

(A)
6

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Registration(OA) No 569 of 1987.

A_N Srivastava

applicant.

Versus

Union of India and others

Respondents.

Hon'ble D S Misra, A.M.

Hon'ble G S Sharma, J.M.

(By Hon'ble D S Misra)

This is an application under Section 19 of the A.T. Act XIII of 1985 for issue of a mandamus to the respondents for correct fixation of his pay w.e.f. 7.11.1951 and to pay arrears in respect of the increased salary, provident fund interest, dearness pay and dearness allowance amounting to Rs 82,933/-.

2. The applicant has claimed that he was appointed as Guard Grade II on 12.1946 in the ~~First~~ ^{1/2} while East Indian Railway, and transferred to Northern Railway, later on; that on the implementation of the First Pay Commission Report, he was adjusted as Guard Grade A w.e.f. 1.1.1951 in the scale of Rs. 150-225; that w.e.f. 7.11.1951, he was promoted to officiate in the stationary cadre post as Relieving Transport Assistant in the scale of pay of Rs 200-10-300; that his pay was wrongly fixed at Rs 200/- per month w.e.f. 7.11.51 and that it should have been fixed at Rs 412/- per month; that after adding the increments admissible to him from year to year, he was entitled to the fixation of pay as given in annexure A-6(A) to the petition.

3. In the reply filed on behalf of the respondents, a preliminary objection has been raised on the maintainability

1/2

AB
72

7

2.

of the application as the application is based on a fresh claim and not against an order by which the applicant feels aggrieved and thus the application is barred by limitation. It is denied that the applicant was adjusted as Guard Grade A w.e.f. 1.1.1951. It is stated that the applicant was working as Guard Grade I or Grade B in the scale of Rs.100-5-125-6-180. He was appointed Relieving Transportation Assistant in the scale of Rs.200-300 w.e.f. 7.11.1951. He was drawing Rs. 125/- prior to 7.11.1951 and his pay was correctly fixed at Rs.200/- after adding 50% of his pay of Rs.125/-, i.e. 62.50 which together with his pay of Rs.125/- comes to Rs.187.50. The above fixation was done under Rule 2017 of the Railway Establishment Manual Vol.II as applicable at that time. The applicant was confirmed in the Grade of Rs. 200-300 on his turn w.e.f. 22.1.1955 on the availability of a permanent post. The method of fixation of pay as alleged by the applicant is absolutely incorrect and the applicant is not entitled to relief claimed by him.

4. The applicant presented his case in person and the respondents were represented by Sri Lalji Sinha, Advocate. We have heard the arguments of both the parties and have carefully perused the documents on record.

5. Regarding the maintainability of the application under Section 19 of the A.T. Act, 1985 the applicant has contended that the application has been filed in pursuance of the orders dated 27.2.1987 of the High Court of Judicature

be application filed by the
at Lucknow Bench Sri Lalji Sinha, has contended that the applicant and some other petitioners alleging non-compliance of an order passed earlier, was dismissed and it was also held that the applications disclosed fresh cause of action

8
A/P

-3-

and the High Court was not competent to grant the relief claimed by the petitioners. The present application was filed on 17.8.77 after a lapse of more than 4 months and not in the manner directed by the High Court, but in the form of a fresh petition under Section 19 of the A.T. Act 1985. It would be relevant to give a brief history of litigation regarding fixation/refixation of pay of staff brought from running cadre to stationary posts insofar as it relates to the present case. Initially, three writ petitions bearing nos. 443/70m1046/70, and 626/71 were filed by M/S Bhagawati Prasad Pandey, Ram Kumar Dubey and Sardar Hussain, respectively for correct fixation/refixation of their pay as a sequence of their transfer from running to stationary post. The above mentioned writ petitions were disposed of by an order dated 7.11.1974 of Hon'ble O.P.Trivedi/J. The railway administration filed three special appeals nos. 9,10, and 11 of 1975, whereas petitioners-Bhagawati Prasad Pandey and Ram Kumar Dubey also filed special appeals nos.12 and 13 of 1975 respectively against some of the observations of the Single Judge. These appeals were disposed of by a common Judgment and order dated 12.3.79 by a division bench. By this order, the railway administration was directed to refix the pay of the petitioners in the original Writ Petitions in accordance with Rule 2017,2018, and 2027 read with relevant circulars after taking into consideration that the running allowance is part of pay during the period they hold officiating appointment, in the stationary post. Learned Judges also observed "the order passed by learned Single Judge in other respects is being maintained. The refixation shall be made within 3 months from today." After the decision of the aforesaid special Appeals, and writ petitions,

the applicant filed a writ petition no. 536 of 1980 in Jan.1980
On 22.8.84 a division bench of High Court decided the
aforesaid writ petition of the petitioner along with 15 other
connected writ petitions, then pending on the same matter
and extended the benefit of the judgment delivered in special
appeals mentioned earlier. In terms of the judgment dated
22.8.84, mentioned above, the compliance was to be made
within 3 months but on an application moved by the railway
administration, the said time was extended first upto 31.5.85
and thereafter upto 15.1.1986. The rail way administration
filed a compliance report dated 23.1.1986 in respect of
several petitioners in the writ petitions including the present
applicant (copy R.A.2). In this compliance report dt. 23.1.1986,
it was stated that the applicant was not entitled to receive
any amount as his pay had been fixed correctly. A contempt
case no.460/1980 had been filed by some of the petitioners
mentioned earlier and the same was pending before Hon'ble
K.Nath-J.. The present applicant also moved a contempt
petition before the same Judge and got an order passed
on 17.10.1985 by means of which his claim was also referred
to Chartered Accountant for determination of his claim.
Against the report of the Chartered Accountant, the
respondents filed objection before the Hon'ble Judge dealing
with the contempt, who dismissed the contempt petition
on 16.5.86 (copy annexure R.6). Thereafter the
applicant filed a civil misc application on 6.9.86 before
the division bench of the Allahabad High Court claiming
a total sum of Rs 2,67,505/- (copy annexure R.7). The respondents
filed counter/affidavit through which the claim of the
applicant was refuted (annexure R.8). The division bench
gave the judgment on 27.2.1987 dismissing the application

Ay
S

10

-5-

with the observation that it will be open for the petitioners to take back all the certified copies and file the same before the Central Administrative Tribunal.

6. We have considered the contentions of the parties on the question of limitation and we find that in the matter pending before the Allahabad High Court, the respondents had filed their compliance report on 23.1.1986 in which it was clearly stated that the applicant was not entitled to receive any amount as his pay had been fixed correctly. It appears that on the establishment of the Central Administrative Tribunal w.e.f. 1.1.1985, the High Court ceased to have any jurisdiction over service matters and the High Court refused to pass any orders in these matters pending before them. However, it appears that instead of transferring ~~the~~^{be} pending matters to this tribunal, the Hon'ble Judges of the Allahabad High Court directed the applicant to approach the CAT by their order dated 27.2.1987. In our opinion the cause of action in this case arose on 23.1.1986 when the respondents informed the High Court that the applicant's claim for refixation of his salary w.e.f. 7.11.1951 onwards have been considered and rejected. The period of limitation would thus start from this date and the application should have been filed within 1 year i.e. by 22.1.1987. However, we are inclined to take liberal view of the matter as the applicant during his presentation of his case pleaded that he was not fully conversant with the period of limitation provided under the A.T. Act, 1985 not being an advocate and therefore, this delay of about 5 months may be condoned. We are of the view that as the litigation between the applicant and the respondents has been going on since 1980, and as the division bench had

the division bench had given its final order on 27.2.1987 advising the applicant to file a petition before this tribunal, the delay in presenting this application before the tribunal is condoned. Accordingly we have decided to examine the claim of the applicant on merit.

7. The first contention of the applicant is regarding fixation of his pay w.e.f. 7.11.1951. In this regard the contention of the applicant is that on 7.11.1951, the applicant was drawing a salary of Rs.150/- in the scale of Rs.150-250 as he was working as Guard Grade A. He has not filed any documentary evidence in support of this claim and has contended that since he was employed on express and mail trains, he should be deemed to have been working as Guard Grade A. We have considered this matter and we are of the opinion that in the absence of any documentary evidence and in face of denial by the respondents, it is not possible to accept this contention of the applicant. The respondents have filed extract from the service book of the applicant in which it is clearly stated that the applicant was working as Guard Grade I in the scale of Rs.100-5-125-6-155-EB-6-... and drawing a salary of Rs.125/- per month w.e.f. 1.1.1951. On the promotion of the applicant in the grade of Rs.220-10-300, pay was fixed at Rs.200/- in accordance with the instructions contained in para 2017 of the Railway Establishment Manual Vol.II as applicable at that time. The basic pay of the applicant was Rs.125/- and to this was added 50% of pay as running allowance, making it Rs. 187.50. As the applicant was working on a promotion post, his pay was fixed at Rs.200/- being the minimum of the scale of pay of the post to which he was promoted. The

PL

A2
7

12

-7-

applicant's contention is that his pay should have been fixed by taking into consideration his basic pay at Rs.150/- and then adding 75% of his basic pay as running allowance and further adding 50% of the resultant pay. The applicant has based his claim in accordance with letter no 22334-SA. dated 8.11.1954 from General Manager, Central Railway Board, New Delhi on the subject of officiating pay and special pay to running staff employed as instructors in Railway Training School (copy annexure A 1). In this letter, there is a reference to Railway Board's letter dated 16.3.1949 on the subject mentioned above. Sri Lalji Sinha, contested the applicability of this letter on the ground that this letter deals with officiating pay and special pay to running staff utilized as instructors in the Railway Training School and not to the case of the applicant, who was appointed as Relieving Transportation Assistant, a post of stationary duty. He further contended that the instructions contained in the Railway Board's letter of 17.1.1949 (copy annexure R.9) was applicable to the case of the applicant.

8. We have examined the contention of the applicant regarding fixation of his pay by adding 75 per cent of the average running allowance received by him during one year prior to his posting in a stationary post and we find that the contention of the applicant regarding the applicability of the instructions contained in the letter dt. 8.11.1954 (annexure A 1) is not applicable to his case, as he was not working as instructor in the Railway Training School. This letter is not in the nature of a circular letter, but it is a letter of General Manager, Central Railway, addressed

to the Director Establishments containing reply to Board's letter dated 16.3.1949. In any case this letter deals with grant of officiating pay and special pay to running staff utilized as instructor in the Railway Training School ^{and he} this letter is not applicable to his case. The instructions contained in Railway Board's letter dated 1st July, 1949 are available at pages 191, 192 of the reply, filed by the respondents. The relevant portion of the circular is reproduced below:

"For running staff officiating in higher grades of posts for periods of 21 days or less:-

(i) The normal rules will apply with the relaxation that promotion to the lowest grades of fireman hunters, and drivers will be permissible in excess of the sanctioned cadre; if required for dealing with the traffic but grade promotion in a category will be permitted only if there are vacancies on the sanctioned cadre; provided grade to grade promotion within the same category is otherwise admissible under the rules applicable to the staff concerned.

(ii) The pay should be fixed under Rule 2017-R-II, 50% of the pay in the running post also to be treated as pay for the purpose of fixation of pay in the stationary appointment"

We have considered the implications of these instructions which are in two parts. The first part deals with fixation of pay under normal rules where an employee is appointed to a stationary post which is a higher post and is in the nature of his promotion. The second part provides that in making such fixation 50% of pay should be added in respect of the running staff appointed to stationary post.

bh

9. On going through the relevant judgments of the Allahabad High Court, we find that no specific direction has been given regarding the refixation of the salary of the applicant as claimed by him. It has been asserted by the respondents that annexure 1 of the compliance report (copy annexure R8) filed by them before the High Court on 23.11.1986 discloses that the amount claimed by the applicant in the present application is neither admissible nor payable. Learned counsel for the respondents Sri Lalji Sinha contended that the pay of the applicant was fixed/ refixed on various dates in accordance with para 2017 of the Railway Establishment Manual as applicable at that time until the confirmation of the applicant on the stationary post of Relieving Transportation Assistant w.e.f. 2.7.1955. It was also stated that the applicant was confirmed as Guard Grade A in the scale of Rs. 150-225 w.e.f. 20.5.1954. We have considered the applicability of the relevant rules in the matter of fixation of pay of the applicant w.e.f. from the date of his promotion as Relieving Transportation Assistant and confirmed on that post on 2.7.1955 ^{by} ~~and~~ are of the opinion that Rule 2017 of the Railway Establishment Manual read with the instructions contained in the Railway Board's Circular dated 17.1949 ^{be (An R-9)} was applicable. In accordance with these instructions the applicant was entitled to fixation of his pay on promotion as Relieving Transportation Assistant on 7.11.1951 as follows:

1. Pay in the running cadre Rs.125/-.
2. 50% of pay in lieu of mileage Rs.62.50.
3. Total 187.50.

(A3)
15

-10-

Pay to be fixed at Rs 200/- minimum of the grade of Rs 200-300 in accordance with sub rule A(1) of Rule 2017 of the Railway Establishment Manual.

2017: The initial substantive pay of a railway servant who is appointed substantively to a post on a time scale of pay is regulated as follows:

(a) If he holds a lien on a permanent post other than a tenure post, or would hold a lien on such a post had his lien not been suspended-

(i) When appointment to the new post involves the assumption of duties or responsibilities of greater importance, (as interpreted for the purposes of rule 2026(F.R. 30)) than those attaching to such permanent post, he will draw as initial pay the stage of the time scale next above his substantive pay in respect of the old posts!"

The contention of the applicant that he was entitled to any additional 50 per cent of the resultant pay of Rs.187.50 is not permissible under any rule applicable to the case of the applicant. The refixation of the pay of the applicant on 1.1.1952 when the applicant would have earned an increment of Rs.6/- per month in his old scale of Rs.100-185 has also been done correctly by the respondents as shown in Annexure 1 to R.A.8. In the extract of service book filed before us it is stated that the applicant was confirmed as Guard Grade A in the scale of Rs.150-225 w.e.f. 20.5.54. There is no mention in this regard as to when was the applicant notionally promoted as Guard Grade A. In fact even promotion order dated 20.5.54 of the applicant as Guard Grade A is notional as he was already officiating in the higher scale of Rs 200-10.300 as Relieving Transportation Assistant. As this appointment of the applicant was in an officiating capacity till 27.5.55, the applicant was entitled to refixation of his pay on 20.5.54, the date from which he became a permanent Guard Grade A in the scale of Rs.150-225. In

(A2)
16

-11-

the statement at annexure I to annexure R8, the pay of the applicant on 7.11.1954 was raised to Rs 230/- in the grade of Rs 200-10.300. This has been done after taking into consideration the basic pay of the applicant being Rs.143/- in the scale of Rs. 100-185 on 1.1.1954. The basic pay of the applicant on his confirmation as Guard Grade A w.e.f. 20.5.1954 can not be less than Rs.150/-. Even on 1.1.1955, the basic pay of the applicant in the running grade has been shown as Rs.149/-. This should have been a minimum of Rs. 150/- and not Rs.149/- as mentioned in the Calculation Chart at annexure I to Annexure R8. The basic pay of the applicant on 20.5.54 being a minimum of Rs.150/-, the applicant was entitled to Rs 75/- as 50% of pay in lieu of mileage raising the pay of the applicant to Rs 225/- w.e.f. 20.5.1954. The applicant would be entitled to earn an increment w.e.f. 20.5.55 raising his basic pay to Rs.160/-. After adding 50% of pay in lieu of mileage, the pay of the applicant should be refixed at Rs 240/- per month w.e.f. 20.5.1955. The future increments of the applicant would fall on 20.5.1956, 20.5.1957 onwards until his promotion to a higher post. The claim of the applicant for the refixation of his salary as indicated in the earlier paragraph will have to be considered in the light of the various judgments of the Allahabad High Court, mentioned earlier. It has been clearly stated in the finding of the learned Single Judge that the petitioners will be entitled for arrears of salary for a period of 3 years prior to date of filing of the petition. The applicant has filed a writ petition in January 1980 and any arrears to which he may become entitled by the process of refixation of his salary as indicated in the previous paragraph will be limited to the years 1977,78 and 79 only.

BL

(A7/2) 17

-12-

We order the respondents to work out the arrears of pay, allowances, pension etc. admissible to the applicant and pay the same within a period of 3 months from the date of receipt of this order. The application is decided accordingly. Parties shall bear their own costs.

Sharma
3.3.88

A.M.

Sharma
3/3/88

J.M.

JS 3.3.1988