not disclose as to on which date the applicant and the persons junior to him were ordered to be promoted and the date on which the persons on the panel junior to the applicant were actually promoted. In these circumstances, the applicant could claim benefit of Next Below Rule for fixation of his pay in the grade for the post of Chief Controller with effect from the date his junior was actually promoted, presumably some time in March, 1986 or immediately thereafter, if other conditions for applicability of Next Below Rule were fulfilled. This he should have done when he was denied the same benefit in early 1986 or at best when he returned to his parent cadre in July/September, 1988. His claim for that benefit in the O.A. filed on 13.1.1992 is clearly barred by limitation in accordance with the provisions of Section 21 of the Administrative Tribunals Act, 1995. From a perusal of Annexure A-8 which is a letter from the Principal, Zonal Training School, Chandausi dated 22.7.1988, addressed to DRM, Delhi, it appears that he made some representation which was forwarded by this letter. However, a copy of this representation has not been placed on file nor is it stated by the applicant that the same was accepted or rejected. After waiting for six months he could have approached the Tribunal within one year thereafter for agitating his grievance in this regard. However, he has not shown that he took any such action. At Annexure A-9, he has placed a copy

of his letter dated 12.3.1991 addressed to the Senior Divisional Personnel Officer, Northern Railway, New Delhi, in which he has stated that he was promoted vide headquarters office letter dated 11.2.1986 but his pay in the relevant grade was fixed under Next Below Rule in October, 1990 at Rs.3200/- per month. It is further stated that the settlement dues have been paid to him on the basis of Rs.3200, and he shall be highly obliged in case all the arrears of pay are arranged early from February, 1986 to October, 1990. It is stated that no reply to the above representation has been received. This representation does not help the applicant in the matter of limitation inasmuch as the cause of action accrued to him on the date when he is said to have been promoted in February, 1986, or on the date a person junior to him was so promoted and he was denied the promotion. At best, on the facts and in the circumstances of this case, the cause of action can be said to have accrued to him on 16.9.1988 when he in fact took over independent charge of the post of Chief Controller in the scale of Rs.2375-3500. He having failed to agitate his grievance within the period of limitation prescribed, is debarred from doing so now.

4. The other question which falls for adjudication is as to when the applicant's pay in the scale of Rs.2375-3500 was in fact fixed. The applicant's case is that it was fixed in October, 1990. He has not placed any document to substantiate the above contention. He has also not shown by placing any document on record that he continued to draw pay at the stage of Rs.2900 on his reversion to his parent cadre till the date of retirement, as was contended by him at the time of oral hearing of the case. However, in para 11.

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4.15 of the counter reply, the respondents have stated that his pay has been fixed as under :-

Rs.3050/- w.e.f. 16.9.1988

Rs.3125/- w.e.f. 1.9.1989

Rs.3200/- w.e.f. 1.9.1990

The applicant has contended that this has been done after the C.A. was filed. As already stated above, in the absence of any material on record to show as to when the applicant's pay in the grade of Rs.2375-3500 (RPS), ^{as was} fixed, it is not possible for us to give a finding as to the date on which his pay in the above grade was in fact fixed.

5. We may now examine whether the settlement dues paid to the applicant bear any nexus with the pay of the applicant said to have been fixed as disclosed in the counter reply and as also extracted above. As per the pay fixed by the respondents, the applicant was entitled to pay of Rs.3200/- per month on the date of his retirement and as such, he was entitled to leave encashment as well as the DCRG calculated on the basis of Rs.3200/- per month. This is what is said to have been done as per the applicant's own contention. As regards the pension, a copy of the PPO has been placed by the applicant as Annexure-4 to the rejoinder. It shows that his pension was fixed at Rs.1585/- leaving aside the relief portion of the pension. The applicant's contention is that as his pay was fixed after taking into account his pro forma promotion to the post of Chief Controller at Rs.3200/- on his assumption of charge on reversion to his parent cadre, his monthly pension should have been Rs.1600/- and not Rs.1585/-. Similarly, if the pay as fixed by the respondents and as stated in the counter reply is taken as the basis, the pension of the Cen.

applicant should have been Rs.1570/- per month (at the rate of Rs.3125 for 8 months and at the rate of Rs.3200 for 2 months = average monthly emoluments for the preceding 10 months and 50% thereof). Thus, obviously there is some mistake somewhere. In any case, the applicant is entitled to the arrears of pay and allowances admissible thereon, if not already done, for the period from 16.9.1988 to 31.10.1990 on the basis of the pay fixed by the respondents as per the statement in para 4.15 of the counter, i.e., at the rate of Rs.3050/- from 16.9.1988, at the rate of Rs.3125/- from 1.9.1989, and at the rate of Rs.3200/- from 1.9.1990.

6. In the light of the foregoing discussion, this C.A. is partly allowed in terms of the directions that the applicant shall be entitled to arrears of pay and allowances admissible thereon, if not already paid, on the basis of his pay fixed as referred to above, within a period of two months from the date of receipt of a copy of this order with simple interest at the rate of 12 per cent per annum from 1.2.1992 till the date of payment. We leave the parties to bear their own costs.

J. P. Sharma
(J. P. Sharma)

Member (J)

(P. C. Jain)
(P. C. Jain)
Member (A)

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