

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
I.A. No.

50/90

498
with

T.A.K. 432/87

498

DATE OF DECISION

28.6.90

C.S. Subramanian

Applicant (s)

Mr. M.R. Rajendran Nair

Advocate for the Applicant (s)

Versus
Union of India & 5 others

Respondent (s)

Mr. M.C. Cheriyan

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P. Mukerji, Vice Chairman

The Hon'ble Mr. A.V. Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement? *N*
4. To be circulated to all Benches of the Tribunal? *N*

JUDGEMENT

(Shri S.P. Mukerji, Vice Chairman)

In the original writ petition dated 17th September, 1984 filed before the High Court of Kerala and transferred to the Tribunal under section 29 of the Administrative Tribunals Act, the two petitioners, S/Shri C.S. Subramanian and K.Sivaraj, who had been working as Superintendents, Drawing Office in the Works Branch in the Divisional Railway Manager's office, Southern Railway, had prayed that the impugned order dated 17.8.84 at Exbt. P-5 downgrading the posts held by them from the scale of pay of *set* Rs 840-1040 to Rs 700-900 be *set aside* with all consequential

benefits. The transferred petition (TAK 432/87) was dismissed by the Tribunal on 8.6.88 ex parte on merits. One of the petitioners, Shri C.S.Subramanian, filed a Review Application No.39/89 which was allowed and the order dated 8.6.88 stood vacated so far as Shri Subramanian is concerned and the transferred application listed and heard by us. On the dismissal of the original writ petition on 8.6.88, it appears that the respondents issued orders dated 2.1.90 reducing his pay and another order dated 9.1.90 reducing his pension. Shri Subramanian filed a fresh application OA.50/90 on 15th January, 1990, challenging these two orders annexing them as Annexures-I and II to the (TAK 432/87) fresh application. Since the transferred petition and O.A.50/90 are closely connected, they have been heard together and are being disposed of by a common order as follows:

in TAK 432/87

2. The petitioners were promoted to the post of Superintendent, Drawing Office in the scale of Rs 840-1040 from the scale of Rs 700-900 on 9.6.82 and 2.9.82 on adhoc/officiating basis. While they had been so promoted, the Railway Board issued the order dated 31.1.83 (Exbt. P-4 in TAK 432/87) giving certain clarifications about creation of posts in the scale of Rs 840-1040. Inter alia, it was indicated that posts in this scale may be created in Projects and Construction Units, if justified. Regular posts of Superintendent, Drawing Office in Production Units were

specifically categorised in this scale of pay.

On 17.8.84 the Railway Board issued a further clarification at Exbt. P-5 indicating that the scale of Rs 840-1040 are to be available only in Production units and not in the Zonal Railways or any projects and construction offices. In that circular addressed inter alia to the General Manager, Southern Railway, it was directed that if any post in Drawing Office cadre has been operated in that scale of pay, the same should be downgraded.

Apprehending their reversion by the downgrading of their posts, the petitioners moved the High Court of Kerala and their reversion through downgradation was stayed. The petitioners' contention is that on the basis of the type of work and ~~qualifications~~ ^{he} ~~qualifications~~ cannot be discriminated against as Superintendent, Drawing Office, merely because ~~he~~ ^{he was} ~~was~~ in not production units. ~~he~~ ^{he} ~~has~~ ^{he} ~~has~~ argued that ~~he~~ ^{he} ~~was~~ promoted in the scale of Rs 840-1040 in 1982 long before the clarificatory orders at Exbt. P-3, P-4 and P-5 were issued.

3. The respondents have stated that there was no post of Superintendent in the scale of Rs 840-1040 in the Drawing Office and the Zonal Railways. In the Production units such as Chittaranjan Locomotives, etc. considering the special requirements of design and planning, the Railway Board issued the order at Exbt. P-3 about creation of the post of Superintendent, Drawing Office, in the scale of Rs 840-1040 and as a matter of routine information it was circulated to Zonal Railways. It was by mistake

that Zonal Railways also created posts in that scale and when this came to the notice of the Railway Board they issued the clarification at Exbt. P-4 and a further clarification at Exbt. P-5. According to them, in accordance with these letters the scale of Rs 840-1040 is not admissible to the Zonal Railways.

4. This petition (TAK 432/87) was originally dismissed ex-parte on merits by this Tribunal on 8.6.88 but on a review application that order was recalled and the petition was heard by us on merits de novo only so far as the petitioner before us is concerned.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. From the orders at Exbt. P-1 which was issued on 9.6.82, it is clear that the petitioner was promoted from the scale of Rs 700-900 to the regular post of Superintendent in the scale of Rs 840-1040 on the retirement of the regular incumbent. Though the promotion was ad hoc that did not in any manner dilute his rights to draw his pay in the scale of Rs 840-1040 which he actually drew. The Railway Board themselves at Exbt. P-3 classified the posts of Superintendent Drawing Office, even in the Zonal Railways, as a non-selection post in the scale of Rs 840-1040. The respondents have mainly relied upon the Railway Board's Superintendents in the scale of clarification at Exbt. P-4 dated 31.1.83 to say that /

Rs 840-1040 were visualized only in production units like Chittaranjan Locomotives, Diesel Loco Workshops and Integral Coach Factory, etc.,. This has been mentioned in Part 'A' of that letter. However, para 2 of that letter reads as follows:

"2. A statement is enclosed, part 'A' of which indicate the categories in which the scale of Rs 840-1040 has been regularly allotted as a part of the regular grade structure. To the extent that these posts are required to be operated in Projects and Construction Units, there is no objection to the posts in grade Rs 840-1040 being created in Projects and Construction Units, subject to the condition that the creation of the posts is justified on the basis of worth of charge and the posts are included in the sanctioned estimate." (emphasis added)

From the above it is clear that there was no bar on creation of posts in the higher scale in Projects and Construction Units also, provided the work justifies.

6. The further clarificatory order dated 17.4.84 at Exbt. P-5 however narrowed down the availability of such posts as follows:

".....It is therefore clarified that the scale of Rs 840-1040 (RS) is applicable to the posts of Supdt., drawing office, Chief Design Asst. (Drawing Office) and Supdt. Inspection on Production Units viz. CLW, DLW and ICF only and not on the Zonal Railways including Projects and Construction Offices."

Reading the two clarificatory letters together, one cannot help getting the impression that there was no specific and positive direction of the Railway Board to downgrade the posts of Superintendent from the scale of Rs 840-1040 to Rs 700-900. The letter of 31.1.83 (Exbt. P-4) left an

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element of discretion and liberty to the General Managers to retain or create posts in the scale of Rs 840-1040 if the same is justified by work. The direction of the Railway Board in the letter dt. 17.8.84 was to the General Manager to downgrade the posts but the direction by itself did not mean that all existing posts stood downgraded with immediate effect. The specific orders to downgrade the posts had to emanate from the General Manager or other competent authority in the Zonal Railways. Since the petitioner before us had been promoted to the scale of Rs 840-1040 well before the restrictive letters of the Railway Board were issued, and no specific order of any competent authority has been issued downgrading the posts held by the petitioner even after he had retired, he cannot be deprived of getting the benefit of pay and pension accruing from holding the post of Superintendent in the scale of Rs 840-1040. It is also legally not permissible to downgrade the post of the petitioner with retrospective effect, and that too without/ notice.

7. In the circumstances, we allow the transferred writ petition in so far as Shri Subramanian is concerned as also the Original Application No.50/90 and set aside the impugned orders dated 2.1.90 at Annexure-I and 9.1.90 (in OA 50/90) at Annexure-II with the direction that the applicant should be deemed to have continued as Superintendent in the scale of Rs 840-1040 inspite of the impugned orders (in TAK 432/87) at Exbt.P-4 and P-5. His pay and pension as originally

fixed on the basis of his continued officiation in
the scale of Rs 840-1040 till his retirement should be
restored back to him and no recovery of over-payment
of pay or pension should be effected and if any such
recovery has been made, the same should be refunded
to him within a period of 3 months from the date of
communication of this order. There will be no order
as to costs. A copy of this order may be placed in
both the case files.


(A.V. Haridasan)
Judicial Member

28/6/96


(S.P. Mukerji)
Vice Chairman

28.6.96