

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

(8)

O.A. No. 487 OF 1987

~~Ex-Ax No~~

DATE OF DECISION 20.1.1989

SHRI HEMRAJ AGGARWAL, Petitioner

MR. P.K. HANNA Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondents

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*

(A)

Shri Hemraj Aggarwal,
Ex. MWFO/BRCY
446/F, Nava Yard,
Railway Colony,
Vadodara - 2.

.... Petitioner.

(Advocate: Mr. P.K. Handa)

Versus.

1. Union of India,
Secretary
Ministry of Railways,
Railway Bhavan,
New Delhi.
2. The General Manager
Western Railway,
Churchgate,
Bombay.
3. Sr. Workshop Manager,
Carriage Workshop
Lower Parel
Bombay.
4. The Divisional Railway Manager,
Western Railway,
Pratapnagar
Vadodara - 4.
5. Sr. Divisional Personnel Officer,
Western Railway,
Pratapnagar
Vadodara - 4.
6. Divisional Mechanical Engineer (Loco)
Western Railway
Pratapnagar
Vadodara - 4.

..... Respondents.

(Advocate : Mr. N.S. Shevde)

J U D G M E N T

O.A. No. 487 OF 1987

Date: 20.1.1989.

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

The petitioner Shri Hemraj Aggarwal, who retired with effect from 30.4.87, as "Shop Superintendent Millwright" (SSMW) in the scale of Rs.840-1040, has filed this application on 5.10.87 under section 19 of the Administrative Tribunals Act. The petitioner claims that even though he was promoted to the post of "Shop Superintendent Millwright" and posted at

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Lower Parel vide order dated 17.3.1986 (Annexure 'A'), he was not relieved and detained for the reasons of administration. According to him, again when he was promoted and transferred at Kota Workshop with effect from 1.4.86 to the said post vide order Annexure A-I dated 2.4.86, he was not relieved and detained at Baroda, whereas his junior Mr. Chaudhari was allowed to officiate since 1978 contrary to Railway Board's instructions and his pay has been fixed at Rs. 3050/- per month on 1.1.86. It was further submitted that he was retained by the DME(L) Baroda in terms of his recommendations to transfer the post of SS(MW) at Baroda. However, later on, when he was promoted to the said post with effect from 1.11.86 vide order dated 31.10.86, his basic pay was fixed at Rs. 2990/- per month. The petitioner therefore prayed that the respondents be directed to pay the difference of pay from 18.10.78 when his junior Mr. B.D.Chaudhari was allowed to officiate as Shop Superintendent Millwright. He also prayed that his pay be fixed at Rs. 3050 (basic) per month with effect from 1.1.86 by way of stepping up of pay and proforma fixation as the pay of his junior has been so fixed.

2. The respondents-railway administration in their counter have denied the petitioners claim and allegations made against them. According to them, even though the petitioner was promoted and posted as "Shop Superintendent Millwright", he did not report either at Lower Parel or at Kota for the reasons best known to him. It is further submitted that the pay on promotion to the post of Shop Superintendent was fixed on the basis of last pay drawn by him, whereas in the case of Mr. Chaudhari who happened to be his junior, was officiating in higher post of Shop

Superintendent scale Rs. 840-1040(R) from prior date and consequently his pay in the said post was fixed on the basis of last pay drawn by him.

3. When the matter came up for hearing Mr. P.K. Handa and Mr. N.S. Shevde, the learned counsel for the petitioner and the respondents, respectively, were heard. The materials placed on record including the rejoinder filed by the petitioner are also perused.

4. At the outset it may be stated that Mr. P.K. Handa, the learned counsel for the petitioner, restricted his claim of proforma fixation to the post of Shop Superintendent Millwright with effect from 17.3.1986 and claimed monetary benefit including the increment due from 17.3.1986 with prospective effect. In support of his submission he relied on the case of Roshan Lal V/s. Jabalpur Bench; Union of India & Ors. (A.T.R. 1987(2) C.A.T. 16) / wherein it was held as under :-

"On the principle of 'No work no pay' salary can be given only from the date the petitioner has worked actually on the post of chargeman Gr.II that is 27.9.82. The Railway Board's Circular of 17.9.1964 is unexceptionable. In its application, however, the only point that remains to be considered is that the pay fixation of the petitioner should be done in such a manner that as on 27.9.82, the date on which he was promoted as chargeman Gr.II, he should have the benefit of increments which he would have earned, had he actually assumed office of this post on 1.8.78, the date from which benefit of seniority and proforma promotion has been given to him. The respondent No.4 was directed to take action accordingly."

5. Mr. N.S. Shevde, the learned counsel for the respondents, however strenuously urged that the petitioner is not entitled to claim proforma fixation and the benefit of stepping up as he did not join and carry out his posting order. According

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to him, even otherwise such benefits of proforma fixation are not available to him in view of the instructions contained in the Board's letter No. E(NG) I-PMI/30 dated 14.2.75 which read as under :-

Sub : Promotion, Reversion and Transfer of NG staff - Administrative errors.
.....

Reference your letter No. EP/839/14 dt. 21.3.74 on the above subject. The Board observe that under extant rules the benefit of proforma fixation of pay vis-a-vis junior is not permissible in cases where the senior employee's promotion could not be carried out immediately due to delay in relieving him on administrative grounds.

6. With regard to the aforesaid instructions, which are pressed in service by the respondents, it is significant to note that they are not a part of any rules or regulations (statutory or otherwise). More over, it is not a part of a circular issued by the Railway Board. The said instructions seem to be the observations made in the letter addressed to General Manager, Western Railway. As against this Mr. Handa has relied on Note No.7 of the recommendation of the Fourth Pay Commission, accepted by the Railway Board and published in the extra ordinary Gazette dated 20th October, 1986 which are reproduced in extenso :-

Note:-7. In cases, where a senior railway servant promoted to a higher post before the 1st day of January, 1986 draws less pay in the revised scale than his junior who is promoted to the higher post on or after the 1st day of January, 1986, the pay of the Senior Railway servant should be stepped upto an amount equal to the pay as fixed for his junior in that higher post. The stepping up should be done with effect from the date of promotion of the junior railway servant subject to fulfilment of the following conditions, namely.

- (a) both the junior and the senior railway servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre,
- (b) the pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical and

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(c)... the anomaly should be directly as a result of the application of the provisions of Rule 2018 (FR22C) of Indian Railway Establishment Code, Volume II or any other rule or order regulating pay fixation on such promotion in the revised scale. If even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provisions of this Note need not be invoked to step up the pay of the senior officer.

The orders relating to refixation of the pay of the senior officer in accordance with the above provisions should be issued under Rule 2023 (FR27) of Indian Railway Establishment Code, Volume II and the senior officer will be entitled to the next increment on completion of his required qualifying service with effect from the date of refixation of pay.

7. The fact that the pay of Shri B.D. Chaudhari, who is admittedly a Junior to the petitioner has been fixed at Rs. 3050 with effect from 1.1.86 for the post of Shop Superintendent Millwright, is not in dispute. Moreover the fact that the petitioner was regularly promoted to the post of Shop Superintendent Millwright in the scale of Rs. 840-1040 and posted at Lower Parel is not controverted. Later on, fresh order of promotion was passed vide order dated 2.4.86 (Annexure A-I) and the petitioner was transferred at Kota. According to the petitioner, he was not relieved by his superior officer and he was detained at the same station. In support of his version the petitioner has relied on the letters dated 25.8.86 & 29.5.86. The material portions whereof are reproduced as under :-

(1) Letter dated 25.8.86.

Sub: Organisation and Management of
Administrative function.

(MWFO BRCY)

Instructions are hereby issued that MWFO will remain at Headquarter only and manage the affairs of supply of material to MW&M&W department. Besides this he will also ensure timely compliance to this office correspondance and office management. He will not leave HQ without prior permission of DME(L)/AME(L) BRC.

JSS

The field work of this department such as

erection of Machines shifting/transfer of machines, repairs and maintenance of machinees will be ensured by JSS Shri Tripathi.

These instructions issued will be regidly as observed by all concerned.

xxxxxx xxxxx xxxxxxx

(2) Letter dated 29.5.86.

Shri H.R.Agarwal MWFO scale Rs. 700-900(R) BRC Divn. was due for promotion to scale Rs. 840-1040(R) by virtue of his seniority. He is due to retire under age limit on 30.4.1987. In terms of HQ Office conf. letter No. RP 839/12 dated 18-8-1981 an employee who is on the charge of his retirement (with 1 or two years service left) may not be transferred from the place of their working. Since Shri Agarwal is due to retire within one year, he is required to be retained in BRC Division by transferring one post of SS (MW) scale Rs. 840-1040(R) to BRC Division he has been done in the case of Shri Ramanlal D. of BCT Division.

BRC Division is one of the biggest divisions of this Railway. The work load of MW organisation of BRC Division has oflate increased many times and requires to be supervised by a senior subordinate in scale Rs. 840-1040 (R). Necessary justification for the provision of one permanent post of SS(MW) scale Rs.840-1040(R) in BRC Division has already been submitted to your office vide this office letter No.E/L/830/5/3 dated 27-9-1985. Shri Agarwal is the incharge of the MW organisation of this Division and has been looking after the work very efficiently. In the interest of the smooth working of this Division, it is not possible for this Division to spare Shri Agarwal for RJT Workshop.

xxxxxx xxxxxxx xxxxxxx

8. In light of the aforesaid materials it is obvious that the version of the respondents that the petitioner did not carry out his posting order is far from truth. As a matter of fact the petitioner was retained at the same station for the reasons of the administration and in anticipation of the acceptance of the recommendations for "transfer of the post of S.S.(MW)" at BRC Division. Thus the petitioner can not be denied the benefits of proforma fixation to the post of Shop Superintendent Millwright (non-selection post), when he was regularly promoted vide order dated 17.3.1986.

9. There is no dispute about the fact that the petitioner is senior to Mr. Chaudhari. In view of

the seniority list produced at Annexure A-2 the petitioner is placed at Sr.No.7; whereas Mr.Chaudhari has been shown at Sr.No.11. The petitioner was promoted to the post of Shop Superintendent Millwright vide order dated 17th March, 1986 (Annexure-A). Both of them belonged to the same cadre i.e., junior Shop Superintendent grade Rs. 700-900 and both are promoted and the post, in which they have been promoted, is identical in the same cadre i.e., Shop Superintendent Millwright scale Rs. 840-1040. The petitioner when again promoted to the said post vide order dated 31.10.86, he pointed out the anomaly under his representations - A6, A-7 & A-8 dated 26.3.1987, 31.7.1987 & 7.9.1987 respectively. The respondents failed to respond to them. However, they have preferred to deny the petitioner's claim of stepping up on the sole ground that Mr. Chaudhari, who is junior to the petitioner in the scale of Rs.700-900 (RS) was promoted from prior date on the basis of local arrangement.

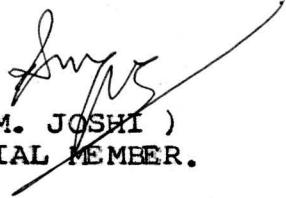
10. There is, therefore, no doubt that the petitioner is entitled to stepping up of pay so that his pay on promotion becomes equal to the pay that was being drawn by his junior Shri Chaudhari. The petitioner and his junior Shri Chaudhari were in the same cadre before promotion and were promoted to the identical cadre after promotion and the unrevised and revised scale of pay and the lower and higher post in which the petitioner and his junior were entitled to draw the pay were also identical.

11. In the result, the application succeeds. The petitioner is entitled to proforma fixation with effect from 17.3.86 in the post of Shop Superintendent

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Millwright. The petitioner has worked actually on the said post with effect from 1.11.86, when his basic pay was fixed at Rs. 2900; whereas it was fixed at Rs. 3050 in the case of his junior from 1.1.86. The respondents are therefore directed to remove the anomaly by stepping up the pay of the petitioner so that his pay on promotion becomes equal to the pay that was being drawn by his junior. It is further directed that the respondents should work out the pay fixation in such a manner that he has the benefits of increments which he would have earned from 17.3.86, when he was first promoted to the said post but was not relieved in the interest of the administration and grant such monetary benefits only with effect from 1.11.86, i.e., the date he actually assumed the office of the said post. The respondents are directed to work out the difference and pay the balance to the petitioner within three months from today.

This disposes the application without any order for costs.


(P.M. JOSHI)
JUDICIAL MEMBER.