

69

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

O.A. No. 302 OF 1987.  
~~Ex-Ax No.~~

DATE OF DECISION 23.9.1988

SHRI S. NATESAN IYER Petitioner

PARTY-IN-PERSON Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondent(s)

MR. N.S. SHEVDE Advocate for the Respondent(s)

**CORAM :**

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal. *Yes*

Shri S. Natesan Iyer,  
Assistant Electrical Engineer,  
Traction - Distribution,  
OHE Depot,  
Near Railway Station,  
Godhra.

..... Petitioner.

16

(Party - in - person)

Versus.

1. Union of India,  
Owning & Representating  
through its General Manager,  
Western Railway,  
Churchgate, Bombay.

2. Divisional Railway Manager,  
Traction Distribution  
Establishment, Western Railway,  
Pratapnagar,  
Vadodara.

..... Respondents.

(Advocate: Mr. N.S.Shevde)

J U D G M E N T

O.A. NO. 302 OF 1987

Date: 23.9.1988

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

The petitioner, Shri S.Natesan Iyer, working as Electrical Chargeman (Western Railway) at Godhra, has filed this application on 26.6.1987, under section 19 of the Administrative Tribunals Act, 1985. According to the case set up by the petitioner, he was promoted to the post of Electrical Chargeman and officiated on the said post during the period 9.7.73 to 31.7.75. Before he was reverted his last basic pay drawn on 31.7.75 was Rs.470/- in grade Rs. 425-700(R) in the said Virar-Sabarmati Railway Electrification Project (V.S.R.E.). He was rendered surplus in the said project and transferred to his parent unit. It was further submitted that thereafter he successfully passed the selection of

Electrical Chargeman in grade 425-700 vide memorandum dated 3.4.82. It is alleged that on his promotion to the post of Electric Chargeman from 5.4.82, his pay ought to have been fixed at the rate of Rs. 470/- in the grade of 425-700(R). But, as the respondents have failed to do so, despite his several representations, he has prayed that the respondents-railway administration be directed to fix the pay at the rate of Rs. 470/- from 5.4.82 in the grade of Rs. 425-700(R) and pay the arrears representing the difference in salary.

2. The respondents-railway administration in their counter have resisted the petitioner's claim contending inter-alia that the promotion of the petitioner in V.S.R.E. Project was purely on adhoc basis and did not confer any right on him and on his reversion in the year 1975, he was appointed to scale Rs. 380-560(R) as Electrical Mistry. According to them, even the petitioner's promotion to the post of Electric Chargeman in scale Rs. 425-700(R) was made purely on adhoc basis as he was placed on the panel of 7 employees which was considered as provisional subject to finalisation of seniority of E.L.M. scale Rs. 380-560(R). It was further submitted that the petitioner's pay has been rightly fixed at Rs. 425 in the scale Rs. 425-700(R) as per rules vide memorandum dated 3.4.1982.

3. When the matter came up for hearing, the petitioner, party-in-person, and Mr. N.S. Shevde, the learned counsel for the respondents, are heard. The written arguments and the materials placed on record are also perused and considered.

12

4. Relying on the case of Shri Bahadur Chand Bhatia V/s. Union of India & Ors. (A.T.R. 1987(1) C.A.T. (New Delhi) 496), it was strenuously urged by the petitioner that he is entitled to the benefit of past officiation on the post, which carried identical pay scale, as the scale in which on promotion his pay was determined. According to him, he has been discriminated as the railway administration has re-fixed the pay under similar situation in the case of Shri Shivender Singh & Ors.

Mr. N. S. Shevde, the learned counsel for the respondents relying on the memorandum dated 17.4.1985 pertaining to the salary of Shri Gladvin (Sr.E.L.C.) contended that no person except Shri Gladvin has been given the benefit of weightage of past service and even in his case, the action has been corrected by effecting recoveries of over payment made to him. In his submission the petitioner is not entitled to protection of pay drawn by him while working on construction/project work in past on adhoc basis and hence his pay was correctly fixed at Rs.425/- in 1982.

5. The main grievance of the petitioner is that his pay ought to have been fixed at Rs.470/- when he was promoted as Electrical Chargeman in grade Rs.425-700(R) vide office order dated 3.4.1982, instead of Rs. 425/-, as he had previously officiated the said post and had earned increment and had drawn the pay at the rate of Rs. 470/- when he was reverted. During the course of arguments both the sides had referred to the provisions contained in F.R.22 and F.R.22-C. The basic question in this case is whether the fixation of pay of the petitioner in the cadre post of Electric Chargeman in the scale Rs. 425-700(R)



should be on the basis of F.R.22 or on the basis of F.R.22-C. The comparative reading of the two FRs clearly indicate that F.R.22 governs the case of fixation of initial substantive pay of a Government servant, when he is appointed substantively to another post, whereas F.R.22-C governs the case of fixation of initial pay when one is promoted in a substantive, temporary or officiating capacity to a higher post, which one was holding earlier in a substantive, temporary or officiating capacity.

6. In the instant case, it is an admitted case of the petitioner that while he was holding the cadre post of Electrical Mistry scale Rs. 150-240(A) he was further promoted as Electrical Chargeman in grade Rs. 205-280(AS) 425-700(R) on V.S.R.E. Project from 9.7.73 vide office order dated 9.7.73 and worked in his capacity upto 31.7.75. It is clearly borne out from the pay slip of the petitioner for the month of July 1975, that when he officiated as Electrical Chargeman he was drawing basic pay of Rs. 470/-. It is true, the petitioner's promotion to the post of E.L.C. was purely on adhoc basis by virtue of office order No.241 dated 9.7.73. But the only stipulation made therein was that this promotion will not confer any claim over his seniors. It is conceded that the petitioner has been considered in higher scale i.e., in the grade Rs. 550-750(R) for the period 18.8.82 to 31.12.86 and he has been paid arrears during June 1988 in terms of the decision in T.A.No. 832/86. The petitioner has therefore restricted his claim for arrears of pay for the period 5.4.82 to 17.8.82 on the basis of his claim for fixation at the rate of Rs.470/- in the grade of Rs.425-700(R).

11

7. The relevant for the purpose of consideration is the 4th Proviso to F.R.22-C which reads as under:-

"Provided that if a Government Servant either -

- (1) has previously held substantively, or officiated in -
  - (i) the same post, or
  - (ii) a permanent or temporary post on the same time-scale, or
  - (iii) a permanent post other than a tenure post, or a temporary post (including a post in a body, incorporated or not, which is wholly or substantially owned or controlled by the Government) on an identical time-scale; or
- (2) is appointed substantively to a tenure post on a time-scale identical with that of another tenure post which he has previously held substantively or in which he has previously officiated ;

then proviso to F.R.22 shall apply in the matter of the initial fixation of pay and counting of previous service for increment."

8. The applicability of the aforesaid provision, seems to have been considered by the Government, even in the case of a Government Servant who had not even actually drawn his last pay of his reversion and was re-promoted to the same post and such a case has been illustrated in the following terms :-

(11) Protection of last pay not actually drawn on his reversion and repromotion to the same post. - A question has been raised as to whether a Government servant can get protection of the last pay actually not drawn (being on leave) on his reversion and repromotion subsequent to the same post in which the previous service is to be counted. The concrete case which has given rise to the above question is as follows:-

"A Government servant was officiating as UDC and drew his pay at the stage of Rs.404 during the period from 1.1.74 to 19.11.74. Thereafter he proceeded on leave up to 31.12.76 and it was certified by the competent authority that he would have continued to officiate as UDC up to 3.9.75. Excluding the total of all such periods as do not count for increment in the time-scale of UDC, the date of next increment was worked out as 13.6.75 and since he was on leave on this date and continued to remain on leave, the increment raising his pay to the stage of Rs.416 in the officiating post of UDC was actually not drawn. He stood reverted to his substantive post of LDC with effect from

(S)

4.9.75. On his repromotion as UDC with effect from 3.1.77 his pay was fixed at the stage of Rs.404 with reference to his substantive pay of Rs.390 as LDC as on that date. The point for consideration is whether his pay may be fixed at the stage of Rs.416 on his repromotion with effect from 3.1.77 and whether he may be allowed to count the period during which he would have drawn that pay for increment in the stage of the time-scale equivalent to that pay."

2. This has been examined carefully. The fourth proviso to F.R.22-C as at present does not permit such a dispensation. On a somewhat analogous situation under F.R.31(2) orders have been issued to the effect that in the case of a person proceeding on leave, if the period of leave counts for increment in the officiating post under F.R.26(b)(ii) subject to the fulfillment of the conditions and production of the necessary certificates, his officiating pay may be refixed under F.R.31(2) from the very date of increment or increase in the substantive pay as if he was appointed to officiate in that post on that date. The benefit of the increase in his officiating pay can be had only from the date of resumption of duties but his next increment in the officiating post will accrue to him from an earlier date in the next year calculated with reference to the date of refixation of pay.

3. Accordingly, it has been decided that in the type of cases referred to in paragraph 1 above, the pay may be fixed at the same stage (though not drawn) and the period during which it would have been drawn may also be counted for increment in the stage of the time-scale equivalent to that pay.

(see F.R.22-C. page 102)

9. In accordance with the 4th Proviso to F.R.22-C reproduced as above, the proviso to F.R.22 is attracted. These two provisos lay down that where an officer whose initial pay in the higher post is being fixed under F.R.22 (substantive pay) or F.R.22-C, (substantive/temporary/officiating pay) how he should be given the benefit of past officiation against a post which carried identical pay scale as the scale in which on promotion his pay is being determined. In the present case the fact that petitioner earlier officiated as Electric Chargeman in grade Rs.425-700(R) during 9.7.73 to 31.7.75 and at the time of his reversion he drew basic pay in the sum of Rs.470/- is not in dispute. Admittedly, he has been also

promoted to the same post and in the grade carrying Rs.425-700 from 5.4.1982. His claim for fixation of pay at the rate of Rs. 470/- p.m. and recovery of arrears of difference in pay for the period 5.4.1980 to 16.8.1982, is a subject matter of this application. Now, the proviso to F.R.22-C lays down that in such a case, the benefit of past officiation should be given in the same manner as provided for in the proviso to F.R.22. F.R.22 was amended on 30th November 1965 and it was indicated therein that on reversion to the parent cadre, the past officiation in an identical pay scale will also count towards initial pay fixation, on the satisfaction of three conditions laid down in the amended proviso.

10. The petitioner seems to have been denied the benefit of past officiation against a post which carried identical pay scale, on the sole ground, that his promotion was purely on adhoc basis. Even though the promotion was purely on adhoc basis the order clearly stated that he was promoted to officiate as E.L.C. and only stipulation was that it will not confer any claim over his seniors. In order to derive the benefit of past officiation in pay fixation one has to satisfy the three conditions laid down in the 4th Proviso to F.R.22-C quoted earlier. Bearing in mind all the facts and circumstances as discussed above and having regard to the provision contained in 4th Proviso to F.R.22-C the petitioner has been successful in establishing his claim for the benefit of past officiation. The respondents have committed a serious error in dis-allowing such benefit to the petitioner.

11. In this view of the matter the application

19

succeeds and the respondents-Railway Administration are directed that the officiating pay of the petitioner as Electric Chargeman in the grade Rs. 425-700(R) should be fixed strictly on the basis of the main provision of F.R.22-C by counting his previous services for increment.

The application is allowed on the above line with a further direction that the pay of the petitioner's should be fixed with effect from 5.4.1982 and he should be paid the arrears of the difference in the salary for the period 5.4.82 to 16.8.82, within a period of next three months. The parties are left to bear their own costs of this application.

  
( P.M. JOSHI )  
JUDICIAL MEMBER

ttc.