

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,

ALLAHABADDated: Allahabad this the 10th ^{December} November, 1996CORAM: Hon'ble Dr R.K.Saxena, JM
Hon'ble Mr D.S.Baweja, AMORIGINAL APPLICATION NO. 167 OF 1992

R.N.Sharma son of Sri R.I.Sharma,
 Senior Instructor posted at Subedarganj,
 Allahabad under Principal Electrical
 Toarkway Centre, Kanpur

- PETITIONER

(C/A Sri P.K.Kashyap)

Versus

1. Union of India through General Manager,
 Northern Railway, Baroda House,
 New Delhi

2. Divisional personal Officer,
 Northern Railway, Allahabad

- RESPONDENTS

(C/R Sri Mohd. Yusuf)

ORDER

(By Hon'ble Mr D.S.Baweja, Member (A))

This application has been filed praying for the following reliefs:-

(a) To quash the wrong fixation of pay vide order dated 5.7.91

(b) To direct respondents not to reduce the salary from Rs.2750/- to Rs.2600/- and not to recover the payment already made from 23.1.87 onwards.

2. The applicant joined as an Apprentice Assistant Driver, Allahabad Division, Northern Railway. He was promoted as Driver 'B' Grade from 1.1.82. After passing the screening test, he was promoted as Driver 'A' Grade (Passenger Driver) on adhoc basis vide order dated 14.10.86. Thereafter he was promoted in the grade of Rs.2000-3200 from 23.1.87 on adhoc basis as Senior Instructor. He appeared in the regular selection for the post of Senior Instructor ^{was} and got selected and placed on the panel dated 7.10.88.

He was posted regularly vide order dated 28.10.88. His pay was fixed at Rs.2750/- in the grade of Rs.2000-3200 taking into account his pay as passenger Driver on adhoc basis. He, also earned four annual increments upto 1991 based on this pay. However, vide order dated 5.7.91, the pay of the applicant has been refixed on 23.1.87 as Rs.2600/- instead of Rs.2750/- and for the subsequent years accordingly on the ground that he was not regularly promoted as Driver Grade 'A' (Passenger Driver). Order was also passed for recovery of the over payment made on the basis of pay of Rs.2750/-. The applicant made a representation dated 16.1.92 against the same. Being aggrieved he has filed this application on 4.2.92.

3. The applicant has pleaded that since the applicant was selected from the post of Driver Grade 'A' (Passenger Driver) on regular basis as Senior Instructor, the adhoc promotion as passenger Driver impliedly gets regularised. In view of this, he is entitled for the fixation ^{of pay} as allowed initially at Rs.2750/-. His pay has been reduced without giving any notice. The action of the respondents is, therefore illegal, arbitrary and ⁱⁿ violation of the provisions of Article 14 and 16 of the Constitution of India.

4. The respondents have filed the ^{counter} reply opposing the application. It is submitted that since the applicant was promoted as Driver Grade 'A' (Passenger Driver) on adhoc basis, he cannot get the benefit ^{of} _{from} pay fixation of this promotion on appointment as Senior Instructor through regular selection. Pay fixation was wrongly done due to clerical error. When this error was detected, necessary action was taken to correct the same, by ^{re} fixation of pay at Rs.2600/- instead of Rs.2750/- on 23.1.87. No notice was required for the correction of ^{error in} _{re}-fixing pay in terms of Rules 2018 R (II) (Indian Railways Establishment Code).

also There is no provision that if the fixation of pay was done erroneously, the same could not be corrected. Thus the action taken is not arbitrary, illegal and ⁱⁿ violation of Article 14 and 16 of the Constitution of India. In view of these facts, respondents submit that there is no case in favour of the applicant and the application deserves to be dismissed.

5. Vide order dated 17.2.92, as an interim relief the operation of the order dated 5.7.91 was stayed. This stay was extended from time to time and continued till the end.

6. We have heard the learned Counsel of the parties. *also* A careful consideration has been given to the material brought on record.

7. From the rival contentions, the short question which emerges is whether the applicant was entitled for pay fixation on appointment as Senior Instructor treating his promotion as passenger Driver ⁱⁿ regular basis? The applicant himself has averred that his promotion as Driver grade 'A' (passenger Driver) was on adhoc basis. This is also quite clear from the letter dated 14.10.86 at A-2. The applicant's pleas that he had passed the screening test and successfully completed the training are not tenable as the required selection process was still to be completed. With this admitted status of his promotion as passenger Driver, the only ground advanced by the applicant is that this adhoc promotion impliedly becomes regular ^{to support his claim} in his passing the selection for the post of Senior Instructor. The applicant has not quoted any rules to support his contention. We are, however, not inclined to subscribe to the contention of the applicant. As we understand from the material placed on record, the post of the Instructor is not in the normal channel of promotion in the Driver's Cadre. The selection for the post of Instructor is

confined to those who opt for the same. Therefore, on being appointed as Senior Instructor through regular selection in the grade of Rs.2000-3200 will not imply that his adhoc promotion as Driver Grade 'A' also gets regularised without undergoing selection over his seniors, who had not appeared for the post of Senior Instructor. Keeping this position in mind, we are in agreement with the respondents that fixation of pay in the grade Rs.2000-3200 is to be done based on his substantive posting as Driver Grade 'B'. The fixation of ~~his~~ pay at Rs.2750/- allowed ^{to} him in the grade of Rs.2000-3200 was accordingly erroneous.

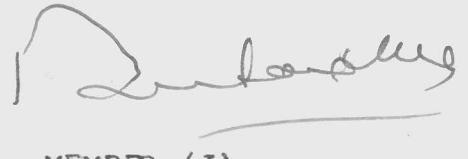
8. We have held above the contention of the respondents that the fixation of the pay was erroneous. Respondents are entitled to rectify this error when detected. The question that arises whether the error could be rectified without giving show cause notice to the applicants? It is admitted fact that no notice was given to the applicant before refixing pay at Rs.2600/- instead of Rs.2750/-. The respondents have argued that since the pay fixation of Rs.2750/- was erroneous and not permitted as per rules, for rectification of error, show cause notice was not necessary. The principles of Natural Justice demand ^{that} before any adverse order is passed against the employee affecting his right, affording ^{an} opportunity of being heard and presenting his case. In the present case, the fixation of pay allowed in 1987 was not permissible. The applicant has ^{not} quoted any rules to support his case. We have held above that fixation of the pay allowed was not permissible. In such a situation, even if the show cause notice was issued to the applicant to afford opportunity to represent his case, the applicant would not have any defence to put forward. The issue of show cause notice would have served little purpose. In this view of the matter, we are not inclined to endorse the contention of the applicant that there

has been violation of principles of natural justice.

9. The respondents have erred in granting ~~in~~ wrong fixation of pay. It is not on account of mis-representation by the applicant that the benefit of higher pay fixation was ^{therefore} allowed. The applicant ^{cannot} be held responsible for any over payment. It shall be, therefore, just and proper not to recover excess payment ^{made} already ~~on~~ on account of pay fixation at Rs.2750/- on 23.1.87 till the passing of the order dated 5.7.91. In this connection, we have support of the judgements of the Apex Court, (i) Sahib Ram Versus State of Haryana and others (1994) 28 ATC 747 (ii) Shyam Babu Verma and others versus Union of India (1994) 27 ATC 121.

10. In consideration of the above facts, we allow the application ~~in~~ partly. We find no merit in the relief with regard to quashing of the order dated 5.7.91. With regard to recovery of the excess payment upto 5.7.91, we direct that no steps shall be taken to recover or adjust the same. The application is disposed of accordingly. There will be no order as to costs.


MEMBER (A)


MEMBER (J)

RJ