

(11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 587 OF 1988
~~REXXNO.~~

DATE OF DECISION 28-10-1994

Shri Tejbhan Lorindaran Khera Petitioner

Mr. K.S. Jhaveri Advocate for the Petitioner(s)

Versus

Union of India & Others Respondent

Mr. N.S. Shevde Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.B. Patel, Vice Chairman

The Hon'ble Mr. K. Ramamoorthy, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

- 2 -

Shri Tejbhan Lorindaram Khera,
A/5/12 Godavarinagar, Co-Op.
Housing Society Part I,
Behind Sangam Flats,
Vasna, Ahmedabad - 380 007.

..... Applicant

(Advocate : Mr. K.S. Jhaveri)

Versus

1. Union of India through
General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.

2. Divisional Railway Manager,
Western Railway,
Baroda - 390 005.

3. Divisional Mechanical Engineer(EST),
Vadodara Division,
Pratapnagar,
Vadodara - 390 005.

4. Divisional Accounts Officer,
Western Railway,
Vadodara Division,
Pratapnagar,
Vadodara - 390 005.

..... Respondents

(Advocate : Mr. N.S. Shevde)

J U D G M E N T

O.A. NO. 587 OF 1988

Date : 28-10-1994

Per : Hon'ble Mr. K. Ramamoorthy, Member (A)

This application pertains to the issue of fixation of pay and consequential benefits by way of pension on retirement.

2. The applicant had joined the Railways on 24-8-1950 and in due course of time, had got promoted as Driver Gr.A

- 3 -

in the pay scale of Rs.550-700 (R) vide Memo No.E/L/763/1/5/11 dated 15-4-1982 with effect from 1-6-1981 from Driver Grade "B" to Driver Grade "A". However, prior to the actual issue of order of upgradation on 9-6-81 itself, he was transferred, albeit on ad hoc basis, as Asstt. Loco Foreman at Kankaria and the applicant joined the post. When his substantive post of Driver was upgraded as Grade "A", he had requested for transfer to the running side, when he was advised to wait till administrative arrangements could be made to find a replacement. Thereafter, however, he had been continued on the stationary post till the date of retirement. The applicant in his application has contended that because he was not transferred to his substantive post on the running side by Administration, and was continued on stationary side, he has been made to suffer in his emoluments and subsequent pensionary benefits because of the formula adopted for fixing his emoluments in the non-running cadre post.

3. The respondents, while agreeing that on the first request of the applicant, administration did not give posting immediately, asking the applicant to wait till alternative administrative arrangements would be made, ^{have further stated} ² the continuance of the applicant on stationary post thereafter, has been on the specific request of the applicant.

4. The reduction in emoluments sustained by the applicant is on account of the fact that the running allowance is merged in the scale of pay itself of the stationary post scale, at the time of fixation, and gets therefore, limited to the maximum of the scale in the same post which the applicant reached 3 to 4 years before his actual date of superannuation, whereas if the applicant

were to be on the running side, he would have reached the maximum of the scale and also continued to get the benefits of running allowance. In his view, actually the petitioner is entitled to pension of Rs.1092/- if his pension is fixed on his substantive post and other benefits viz., gratuity and differential arrears of 24 months pension and the difference of compensation which comes to about Rs.24,000/-. The respondent has wrongly deprived the applicant for his pension and other benefits which he is entitled under the rules.

5. Having stated the problem as above, the question remains as to whether such incidences of service could get to be legally remedied, or even whether equity considerations require such remedial action.

6. As narrated earlier, though the applicant did first make a request in 1982, soon after the upgradation order, on which request though not refused, the applicant was asked to wait, the fact of the applicant himself making two later requests first in October 1983 and again in November 1983, to continue him as A.L.F. is not denied. On the specific contention in the written statement of the respondents, the applicant has stated that -

"in view of the fact that his juniors were given the benefit of running staff whereas the applicant was denied the same and requested to retain him at the said post".

But on perusal of the letter furnished by the applicant himself at Annex. A.XI, he has clearly requested that-

"kindly continue me as an A.L.F., KKF by shifting the junior than me or I may be given a chance to work as A.L.S. at ADI where too junior than me are working".

The following averments in the reply of the respondents are relevant:

"As per applicant's request and as per WREU's informal item applicant was posted as Power Controller vide Office Order No.E/L/238(L) dated 9-1-84 and posted to officiate as Power Controller at Ahmedabad in the same scale and pay purely on ad hoc basis".

The denial of this averment by the applicant is without any support.

7. Having willingly continued on a stationary post, the fixation of emoluments will be determined naturally on the relevant rules viz. R. 924(d). This fixation is shown at Annex. A.IV. By virtue of this rule, he has actually got a marginal benefit of Rs.10/- per month in the first year and Rs.3/- per month in the second year, though thereafter since the maximum of the scale in the stationary post is reached, there were no further increases in the emoluments. On the stationary post, therefore, the question of his being legally entitled to larger emoluments cannot be legally established, as they have been rightly fixed as per the rules applicable to the case.

8. The applicant has averred that the respondents should have transferred him to the running cadre as this was his substantive post, and should not have continued him on ad hoc basis. But when a specific request is made, and the respondents have chosen to agree to it, they cannot be faulted for this.

l

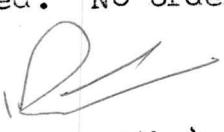
- 6 -

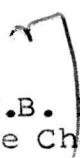
9. On the question of equity also, the applicant's case fails. The respondents have rightly averred that after 1983, when the applicant began to feel the effect of non-increment in his emoluments, and till 1988 when he retired, he had not made any representation for transfer, as per para 7 of the written reply of the respondents. This para has not been disputed excepting for the statement that -

"it is the statutory duty of the Administration to send me back to the substantive post after 4 months".

In point of fact, in 1981 he had willingly opted for the post since it meant, at that point of time, a higher grade, though by hindsight he can claim that he was already on that post even then (the actual upgradation of post to evaluate it to that of A.L.F. came later in 1982 though with retrospective effect). He was not also losing at anything in the first two years. There would have been some equity consideration if the applicant had thereafter insisted on his transfer back to his substantive grade. He has failed to show any evidence in this regard. The pension benefits also flow from that fixation.

10. For reasons given above, the petition is disallowed. No order as to costs.


(K. Ramamoorthy)
Member (A)


(N.B. Patel)
Vice Chairman

kvr/.