

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 488/2002

TUESDAY THIS THE 17th DAY OF MAY 2005

C O R A M

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

R.Rajappan Nair,
Son of A.Raghavan Pillai,
(Retd. Clerk, Dy. Chief Engineer/Construction Office,
Southern Railway, Trivandrum)
Residing at Maruppankottu Veedu,
Puravoor, Chirayinkil, P.O.
Thiruvananthapuram DistrictApplicant

by Advocate Mr. M.P.Varkey

Vs.

Union of India Represented by
General Manager,
Southern Railway, Chennai – 600003.

The Deputy Chief Engineer/Construction,
Southern Railway, Trivandrum

The Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum

The Senior Divisional Accounts Officer,
Southern Railway,
TrivandrumRespondents

By Advocate Smt. Sumati Dhandapani.

ORDER**HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER**

The applicant R. Rajappan Nair superannuated from Railway Service on 31.12.2001, while holding the ex-cadre post of Clerk in the office of the Deputy Chief Engineer, Construction, Southern Railway, Trivandrum. Although his lien was maintained in Open Line, he had until superannuation been continuously engaged for the last 27 years in the Construction organisation in various ex-cadre posts. He had been drawing a basic pay of Rs. 4270 from February 2001 in the last ex-cadre post and continued drawing at this rate until November, 2001. Eventhough he was not repatriated to the parent cadre, his pay for the last month (December, 2001) was arbitrarily brought down from Rs.4270 to Rs. 3800 and his pensionary and other retiral claims were discharged on the basis of claim of refixations w.e.f. 1.1.1996, beginning with a refixation at Rs. 3350 on 1.1.1996 and reckoning the lower last pay as the basis and showing recovery of overpayments to the extent of Rs. 49,074/-. The applicant, aggrieved by this has sought the following reliefs:

(a) "Declare that Annexures A6, A8 and A9 are illegal, without jurisdiction, unconstitutional and opposed to the principles of natural justice inso far as they reduced the applicant's pay and retiral benefits and deducted Rs. 49074 from his retiral benefits and set aside them to the above extent.

(b) Declare that the applicant is entitled to retain the pay which he has been drawing upto November, 2001 todraw a pay



of Rs. 4270 for December 2001 to have his pensionary benefits computed accordingly to get the consequential difference in pay and retiral benefits plus the deducted amount of Rs. 49074 refunded with 12% interest per annum from 1.1.2002 to the date of payment and direct the respondents accordingly.

(c) Or in the alternative, if it is held that the applicant's pay is amenable to retrospective revision, hold that it shall be subject to the option available to him with effect from the date of his adhoc promotion as Clerk on 1.4.1986, in terms of the amended rule 1313(a)(1) of REC Vol.II and direct the respondents accordingly.

(d) Award costs of and incidental to this Application.

(e) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

2. We have heard the learned counsel for both parties extensively and have examined a wide array of rules, orders and circulars as well as pay fixation statements produced in support of respective positions, and have arrived at the crux of the issue, as an agreed basis for proceeding with the adjudication. The issues in crux are (i) whether it was right on the part of respondents to refix the pay on 1.1.1996 by reducing it from Rs. 3800 to Rs. 3350 and whether (ii) it was right on the part of the respondents to reduce the last month's basic pay to Rs. 3800 from Rs. 4270 already drawn since February, 2001 upto the previous month? At our instance the respondents also produced a comparative statement of fixations showing how the amount of recovery was arrived at.

3. The respondents contend that this revision was done at the instance of the

4

Internal Finance, who had not vetted the pay fixation done by the Construction Organisation at the time of giving effect to the revised scale recommended by the Vth Pay Commission and the Construction Organisation had fixed the pay of the applicant as Rs. 3800 on 1.1.1996 in the revised scale by applying the corresponding replacement stage for Rs. 1225 in the old scale. The Internal Finance however held, when the case was handled by them at the late stage of December, 2001 that in accordance with the Board's letter dated 7.8.1986 (Annexure R1) the applicant was to be treated as the holder of an ex-cadre post for the purpose of pay fixation and the benefit of pay drawn in such posts could not be admissible in cadre posts.

4. To say the least, we are dismayed by this obvious misreading and misinterpretation of the text by the authors of the refixation. R1 rightly declares that while fixing the pay of a lien-holder in a cadre post, his ex-cadre pay would not be taken into account. Converse is also true. Pay in a cadre post would not restrict the ex-cadre pay as long as the employee remains in an ex-cadre post. When an employee continues in the ex-cadre set up without ever having been reverted to the cadre, his pay in the cadre post, regulated from time to time based on his position in the cadre remains only a theoretical construct or at best a guide post to be brought into use when the employee reverts to the cadre. In other words, the cadre pay is what he would have drawn had he been in the cadre or what he would draw on reversion to the cadre with reference to both his senior and junior in the cadre. In ex-cadre placing there is no cadre seniority in operation. There would be many seniors, unwilling to volunteer for ex-cadre posts

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who would be drawing less pay in the cadre in comparison to their juniors working in ex-cadre posts. As long as the employee continues in the ex-cadre post, he would be entitled to this advantage, but on reversion, the cadre pay would become effective. In the instant case the fixation done by Internal Finance evidently relates to the cadre post, but this would not have the effect of reducing the pay in the ex-cadre post as long as the applicant continues in the ex-cadre post.

5. The learned counsel for the respondents argued that since staff employed in the executive offices of Construction Organisation are granted only adhoc promotion it becomes necessary to fix their pay on regular basis when they get regular promotion in the cadre. This is also part of the same misreading of rules. To clarify matters let us look at the operative rule itself.

"Notwithstanding anything contained in this rule, when a Railway servant holding an ex-cadre post is promoted or appointed regularly to a post in his cadre, his pay in the cadre post will be fixed only with reference to his presumptive pay in the cadre post which he would have held but for holding any ex-cadre post outside the ordinary line of service by virtue of which he becomes eligible for such promotion or appointment."

(emphasis added)

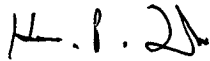
This rule clearly specifies that when a person holding an ex-cadre post gets his regular promotion in the cadre, his cadre pay would be fixed with reference to the presumptive pay in the cadre and not with reference to his ex-cadre pay. There is no instruction anywhere that on getting promotion in the cadre while continuing in the ex-cadre post his ex-cadre pay would be brought down to the level of cadre pay. In the instant case, the applicant's promotion in the cadre post would have

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no effect on his ex-cadre pay. In other words when an ex-cadre Clerk gets regular promotion as Clerk in the cadre, his spay in cadre would be fixed in the presumptive basis but his ex-cadre pay, when he is continuing in the ex-cadre post would continue to remain unaffected.

6. Accordingly, the application is disposed of with the direction to the respondents to authorise pay at the basic of Rs. 4270 for the month of December, 2001 that the applicant was entitled to, to recalculate pensionary and other retiral benefits with reference to pay actually drawn in the ex-cadre post from where the applicant retired and refund amount deducted (Rs. 49,074) towards recovery of misjudged over-payments already made from the gratuity with 8% simple interest per annum. The exercise culminating in the discharge of all the dues of the applicant should be completed within a period of three months from the date of issue of these orders. No order as to costs.

Dated 17.5.2005.



H.P. DAS
ADMINISTRATIVE MEMBER



K.V. SACHIDANANDAN
JUDICIAL MEMBER

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