

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH  
CALCUTTA

No.O.A.663/1997

Date of order : 04/8/96

Present : Hon'ble Mr. B.V. Rao, Judicial Member  
Hon'ble Dr. A.R. Basu, Administrative Member

BIRESWAR DAS  
VS.  
UNION OF INDIA & ORS.

*Case Laws referred :*

*M.R. Gupta v. Union of India and others, AIR 1996 Supreme Court 669*

*Tota Ram Sharma v. Union of India & Others, (1991) 18 Administrative Tribunals Cases 367*

*S.R. Bhanrale v. Union of India & Others, 1996 Supreme Court Cases(L&S)1384*

*K. Gopinathan v. Union of India, 1993 Supreme Court Cases(L&S) 46*

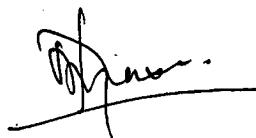
For the applicant : Mr. B.P. Roy, counsel  
Mr. S.N. Mitra, counsel  
Mr. P.K. Ghosh, counsel  
For the respondents : Dr.(Ms) S. Sinha, counsel

ORDER

Per Dr. A.R. Basu,A.M.

Corrected  
vide order  
dated  
24.8.96

The applicant, Sri Bireswar <sup>Das</sup> Rao has filed this application under Section 19 of the Administrative Tribunals Act,1985 challenging the order of the Divisional Railway Manager bearing No.E/16/Pen.Adalat/96/79 dated 03.12.1996. Fact of the case in brief is that the applicant was appointed in the N.F. Railway as Laskar in Marine Department on 11.7.1948. He was promoted as Second Class Master in the pay scale of Rs.175-280/- and was transferred in the same capacity to Eastern Railway on 31.3.1966. His pay



as Second Class Master was Rs.515/- as on 1.1.1975. His pay was Rs. 545/- on 1.1.1977. On being rendered surplus he was transferred in administrative interest as a Trainee ticket Collector and was sent to Bhuli ZTS for training. On completion of training he was absorbed as Ticket Collector in the pay scale of Rs.260-400/-(AS) on 9.3.1978 and his pay was fixed at Rs.400/- instead of Rs.545/-. He was thereafter promoted to the post of Ticket Collector in pay scale of Rs.380-560/- w.e.f. 8.1.1979 and his pay in promotion grade post was fixed at Rs.416/- instead of 560/-. The applicant retired from service on superannuation on basic pay of Rs.500/- in pay scale of Rs.380-560/- w.e.f. 1.7.1984. Despite his repeated representations regarding fixation of his pay properly it was not acceded to by the authorities concerned and ultimately by the letter dated 03.12.1996 the Divisional Railway Manager, Eastern Railway/Howrah intimated the applicant that his pay was fixed as per rules and subsequent promotions were given from time to time. Being aggrieved by the said order the applicant has filed this O.A. for the following reliefs:-

- a) An order declaring the purported orders dated 3-12-96 under challenge as illegal and void ab-initio; and an order directing the respondents to fix the pay of the applicant at Rs.545/- as on 8-7-77 and at Rs.560/- as on 8-1-79 and to give the applicant all consequential benefits such as stagnation increment etc.
- c) An order directing the respondents to pay to the applicant the amount due and payable as arrears of pay etc. within a period of three months with interest @ 15% per annum from the date it became due and payable till date of actual payment;
- d) An order directing the respondents to pay to the applicant a lump sum amount, as the Hon'ble Tribunal may kindly deem fit and proper in token of compensation for unlawfully depriving the applicant from the benefit of enjoying and availing 1st Class passes during 8-7-77 till date;



## e) Costs

f) Any other relief(s) as Hon'ble Tribunal may kindly deem fit.

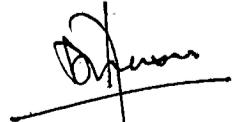
2. The respondents have opposed the contention of the applicant by filing written reply to the O.A. First point taken by them is that the application is barred by limitation as the cause of action arose in the year 1996 and they have filed this O.A. on 16.06.1997. The respondents in Para 6.5 of the reply have stated that the applicant's pay was fixed at Rs.400/- during July,1977 when he was absorbed as Ticket Collector 'B' on being rendered surplus; thereafter he got promotion from time to time and ultimately retired from service on 1.7.1984; therefore, it is evident that at the material time the applicant did not highlight his grievances at the proper forum; it is in 1997 when the applicant has come with a plea that his pay fixation during 1977 was done wrongly when he was absorbed as Ticket Collector 'B' and thus the application is hopelessly barred by limitation. The respondents in Para 11 of their reply have stated that the applicant's pay has been fixed at Rs.400/- in the pay scale of Rs.260-400/- properly as per C.P.O./Eastern Railway's Serial Circular No.6968(Annexure 'R') They have contended that the applicant's pay was fixed correctly on his promotion to the post of Ticket Collector in the scale of Rs.330-560/- taking into consideration of his pay in the immediate lower grade. The applicant's pay was fixed at Rs.400/- i.e. at the maximum in the scale of Rs.260-400/-(RS) according to the extant rules applicable to surplus staff (Annexure R). They have further contended that the representations of the applicant during the



period from 1993 to 1996 were received and dealt with by the authorities properly. The reasons for fixation of the pay of the applicant at Rs.400/- was explained to him stating that there was no deviation from the rule while fixing his pay at Rs.400/-.

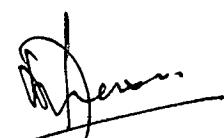
3. The applicant in his rejoinder has stated that according to rules as contained in Rule 127 of IREM, no one can be straight away appointed/promoted or posted as 'Ticket Collector 'B' without successfully completing a statutory training for a specified period; the applicant was transferred on 8.7.1977 as Trainee Ticket Collector in the scale of pay of Rs.260-400/- and was sent for training at Bhuli, Dhanbad. Thereafter he was absorbed in the scale of Rs.260-400/- as Ticket Collector. Prior to that he was in the grade of Rs.175-560/- and his pay was Rs.515/- as on 1.1.1975 and Rs.545/- as on 1.1.1977.

4. Ld. Counsel for the applicant has argued that the applicant's case is not barred by limitation. Moreover, when he was already in the grade of Rs.175-560/-, his basic pay was Rs.515/- as on 1.1.1975 and Rs.545/- as on 1.1.1977 his pay could not be reduced on 9.3.1978 to Rs.400/- instead of Rs.545/-. Ld. Counsel for the applicant has contended that in no circumstances his basic pay can be reduced except as a measure of penalty. The fixation of pay of the applicant as on 8.7.1977 and on 8.1.1979 was made arbitrarily and in contravention of the rules. The Railway Rules provide for grant of personal pay which means additional pay to save the railway servant from loss in substantive pay in respect of a permanent post other than a tenure post due to revision of pay or to any reduction of such



substantive pay otherwise than as a disciplinary measure. Ld. Counsel has invited our attention to a Circular bearing Serial No.7347, Circular No.E.839/0/Pt.I, dated the 8<sup>th</sup> Dec.,1969(Annexure 'A' to the written brief argument of the applicant) which deals with fixation of pay of staff rendered surplus and absorbed in alternative posts and as such the Ld. Counsel has contended that the basic pay of the applicant could not be reduced in view of the same and prayed that the reliefs sought for in this application may be granted.

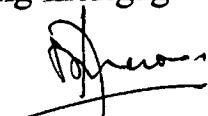
5. Ld. Counsel for the respondents has argued that the pay of the applicant has been properly fixed and as the applicant had become surplus in the Marine Department, he was absorbed as Ticket Collector 'B' in the Eastern Railway in the scale of pay of Rs.260-400/. His pay was fixed at Rs.400/- i.e. at the maximum of the scale and he served in the Eastern Railway upto 30.06.1984. On 1.7.1984 he retired on superannuation and almost 13 years after superannuation he approached this Tribunal by filing this O.A. in the year 1997. He is seeking remedy regarding a matter in which cause of action arose long back. In Pension Adalat also he was explained in detail as to how fixation had been done. Ld. Counsel for the respondents has further stated that the pay of the applicant was rightly fixed as per the extant rules duly applicable to surplus staff in terms of the Railway Board's Serial No.6968, Circular No.E 839/0/Pt/I, dated 13<sup>th</sup> May,1968, therefore, the case of the applicant should be dismissed being devoid of any merit.



6. We have heard Id. Counsel for both sides and have gone through the pleadings. Two issues are involved in this case. One is whether the application is barred by limitation or not and another is whether the respondents are competent to reduce the basic pay of the applicant or not. Section 21 of the Administrative Tribunals Act deals with limitation. The period of limitation prescribed in Section 21(2) reads as follows:-

“Where a final order has been made by the Government or a competent authority, rejecting the application or representation authorized by the relevant Service Rules, for the redressal of his grievance – the application to the Tribunal under s.19 shall be barred unless made within 1 year from the date of such final order of the Government or other competent authority.”

However, there is an exception to the bar prescribed in Section 21(2). In the instant case, the basic pay of the applicant had been reduced in the year 1978 as a result of which the applicant suffered continuously. Since the applicant's grievance is related to fixation of initial pay which was not in accordance with rules, question of limitation would not arise. So long as the employee is in service a fresh cause of action arises forthwith when he is paid his monthly salary on the basis of wrong computation made in contrary to rules. There is no doubt if the employee's claim is correct, he would be entitled to proper fixation of pay and the question of limitation would arise for recovery of the arrears for the past period. Similarly when the employee retires, if he had not been paid correctly his entire pension and other retiral benefits would also be fixed at lower than the amount he was entitled to. Right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and



subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. The Apex Court in case of *M.R. Gupta v. Union of India, AIR 1996 Supreme Court 669* has held that:-

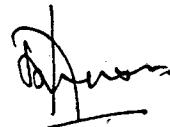
“Non fixation being continuing wrong, question of limitation does not arise.

In case of *Tota Ram Sharma Vs. Union of India & Others, (1991)18 Administrative Tribunals Cases* the Hon'ble Apex Court has held that question of limitation does not arise in case of continuing wrong. In case of *S.R. Bhanrale Vs. Union of India & Others, 1996 Supreme Court Cases(L&S)1384* it has been held by the Hon'ble Supreme Court that:-

“Where the retiral benefits and other claims of a retired employee(encashment of earned leave, increment arrears, special pay due, LTC etc. in this case) were wrongfully withheld despite numerous representations, raising the plea of limitation by the Government against such claims, held, improper.”

In view of the above discussion, it is clear that the plea of limitation raised by the respondents is not tenable.

7. Next point is whether the basic pay of the applicant can be reduced or not. As per Art. 311 of the Constitution no person shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges provided that where it is proposed after such inquiry, to impose upon him any such penalty, as the penalty may be imposed on the basis of the evidence adduced during such enquiry and it shall not be necessary to give such person any opportunity of making



representation on the penalty proposed. Reduction in basic pay amounts to reduction in rank which may be done only as a measure of penalty. In the instant case no disciplinary proceeding has been initiated against the applicant, therefore, question of enquiry/penalty etc. does not arise. The applicant was earlier in the pay scale of Rs.175-280/-(PS)/Rs.380-560/-(AS). His basic pay was Rs.515/- as on 1.1.1975 and Rs.545/- as on 1.1.1977. On 9.3.1978 his basic pay was fixed at Rs.400/- in the scale of Rs.260-400/- and in this way his basic pay was reduced from 545/- to 400/- on the plea that his basic pay was fixed at the maximum level while absorbing him in the scale of Rs.260-400/- which is not permissible under the law. In case of *K. Gopinathan Vs. Union of India, 1993 Supreme Court Cases(L&S) 46* it has been held by the Hon'ble Apex Court that:-

“ Absorption – Reduction in basic pay – ASI of Police under State Govt. on deputation to CBI absorbed in CBI – On absorption his basic pay reduced though his overall pay became higher than his pay as deputationist – Tribunal observing that DA under Central scale was higher out of which a portion was merged with the pay and therefore, by adding the merged portion to the basic pay the total amount became higher than the basic pay under the State Govt. – Held, such reasoning not acceptable – Basic pay, could not be reduced on absorption.”

8. In view of the above facts, the O.A. is allowed. The impugned order dated 03.12.1996(Annexure 'N' to the O.A.) stands quashed. The respondents are directed to fix the pay of the applicant properly as per the Railway Board's instructions under Serial No.7347, Circular No.E 839/0/Pt.-I, dated 8<sup>th</sup> Dec., 1969 and give him all consequential benefits

