

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.OA 677 of 1996

Present : Hon'ble Mr.N.D.Dayal, Administrative Member
Hon'ble Mr.K.B.S.Rajan, Judicial Member

DILIP KUMAR DUTTA
S/O Late Gour Hari Dutta,
R/O C/O Pranbendra Roy, Ismail Road,
Asansol, Dist - Burdwan, worked as
Goods Driver, Asansol under the Loco
Foreman, E.Rly., Asansol Division,
Asansol.

...APPLICANT.

VERSUS

1. Union of India, service through
the General Manager, E.Rly.,
17 Netaji Subhas Road,
Calcutta - 700001.
2. The Divisional Personnel Officer,
E.Rly., Asansol Division,
Asansol.
3. The Divisional Railway Manager,
E.Rly., Asansol Division,
Asansol.

...RESPONDENTS.

For the applicant : Mr.B.Mukherjee, counsel

For the respondents : Mr.P.K.Arora, counsel

Heard on : 15.6.05

Order on : 21/06/05

O R D E R

MR. K.B.S.Rajan, J.M.:

The issue involved in this case is whether the applicant is entitled to the salary and other benefits at par with one Shri Bhubaneswar Prasad, who was junior to the applicant in the grade of 1st Fireman/Diesel Asstt. Vide seniority list dated 21-8-87 (Annexure A7).

2. Under the normal circumstances we would have had a comparison of the pay of the two individuals under various stages and situations to ascertain whether the applicant is entitled to enhancement of pay under the stepping up of pay. However, in the instant case as the applicant was removed from service in 1981 and reinstated under Court's order in 1994, whereafter he had earned two successive promotions, his case has to be analysed from an entirely different angle.

3. Brief facts : The applicant while functioning as 1st Fireman was subjected to disciplinary proceedings and was removed from service on 6-2-1981. Under an interim order of the Hon'ble High Court, he was allowed to receive his pay as last drawn prior to removal from service, while he was at the same time restrained from attending his office. Ultimately, the Writ Petition filed by him was dismissed by a single Judge against which the applicant had preferred an appeal before the Division Bench of the High Court and the earlier Interim relief was allowed to continue. The Division Bench also dismissed the appeal with liberty to the applicant to prefer a Departmental appeal.

4. On the appellate authority upholding the penalty of removal from service the applicant moved this Tribunal by filing OA No.908 of 1989 which resulted in an order with the following effect :-

It has been submitted before us by the ld. counsel for the applicants that this Tribunal, in several cases, has followed the judgment of the Supreme Court in R.Redappa's case and the said judgment especially appears to have taken note that the Railway employees working in Loco Running Staff, of different zones numbering approximately 800, were dismissed under Rule 14(ii) of Railway Service (D&A) Rules for their participation in Loco Running Staff Association strike in January, 1981 and in each of these cases the disciplinary authority held that it was not reasonably practicable to hold any inquiry and passed orders in each case under Rule 14(ii) in identical terms. The Supreme Court has observed in the judgment in Redappa's case that the appellate authority in some of the cases, failed to consider the judgment passed in Tulsiram Patel's case. We are of the view that the law laid down by the Supreme Court in R.Redappa's case applies wholly to the facts of the present case.

In view of the above, the application is disposed of with the following order:-

The order removing the applicants from service are hereby quashed. The applicants should be deemed to be continuing in



service from the date of their removal and respect of applicants 2 and 3, they should be deemed to be continuing in service till the date of their retirement. Applicant No.1 shall be reinstated in service within a period of two months from the date of communication of this order. Applicants 2 and 3 shall be treated to be continuing in service till the date of their normal retirement. Their pay shall be appropriately fixed on the date of their retirement, maintaining notional continuity of their service and they shall be paid pension and other retirement benefits accordingly, within a period of three months from the date of communication of this order. As all the applicants were enjoying compensation to the extent of pay and dearness allowance upto 20th September, 1988, we do not grant them any compensation, as has been awarded by the Supreme Court”.

5. In compliance with the above order of the Tribunal the applicant was reinstated in service with effect from 7-7-94 as Fireman Group C. Thus the applicant was on “Notional continuation” in service from 6-2-81 to 7-7-1994 and according to the applicant his pay fixed on his reinstatement was Rs1175 in the grade of Rs950-1500/- which was the same prior to his removal from service (of-course the pre-revised scale). The applicant contended that his pay remained the same as per order dated 5-7-94 wherein it was stated “reinstated to the former post as Fireman C in the scale of Rs825-1200/-“.

6. The applicant was later on promoted as Shunter vide order dated 19-12-94 in the pay scale of Rs1200-2040/- and he was thereafter promoted further in the scale of pay of Rs1350-2200/- as Diesel Goods Driver. The applicant later on retired from service on superannuation on 31-12-1995 as Goods Driver.

7. The contention of the applicant is that at the time of his removal from service on 6-2-1981 his pay scale was Rs260-350/- and he was drawing a pay of Rs278/-. Corresponding to the aforesaid pay of Rs278/- in the revised pay in the wake of the Fourth Pay Commission recommendations is Rs1175/- and as such it is evident that the applicant was placed in the very same pay on reinstatement as he was drawing at the time of removal from service. The claim of the applicant therefore is that he must be placed in the pay of Fireman by adding the increments that accrue for the period from Feb'81 to July'94 and on such refixation his pay should be worked out in the promotional post of Shunter and Goods Driver respectively. On the above grounds

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the applicant has prayed for revision of pension, recalculation of leave salary, DCRG etc.

8. The application was contested by the respondents. According to them the order of this Tribunal clearly stipulating notional continuation, the question of payment of increment during the period when the applicant was out of service does not arise. They had also made available relevant service records of the applicant for perusal by the Tribunal.

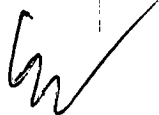
9. Arguments were heard. Pleadings as well as the personal record of the applicant produced by the respondents, perused and we have given our anxious consideration to the entire case.

10. From the records it is found that in pursuance of the order of this Tribunal dated 27-4-94, the applicant was reinstated as Fireman Grade B in the scale of Rs825-1200/- by order dated 5-7-94. However, by a corrigendum dated 15-7-94 instead of Fireman B in scale of Rs825-1200/-, the words "1st Fireman in scale of Rs950-1500/-" were substituted. Reference to his option exercised for the revised pay has also been recorded in the Service Book and the pay fixed at Rs1175/- in the scale of pay of Rs950-1500/- was duly recorded on 29-12-94.

11. It was thereafter that the applicant was promoted as Shunter in December, 1994 and his pay was fixed at Rs1260/- in the scale of Rs1200-2040/-. Again with effect from 6-12-95 the applicant was promoted and posted as Driver in the scale of pay of Rs1350-2200/- and fixed in the pay of Rs1350/-.


12. From the records it is evident that the scale of pay fixed on reinstatement of the applicant was Rs950-1500/- and the stage in the said scale in which the applicant's pay was fixed was Rs1175/-. This is the factual position. The contention of the applicant that he was fixed in the lower pay scale corresponding to his erstwhile pay scale of Rs260-350/- is thus erroneous and not borne on facts.

13. The applicant has not produced any comparative statements regarding his pay vis-à-vis that of his junior Shri Bhubaneswar Prasad. Even if he had produced any such statement the same is not likely to improve his case in as much as the applicant




was in notional continuation of service for about 13 years and a comparison under such circumstances cannot be easily drawn. Perhaps the promotion of his junior could be during the period when the applicant was out of service and the applicant had not raised his voice at the relevant point of time for stepping up of pay even if he otherwise was so eligible.

14. Under the above circumstances, the applicant's pay on reinstatement having been correctly fixed at Rs1175/- the applicant has not made out a case and as such the OA being devoid of merits, merits only dismissal, which we order accordingly. No costs.



Member(J)



Member(A)