

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.568/2003
Tuesday, this the 30th November 2004

C O R A M:

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.S.K.HAJRA, ADMINISTRATIVE MEMBER

P.M.Thankappan Nair, S/o Ramakrishnan Nair
(Retired Office Superintendent Gr.II)
Southern Railway, Shenkottah,
R/o Valiyaparambil House, Parumala,
Pathanamthitta District.

Applicant..

(By Advocate Mr.T.C.Govindaswamy)

Vs.

1. Union of India represented by the General Manager
Southern Railway Head Quarters Office, Chennai-3.
2. The Divisional Railway Manager, Southern Railway
Madurai Division, Madurai.
3. The Divisional Personnel Officer, Southern Railway
Madurai Division, Madurai.

Respondents


(By Advocate Mr.Sunil Jose)

The application having been heard on 30.11.04 and the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

The applicant commenced his service in the Railway on
3.8.1965 as a Lower Division Clerk. While working as Senior
Clerk (Works) in the scale Rs.330-560 in the year 1983 being a
volunteer among the Clerical Staff of the Works Branch of the
Civil Engineering Wing he was promoted as a Depot Store Keeper
in the scale Rs.550-750 which was later revised to Rs.1600-2600
and then to Rs.5500-9000 by Annx.A1 order. The applicant joined
the post on 17.3.84. While working as Depot Store Keeper scale
Rs.5500-9000 by Annx.A2 order dated 16.9.97 he was promoted as
Office Superintendent Gr.II in the same scale. His pay was
fixed in the scale Rs.5500-9000 and he was drawing the pay
accordingly. His grievance is that while he was to retire on
31.5.02 the 3rd respondent issued Annx.A4 order dated 24.5.02



retrospectively reducing and refixing his pay w.e.f. 1.10.84 and consequent orders of Annxs.A5 and A6 ordering recovery of Rs.85000/- from his DCRG. In reply to the representation he was sent with Annx.A10 order stating that the refixation of his pay was in order and that an amount of Rs.77410/- has been adjusted from DCRG due to him. Aggrieved by that the applicant has filed this application seeking to set aside Annxs.A4, A5, A6 and A10 declaring that he is entitled to have pension, retirement gratuity, leave salary and other terminal benefits calculated and paid ignoring Annxs.A4, A5, A6 and A10, for a direction to the respondents to recalculate and pay the applicant's pension, DCRG and all other terminal benefits as if Annxs.A4, A5, A6 and A10 were not issued and for disbursement of the entire terminal benefits without any deduction with interest. It is alleged in the application that the refixation of the applicant's pay and order for recovery at the fag end of his service without notice is arbitrary, irrational and wholly unjustified.

2. The respondents contend that the applicant while working as Senior Clerk in the scale Rs.330-560 was posted on an ex-cadre post of Depot Store Keeper in the scale Rs.550-750, that on repatriation he was promoted in his cadre as Office Superintendent in the scale Rs.550-750 and at that time his pay was inadvertently fixed reckoning the pay of excadre post while without adverting to the repatriation and that the action taken to rectify the mistake is perfectly justified.

3. We have heard the learned counsel on either side and have gone through the pleadings and materials on record

4. The learned counsel of the applicant inviting our attention to Annx.A1 order dated 26.12.03 by which the applicant was promoted as Depot Store Keeper in the scale Rs.550-750 and

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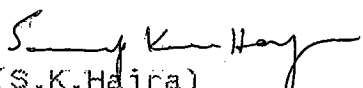
Annx.A2 order by which he was promoted as Office Superintendent Grade-II from the post of Depot Store Keeper argued that there is absolutely no justification for retrospective refixation of the applicant's pay 5 years after his pay was fixed as Office Superintendent. The story that the applicant was repatriated from the post of Depot Store Keeper is untenable because it would be evident from Annx.A2 that the applicant was directly promoted from the post of Depot Store Keeper to that of Office Superintendent argued the learned counsel. The counsel further argued that even assuming that there has been a defect in the fixation of the applicant's pay in the year 1997 the respondents could not have unilaterally issued an order which would visit the applicant with severe adverse civil consequences without even informing the reasons to do so and giving him an opportunity. If there has been any over payment to be recovered as per rules, it should have been ascertained at least three months prior to the applicant's retirement argued the counsel.


5. The learned counsel of the respondents on the other hand seeks to support the impugned action on the ground that the applicant would be getting unintended benefit for he was entitled to get his pay fixed on his promotion as Office Superintendent Gr.II only with reference to the pay which would have drawn in his cadre post and that the respondents are bound to rectify the mistake and avoid loss to the government.

6. On a careful consideration of the facts and circumstances emerging from the materials on records and from the submissions of the learned counsel of either side we find no legitimate basis for the action taken. In Annx.A1 order by which the applicant was promoted as Depot Store Keeper there was absolutely no indication that the appointment was to an ex-cadre post on the other hand it was stated the applicant was promoted.

Even in Annx.A2 promotion order to the post of Office Superintendent Gr.II it has not been stated that the applicant was holding an ex-cadre post and was repatriated before promotion as Office Superintendent. Even in Annxs.A5, A6 or A10 such a case has not been spelt out. No material has been brought on record to show that the promotion of the applicant as Depot Store Keeper was to an ex-cadre post. Further it is evident from Annx.2 that before the applicant was promoted as Office Superintendent Grade II the applicant was not reverted as Senior Clerk or repatriated to the clerical cadre. Hence the contention that the applicant got repatriated and that it was omitted to note in the fixation of pay cannot be accepted. Even assuming that there was an omission as the applicant's pay was fixed way back in 1997 the respondent have no authority to unilaterally reduce his pay after such a long time.

7. In the light of what is stated above we find that the applicant succeeds and the impugned orders are liable to be set aside. We, therefore, set aside the impugned orders Annx.A4, A5, A6 and A10 directing the respondents to compute the pension, DCRG and other terminal benefits of the applicant treating Annxs.A4, A5, A6 and A10 did not exist and make available to the applicant the entire monetary benefits without making any deduction. The above exercise shall be completed and monetary benefits made to the applicant within two months from the date of receipt of a copy of this order. The applicant shall be entitled to interest as per rule on the amount of withheld DCRG. No costs.


(S.K. Hajra)
Administrative Member


(A.V. Haridasan)
Vice Chairman.

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