

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

No. OA 678/96

Date of order: 4.10.2004

Present : Hon'ble Mr. Sarweshwar Jha, Member (A)

Hon'ble Mr. Mukesh Kumar Gupta, Member (J)

J.A.N. Murty,  
S/o late J.S. Rao,  
Aged about 62 1/2 years,  
retired Sr.S.A., EDP,  
SE Rly., Garden Reach,  
Calcutta-43, at present  
residing at P.31,  
State Bank Park,  
Thakurpukur-PO & PS,  
Calcutta-63.

Applicant

v.

1. Union of India service  
through General Manager,  
S.E.Rly., Garden Reach,  
Cal-43.

2. General Manager, SERLy,  
GRC, Cal-43.

3. F.A. & C.A.O., SERly,  
GRC, Cal-43.

4. Controller of Stores,  
SERly, GRC., Cal-43.

Respondents

For the applicant : Mr.B.C. Sinha

For the respondents : Ms.S.Banerjee

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Per Mukesh Kumar Gupta, Member (J)

1. J.A.N. Murty who attained the age of  
superannuation on 30.6.1991, in this application seeks  
the following reliefs:

"A. Be pleased to direct the respondents to refix the  
pay correctly in the light of the Board's Orders  
(Annx. 'A1') and pay the arrears including all  
consequential benefits including retiral benefits;

B. Be pleased to direct the respondents to refund the  
sum of Rs.6613.60 illegally recovered from the  
DCRG amount.

C. Pay cost and interest.

D. Any other order(s) as the Tribunal deems fit &  
proper."



2. The facts as stated by the applicant are that he was appointed on 12.6.1951 as Lower Division Clerk in the Stores Department and later on promoted as Head Clerk. While working as Head Clerk in the Stores Cell of EDP Centre he applied for the post of Console Operator, to which post he was appointed in the year 1972. On the basis of options called for and accepted by the applicant, he was provisionally confirmed vide order dated 21/22.3.1984 (Annexure A-4). Subsequently he was appointed as In-put Out-put Supdt. in the pay scale of Rs.700-900 (revised to Rs.2000-3200) with effect from 30.4.1982 and also Assistant Controller of Stores (Incharge) Group B, Assistant System Analyst and Senior System Analyst (Senior scale post) in the pay scale of Rs.2000-3500, Rs.2000-3500 and Rs.3000-4500 on 31.10.1986, 29.1.1987 and 12.5.1990 respectively. Unfortunately after his retirement, the respondents issued order dated 7.8.1992 (Annexure A-8) and paid him DCRG after deducting a sum of Rs.6613.60 on account of overpayment of salary. According to the applicant this seems to be the result of refixation of his pay on the ground that the post of Console Operator as well as in-put Out-put Supdt. were treated as ex-cadre post and his promotion from the post of Console Operator to In-put Out-put Supdt. was treated as promotion from one ex-cadre post to another ex-cadre post.


3. The respondents contested the aforesaid claim of the applicant and stated that the applicant was promoted as Input Out-put Supdt., (hereinafter referred to as IOS), based on his eligibility as Head Clerk in

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his parent department namely Stores Department. He was, therefore, promoted from one ex-cadre post to another ex-cadre post. It was further contended that his pay was fixed with reference to his pay in the cadre post based on Railway Board guidelines dated 24.11.1971 and, therefore, it is contended that the applicant's pay was rightly fixed, which alone had been rectified and the over payment made to the applicant was recovered from his DCRG.

4. We heard learned counsel appearing for the parties and perused the pleadings.

5. Shri B.C. Sinha, learned counsel for the applicant, contended that the basis premise of the respondents that the post of Console Operator as well as IOS were ex-cadre and, therefore, his promotion from Console Operator to IOS was a promotion from one ex-cadre to another ex-cadre post, is misplaced and misconceived inasmuch as vide Office Order No.EDP/ESTT/95/29 dated 8.8.1995, the post of Console Operator has been made a cadre post in Group C cadre with effect from 28.3.1970 and, therefore, the applicant is entitled to relief. It was further contended that the respondents recovered a sum of Rs.6613.60 on account of over payment of salary without issuing any notice to him, which was in breach of principle of natural justice and for this purpose he relied upon the order dated 12.6.2002 passed by this Bench of the Tribunal in O.A.No.1194/2001 Salil Kumar Banerjee v. Union of India and others, particularly to para 4 wherein the reliance was placed on the cases of



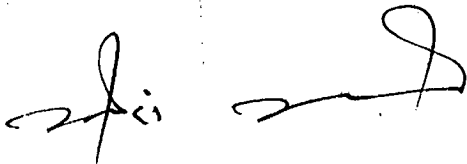
K.S.Shiridharan & ors. vs. Union of India & Ors [1991(2) SLJ p.230]; Shyam Babu Verma and Ors. vs. Union of India & Ors [(1994) 27 ATC 121] and Divisional Superintendent, E. Rly., Danapur & Ors v. L.N. Kashri & Ors.(AIR SC 1989).

6. On bestowing our careful consideration and upon hearing both sides we are of the considered view that once a post of Console Operator is caderised, with retrospective date i.e., from 28.3.1970 vide order dated 8.8.1995 (Annexure A-5) the respondents' contention that the said post was an ex-cadre post no longer survive. That being the fact & further that it is not disputed that one can be promoted/appointed from one cadre to another ex-cadre post, the respondents' contention that his pay was wrongly fixed by applying the principles of FR 22C, as applicable then, does not hold field. On the question whether any opportunity of hearing was afforded to the applicant before the aforesaid sum was recovered from DCRG, we did not find satisfactory answer from the respondents. No doubt such a contention in specific had not been taken by the applicant in his grounds para. Be that case as it is, it will not make a difference particularly in view of the fact that once the post of Console Operator becomes a cadre post, the respondents' stand and averment that the applicant was promoted from one ex-cadre post to another ex-cadre post is not justified and his promotion to the post of IOS was fully justified and, therefore, his pay was rightly fixed. Accordingly we allow the claim of the applicant and direct the respondents to refund a sum of Rs.6613.60 ps which was

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recovered unjustly. This exercise shall be completed within three months from the date of receipt of a copy of this order. The applicant will not be entitled to either costs or interest particularly for the reason that the post of Console Operator was caderised much after the applicant retired from service.

7. The application is according allowed in terms of aforesaid directions.



MEMBER (J)



MEMBER(A)

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