

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 27th day of Sept. 1995.

Original Application no. 128 of 1993.

Hon'ble Mr. T.L. Verma, Judicial Member.
Hon'ble Mr. S. Dayal, Administrative Member.

Prem Narain Shukla, S/o Late Sri K.L. Shukla, Retired
Div. T.T.I., N.E. Rly., Anwarganj, Kanpur, R/o 127/U/207
Nirala Nagar, Kanpur.

... Applicant.

C/A Sri Ram Sumer.

Versus

Union of India through D.R.M., NE, Rly., Lucknow.

... Respondent..

C/R Sri P. Mathur.

ORDER

Hon'ble Mr. S. Dayal, Member-A

This is an application under section 19 of the
Administrative Tribunal Act, 1985.. The following
reliefs are sought through this application;-

- i. Quashing of the respondent's order no. E/11/205/
upgrading/TC-TIE dated 23.08.91 and restoration
of status quo as it stood after promotion order
dated 25.03.91.

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- ii. Quashing the respondent's order no. E/11/211/P. Adalat/91-92 dated 11.12.91.
- iii. Direction to the respondent to review the case under notification 5 Explanation 2 and 6(1) of the pay commission.
- iv. Direction to the respondent to pay penalty for the malicious and vexatious ^{deduction} of wages under Payment of Wages Act.
- v. Direction to the respondents to pay pension, gratuity, encashment of leave and other terminal benefits on the basis of last pay of Rs. 2000 per month which the applicant was earning since March, 1991.

2. The grounds for asking the relief are stated to be:-

- i. The reduction of pay from Rs. 2000 p.m. to Rs. 1950 per month was against order dated 25.03.91 and service certificate.
- ii. The basis or the order of reduction of pay that change of pay in 1990 for promotion given on 01.01.84 is not permissible is erroneous as the promotion order was made on 16.01.90.
- iii. The letter of 23.08.91 is contrary to letters dated 25.09.90 and 25.03.91.
- iv. The pension adalat was prejudiced and failed to summon and hear the applicant.

3. The applicant claims that he was promoted from the post of Ticket Collector in the scale of Rs. 330-560 to the post of conductor on 01.01.84 in the scale of Rs. 425-640 vide order no. E/11/205/Upgrading/TC-TTE/89

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dated 16.01.90. The applicant's pay in conductor's scale was fixed by order no. E/11/205/Upgrading/TC-TTE/84 dated 25.09.90 and the pay scale was fixed as follows:-

01.01.84	530
01.01.85	545
01.01.86	1640
01.07.86	1720
01.07.87	1760
01.07.88	1800
01.07.89	1850
01.07.90	1900

4. This was done because of the applicant's option that his pay should be fixed in the new scale after the grant of increment on 01.07.86 in the old scale. The applicant claims that he was informed by letter no. E/11/205/Upgrading/TC-TTE/84 dated 23.08.91 that in response to option dated 22.01.90, the applicant's pay was reconsidered and reduced to Rs. 1900 on 01.07.91. The applicant sent a representation dated 31.08.91 but received no reply. He moved an application on 06.11.91 for adjudication in Pensioner's Adalat which was being held on 16.12.91. The applicant received a letter on 24.12.91 that the applicant's option in 1990 could not be considered as there was no provision in Pay Commission's award for such an option. The applicant tried to meet the respondent in January, 1992, but did not succeed. The applicant represented on 19.02.92 but received no reply.

5. The arguments of Shri R.S. Mishra, learned counsel

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for the applicant and Sri Prashant Mathur learned counsel for the respondents were heard. As it was considered necessary to peruse ~~the~~ order no. E/11/205/Upgrading/TC-TTE/89 dated 16.01.90, the learned counsel for the applicant was directed to file a copy of the order within one week from the date of hearing. The applicant, in a application filed by him on 17.07.95, ~~it is~~ mentioned that the Railway order dated 16.01.90 was Annexure 4 to the original Application and has filed a copy of paragraph 1317 of Indian Railways Establishment Manual Vol II. The learned counsel for the applicant was given the option to file a reply. Although the letter filed by the learned counsel for the applicant was served on him on 17.07.95, he has not filed any reply till the end of August.

6. We have considered the pleadings and arguments made on behalf of both the parties. Our decision is set forth in the ensuing paragraphs.

7. A perusal of the impugned letter dated 11.12.91 shows that the representation of the applicant for being considered by the pension adalat was rejected on the ground that the option contemplated under the Pay Scales revised on the recommendation of the Fourth Pay Commission was not available in the year 1990. Therefore, his representation was rejected as it was received after the prescribed period. The applicant has annexed the Notification dated 19.09.86 of the Railway Service (Revised Pay) Rules, 1986, which makes these rules applicable with effect from 01.01.86. The ~~proviso~~ ^{proviso}

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to Rule 5 of these Rules lays down that, " a Railway Servant may elect to continue to draw pay in the existing scale untill the date on which he earns his next or any subsequent increment in existing scale or untill he vacates his post or cases to draw pay in that scale." Rule 6 (1) of the same Rule lays down that the option should reach the designated authority within three months of the date of publication of these rules, or, where an existing scale has been revised by any order made subsequent is that date, within three months of the date of such order. Rule 6 (4) of these Rules lays down that option once exercised shall be final. Another impugned order dated 23.08.91 shows that the pay fixed earlier in case of the applicant was awarded on this basis of option dated 22.01.90 of the applicant as follows:-

01.07.84	545
01.07.85	560
01.01.86	1640
01.07.86	1680
01.07.87	1720
01.07.88	1760
01.07.89	1800
01.07.90	1850
01.07.91	1900

8 The document annexed by the applicant his O.A. shows the stages traversed by the applicant in 1990 and 1991. The order of restructuring dated 16.01.90 annexed to the O.A. as Annexure 4 speaks about 'Promotion' of some 28 employees including applicant with effect from 01.01.84 under some scale

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of restructuring. However, in case of the applicant the order shows in columns 3, 4 and 5 the present post, place and pay scale which were conductor at Kanpur Junction in the pay scale of Rs. 425-640 and the post of promotion, place of posting and pay scale of promotion have been given in columns 6, 7 and 8 of the annexure and they are conductor at Kanpur Junction in the pay scale of Rs. 425-640. The next Annexure no. 5 to the O.A. is an order dated 25.09.90 which amends the order dated 16.01.90. It shows the name of Sri P.N. Shukla, the applicant, at serial no. 3 and shows him as posted as T.T.E. under station superintendent, Kanpur, in the pay scale of Rs. 330-560 and getting Rs. 500 permonth on 31.12.83 in columns 3, 4, 5 and 6 and shows him as having been promoted to TTE Grade I under the Station Superintendent, Kanpur, in the pay scale of 425-640 and getting Rs. 530 as pay with effect from 01.01.84 which becomes Rs. 545 on 01.01.85 and Rs. 1640 on 01.01.86 and Rs. 1720 on 01.07.86. There is another order of promotion of the applicant dated 25.03.91 at Annexure A-7 to the O.A. which shows the applicant as having been promoted from the post of TTE grade I, Kanpur Anwarganj in the scale of Rs. 1400-2300 to that of D.T.T.I., Kanpur Anwarganj in the scale of Rs. 1600-2660 and his pay is shown as having been fixed at Rs. 2000. The service certificate annexed at Annexure 10 shows the applicant as getting Rs. 2000 permonth on the date of his superannuation which was 31.08.91 (Annexure A-3 of the OA) in which the applicant is shown as having been fixed at Rs. 545 on

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on 01.07.84 and entitled to Rs. 1640 permonth on 01.01.86 and Rs. 1680 permonth on 01.07.86. Consequent upon this an order dated 27.08.91 was passed reducing the pay of the applicant from Rs. 2000 to Rs. 1950. This order is annexed as Annexure CA-III to the counter affidavit.

9. The applicant has given ^{two} options. The first one was dated 22.01.90 and is annexed as A-6 to the OA. In this letter of option, the applicant has requested for **fixation** of his pay with effect from 01.07.86 in the new pay scale of Rs. 1400 - 2300. The respondents in their counter affidavit have denied that they received this option but mention that they have received option dated 24.01.90 of the applicant in which he has requested for fixation of his pay with effect from the date of his increment on 01.07.84. The applicant in his rejoinder application has mentioned that second option was only for promotion to the pay scale of Rs. 425-640. It is mentioned in order of the respondent dated 23.08.91 (Annexure A-3 to the OA) that the pay of the applicant was being refixed on the basis of his option dated 22.01.90. It is not understood as to how the respondents are now denying that they received this option.

10. As far as provision for exercise of option under the Railway Service (Revised Pay) Rules, 1986, is concerned, an option is clearly provided for under rule 5. Thus there should be no doubt that the applicant was entitled to exercise of option dated 22.01.

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when his pay was to be fixed in the pay scale of Rs. 1400-2300 from the earlier pay scale of Rs. 425-640.

11. The reasons for down gradation of the pay from the stage of Rs. 2000 permonth to Rs. 1950 permonth a few days before the retirement of the applicant given by the respondents are different on different occasions. The reason given in the impugned order dated 11.12.91 (Annexure 1 of the Original Application) are that the benefit of fixation of pay after earning one increment was given in the old scale of Rs. 425-640 in accordance with option dated 24.01.90. It was also said that the option of pay fixation in the new pay scale after having one increment in the old pay scale was not available in 1990. Therefore, his option given on 22.01.90 was outside the prescribed period. The respondents have mentioned in the counter affidavit that his pay in the scale of Rs. 1200-2040, which was revised equivalent of Rs. 330-560, was fixed in 1986. He should have given his option at that time. The respondents have denied in the counter affidavit that they received option dated 22.01.90 from the applicant but state they had only received option dated 24.01.90. As we have seen earlier, the respondents have themselves mentioned in order dated 23.08.91 that they are revising the pay scale on the option of the applicant dated 22.01.90. Thus they are contradicting themselves.

12. A perusal of Rule 5 of the Railway Service (Revised pay) Rules, 1986, and paragraph 1317 of

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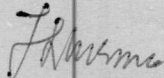
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of the Indian Railway Establishment Manual leaves one in no doubt that the applicant was entitled to give an option when his pay was to be revised to the pay scale of Rs. 1400-2300 from the pay scale of Rs. 425-640.

13. We, therefore, set aside the impugned order no. E/11/205/Upgrading/TC-TTE/84 dated 23.08.91 and order dated E/PC/TTE/P-4/91 dated 27.08.91. We hold that the applicant is entitled to the payment of salary and terminal benefits in accordance with the pay fixed and shown in order no. E/11/205/15/up/TC-TTE/89 dated 25.03.91 at Rs. 2000 per month in the pay scale of Rs. 1600-2660. The respondents are directed to pay the terminal benefits to the applicant accordingly within a period of three months from the date of furnishing of a copy of this order.

14. There shall be no order as to costs.


Member-A


Member-J

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