

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH, CALCUTTA

O.A. No. 541 of 1997

Dated Calcutta the 19th June 2002

S.N. Sengupta (Sachindra Nath Sengupta), son of Late Dhirendra Nath Sengupta, retired Sr. Inspector of Stores Accounts, S.V. Section F.A. & CAO's office, S.E. Railway, Garden Reach, Calcutta-43, residing at Flat No. D-16/4, Purbasha Housing Estate, 160, Manichtala Main Road, Calcutta-54.

.. Applicant

-versus-

1. Union of India through Chairman, Railway Board and Ex-Officio Principal Secretary, Ministry of Railways, Govr. of India, Rail Bhawan, New Delhi-1.
2. The G.M., S.E. Railway, Garden Reach, Calcutta-43.
3. The Financial Adviser and Chief Accounts Officer, S.E. Railway, Garden Reach, Calcutta-43.

.. Respondents

Counsel for the applicant .. Mr. P.B. Mishra

Counsel for the respondents .. Mr. S. Choudhury

P R E S E N T: The Hon'ble Mr. L.R.K. Prasad, Member(A)
The Hon'ble Mrs. Meera Chibber, Member(J)

O R D E R

L.R.K. Prasad, Member(A):

1. The basic prayer of the applicant in this O.A. is for issuance of direction to respondents to fix his pay as SG CG I from 1.4.1980 under FR 22-C taking his special pay of Rs.35/- into account for fixation with all arrears from 1.4.1980 and other consequential pensionary benefits along with 18 per cent interest per annum.

2. The applicant was appointed in Railways as Clerk Grade II in 1956. He was promoted as Clerk Grade I in the Accounts Department in 1959. He was granted special pay of Rs.35/- with effect from 5.5.1979 (Annexure-A4) due to

restructuring. In 1977, it was decided to create higher Selection Grade ~~of~~ different percentages depending on the scope of promotion with effect from 1.4.1980 (Annexure-A-5). The promotional post of Sub-Head was abolished and 20 per cent in the same Selection Grade was created and several persons were promoted on promotion as S.G.C.G.I. The applicant was given the said scale with effect from 1.12.1982 vide order dated 14.2.1983 (Annexure-A-6) on the terms and conditions stated therein. It appears that his special pay of Rs.35/- was treated as personal pay and absorbed on the grant of annual increment. On 1.1.1984, the cadre of S.G.C.G.I was abolished and cadre of Sub-Head was revived. The pay of S.G.C.G.I. on promotion as Sub-Head after 1.1.1984 was fixed under FR-22C. Therefore, with effect from 1.1.1984, the applicant was redesignated as Sub-Head. On passing of examination, he was promoted to the next higher scale of Rs.500-900. The applicant retired from service on 1.8.1991. It is stated that a sum of Rs.15,000/- was recovered from his DCRG on the ground of his pay being reduced from 2750/- to 2600/-. He had filed representation against such reduction. As he did not get any relief, he filed O.A.266/92 and O.A.935/95. In the meantime, a batch cases (Annexure-A8) on the same issue were filed which were disposed of on 26.2.1996 by a common order directing the respondents to refund DCRG amount with interest. The applicants were allowed the benefits of fixation of pay under FR-22C as S.G.C.G.I from the date of their respective promotion. The applicant also got the ~~benefit~~ benefit of said judgment and his recovered DCRG amount was ordered to be refunded with interest and his ~~pay~~ pay was also required to be fixed under FR-22C as S.G.C.G.I. (Annexure-A-3). It is stated by the applicant that Shri Kundu, who was junior to the applicant, in the combined seniority list at the relevant time, was granted necessary

relief vide order passed in O.A. 1025/88 wherein all the applicants got special pay of Rs.35/- from 5.5.1979 and the higher scale of Rs.425-700 as S.G.C.G.I from 1.4.1980. It is, therefore, the stand of the applicant that as he is senior to Shri Kundu and many such other persons, he is also entitled for the same benefits and, therefore, he should be granted special pay of Rs.35/- from 1.4.1980 and his pay consequently be refixed for the purpose of granting him arrears as well as pensionary benefits. It is further stated that apart from Shri Kundu, many other juniors like Shri B.K. Joardar have been given the benefit of promotion as S.G.C.G.I from 1.4.1980. As such, the applicant made a representation before the concerned authority on 16.1.1997 (Annexure-A-1) requesting the General Manager, S.E. Railway, to grant the applicant the same benefit of upgradation of the post of S.G.C.G.I with effect from 1.4.1980 as given to his junior and to ~~refix~~ his pay under Rule 2018 B(FR-22C) with effect from 1.4.1980 and also to re-determine his pensionary benefits on revision of pay. We were told that the said ~~representation~~ is still pending with the ~~competent~~ ^{concerned} authority for the last so many years. As his representations were not disposed of by the ~~concerned~~ authority, he had no alternative but to file the instant O.A. with the prayer as stated in the beginning and on the ground explained in the O.A., specially para 5.

3, While challenging the stand of the applicant, the respondents have filed W.S. While admitting the factual position with regard to the applicant, the respondents have stated that selection to non-functional selection grade CG I is an appointment and not promotion

in terms of Railway Board's letter dated 7.3.1997 (Annexure-R-1). The applicant was redesignated as Sub-Head with effect from 1.1.1984 (Annexure-A-7) and his pay was fixed as S.H. under FR-22(a) (i). However, in pursuance of the order of this Tribunal passed in O.A.935/95 on 28.6.1996, the pay of the applicant as S.G.C.G.I with effect from 1.12.1982 has been refixed under Rule 2019B (FR-22C) and arrears amounting to Rs.15,000/-, which was recovered from his DCRG, has been paid back to him with interest in 1997. His pension has also been, accordingly, revised. It is further clarified that special pay of Rs.35/- was not taken into consideration for fixation of pay in higher scale as Selection Grade C.G.I, as per Railway Board's letter dated 7.10.1991, according to which, special pay of Rs.35/- is not to be taken into account for fixation of pay as B.G.C.G.I and the same has to be treated as P.P. which will be absorbed in future increment. Therefore, the respondents have stated that he cannot be granted benefit of fixation of his pay from 1.4.1980. With reference to paras 4.9 and 4.10 of the O.A., it is stated that in O.A.1025/88 (Annexure-A-2) full facts were not presented before this Tribunal. As such, the benefits of judgment in O.A.1025/88 were given only to the applicants of the said O.A. and the same is not binding on entire S.E.Railway. The present applicant was not party in the said O.A. and, as such, he is not entitled for extension of such benefit to him. Moreover, the said post has already been abolished due to decentralisation of clerical cadre with effect from 1.7.1984.

4. We have considered the entire matter in the light of submissions made on behalf of the parties and

materials on record. No rejoinder to W.S. has been filed on behalf of the applicant, meaning thereby that the applicant has not rebutted the points made against him by the respondents through their W.S. The basic issue for consideration is whether the applicant is entitled for the relief claimed by him, as indicated in para 8 of the O.A. wherein he has prayed for issuance of direction upon the respondents to fix his pay in SGG I from 1.4.1980 under FR-22C by taking his special pay of Rs.35/- into consideration and also to grant him relief in terms of pensionary benefits arising from such re-fixation. The applicant has placed reliance on the order of this Tribunal passed in certain OAs as have been annexed specially the order of this Bench passed in O.A.1025/88 against which it is stated that S.L.P. was filed by Railway Administration under No.2045/92 which was ultimately rejected by the Hon'ble Supreme Court on 7.10.1992. The applicants of OA 1025/88 have already been granted necessary relief and the relevant orders No.39/88 dated 25.5.1988, 92/93 dated 20.3.1992, 31/92 dated 30.6.1992 and 1213/92 dated 20.10.1992 (refers) in para 3 of the representation of the applicant dated 16.1.1997-Annexure-A-1) have been issued to effect the benefits granted by the said judgment in favour of the applicants and upgradation to the post of SGG I from 1.4.1980. It is the claim of the applicant that as his case is similarly situated, he is also entitled for the same benefits which should be extended to him and his pay be refixed from 1.4.1980 and thereafter his pensionary benefits be revised arising from the refixation of pay of the applicant. In this regard, his representation dated 16.1.1997(Annexure-A-1) is self-explanatory, which is still pending with the General Manager, S.E. Railway, Garden Reach, Calcutta. It is

noted that the respondents have not denied the assertion of the applicant, according to which, some of his juniors have been granted the benefits in terms of the order of this Tribunal, as referred to in the representation of the applicant (Annexure-A-1). The only point raised by the respondents is that full facts were not presented before the Tribunal when said judgments were pronounced and moreover they are applicable only in case of the applicants of the said OAs. Nevertheless, the fact remains that some of the juniors of the applicant have been granted certain benefits in terms of Court's order. The order passed in O.A.1025/88 of this Tribunal was challenged but the same was rejected by the Hon'ble Supreme Court on 7.10.1992. Keeping in view the facts and circumstances of the case, in our considered opinion, the representation of the applicant dated 16.1.1997 (Annexure-A-1), which is still pending with the concerned authority, deserves to be considered by him in accordance with law and in the light of orders already pronounced in O.A.1025/88, for passing appropriate speaking order specially as the applicant has already retired from service, but the same is not to be treated as precedent.

5. In view of the above analysis of the case, we dispose of this O.A. by directing respondent no.2 (General Manager, S.E. Railway, Calcutta) to examine and consider the representation of the applicant dated 16.1.1997 (Annexure-A-1) in the light of order passed in O.A.1025/88, as referred to above, and the observations made by us hereinabove and thereafter to pass a reasoned order in