

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, AL LAHABAD BENCH

AI LAHABAD

DATED: THIS THE 26th DAY OF FEBRUARY, 1999

Hon'ble Mr. S.L. Jain *avai* JM
Coram : Hon'ble Mr. G. Ramakrishnan AM

ORIGINAL APPLICATION NO. 1892 OF 1992

Versus

C/R Shri G.P.Agrawal

ORDER

By Hon'ble Mr.G.Ramakrishnan AM

This is an application under section 19 of the Administrative Tribunals Act 1985 against wrong fixation of pay and for the relief of arrears of pay with interest after due restoration of salary at the rate which was already being paid to the petitioners at the time of arbitrary deduction started. The applicant has sought for the following reliefs :-

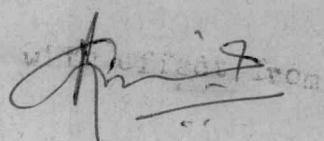
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(a) To issue a writ, order or direction in the nature of mandamus thereby commanding the respondents to pay the entire amount recovered from the pay sheet of the petitioner from 15.10.1985 to January, 1988 as consequence of fixing pay of the petitioner at the rate of Rs.1900/- from the higher fixation to pay Rs.2250/- as back as 1988 with interest.

(b) To issue any other writ, order or direction in the nature of writ, as this Hon'ble court may deemed fit and proper in the circumstances of the case.

(c) To award cost to the petitioner of this petition.

2. In the O.A., the applicant stated that he was promoted to ex-cadre post of Law Assistant in grade Rs.550-750 w.e.f. 16.12.1972 in which he continued till 14.10.1985. While working in the ex-cadre post, he was given proforma promotion as per law and rules in his parent cadre as Personnel Inspector grade Rs.425-640 from 2.2.1978 and from 25.6.1982 as Personnel Inspector grade Rs.550-750. Subsequently the applicant was transferred from ex-cadre post to cadre post and was posted as D.P.I. in grade Rs.550-750 by office order dated 22.8.1985. He joined the same w.e.f. 15.10.1985. He stated that on transfer from Law Asstt. in grade Rs.550-750 to the parent cadre, his pay was protected in terms of printed serial No.5915 (P.S.No. 5915) circulated by the General Manager, Northern Rly, (annexre A-1 to the O.A.). According to the applicant he was allowed to draw salary of Rs.2250/- per month

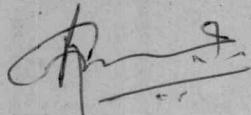

Anil Kumar

with effect from 28.7.1988 and that all of a sudden, respondent no.2 started making deduction from the pay sheet of the petitioner without disclosing any reason or any show cause notice to the applicant and the rate of pay was arbitrarily reduced from Rs.2250/- to rupees 1900/- with effect from 11.2.1998 in violation of P.S. No.5915. The applicant stated that he had been making representations on the subject but of no avail. He referred to his representation dated 23.12.1991 which he followed up with reminders and latest reminder dated 13.1.1994 was filed as annexure A-2 to the O.A. (but in actual fact, annexure 2 was a copy of representation dated 25.12.1991) He further stated that matter of payment of salary and arrears were never time barred. He prayed for the reliefs on the ground that action of the respondents was arbitrary, discriminatory and against the principles of natural justice, respondents had not followed the instructions of the printed serial which had the force of law, because the applicant once having been given higher fixation of pay could not have been relegated to lower pay scale without notice, because all the action of the respondents were violative of Articles 14 and 16 of the Constitution of India and because the applicant moved several representations, but all of no avail.

3. The respondents resisted the claim of the applicant by filing counter affidavit. They stated that the application was barred by time and the delay condonation application submitted by the applicant did not contain with any sufficient grounds. It was stated that the applicant while working as Sr.Clerk was promoted in 1972 on local adhoc basis as Law Assistant from 16.12.1972. The applicant was selected as P.I. in grade Rs.425-640 ~~(annexure A-2)~~ and was placed on panel

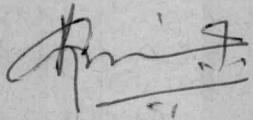
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decalred on 22.1.1976. ^{Contra} Subsequent upon promotion of his ~~senior~~ ^{junior} as P.I. in grade Rs.425-640 with effect from 12.10.1976 applicant's pay was also fixed on proforma basis in grade Rs.425-640 at Rs.455/- w.e.f 13.10.1976. Again consequent upon promotion of his ~~senior~~ ^{junior} as DPI in grade Rs.550-750 with effect from 29.6.1982 applicant's pay was also fixed on proforma basis at Rs.550/- w.e.f 29.6.1982. The applicant while working as Law Assistant was transferred and posted as D.P.I., Moradabad in scale of Rs.550-750 at his own request and he joined ^{to} dues on 14.10.1985. Respondents' admitted that while working as Law Assistant on adhoc basis, the applicant continued drawing annual increments till he reached the maximum of the grade and was later on allowed stagnation increment, raising his pay from Rs.750/- plus Rs.25/-p.p. with effect from 27.7.1983. Respondents stated that the P.S. 5915 had no applicability in his case. According to the respondents, the applicant worked as Law Assistant on purely adhoc basis/arrangement and on his own request he was posted to his parent cadre of P.I. and there was no question of protection of his pay in terms of P.S.No.5915. They also stated that the applicant did not produce any documentary evidence in his submissions that he was allowed protection of pay while being sent back from the post of Law Asstt: to D.P.I. They stated that the applicant was allowed to draw Rs.610/- in scale of Rs.550-750 with effect from 14.10.1985 when he was posted to his own cadre and prior to this he was allowed proforma promotion in comparison to his junior at Rs.550/- with effect from 29.6.1982. They did not admit the allegation of the applicant that he was allowed Rs.2250/- per month w.e.f 18.7.1988. They stated that on 1.1.1986 applicant's



pay was Rs.610/- per month in scale of Rs.550-750 and was revised to Rs.1800/- in scale of Rs.1600-2660. His pay was further raised to Rs.1850/- w.e.f. 1.6.1986 and Rs.1900/- from 1.6.1987. Pay fixation chart of the applicant vetted by Accounts was annexed with the C.A. (annexure CA-II). They stated that the applicant never challenged the fixation of his pay in grade Rs.1600-2660 on 1.1.1986 and in regard to onward increments. They further stated that the applicant was placed under suspension in pursuance to a D & A.R. case w.e.f. 11.2.1988 which was revoked with effect from 25.11.1988. He was reverted as P.I. in scale of Rs.1400-2300 on pay of Rs.1700/- for 3 years vide punishment notice dated 17.11.1988 and the appellate authority-D.R.M.-amended the punishment and he was reduced to Rs.1720/- in scale of ^{Rs.}1400-2300 for 3 years without cumulative effect. The applicant challenged this D & A.R. proceedings in Central Administrative Tribunal, New Delhi which quashed the punishment imposed on him and consequently he was restored w.e.f. the date the pay was reduced and consequent upon regularisation of the suspension period, his pay was raised to Rs.1950/- from 1.6.1988, 2000/- from 1.6.1989 and so on to Rs.2250/- from 1.6.1992. He was promoted as C.P.I. in grade Rs.2000-3200 with effect from 21.12.1993 and his pay was fixed at Rs.2300/- from that date and he retired under age limit from 31.1.1994. They stated that he was working in his parent cadre of P.I. from 14.10.1985 to 31.1.1994 when he was retired and during this long period of more than 8 years, he never complained regarding deduction and relegate his pay from Rs.2250/- to Rs.1900/- from 11.2.1988.

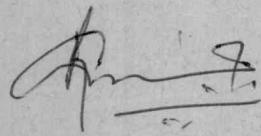
4. Applicant filed rejoinder affidavit in which he reiterated the pleadings made by him in the O. A.



5. We heard the learned consels for the parties and have also given careful consideration to the pleadings made and the records annexed thereto.

6. The applicant's claim for protection of his pay is based on P.S.NO.5915. We have perused this printed serial, copy of which was annexed by the applicant alongwith the O.A. as annexure A-1. This was a clarification issued by the Railway Board on 16.5.1973 consequent on the amendment to proviso to Rule 2017 (FR 22) R-II. ^{the and third} Second para of this letter reads as following :-

" With the amendment to proviso to Rule 2017 (FR 22) R II issued under Board's letter F(E)65 PRI/5 dated 18.11.1966, counting of service rendered in ex-cadre post, ^{for} increment _{the scale} in a cadre post on identical is no longer admissible except to the extent the conditions laid down therein are fulfilled. A question has been raised whether the benefit of fixation of pay in a cadre post with reference to pay drawn in an ex-cadre post under rule 2018-B(FR 22(c)) RII as made admissible under Board's letter no.PC-60/ PP-1 dated 20.5.1961 still continued to be available. It is clarified that after amendment of the rule 2017 (FR 22) R II as referred to above, orders contained in Board's letter of 20.5.1961 have become obsolete and it is not permissible to fix the pay in a cadre post on the basis of pay in an ex-cadre post. Accordingly the pay of railway servants already fixed in



in respect of promotions on or after 18.11.66, by applying the provisions of Board's letter No. PC-60/PP/1 dated 20.5.1961, No. PC-67/PP/11 dated 15.9.1967 should be refixed strictly with reference to their pay in the lower cadre post in the parent cadre. However, in order to avoid hardship, it has been decided that difference, if any, between the pay as already fixed and the pay as now fixed under revised orders should be treated as personal pay to be absorbed in future increments and increases in pay."

Ref:
No. PC-63/PP/5 dt 17-6-1965
No. PC-66/PP/11 dt 6-9-67 and

"Board's letter no. PC-66/PP/11 dated 6.9.67 and No. PC-67/PP/II dated 15.9.1967, accordingly stand cancelled."

7. Respondents have stated that Law Assistant was a post which was controlled by the Headquarters office and the applicant was posted on local adhoc arrangement as Law Assistant. There is no dispute that the applicant belongs to the cadre of Personnel Inspector. Thus his posting as Law Assistant can be taken as outside his cadre i.e. on ex-cadre basis. P.S.No.5915 circulating Railway Board's letter dated 16.5.1973 deals with fixation of pay of the staff who were working on ex-cadre posts on being posted to cadre posts is to be regulated. A reading of Railway Board's letter dated 16.5.1973 will clearly indicate that it was not admissible after 16.5.1973 to fix the pay of a railway servant in a cadre post on the basis of pay drawn in ex-cadre post. Therefore, applicant's plea for invoking P.S.No. 5915 for fixation of his pay on his posting in the parent cadre of P.I. fails.



8. It is also clear from the applicant's prayer under para 8(i) that from 15.10.1985, applicant was being paid on the basis of his pay fixed in his parent cadre as Personnel Inspector. This would indicate that there was no recovery of any over-payment from a subsequent date. The only copy of the representation which was enclosed with the O.A. is dated ~~5.12.1991~~ and in this he did not refer to any of earlier representation or referred to any recovery. It would appear that the applicant was fully aware as to how on his posting as D.P.I. in 1985, his pay had been fixed. It was only on 16.12.1994 after his retirement, he has filed this O.A. This is badly time barred and is hit by limitation under section 21 of A. T.Act.

9. Inview of the above, this application fails both on merit as well as on limitation and accordingly deserves to be dismissed and accordingly is dismissed with costs. Applicant is directed to pay the cost of Rs. 650/- (Rs. 550/- as Advocate's fee and Rs. 150/- as other expenses) to the respondents within a period of two months from the date of receipt of this order.

S.P. Dutt
Member(J)

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Member(A)

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