

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

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B.A.No. 269/93

Tuesday, this the 18th day of January, 1994

CORAM

SHRI N.DHARMADAN, JUDICIAL MEMBER

SHRI S.KASIPANDIAN, ADMINISTRATIVE MEMBER

Applicant

Shri V.Ashok,
Head Clerk,
Carriage and Wagon Supdt. Office,
Southern Railway,
Mettupalayam.

By Advocate Shri P.Sivan Pillai

VERSUS

Respondents

1. Sr. Divisional Personnel Officer,
Southern Railway,
Palghat.
2. The Union of India through
the General Manager,
Southern Railway,
Madras-3.

By Advocate Shri M.C.Churian

O R D E R

N.Dharmadan, JM

Only objection of the applicant is against the following clause in Annexure-A1, order of fixation of his pay from 1.1.87, which denies him the arrears of salary on the basis of the order ^{for} enhancement from the actual date of promotion:

"He is eligible for the enhanced pay from the date of actual promotion."

2. The facts are not in dispute. The applicant was promoted as Head Clerk w.e.f. 31.5.89 while he was working at Guntakkal Division of South Central Railway. His request for a mutual transfer to Palghat with one Shri CH Roopchand, who was working

as a Senior Clerk on adhoc basis, was allowed and he joined Palghat Division on 19.5.89 in the place of Shri Roopchand. Consequently the applicant was assigned seniority position of Shri Roopchand in Palghat Division. Though Shri Roopchand was granted retrospective regular promotion w.e.f. 1.1.84, the applicant was granted the benefit of regular promotion as Senior Clerk w.e.f. 1.1.87. Since Shri Roopchand was granted retrospective regularisation, the applicant also claimed the same benefit of seniority and consequential rights in the Division from 1.1.84. The Railway accepted the contention and passed Annex.R1 order dated 18/24.7.91. The operative portion is extracted below:

"Consequent on the regularisation of adhoc promotion of Shri V.Ashok as Sr. Clerk from 18.4.82 and the adhoc promotion of Shri Roopchand as Sr. Clerk from 1.1.84 Shri V.Ashok is assigned seniority as Sr.Clerk/Mechl. Branch PGT Division, in scale Rs 330-560 with effect from 1.1.84.

His seniority position as assigned in the seniority list of Sr. Clerks published as on 31.7.87 under this office letter No.J/P 612/V/1 -Clerks dt. 7.8.87 stands modified as under. xx xxx xxx"

3. However in the consequential order Ann.A1, challenged in this OA, the applicant was granted only a proforma fixation of pay from 1.1.87 in the scale of Rs 1400-2900 as follows:

Rs 1400/-	from	1.1.87
Rs 1440/-	from	1.1.88
Rs 1480/-	from	1.1.89
Rs 1520/-	from	1.1.90
Rs 1560/-	from	1.1.91"

There is no justification in restricting the benefits from 1.1.87 when Ann.R1 order provides for promotion from the date of regular promotion of Shri Roopchand viz. 1.1.84. Actually the benefit of arrears was denied to the applicant by incorporation of unnecessary clause as indicated above. According to the applicant, when once the pay of an employee has been fixed with retrospective effect, the benefit of it cannot be denied unless there is some order, instruction or rule enabling the Railway to do so. The Railway did not produce any such enabling provision to sustain their stand.

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The reasons/stated in Ann.A3 order passed by the Sr.DPO rejecting his representation filed for getting the relief.

4. The respondents have admitted the claim of seniority of the applicant from 1.1.84 in Exbt. R1. Applicant also relied on an earlier decision of this Tribunal in P.Tyagarajan and others V.Union of India & others (1992)19 ATC, 839.

5. We have gone through that decision. In that case also a more or less similar question came up for consideration and this Tribunal observed as follows:


"After surveying the various judicial pronouncements on the question of payment of arrears of pay on retrospective promotion, we in that judgment observed as follows:

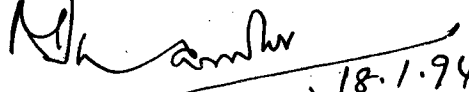
"In view of the unequivocal and consistent rulings of the Supreme Court, High Courts and this Tribunal, we hold that the applicants on their retrospective notional promotions to the higher grades of Rs 425-640 with effect from 29.6.76, Rs 550-750 with effect from 26.11.76 and Rs 700-900 with effect from 1.8.79 cannot be denied the arrears of pay in those grades calculated from the respective dates of promotion and that the following provisions in the Railway Board's letter No.E(NG) 63 PMI/92, dated 15/17 September, 1964 is not legally sustainable."

6. In the light of the aforesaid decision and Exbt.R1, we are inclined to allow the application. Accordingly we quash Ann.A1 and A3 to the extent the same deny the benefit of fixation of pay and disbursement of arrears to the applicant in the post of Head Clerk for the period from 1.1.87 to 6.8.91. The respondents shall comply with the above directions within a period of 4 months from the date of receipt of a copy of this order.

7. The OA is allowed to the extent indicated above.

No costs.


(S.Kasipandian)
Member (A)


(N.Dharmadan). 18.1.94.
Member (J)