

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD

(THIS THE 07TH DAY OF DECEMBER, 2010)

HON'BLE DR.K.B.S. RAJAN, MEMBER (J)
HON'BLE MR. D. C. LAKHA, MEMBER (A)

Original Application No. 261 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

Chaturbhuj, S/o Late Shri Bhagirath,
Aged about 61 years,
R/o Isaitola, Kamalsingh Colony,
Near Indal Memorial School,
Jhansi (U.P.).

..... **Applicant**

Present for Applicant : Shri M. P. Gupta, Advocate
Shri S. K. Mishra, Advocate

Vs.

1. The Union of India through the General Manager,
North Central Railway,
Allahabad (U.P.)
2. The Divisional Railway Manager,
North Central Railway,
Divisional Office,
Jhansi (U.P.)

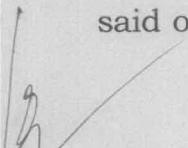
..... **Respondents**

Present for Respondents : Shri D. P. Singh, Advocate.

ORDER

(Delivered by Hon. Dr. K.B.S. Rajan, Member-J)

The applicant, initially appointed as Train Examiner (TXR) was, under an order of penalty first removed from service but in appeal, the said order of removal was modified as reversion to a lower post of Highly



Skilled Fitter as a permanent measure after fixing his grade in 380-560 per month as a permanent measure. His pay at the time of penalty was Rs 600/- which was reduced to Rs 560/- being the maximum in the reverted post. Pay fixation as per the fourth and fifth Pay Commission was also correspondingly made at Rs 1640/- and Rs 5000/- respectively, being the replacement pay as per table of concordance in the pre revised pay of Rs 560/-. Applicant had been claiming proper revision of pay that the same should be the maximum in the respective replacement scale of Rs 1320 – 2040 and Rs 4000 – 6000/-. While no response had been given, the applicant superannuated on 30-04-2004. It was by order dated 28-10-2004 that the respondents had rejected the claim of the applicant, vide Annexure A-1. Hence this O.A.

2. Respondents have contested the O.A. According to them, the OA is barred by limitation. The applicant never challenged his penalty order and once the pay scale had been brought down to Rs 330-560, the logical corollary is that the applicant would be entitled to the maximum in the pay scale i.e. Rs. 560/- and it was the replacement pay of Rs 1640 and Rs 5000/- under the IVth and Vth Pay commission and hence, the applicant is not entitled to further relief.

3. In rejoinder the applicant had contended as under:-

5. *That the contents of para 4 of the counter reply are not admitted and it is submitted that the applicant did dispute the appellate order but had never admitted the validity of the same. The appellate authority had ordered the reversion of the applicant upon a post which was lower than the one upon which he was originally appointed. This was clearly in violation of Art 311 of the Constitution. The appellate authority did not possess power to do so. The deponent was reverted to the post of skilled fitter Grade I and not Grade II as*



mentioned in the counter reply. An employees pay could not be permanently fixed under rules even by way of punishment. It was for this reason that with every revision of pay the pay of the deponent was also revised. The grievance of the deponent is that his pay was not correctly fixed with every revision of pay in 1986 and 1996. The applicants pay was fixed at Rs. 560/- per month, the maximum of the grade Rs. 380-560 by way of punishment. On revision of this grade in 1986 the pay of the deponent was not fixed at the maximum of the revised grade, which should have been done. Similarly, when the pay of the deponent was revised in 1996 (Fifth pay commission) the pay of the deponent was not correctly fixed. It should have been fixed at the maximum of the grade revised. It is untrue too say that the applicant was not entitled to stagnation allowance also. The scale of Rs. 380-560 to which grade the deponent was reverted and his pay was fixed at the maximum of Rs. 560/- was revised to Rs. 1320-2040, therefore, the pay of the applicant should have been fixed at Rs. 2040/- which was the maximum of this revised grade but was wrongly fixed at Rs. 1640/- per month. The grade of Rs. 1320/- Rs. 2040/- in which the applicant/deponent was fixed in 1996 was revised to Rs. 4500-7000. Thus instead of fixing the pay of the deponent at Rs. 5000/- per month in; this scale the pay of the deponent should have been fixed at Rs. 7000/- which was the maximum of the revised grade. The applicant has retired in 2004 while working in this scale Annex RA I.

4. Counsel for the applicant argued that the applicant has a meritorious case as he cannot be reverted below the post he held and even if the same is permissible, he ought to have been placed in the maximum of the pay scale as per IVth and Vth Pay Commission. As regards delay, save that this is a case where the pay fixation is directly involved and as such, there is recurring cause of action.

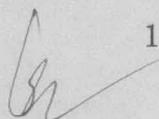


5. Arguments were heard and documents perused. True, the applicant had not challenged the earlier order of reversion to a post, which he never held. Had he moved the matter at the appropriate time, he could have been perhaps successful, as it has been held in the case of

P.V. Srinivasa Sastry v. Comptroller and Auditor General, (1993) 1 SCC 419 as under:-

8. The expression "reduction in rank" in Article 311(2) has an obvious reference to different grades in service. Whenever there is a reduction in rank it implies reversion from a higher post to a lower post. Reversion from a higher post to a lower post may be under exigencies of situation or by way of punishment. The expression "reduction in rank" occurring in Article 311(2) covers only such reversions which are by way of punishment. The expression "reduction in rank", within the meaning of Article 311(2) as the expression itself suggests, means reduction from a higher to a lower rank or post. But the question is whether in this process an officer can be reduced from post which he never held? If the power to reduce an officer by way of punishment to a rank which was never held by such officer is conceded, then a person directly appointed as Upper Division Clerk cannot only be reverted to the post of Lower Division Clerks, but even to the post of a Peon; an Engineer to the post of a Fitter, a Headmaster of a School to the post of an Accountant or Clerk in the said School. As such even while imposing the punishment of reduction in rank, the order must have nexus with the post held by the delinquent officer concerned, from which he had been promoted to the post from which he is being reverted. If such an officer had not held that post or was not member of that cadre then he cannot be reverted to a lower cadre to which he did not belong or to a lower rank which he did not hold at any stage.

9. This Court in the case of *Nyadar Singh v. Union of India* in connection with Rule 11(vi) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 said: (SCC p. 181, para 30)



"The argument that the rule enables a reduction in rank to a post lower than the one to which the civil servant was initially recruited for a specified period and also enables restoration of the government servant to the original post, with the restoration of seniority as well, and that, therefore, there is nothing anomalous about the matter, does not, in our opinion, wholly answer the problem. It is at best one of the criteria supporting a plausible view of the matter. The rule also enables an order without the stipulation of such restoration. The other implications of the effect of the reduction as a fresh induction into a lower grade, service or post not at any time earlier held by the Government servant remain unanswered. Then again, there is an inherent anomaly of a person recruited to the higher grade or class of post being asked to work in a lower grade which in certain conceivable cases might require different qualifications.... But, an overall view of the balance of the relevant criteria indicates that it is reasonable to assume that the rule-making authority did not intend to clothe the Disciplinary Authority with the power which would produce such anomalous and unreasonable situations. The contrary view taken by the High Courts in the several decisions referred to earlier cannot be taken to have laid down the principle correctly."

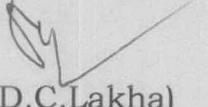
We are in respectful agreement with the aforesaid view. But the applicant having not challenged the reversion, he cannot get the benefit of the above said judgment.

6. Coming to the question of revision of pay, the pay fixed on the basis of the penalty order was Rs 560/- which is the maximum in the pay scale for Fitter Gr. I. Thus, it was the same which the applicant got and he was stagnating in the said pay. When the Pay Rules 1987 were

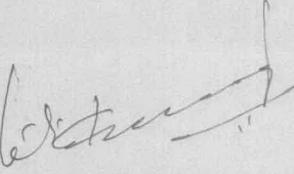


framed, the replacement scale of Rs 380 – 560 was Rs 1320 – 2040 and when the pay of the applicant was fixed, it was on the basis of the table of concordance, vide Annexure CA-1 and likewise, when the Revised Pay Rules 1996 was introduced, it was again revised under the table of concordance vide Annexure CA-2. In fact, on both the occasions, the penalty on permanent measure was kept in mind and it was on account of the same that the applicant was neither given any increment prior to 01-01-1986 nor from 01-01-1986 to 01-01 -1996 and thereafter even, till his retirement. The pay of Rs 560/- came to be static, save for future revision under the Pay Commission Recommendations as per table of concordance. The applicant has accepted the penalty as it is and what he had agitated is that the pay having been fixed under the scale of Rs 380 – 560 with the maximum of Rs 560/- , when the pay scale is revised he should have been fixed at the maximum of the respective scale of Rs 1320 – 2040 and 4000 – 6000 respectively. There is no such rule to that effect in any situation or circumstances, there would be replacement in the way the applicant claimed. The Table of concordance is the only possibility, which the respondents have adopted.

7. Though in pay fixation, limitation does not count, being recurring cause of action, as in the instant case, the respondents have not acted illegally, the applicant cannot get any relief he claims. Hence, the OA is dismissed. No cost.


(D.C.Lakha)
Member (A)

Shashi


(Dr. K.B.S. Rajan)
Member (B)