

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.341/2001

Cuttack, this the 24 day of ~~June~~ July, 2004

B.C. Mohanty

Applicant(s)

Vrs.

Union of India & Others

Respondent(s)


FOR INSTRUCTIONS


(1)Whether it be referred to the Reporters or not ?

no

(2)Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

no


08/07/04
(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.341/2001
Cuttack, this the 28th day of July, 2004

CORAM:

HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
&
HON'BLE SHRI M.R. MOHANTY, MEMBER (J)

Sri Baishnab Charan Mohanty aged about 66 years, S/o Late S.S. Mohanty Retired Chief Ticket Inspector, S.E. Railway, At/P.O. Mouda, P.S. Bhadrak, Dist. Bhadrak.
..... Applicant.

By the Advocate(s) Mr. R.C. Patnaik

-Vs-

1. Union of India, represented through the Secretary to Govt. in the Ministry of Railways, Rail Bhawan, New Delhi-1.
2. Divisional Manager, South Eastern Railway, Khurda Road, P.O.. Jatni, Dist-Khurda.
3. The Senior Divisional Personnel Officer, South Eastern Railway Khurda Road, P.O. jatni, Dist-Khurda.
4. Sri Kamal Lochan Mishra, Retired Chief Ticket Inspector, S.E. Rly, Talabania, Puri-2.

By the advocate(s) Respondent(s)
Mr.P.K. Mishra

ORDER

SHRI B.N. SOM, VICE-CHAIRMAN: Sri Baishnab Charan Mohanty, Retired Chief Ticket Inspector, S.E. Railway has filed this Original Application with a prayer to direct the Respondent to step up of his pay with effect from 07.07.92 at par with the

pay of Respondent No.4 who was junior to him in service and to re-fix his pension as a consequence thereupon..

2. The fact of the case in short, is that admittedly the applicant had joined service as Ticket Collector on 17.01.57 in the scale of pay of Rs. 60-130/- and Respondent No.4 joined service as Ticket Collector with effect from 10.12.54 in the pay scale of Rs.55-130/-. The position of Respondent No.4 in the seniority list had all along been shown immediately junior to the applicant (Annexure R-2). The applicant had got promotion to the higher grades of Special Grade of TTE, TTEA & TTI before retiring from service with effect from 31.07.92. Before his retirement he had submitted a representation to Respondent No.3 on 25.05.92 for granting him promotion to the rank of CTI on ad-hoc basis to enable him to get some higher pensionary benefits. However, his request was not acceded to and he was allowed to retire from service as TTI on 31.7.92. But Respondent No.4 who was junior to him was given promotion to the next higher grade of CTI with effect from 17.07.92 retrospectively by issuing Respondent No.3 by his order dated 23.09.92. Being aggrieved, he had challenged the action of the Respondent in O.A. No.201/93 and the Tribunal was pleased to direct the Respondent to promote him from the date his junior, Respondent No.4, was promoted to the rank of CTI with all consequential benefits. Although the Respondent No.3 issued an order dated 19.09.99

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implementing the direction of the Tribunal dated 07.07.99 but the pay of the applicant was not stepped up with effect from 17.07.99 at par with Respondent No.4. The plea of the applicant is that he is entitled to stepping up of pay and therefore his pension is liable to be re-fixed up-wards from 01.01.96 i.e. from the date when his pay scale was revised on the recommendation of the 5th Pay Commission. Relying on the circular dated 21.04.66 issued by the Department, he has claimed the benefit of the higher scale of pay on promotion to higher cadre.

3. The Respondents by filing a detailed counter have opposed the application. They have contended that Respondent No.4 was all along drawing higher pay than the applicant although he was immediately junior to the applicant. They have stated that Respondent No.4 had joined service three years (10.12.54) earlier than the applicant in the scale of pay of Rs.55-130/-. The applicant had joined with effect from 17.01.57 in the scale of pay of Rs. 60-130/- and his pay was fixed at the initial stage of Rs.60/-. At that point of time the pay of Respondent No.4 was drawing pay at the stage of Rs.63/- in that scale with effect from 1st August, 1956 on Jan, 1957. Thereafter all through the service period Respondent No.4, though junior had been drawing pay higher than the applicant. That apart that application is hopelessly barred by limitation as the cause of action arose more than one year before the submission of the application. Secondly, that anomaly of pay between a junior and senior can occur as it happened in this case on various grounds. They have, therefore, stated " the pay

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of senior men not necessarily be higher than his junior. There are some other factors like exercising of option for fixation of pay, ad-hoc promotion, exercising option for fixation of pay in connection with the Pay Commission's recommendation etc." They have argued that the rules cited by the applicant in para 4 (J) of his application is not relevant as the fixation of pay was not done in-terms of Rule 2018-B for the Respondent No.4. They have thus submitted that the claim of the applicant is not admissible keeping in view the instructions contained in Establishment Serial No. 182/90.

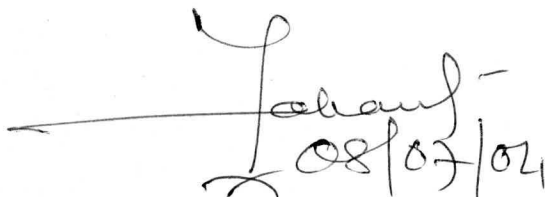
4. We have heard the Ld. Counsel for the rival parties and have also perused the records placed before us.

5. The short point to be answered in this case is whether the applicant is entitled to stepping up of his pay with effect from 17.07.92 in-terms of Establishment Serial No. 182/90 and Establishment Serial No.124/66.

6. The Respondents have submitted at Annexure-R-2 a detailed statement showing the pay structure of Sri B.C. Mohanty the applicant, and Sri Kamal Lochan Mishra, Respondent No.4, since their entry into service. From the perusal of this record it is clear that Respondent No.4 has been drawing pay at higher stage than the applicant through out their official career. We have also gone through the provision of Establishment Serial No.124/66 and serial No.182/90.

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7. It has been laid down in Establishment Serial No.124/66 that stepping up of pay is admissible only when the pay anomaly between a senior and junior arises directly as a result of the application of Rule 2018-B (FR 22-C)- RII. For example, if even in the lower post the junior employee was drawing from time to time a higher rate of pay than the senior by virtue of fixation of pay under the normal rules, say due to grant of advance increment, or due to accelerated promotion etc. the provisions contained in this letter will not be invoked for stepping up the pay of senior employee. Further, it has been laid down in Establishment Serial No.182/90 that the benefit of stepping up of pay of senior with reference to that of a juniors should be allowed only in case where the promotion is made on regular basis. Admittedly the promotion to the grade of TCI with effect from 17.07.92 in respect of the applicant having been made on ad-hoc basis. The applicant is not entitled to the benefit of Establishment Serial No. 182/90. In view of the above discussion we have no hesitation to hold that the O.A. is devoid of merit and is dismissed accordingly. No costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

CAT/CTC
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