

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

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Transferred Application No. 471 of 1986(T)

In

(Civil Appeal No. 2 of 1984)

Padma Kant Plaintiff (Applicant)

Versus

Union of India, through General Manager
Eastern Railway, Calcutta.

. Defendant (Respondent)

Hon'ble Mr. S.N. Prasad, Member (J)

The above Civil Appeal No.2 of 1984 which was filed in the Court of District Judge, Varanasi has been received in this Tribunal by way of transfer under section 29 of the Administrative Tribunals Act, 1985 which has been numbered as T.A. 471 of 1986.

2. The above C.A. No. 2 of 1984 emanates from No. 314 of 1978 "Padma Kant (plaintiff) Vs. Union of India (Defendant) wherein the plaintiff has prayed for declaration that him to be entitled to be fixed and paid @ Rs. 520/- w.e.f. 11.10.1974 by quashing the order No. E/Comm. Clerk/Railway/1977 dated 20.7.1977 passed by the D.M.O. Mughal Sarai Eastern Railway as being illegal and improper and void; and in the alternative for directing the defendant to make proper fixation of plaintiff's pay in the alternative employment in accordance with the law and pay the arrears.

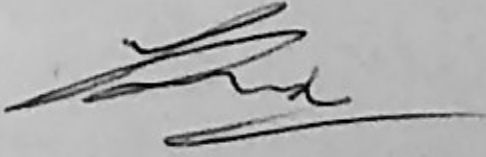
3. The plaint allegations of the aforesaid suit No. 314/1978 briefly stated inter-alia, are that plaintiff is a confirmed employee on the eastern Railway. Since 1964, he was confirmed Guard Grade-C. In 1974 he was declared medically fit in categories in grade C-1 and C-2 in other categories as per order of D.M.O., Mughal Sarai dated 13.3.1974 and after decategorisation he was absorbed in an alternative employment as Commercial Clerk as per order dated 10th October, 1974 at Mughal Sarai.

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and after training he was posted as a relieving Commercial Clerk since 18.2.1975. On absorption as Commercial clerk the plaintiff was paid the basic pay of Rs. 260/- per month and even after training and posting as an R.C.C. he was paid the same basic pay which was wrong and illegal. As Guard Grade-C the plaintiff was receiving pay in Scale 130-225(A.S.) corresponding to the scale 290-350(Revised Scale) since 1.1.1973; but on absorption he was paid in Scale 260-430(R.S.) corresponding to scale 110-200(A.S.) and that too at the initial stage of the aforesaid Revised Scale. The plaintiff as Guard Grade-C was in receipt of Running Allowance besides the pay and D.A. etc. and as such at the time of absorption as Commercial Clerk and relieving commercial Clerk his pay ought to have been fixed in accordance with Rule 2613 of Railway Establishment Manual and the order of the Railway Board which prescribe that for purposes of fixation of pay of Running Staff his pay will be pay plus forty percent of the pay in lieu of Running Allowance and under rule 2609 of the Railway Establishment Manual the pay in the alternative employment after decategorisation should not be less than the above. The plaintiff represented for correct fixation of pay. Where-upon an order No. E/Commercial Clerk/Rly. dated 29.7.1977 fixing the pay of the plaintiff at Rs. 430/- was issued and on 11.2.1978 he was paid Rs. 5629.23 paise as per B.R.No.126/E/P.cII of 1978 dated 24.1.1978 purporting to be arrears arising on this fixation upto June, 1977 and then plaintiff came to know about the wrong fixation and according to the rules the plaintiff was entitled to be fixed at Rs. 520/- per month w.e.f. 11.10.1974, but wrong fixation was made as per aforesaid order dated 29.7.1977.



4. The defendants in their W.S. have, inter-alia, contended that the plaintiff is a decategorised staff. He has been drawing Rs. 430/- per month^{~ the date ~} pay maximum w.e.f. 18.2.1975, he has taken up duty in alternative post as commercial clerk in Grade 260-430. The plaintiff has been correctly absorbed in the alternative post in scale Rs. 260-430 and the plaintiff has been given the benefit of running allowances in fixing the pay^{~ up ~} in absorption in grade 260-430(R.S.) and has been fixed on the maximum of the grade at Rs. 430. The plaintiff is not entitled for absorption in higher grade of Rs. 330/- 560/- as claimed by him. In view of the above circumstances the plaintiff's suit is liable to be dismissed with costs. The above suit of the plaintiff was dismissed with cost by the 9th Additional Munsif, Varanasi as per judgement and decree dated 28.11.1983.

5. Feeling aggrieved against the impugned judgement and decree the above Civil Appeal No. 2 of 1984 has been filed by the plaintiff (Appellant).

6. I have heard the learned counsel for the parties at length and have thoroughly gone through the records of the case.

7. The learned counsel for the appellant has drawn my attention to the Railway Board Letter No. E(NG)11-79RE3/5 dated 14.6.1979 addressed to the General Manager, All Indian Railways and others regarding absorption of medically incapacitated staff in alternative employment, and has also drawn my attention to the letter No. E.359/0/serial No. 145/79 Calcutta, dated 2nd August, 79 issued from the office of the Chief Personnel Officer Eastern Railway Calcutta, and has also drawn my attention to the Railway Board Letter No. E(NG)/178-PMI/305, dated 15.6.79 addressed to the General Manager of All Indian Rlys

and others which is regarding comparison of grade of running staff with stationary categories. Copies ~~on~~ whereof are on record. This is significant to point out that in the aforesaid letter of Railway Board dated 14.6.79 ^{it} which has been clarified that since it has been represented to the Railway Board that the benefit arising from the Board's letter of 2.9.1977 should be made applicable at least to the medically incapacitated Running Staff absorbed in alternative appointments on or after 1.1.73; after careful consideration the Railway Board have accepted this proposal. They desired that all cases where Running staff have been absorbed in alternative appointments on or after 1.1.1973 ^{be} reviewed and the benefits arising from their orders of 2.9.1977 ^{be} afforded to the Running Staff.

8. It is also important to point out that a perusal of the aforesaid letter of the Chief Personnel Officer dated 2.8.1979 also shows that a direction was issued to ensure that all cases of running staff who have been absorbed in alternative appointments ^{on} or after 1.1.1973 ^{are} reviewed and benefits ^{are} afforded to the employees concerned in accordance with the aforesaid letter of the Railway Board.

9. This is also important to point out that the Railway Board after careful consideration decided that the dis-advantage which the running staff suffered when they have to compete for promotion with non-running categories, they were often not selected and were placed on the panels because of their scale of pay being the lowest among the other eligible categories; and that dis-advantage was removed by adding to the pay scale of the running staff roughly 30% of the same (in lieu)

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running allowances) and accordingly scale of stationary category to be treated as equivalent after adding 30% against the corresponding actual scale were specified which reads as follows :-

<u>Actual Scales</u>	<u>Scale of stationary category to be treated as equivalent after adding 30%.</u>
Guard A Spl. Rs.425-640/- Rs. 425-600/-	Rs. 550-750/-
Guard A Rs.	
Guard DRs.330-560/-	Rs.455-700/-
Guard C Rs.330-530/-	Rs.425-640/-

This fact should also not be lost sight of that a perusal of the pleadings of the parties reveals that the plaintiff (appellant) was working as Guard C and was receiving pay in scale of Rs. 130-225/-(A.S.) corresponding to scale 290-350(Revised scale) since 1.1.1973 but on absorption his pay was fixed as Rs. 430 per month as per order dated 29.7.1977 where-as as per decision of the Railway Board contained ⁱⁿ their letter dated 15.6.1979, as referred to above, the plaintiff-appellant's pay should have been ^{date} fixed at Rs. 520/- per month from 11.10.1974 the/on which the plaintiff was absorbed in alternative employment as Commercial clerk and after being medically unfit in other categories for performing the duties of Guard grade -C, as per order No. E/Misc./CC/RE dated 10.10.1974.

10. The learned counsel for the respondents has not disputed about the authenticity of the copies of the aforesaid letters of the Railway Board and of Chief Personnel Officer as referred to above. Further, he



~~The learned counsel for the respondent (defendant) has not disputed about the aforesaid copies of the aforesaid letters of the Railway Board and of Chief Personnel Officer as referred to above.~~

11. The learned counsel for the respondent has argued that the plaintiff-appellant is not entitled to the relief sought for.

12. This fact should not be lost sight of that in para 27 of the written statement of the defendant, it has been mentioned clearly that the plaintiff was working earlier in Scale Rs. 290-480/- as Guard Grade-C. Having considered ~~of~~ the entire materials on records and keeping in view the directions and decisions of the Railway Board as specified in above letters, I find that the plaintiff-appellant is entitled for fixation of his pay at Rs. 520/- per month from 11.10.1974, and is entitled to receive the difference of amounts, between the amounts which are admissible to him minus the amounts which have already been received by him as mentioned in para 7 of the plaint, including other amount, if any, received by him, and I find that the trial court has erred in dismissing the suit of the plaintiff by impugned judgement and decree as indicated above; and consequently the aforesaid appeal No. 2 of 1984 is allowed and the impugned judgement and decree of the trial court are set aside and the plaintiff's suit No. 314 of 1978 is decreed against the defendant (respondent) as above; and the respondent-defendant is directed to pay all the amounts to the plaintiff, for which the plaintiff is entitled as directed above within a period of three months from the date of the receipt of the copy of the judgement. In the circumstances of the case, the parties are directed to abide by their own costs.

Allahabad dt. 10th January, 92.
(RKA)

Member (J)

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