

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 518/90
~~XXXXXX~~

198

DATE OF DECISION 3.5.91

N Rajasekharan Nair & another Applicant (s)

Mr P Sivan Pillai Advocate for the Applicant (s)

Versus

The Union of India rep. by Respondent (s)
the General Manager
Southern Railway, Madras-3 & another

Mrs Sumathi Dandapani Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member.

The Hon'ble Mr. N Dharmadan, Judicial Member.

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

JUDGEMENT

Mr NV Krishnan, A.M

The two applicants, who are Cabin Assistant Station Masters at Ernakulam under Respondent-2, are aggrieved by their pay fixation in the revised pay scale by the impugned order dated 30.1.90 (Annexure A4), on the ground that, according to them, such fixation has been done wrongly, by incorrectly interpreting the provisions of the PB Circular No.28/88 of the Respondent-2 and the Railway Board's letter dated 23.6.88 referred to therein.

2 The grievances of the applicants have arisen in the following circumstances.

2.1 The pay scales of the Government of India employees were revised with effect from 1.1.86 in accordance with the

provisions of the Central Civil Services (Revised Pay) Rules 1986. In respect of certain employees of the Ministry of Railways, the Railway Services (Revised Pay) Rules 1986 (Rules for short) were made applicable from 1.1.86. For all practical purposes, these two sets of rules are practically identical. Admittedly, the applicants are governed by the latter Rules.

2.2 The scales of pay attached to the posts of Assistant Station Masters/Station Masters prior to and after revision from 1.1.86 are shown below.

✓ their
revision
by the
Rules and

<u>Prior to 1986 Rules</u>	<u>After 1986 Rules</u>
Rs 330 - 560	Rs 1,200 - 2,040
Rs 425 - 640)	Rs 1,400 - 2,300
Rs 455 - 700)	
Rs 550 - 750	Rs 1,600 - 2,660
Rs 700 - 900	Rs 2,000 - 3,200
Rs 840 - 1040	Rs 2,375 - 3,500

2.3 The applicants were in the lower post on the scale of Rs 425-640 prior to 1.1.86 and continued as such. The first applicant was drawing Rs 600/- in that scale from 1.8.85 and the second applicant was drawing Rs 600/- from 1.4.85 and Rs 620/- from 1.4.86. Both were promoted to the next higher post in the scale of Rs 455-700 vide Annexure A1. The first applicant assumed charge on 28.7.86 and the second on 10.8.86.

2.4 On such promotion, the pay of the applicants were fixed at Rs 660/- in the scale of Rs 455-700 from 1.8.86 in respect of the first applicant and w.e.f. 10.8.86 in respect of the second applicant under FR.22-C.

2.5 As the Rules came into force on 1.1.86, the applicants opted for fixation of pay in the revised pay scale of Rs 1400-2300 from 1.1.86. Accordingly, the pay of both the applicants were fixed at Rs 1760/- w.e.f. 1.1.86 in the corresponding revised scale of Rs 1400-2300 on the basis of the pay drawn by them in the existing scale on 1.1.86. As the revised pay scale of the higher post in the scale of Rs. 455-700 to which they were promoted after 1.1.86 was also Rs 1400-2300, their pay on that post was not fixed.

2.6 Subsequently, by the Annexure A3 letter dated 23.6.88 of the Railway Board (enclosed to the second respondent's letter dated 31.8.88 also marked as Annexure A3), certain relaxations were announced in the matter of opting for the revised pay scales. Para-3 and of this letter is material/ the relevant portion thereof is reproduced below:

∟ them on 1.1.86 shall also be fixed in accordance with

"In exercise of the powers available under Rule 13 of the Railway services (Revised Pay) Rules, 1986 the President is pleased to decide that the pay of Railway Servants drawing their increments annually who opt to switch over to the revised scale of pay from the date of their next increment or subsequent increment falling after 1.1.86, but not later than 31.12.1987 in respect of the post held by the provisions of Rules 7 of the Railway Services (Revised Pay) Rules, 1986."

2.7 Taking advantage of this concession, the applicants exercised fresh options as at Annexure R3 electing to continue on the existing scale of pay of their substantive post till the date of earning the subsequent increment raising their pay to Rs 640/- which admittedly, was 1.8.87 and 1.4.87 for applicant 1 & 2 respectively.

2.8 Accordingly, by the impugned order at Annexure A4 dated 30.11.90 the pay of the first applicant was fixed at Rs 1900/- in the scale of Rs 1400-2300 from 1.8.87, Rs 1950/- from 1.8.88 and Rs 2000/- from 1.8.89. The second applicant's pay was similarly fixed at Rs 1900 from 1.4.87, Rs 1950/- from 1.4.89.

2.9 The fixation of pay by Annexure-4 is questioned by the applicants who contend that they are entitled to get their pay fixed at a higher stage on the basis of their pay in the higher post held on officiating basis. It is further contended that this ^{memo}is not in accordance with the fixation envisaged in Rule 7(i) as made applicable to them by the Annexure-3 circular. The applicants have, therefore, prayed that the impugned Annexure A4 Memorandum be quashed in so far as it concerns their pay fixation and the respondents be directed to fix their pay w.e.f. 1.8.87 and 1.4.87 respectively, taking into account their pay in the higher officiating post in accordance with Rule-7.

3 The respondents have filed a reply stating that Rule-7 contemplates the fixation of pay in the revised scale of pay only in respect of the post held on 1.1.86. It is also submitted that both the existing scales of Rs 425-640 applicable to the lower post and Rs 455-700 applicable to the higher post have been replaced by a common revised pay scale of Rs 1400-2300 and therefore,

the benefit of fixation of pay on promotion could not be granted in the revised pay scale. The Annexure-3 Memorandum of the Railways merely permits the officials to come over to the revised pay scale in respect of the post held by them on 1.1.86 from a date later than 1.1.86 and yet, get the benefit of pay fixation under Rule 7. The impugned Annexure-4 order correctly fixes their pay in the revised pay scale after they exercised a revised option in pursuance of the Annexure 3 letter. The applicants cannot be permitted to have such fixation done with reference to the pre-revised scale of ^{the} post to which they were promoted on 28.7.86 and 10.8.86 respectively, because the Rules do not provide for this. Besides, in their options after the Annexure A3 circular, they wanted to retain the existing scale of Rs 425-640 ^{of} the lower post only till they earned the increment raising their pay to Rs 640/-.

4 We have heard the learned counsel of both the parties and also perused the records. The contention runs as follows:-
of the applicant's counsel (i) The benefit of fixation of pay under Rule 7 was originally available only if the employee opted for the revised scale from 1.1.86.
(ii) However, the benefit of such fixation under Rule-7 is now made available by the Annexure A3 Memorandum even if the employee opts for the revised scale from a later date than 1.1.86 as provided in Rule-5. (iii) Under Rule 7, pay in the revised pay scale shall be fixed as on 1.1.86 separately in the substantive as well as

on the officiating post. (iv) As fixation of pay under Rule-7 has been allowed from a later date than 1.1.86 (1.8.87 and 1.4.87 in respect of the applicants), the pay of the applicants in the revised pay scale should be fixed both in respect of the substantive post in the existing scale of Rs 425-640 and in the officiating post in the pre-revised scale of Rs 425-700, in accordance with their option.

5 After careful consideration of the provisions of the rules, we are of the view that this application has to be dismissed for the simple reason that though the Railway Services (Revised Pay) Rules 1986 require that the pay of an employee who has been promoted to a higher post after 1.1.86 has necessarily to be fixed in the revised pay scale, such fixation will have to be done only under the Fundamental Rules and not under the former Rules as will be shown presently.

6 It is necessary to first set out the scheme of the Rules to understand the rival contentions.

6.1 The Rules have come into force from 1.1.86 (Rule 1).

6.2 There is a declaration that the scale of pay of every post specified in Column-2 of the first schedule - i.e., the "present scale" as defined in Rule 3 (3) - shall be as specified against in column-4 thereof from 1.1.86 (Rule-4). The posts in the "present scale" of pay of Rs 425-640 and Rs 425-700 in question in the

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present case as well as another in the scale of Rs 425-700 are mentioned in column-2 at sl.12 of the first schedule and the revised pay scale applicable to all these posts is Rs 1400-2300.

6.3 Unless otherwise provided, railway employees shall draw pay only in the revised pay scale of the post to which they are appointed- Rule 5. As this rule is important, it is reproduced below:

"5. Drawal of pay in the revised scales - Save as otherwise provided in these rules, a Railway servant shall draw pay in the revised scale applicable to the post to which he is appointed;

Provided that a Railway servant may elect to continue to draw pay in the existing scale until the date on which he earns his next or any subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that scale.

Explanation-1 - The option to retain the existing scale under the proviso to this rule shall be admissible only in respect of one existing scale.

Explanation-2 -The aforesaid option shall not be admissible to any person appointed to a post on or after the 1st day of January, 1986, whether for the first time in Railway service, or by transfer or promotion from another post and he shall be allowed pay only in the revised scale.

Explanation- 3- Where a Railway servant exercises the option under the proviso to his rule to retain the existing scale in respect of a post held by him in an officiating capacity on a regular basis for the purpose of regulation of pay in that scale under the Rule 2017 (FR 22) or Rule 2027 (FR 31) of Indian Railway Establishment Code, Volume II or any other rule or order applicable to that post, his substantive pay shall be the substantive pay which he would have drawn had he retained the existing scale in respect of the permanent post on which he holds a lien or would have held a lien had his lien not been suspended or the pay of the officiating post which had acquired the character of substantive pay in accordance with any order for the time being in force, whichever is higher."

6.4 Rule 7 deals with the fixation of initial pay in the revised scale. This rule applies only if persons opt from 1.1.86 (or are deemed to so opt) for the revised

pay pay scale and not from any later date. The pay of such an optee as on 1.1.86 in the revised pay scale will be fixed after adding to his "existing emoluments", an amount of 20% of the basic pay. This is the attraction of opting for the revised pay scale from 1.1.86.

6.5 Under Rule 5 one can retain the "existing scale" till four dates subsequent to 1.1.86 and come over to the revised pay scale thereafter viz; till the date of next increment or the date of subsequent increment, or the date of vacating the post or the date one ceases to draw pay in that scale. In such a case, fixation of pay in the revised scale from the date opted is done under Rule 9. In summary form, the revised pay will be fixed in the same manner as in Rule 7 excepting that 20% of the basic pay will not be added to the existing emoluments and this benefit is denied to them.

7 When the employees made a representation seeking a relaxation regarding the dates of option to retain the "existing scale" it was directed that even if the option is to retain the "existing scale" in respect of the post held on 1.1.86 till the date of next increment, which falls not later than 31.12.86, the benefit of fixation of pay under Rule 7 should be given. This was further relaxed by the Annexure-3 Railway Board's Circular dated 23.6.88. The benefit of fixation of pay under Rule 7 was extended to employees who opted to

retain the existing scale of the post held on 1.1.86 till they earn either the next increment or the subsequent increment, falling due after 1.1.86, but not later than 31.12.87. In other words, if the Annexure 3 circular had not been issued, the pay of persons exercising such options will be fixed in the revised pay scale under Rule 9 and they will not get the benefit of adding to the existing emoluments 20% of the basic pay. Therefore, Annexure A3 is really a partial amendment to Rule 9.

8 An analysis of the provisions of the ^{relevant} rules is now required to determine the question raised. That is being done as follows:

8(i) The proviso to Rule 5 permits retention of the "existing scale" for some period after 1.1.86, the effect of which is to permit election to the revised pay scale from a date later than 1.1.86 at the end of the period. "Existing scale" is defined in Rule 3(2) to mean the "present scale" applicable to the post held on 1.1.86, - i.e., the scale shown in column-2 of Schedule-I - whether in a substantive or officiating capacity. Therefore, only Rs 425-640 is the existing scale i.e., the 'present scale' of the post held by the applicants on 1.1.86. The pay scale Rs 455-700 is only a 'present scale' and not an 'existing scale' because the applicants held the post on that scale only on 28.7.86 and 10.8.86 and not on 1.1.86. Therefore, under the proviso to Rule 5,

the applicants can elect only to retain the 'existing scale' of Rs 425-640 till they earn the next increment.

8.2 The effect of Rule 4 is that all posts which existed as on 1.11.86 shall be deemed to carry only the revised pay scale on and after 1.1.86. It has, therefore, to be now presumed that the officiating post to which the applicants were promoted on 28.7.86 and 10.8.86 respectively did not carry the present scale of Rs 455-700 at all but were really on the revised pay scale of Rs 1400-2300 only.

8.3 The option under proviso to Rule 5 will not be available, as clarified in the Explanation-2 to that Rule, if initial or first appointment is made on or after 1.1.86, either by direct recruitment or if it is made on or after 1.1.86 by transfer or by promotion from another post. This really clinches the issue. Such persons shall be allowed pay in the revised pay scale only, due to the operation of Rule 4, as explained above. Therefore, the pay in the higher post of Rs 455-700 has necessarily to be fixed in the revised scale only w.e.f. the date of actual promotion i.e., 28.7.86 and 10.8.86 in respect of the two applicants and the applicants cannot claim any fixation of pay in the officiating post in the revised scale from 1.8.87 or 1.4.87 as the case may be.

8.4 The fixation of pay in the revised scale from 28.7.86 and 10.8.86 when the applicants were appointed to a post on a higher 'present scale', has to be done only

under the normal rules for two reasons. Firstly, as stated above, the Railway Servants (Revised pay) Rules 1986 do not have a provision for fixation in such a case. Secondly, the Ministry of Finance has issued clarification in DM No.F 18(1)IC/86-PT dated 15th December, 86 (Instruction No.15 under Rule 7 in Swamy's Compilation of CCS (Revised Pay) Rules, 1986 corrected ^{by PPR 29} upto 1.11.88) that in the case of Government servants promoted to higher post or after 1.1.86, the pay in the revised pay scale should be fixed with reference to the lower post under CCS (Revised Pay) Rules 1986 and then the pay fixed in the revised scale of the higher post under the normal rules. That clarification is equally applicable to the cases of railway servants governed by the Railway Servant (Revised Pay) Rules, 1986.


9 The learned counsel argued that the Annexure A3 Circular has, in fact, to be construed to have amended Rule 7(1) also such that, despite whatever has been stated above, the applicants have a right to have their pay fixed under Rule 7(1) on the officiating higher posts held by them from 28.7.86 and 10.8.86. There are two main objections to this argument. Firstly, Annexure A3 cannot be construed in the above manner because the instructions therein have reference to only the post held on 1.1.86. Hence these instructions will not apply to the post to which promotion was made after 1.1.86. Secondly, ^b Annexure-3 itself is issued to liberalize the provisions

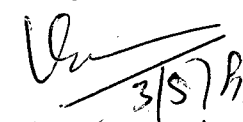
of Rule 9 which apply only to fixation in the revised scale from the date later than 1.1.86 upto which the 'existing scale' has been retained. By definition, existing scale refers to the scale of a post held on 1.11.86. Hence, Annexure-3 instruction too will apply to posts held on 1.11.86 and not the posts to which promotions were made after 1.11.86.

10 For the reasons given above, we are convinced that while the pay of the applicants on the officiating post held by them on 28.7.86 and 10.8.86 respectively should, no doubt, be fixed on the revised pay scale, but this will be done only under the normal rules and not under Rule 7 with effect from 1.8.87 and 1.4.87 as prayed for.

11 In the circumstances, we find that this application has no substance and it is dismissed. We make it clear that the respondents cannot now take any action adverse to the applicant in pursuance of our observations in para-9 supra.

12 There will be no order as to costs.


(N Dharmadan) 3.5.91
Judicial Member


(NV Krishnan)
Administrative Member