

3 (67)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No. 712 of 1994

Cuttack this the 3rd day of April, 1996

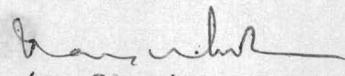
Parsuram Bhuyan & Others ... Applicant(s)

Versus

Union of India & Others ... Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? NO
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? NO


(N. SAHU)
MEMBER (ADMINISTRATIVE)

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No. 712 of 1994

Cuttack this the 3rd day of April, 1996

C O R A M:

THE HONOURABLE MR.N. SAHU, MEMBER (ADMINISTRATIVE)

...

1. Parsuram Bhuyan
S/o.N.N.Bhuyan
A.S.M., S.E.Railway
At/PO:Rupsa
Dist :Balasore
2. Pradeep Kumar Sahu
S/o.Maheswar Sahu
A.S.M., S.E.Rly.
At/PO:Jaleswar
Dist :Balasore
3. Raghunath Rath
S/o.Late J.D.Rath
A.S.M., S.E.Rly.
AT/PO:Rupsa
Dist :Balasore
4. Chandramohan Mohapatra
S/o.Sarbeswar Mohapatra,
A.S.M., S.E.Rly.
At/PO:Haladipada
Dist :Balasore
5. Kamalakanta Ghose Mohapatra
S/o.Late N.K.Ghose Mohapatra
A.S.M., S.E.Rly.
At/PO:Amarda Road
Dist :Balasore
6. Umakanta Rout
S/o.Krutibas Rout
A.S.M., S.E.Rly.
At/PO:Baripada
Dist :Mayurbhanj
7. A.K.Panda
S/o.Sarbeswar Panda
A.S.M., S.E.Rly
At/PO:Rupsa,
Dist :Balasore

...

Applicants

M/s .G A.R . Dora
V.Narasingh
G.P.R . Dora

By the Advocate:

Versus

1. Union of India through
the General Manager
S.E.Railway, Garden Reach
Calcutta-43
2. Sr.Divisional Personnel Officer
S.E.Rly,
Kharagpur, Dist:Medinapur
(West Bengal)

...

Respondents

By the Advocate:

M/s. Ashok Mohanty
Trilochan Rath
Jitendra Sahu

...

O R D E R

MR.N. SAHU, MEMBER (ADMN) : This application under Section 19 of the Administrative Tribunals Act, 1985, seeks a direction to the respondents, Senior Divisional Personnel Officer, S.E.Railway, Kharagpur District, to grant protection of pay last drawn by the applicant in the scale of Rs.1400-2300/- with interest at the rate of 12 per cent. There are seven applicants in this petition. They have a common cause and they have joined together with the permission of this Court.

2. The facts leading to the dispute are admitted and are in a narrow compass. The applicants are directly recruited as Assistant Station Masters through a competitive examination during 1984 (one applicant joined in 1982). After finishing their probation they were given the scale of Rs.1200-2040 with effect from 1.1.1986. They joined in different Divisions. They were eventually promoted to the next higher scale of Rs.1400-2300 on different dates due in November, 1988, December, 1988, August, 1988, November, 1989, October, 1990, March, 1987 and in April, 1988, respectively.

Because of personal problems, they sought an inter-divisional transfer. All these applicants are transferred to Kharagpur Division on reversion to a lower scale, viz., from 1400-23 to 1200-2040 and they also accepted the bottom-most seniority. Applicant Nos. 1, 2, 4 and 5 joined Kharagpur Division in January, 1991, applicant Nos. 3 and 6 in July, 1992, and applicant No. 7 in June, 1991. They have lost their seniority admittedly and willingly. But they seek pay protection in this petition.

3. Shri G A R Dora, learned counsel for the petitioners has brought to my notice Annexure-3 which is a letter issued by the Personnel Branch, Chief Personnel Officer, Madras. This letter is relevant because it deals with fixation of pay of S.M. and other staff who joined the post on inter-divisional transfer on reversion accepting bottom seniority. This letter being a directive of the railway administration is binding and therefore extracted in toto.

" Sub: Fixation of pay of SMs and other staff joined a post on inter Railway/inter divisional transfer on reversion accepting bottom seniority are not done as per rules in force:

It is therefore advised that in the case of permanent employees coming on inter divisional/inter railway transfer on reversion, their pay is required to be protested in terms of rule No.13, 13(a) (iii) R II which reads as under:

" When appointment to the new post is made on transfer at his/her own request under rules 227(2) R 15 A 7 and maximum pay in time-scale of the post is less than the substantive pay in respect of the old posts, he will draw that ~~the~~ maximum as initial pay."

Please, therefore ensure that fixation of pay is regulated accordingly.

The cases which are otherwise dealt with should be reviewed immediately."

4. What it means is : one applicant, let us assume is drawing the pay of Rs.2000/- before transfer in the scale of Rs.1400-2300/-. The maximum pay in the scale of reversion is Rs.2040/-. The applicant is entitled to draw upto a maximum of the reverted scale, i.e., if he ^{is should be restricted to Rs.2040/-} draws beyond Rs.2040. That is, on transfer to the new division, the applicant shall continue to draw Rs.2000 as the initial pay and he can go upto Rs.2040. In the present case the dispute is summed up in para (vi) and (vii) of the application which is extrated hereunder:

"(vi) That when the transfers were ordered in promotional grades of Rs.1400-2300, the applicants were drawing Rs.1480, 1480, 1560, 1440, 1400, 1600 and Rs.1520, respectively, in the basic pay. After transfer as per own request, applicants' pay in the lower scale has been fixed at Rs.1350, 1410, 1410, 1350, 1350, 1380 and 1380, respectively.

(vii) That assuming for the sake of argument that in addition to bottom most seniority, reversion to lower scale (Rs.1200-2040) is justified, then, the applicants are entitled to protection of pay last drawn in the promotional scale of Rs.1400-2300. Applicants have been adjudged suitable for the promotional scale and worked in the said higher scale for some years and with higher suitability and higher experience, they will work in the lower scale ~~scale~~ which is beneficial to the administration. Had they been initially posted in KGP division, they would not have suffered these losses."

5. There can be imposition of conditions on inter-divisional transfer, because, when a senior officer comes to a new division, there is a likelihood of

his marching over persons who work in that division and have legitimate expectations of gaining promotions within a time-frame. One of the present conditions is reasonable in so far as the applicant going on transfer has to accept the bottom-most seniority. He does not come in the way of legitimate expectations of persons in the cadre of that division. Depriving him of the pay drawn by him for services rendered earlier before he is transferred is unconstitutional. Reducing the pay drawn for services already rendered is depriving a person of his property rights and employment benefits and is not a reasonable restriction. Depriving the applicants of the ^{full} emoluments drawn by them is a restriction imposed by the rules which is inconsistent with the right to the benefits of employment and the right to the remuneration which ^{accrued} is already ^{accrued} and received for such an employment.

6. This matter has been decided by now by several decisions of the Central Administrative Tribunal. In Original Application No 1252 of 1994, C.A.T., Hyderabad Bench directed the respondents, by its judgment dated 14.11.1994 to fix the pay of the applicants by protecting their pay in accordance with Rule 1313(3) (iii) of the Railway Establishment Code. This protection of pay is given to the extent of maximum in the new scale of pay. There is a judgment of the

Ernakulam Bench of the Tribunal in O.A.333-400/92 dated 26.2.1993. The Tribunal came to the conclusion that the applicants should be entitled to pay protection drawn prior to their transfer on their own request.

7. I accordingly direct the respondents to allow the applicants to draw at the rate of Rs.1480, 1480, 1560, 1440, 1400, 1600 and 1520, respectively, in the basic pay in place of Rs.1350, 1410, 1410, 1350, 1350, 1380 and 1380, respectively fixed for them in the new division and they shall continue to draw at this rate in the new scale till their basic pay rises to the maximum of new scale.

Application is allowed. No costs.


(N. SAHU)
MEMBER (ADMINISTRATIVE)

B.K.Sahoo//