

4
7
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 747 OF 1995.

Cuttack, this the 2nd day of August, 1999.

Tapan Kumar Basak & another. Applicants.

- VERSUS -

Union of India & Others. Respondents

FOR INSTRUCTIONS

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

L. C
(G. NARASIMHAM)
MEMBER (JUDICIAL)

S. NARASIMHAM
VICE-CHAIRMAN
8.99

8

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 747 OF 1995.

Cuttack, this the 2nd day of August, 1999.

C O R A M :-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D
THE HONOURABLE MR. G. NARASIMHAM, MEMBER(JUDL.)

•••

1. Tapan Kumar Basak, aged about 35 years,
S/o. late ~~Hari~~ ~~Pras~~asad Basak,
permanent resident of Sutahat New Colony,
PO. Buxibazar, PS. Darghabazar, Town/Dist. Cuttack.

2. Amar Ballabh Pradhan, aged about 36 years,
Son of ~~M~~rusingha Charan Pradhan,
At/Po. Badatribida, PS. Talcher,
Dist. Anugul,

(Both the petitioners are at present working as
A.S.M, Talcher Railway Station, At/Po. Talcher,
Dist. Anugul).

... APPLICANT.

By legal practitioner: M/S. C. A. Rao, P. K. Parida, B. N. Muduli,
A. K. Beura, Advocates.

-VERSUS-

1. Union of India represented through
General Manager, South Eastern Railway,
Garden Reach, Calcutta-(WB).

2. Chief Personnel Officer,
South Eastern Railway,
Garden Reach, Calcutta, WB.

3. Divisional Railway Manager,
Khurda Division, South Eastern Railway,
Khurda Road, At/Po. Jatni, Dist. Khurda.

4. Sr. Divisional Personnel Officer,
South Eastern Railway, Khurda Division,
At/Po. Jatni, Dist. Khurda.

... RESPONDENTS.

By legal practitioner : Mr. Ashok Mohanty, Senior Counsel (Rlys.)

•••

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, applicants have prayed for protecting the pay of applicants by giving them the basic pay of Rs.1560/- instead of Rs.1470/- with retrospective effect from the date of their joining in the Khurda Division with interest. The second prayer is for a direction to Respondents to extend the benefit of the judgment dated 10.5.1995 in OA No. 241 of 1994 in favour of applicants.

2. Applicants' case is that they were working as Assistant Station Master in Chakradharpur Division of South Eastern Railway in the scale of Rs.1200-2040/-. Both the applicants were promoted to the higher scale of Rs.1400-2300/- in the year 1989. They applied for inter Divisional transfer which was allowed and in order dated 3.12.1993, both the applicants were transferred from Chakradharpur Division to Khurda Division. Applicants stated that both of them were getting Rs. 1560/- in the pay scale of Rs.1400-2300/- at Chakradharpur Division, at the time of their transfer to Khurda Division. They came to Khurda Division in the lower scale of Rs.1200-2040/- which was the grade in which direct recruitments were made and in bottom seniority. When the applicants' pay was fixed in Khurda Division in the scale of Rs.1200-2040/- their basic pay was fixed at Rs. 1470/- and the protection of pay of Rs. 1560/-, which they were getting in Chakradharpur Division, in the higher scale were not allowed. In view of

S. Som

this, applicants have come up in this original Application with the prayers that while fixing their pay in the scale of Rs.1200-2040/-, their pay at Rs.1560/- should be protected.

3. In this case, inspite of passage of four years, counter has not been filed by the Respondents. Learned Senior Counsel Mr. Ashok Mohanty, appearing for the Respondents wanted an adjournment to file counter. As already four years have elapsed and as it was submitted by learned counsel for petitioner that this matter is squarely covered by the earlier decision of this Tribunal, prayer for adjournment for filing of counter was rejected.

4. We have heard Mr. C. A. Rao, learned counsel for Applicant and Mr. Ashok Mohanty, learned Senior Counsel appearing for Respondents and have also perused the records.

5. According to the version of applicants themselves in Chakradharpur Division, they were in the scale of pay of Rs.1400-2300/- and in which scale they were getting Rs.1560/-. They applied for inter Divisional transfer which was allowed and they joined Khurda Division in the lower scale of Rs. 1200-2040/- occupying bottom seniority. Rules of Railways provide that such inter Divisional Transfer can be allowed only in the scale where there is a direct recruitment so as to not to affect the chances of promotion of officers of that Division to which transfer is sought. Applicants have stated that their pay has been fixed in the scale of pay of Rs. 1200-2040/-. While fixing their pay in the above scale, the stage at which they were getting their pay at Chakradharpur Division in the higher scale which is Rs.1560/- were not protected. Similar matters

S. J. M.

have been disposed of by this Tribunal in their order dated 12th of August, 1996 in a batch of cases (O.A. Nos. 742 to 746 of 1994 and others). A similar matter also came up in O.A. No. 801/97 and was disposed of in order dated 25.1.1999 protecting the stage at which such transferees were getting their pay in the higher scale. Instruction also provides that after transfer the pay of such transferees, will be fixed in the lower scale and they should be given protection of their pay which they were getting in the original division in the higher scale.

6. In consideration of the above, this original Application is disposed of with a direction to the Respondents that the pay of these two applicants should be fixed in the scale of Rs. 1200-2040/- on their joining at Khurda Division giving them protection of their pay at Rs. 1560/- provided that they were getting Rs. 1560/- at Chakradharpur Division before they were transferred to Khurda Division. As this will be reflected in the last pay certificate, there will be no controversy with regard to the amount which they were getting at Chakradharpur Division before transfer to Khurda Division. In case, there is no stage of Rs. 1560/- in the scale of Rs. 1200-2040/- the ~~stage~~ ^{pay} of applicant be fixed at the next below stage and the difference be made up by allowing the applicants a personal pay which is to be absorbed on getting subsequent increments. This should be done within a period of 90 days from the date of receipt of a copy of this order and the financial benefits due to be paid to applicants, should be paid within a period of another 30 days thereafter.

S. J. M.

7. Applicants, in this original application have also asked for interest on the arrear financial benefits. In a large number of similar cases, disposed of by this Bench, we find that in similar cases, pay has been wrongly fixed presumably because on wrong understanding of the financial rules and instructions relating to pay protection. As Respondents have not protected the pay in order to harass the applicants, we hold that no case of payment of interest is made out. In other cases, relied on by learned counsel for applicant, we find that interest has also not been allowed.

8. In the result, the original Application is allowed in terms of the observations and directions made above.

No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som,
(SOMNATH SOM
VICE-CHAIRMAN 99)

KNM/GM.