

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 213/93

NEW DELHI THIS THE 3RD DAY OF DECEMBER, 1993.

MR. Justice S.K.Dhaon, Vice-Chairman(J)

Shri Harjinder Singh
S/o Sardar Gurbachan Singh
R/o 21/5, Railway Colony,
Seva Nagar,
New Delhi-110 003. ... Applicant

By Advocate Shri A.K.Bhera.

versus

1. Union of India
through Secretary(Establishment)
Railway Board,
Ministry of Railways,
New Delhi.

2. General Manager,
Northern Railway,
Baroda House,
New Delhi.

3. Divisional Railway Manager
Delhi Division
Northern Railway,
New Delhi. ... Respondents

By Advocate Sh.R.L.Dhawan

ORDER(ORAL)
Mr. Justice S.K.Dhaon

The subject matter of this application is stepping up the pay of the applicant.

2. On 29.12.1974, the applicant was appointed as Commercial Clerk in the Northern Railway. On 2.2.1975, one Shri M.M.Sharma(Sharma) was appointed in the same capacity in the same Railway. On 22.3.1975 one Shri Devinder Batla(Batla) was appointed in the same capacity in the same Railway. The applicant was initially posted at the New Delhi Railway station and thereafter at the Sewa Nagar Railway station whereas Sharma and Batla were posted at the New Delhi station. All these stations lay in the same division, namely Delhi Division. A common seniority list of all the Commercial Clerks in a particular division is maintained. In the seniority list maintained for the Delhi Division relating to Commercial Clerks respective seniority of the applicant, Sharma and Batla was at Sl.No.83, 89 & 94. It appears that

8

✓ Batla and Sharma were given a chance to work on the higher post of Enquiry-cum-Reservation Clerk(ECRC)on ad hoc basis with effect from 22.3.1975 and 16.12.76 respectively. Learned counsel for the respondents states that they were given allowance for working in / higher post . On 5.9.1982, selection to the post of ECRC took place. The applicant, Sharma and Batla were selected. The seniority list prepared for the Delhi Division qua ECRC indicated that the applicant was placed at S1.No.39 whereas Sharma and Batla were shown at S1.Nos.40 and 41. The applicant made a representation on 22.3.1991 praying therein that his pay may be stepped up so as to place him on par with Sharma and Batla. The said representation was rejected on 31.7.1991 by the General Manager, Northern Railway. On 12.8.1991, the seniority list of the Head Reservation Clerks for the Delhi Division was published and in that list too the applicant was shown as senior to Sharma and Batla. However, the list indicated that Sharma and Batla were drawing higher salaries than the applicant. Immediately thereafter, the applicant made a representation to the Railway Board which was rejected on 27.10.92. Thereafter, the present OA was filed in this Tribunal on 14.1.1993.

3. A counter-affidavit has been filed on behalf of the respondents. Shri R.L.Dhawan, counsel has been heard in opposition to this application. Reliance is placed by the learned counsel for the applicant on the circular dated 27.12.1982 issued by the Railway Board. The subject of the circular is: "Ad hoc promotions-procedure for". It is inter-alia provided in this circular that if essential, only suitable senior-most persons should be promoted and that serious notice should be taken of continued

8

(9)

✓ promotions made of junior employees. Instances are still coming to Board's notice where the juniors are promoted and continued for long durations on ad hoc basis without holding selections, leading to representations from the seniors. There should not be any occasion where a junior has been promoted on ad hoc basis when suitable senior persons were available. This circular made explicit what was implicit before it was issued.

4. It is not the case of the respondents that the applicant was not available for availing an officiating chance on a higher post. On the contrary, the argument advanced at the Bar is that the applicant ought to have made a representation & 1976 in the years 1975/ when juniors to him were given officiating chance on a higher post. This argument is not acceptable. The theme of the circular of the Railway Board is that justice and fair play should be the order of the day and the claim of the seniors should not be overlooked.

5. We may now refer to / circular dated 22.4.1966 issued by the Railway Board. The subject is "Fixation of pay on promotion or appointment to higher posts. Anomalies arising out of the application of rule 2018-B(F.R.22-C)-RII". This circular reiterates the contents of the circular dated 19.3.1966. The circular of 19.3.1966 emphasises that the question of removing certain anomalies arising as a result of fixation of pay of railway servants promoted or appointed to higher posts after the introduction of rule 2018-B(F.R.22-C)-RII had been under consideration of the Board for sometime past. It is also provided that by a strict application of the above rule, it may happen that a railway servant promoted or appointed to a higher post on or after 1.4.1961 may draw a higher rate of pay in that post than another railway servant,

junior to him in the lower grade and promoted or appointed subsequently to another identical post. In order to remove this anomaly, the President was pleased to decide that in such cases, the pay of the senior employee in the higher post should be stepped up to the figure equal to the pay as fixed for the junior employee in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior employee and will be subject to the following conditions; namely:-

.....

" (c) the anomaly should be directly as a result of the application of rule 2018-B(F.R.22-C)-RII. For example, if even in the lower post the junior employee draws from time to time a higher rate of pay than the senior by virtue of fixation of pay under the normal rules say due to grant of advance increments or due to accelerated promotion etc. the provisions contained in this letter will not be invoked to step up the pay of the senior employee."

6. In the present case, the posts, as already indicated, are the same, namely Enquiry cum Reservation Clerks. It is not the case of the respondents that Sharma and Batla were holding lower posts than the applicant. Moreover, it is also not the case of the respondents that a higher rate of pay drawn by Sharma and Batla is on account of fixation of pay under the rules i.e. due to grant of advance increments or due to accelerated promotion etc. Here, the specific case of the respondents is that they were given special allowance on account of the fact that some work was taken from them which related to a higher post. According to the applicant, and his assertion is not rebutted by the respondents, that Sharma and Batla continued to get higher emoluments even after they along with the applicant were selected to the higher

post of ECRC on 5.9.1982. Therefore, there can be no getting away from the fact that a serious anomaly existed. Applying the principle as contained in FR-22C, and in order to remove the anomaly, the natural course open is to direct that the pay of the applicant should be stepped up so as to bring him on par with Sharma and Batla in the matter of emoluments.

7. We may now turn to the reasons given in the order dated 31.7.1991 passed by the General Manager. According to the General Manager, the applicant cannot avail of the benefit of stepping up of pay as the same was not allowed against local officiating of juniors, followed by their regularisation. I have already indicated that the division where the applicant, Sharma and Batla were working was the same. It makes no difference that the applicant was posted at^a different station, though in the same division, than Sharma and Batla.

However, ~~.....~~ the position has been clarified by the circular dated 27.12.1982 of the Railway Board referred to above.

8. I may now read the order dated 27.10.1992 passed by the Railway Board. According to this order, the stepping of pay or proforma fixation is not permissible under the extant rules. No reference has been made to any particular rule in the said order. As already stated, the learned counsel for the respondents has relied upon the circular of the Railway Board dated 22.4.1966. In particular, he has relied upon para 3(c) with which I have already dealt with. The conclusion is, therefore, inevitable that the applicant had been denied the stepping up of his pay on no rational basis.

Sug

9. Shri Dhawan has strenuously urged that the application should be thrown out on the ground of limitation. He urges that the right of the applicant to get his pay stepped up was finally denied on 31.7.1991. Rule 18 of the Railway Servants(Discipline & Appeal) Rules,1968(hereinafter referred to as the Rules) deals with the orders which are appealable. Rule 18(iv) states that an order which denies or varies to the disadvantage of a railway servant, his pay, allowances, pension, Provident Fund benefits, service gratuity or other conditions of service as regularized by rules or by agreement is appealable. Rule 19 provides for appellate authorities. Subrule(1)(iii) of the said Rule provides that an appeal lies against an order specified in clause(iv) of Rule 18, relating to a rule, to the authority which appointed the appellant or the authority which made the rule to which the order under appeal relates, whichever of them may be the higher authority. The order passed by the General Manager on 31.7.1991 denied to the applicant his pay as admissible under the Rules. As indicated above, the applicant relied upon the contents of the Railway Board's letter dated 19.3.1966. In para 3 of the said letter, the decision of the President is conveyed. The said decision has already been referred to above. In the absence of any statutory rules, the decision of the President is enforceable as a rule. It is trite law that an executive direction cannot supplant but can supplement a statutory rule. Here, as already noted, there was no statutory rule. Therefore, the direction given by the President takes the place of a rule. Therefore, there can be no difficulty in taking the view that for the purpose of Rule 19 of the Rules, the decision of

the President should be treated as a rule. It, therefore, follows that the applicant could prefer an appeal to the President against the order dated 31.7.1991 passed by the General Manager. It is true that the applicant addressed a representation/appeal to the Railway Board and not to the President. Nothing will turn upon the form of the appeal. It is well settled law that the pith and substance and not the form has to be examined. The pith and the substance of the representation/appeal of the applicant addressed to the Railway Board was that he had been wrongly denied the salary which was payable to him. The Railway Board should have forwarded the appeal to the President.

10. The Railway Board disposed of the representation/appeal of the applicant on merits. It did not take the view that it had no jurisdiction to entertain the same. Admittedly, the General Manager is subordinate to the Railway Board. The aforementioned circular had been issued by the Railway Board. Of course, it contained the President's decision. Under these circumstances, it cannot be said that the applicant did not prosecute his appeal diligently and bona fide. He presented the same to the Railway Board. Had the Railway Board been vigilant enough to return the representation/appeal to the applicant with the remark that the same should have been preferred to the President, the applicant could have made another representation /appeal to the President. The applicant is, therefore, entitled to the condonation of delay, if any, in the filing of this OA.

11. The applicant can get over the question of limitation yet on another ground. In the seniority

list of the Head Enquiry and Reservation Clerks of the Delhi Division, the applicant was shown senior to Sharma and Batla. However, the said list indicated that the aforesaid two persons were getting higher pay than the applicant. This circumstance gave a fresh cause of action to him to make a representation to the Railway Board and upon rejection of the same by the Railway Board, the applicant was entitled to present this OA. This is exactly what he has done. It is nobody's case that if the period of limitation is computed from the date of decision of the Railway Board, the present OA is barred by limitation.

12. In **S.S.RATHORE vs. STATE OF MADHYA PRADESH** (AIR 1990 SC 10), in paragraph 20, their Lordships, on interpretation of Section 20 of the Administrative Tribunals Act, 1985, emphasised that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when the cause of action shall be taken to have first arisen. Their Lordships observed:

" We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle."

Relying on the observations quoted above, Sh.Dhawan has urged that the applicant cannot get any advantage of the subsequent representation made to the Railway Board. This argument is untenable. I have already

indicated that the statutory remedy of appeal was available to the applicant either to the President or to the Railway Board. It is immaterial that the applicant preferred a representation/appeal to a wrong authority. Their Lordships have emphasised that repeated unsuccessful representations not provided by law will not absolve a party from the clutches of limitation. **S.S.Rathore's** authority is not apposite.

13. Shri Dhawan has also relied upon the case of **BHOOP SINGH Vs.UNION OF INDIA & ORS.(ATR 1992(2) S.C.278)**. In this case, it has been laid down that inordinate and unexplained delay or laches is by itself a ground to refuse relief irrespective of the merit of the claim. No exception can be taken to this proposition. For the purpose of making a petition under Article 32 of the Constitution no period of limitation is prescribed. The only ground on which a petition can be thrown out is laches on the part of the petitioner. In the present case, we are governed by a statute which prescribes limitation i.e. Section 20 of the Administrative Tribunals Act, 1985. Under the Act, an aggrieved person is obliged to make an application under Section 19 before an appropriate Bench of the Tribunal within one year from the date of the passing of the order. This case, therefore, is also not helpful.

14. The next case relied upon by Sh.Dhawan is of **RATAM CHANDRA SAMMANTA & ORS. Vs.UNION OF INDIA & ORS(JT 1993(3) S.C. 418)**. This was again a petition under Article 32 of the Constitution. In this case, the casual labourers employed between 1964 to 1969 were retrenched between 1975 to 1979. They went to the Supreme Court under Article 32 after a lapse of 15 years. Their Lordships threw out the petition on the ground of laches. The reason given for

distinguishing the case of Bhoop Singh is also applicable to the case of Sammanta.

15. I now come to the question as to what should be the proper order to be passed in this case. The applicant certainly has not acted with speed. For one reason or the other, he slept over his rights from 1975. He woke up for the first time on 22.3.1991 when he made his first representation to the General Manager. Keeping in view the facts and circumstances of the case and the principles of equity and justice, it would be just and proper for both the parties, if a direction is given to the respondents to step up the pay of the applicant so as to bring him on par with Sharma and Batla with effect from 22.3.1991. I accordingly direct that the respondents shall compute the arrears of pay payable to the applicant after taking into consideration the emoluments received by Sharma and Batla on account of their being given special allowance and that being merged in their respective salaries. However, the computation shall take place from 22.3. 1991 onwards. Thereafter, the payment will be made to the applicant within a period of three months from the date of presentation of a certified copy of this judgement by the applicant.

16. There shall be no order as to costs.

sns

8/2
(S.K.DHAON)
VICE-CHAIRMAN(J)