

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.294 of 1994

Friday, this the 27th day of January, 1995.

CORAM

HON'BLE MR P. SURYAPRAKASAM, JUDICIAL MEMBER

K.P.Madhusoodanan,
Assistant Station Master,
Vijayamangalam,
Palghat Division.

...Applicant

By Advocate Mr TCG Swamy.

Vs.

1. Union of India through
The Secretary,
Ministry of Railways,
Railway Board,
New Delhi.
2. The Chief Personnel Officer,
Southern Railway,
Madras-3.
3. The Divisional Personnel Officer,
Southern Railway,
Palghat.

...Respondents

By Advocate Mr KV Sachidanandan.

O R D E R

P.SURYAPRAKASAM, JUDICIAL MEMBER

Applicant was appointed in Hubly Division of the South Central Railway as Probationary Assistant Station Master on 15.1.82. Later he was promoted to officiate as Station Master from 1.1.85 temporarily in the Hubly Division. While he was working in Hubly Division, he was posted to Palghat Division of the Southern Railway at his request on Inter-Railway one way transfer on bottom seniority in the initial recruitment grade of ₹ 1200 -2040

as Assistant Station Master. He was relieved from Hubly Division on 10.12.92 and joined Palghat Division on 14.12.92. While under orders of transfer, he was confirmed in grade Rs 1200 - 2040 with effect from 1.12.92.

2. According to applicant, he was drawing Rs 1680/- at the time of his transfer to Palghat Division in the scale of Rs 1400 - 2300. Since the respondents did not fix the pay of the applicant in accordance with his eligibility and continued to pay him the minimum of the scale of Rs 1200 - 2040, the applicant made a representation Annexure A1 dated 19.2.93 to the third respondent seeking protection of his pay at Rs 1680/- which he was drawing while he was in his parent division in the scale of Rs 1400 - 2300. Without considering the request of the applicant and fixing of his pay in accordance with the rules, the second respondent issued an order bearing No.J/P 676/VIII/XII(Pilot) dated 25.11.93 fixing the pay of the applicant at Rs 1470/- with effect from 11.12.92 and Rs 1500/- with effect from 1.11.93. Aggrieved over this, the applicant filed the present application seeking to quash with the following prayers:

"(a) To call for the records leading to the issue of Annexure A2 and A3 and quash the same.

"(b) To direct the respondents to fix the pay of the applicant in scale of Rs 1200 - 2040 at Rs 1680/- w.e.f. 11.12.92 with all consequential benefits."

3. Respondents have filed a reply statement stating that as per Annexure A3 clarification dated 14.7.93 which is a copy of the CPO/Madras letter No.P(R) 524/Fixation of Pay/Vol.II dated 30.6.93 (HQ PBC No.86/93) was sent for information and guidance. According to them, in the light of Annexure A3 clarification the pay of the applicant was refixed correctly as per Annexure A2. There is no illegality or injustice in it. The statement of the applicant that as per rules, he is entitled to have his pay protected at Rs 1680/- is not correct, and his pay has been correctly fixed as evidenced from Annexure A2 based on the orders in force, and hence giving of notice etc. does not arise. They further stated in the Reply Statement that:

"It can be seen that Annexure A3 order has been issued after orders of this Hon'ble Tribunal in OA 333/92. Thus the position has changed after issuance of Annexure A3 order. The rules governing fixation of pay in the case of the applicant is Annexure A3. Annexure A3 was issued after considering the scope of Rule 1313 (FR 22) and Rule 1320 of Indian Railway Establishment Code, Vol.II."

4. The applicant stated that his case is totally covered under the orders passed in OA 333/92 and batch dated 26.2.93 which has been marked as Annexure A6. Further more, he relied on the order rendered in OA 2087/93 wherein the order rendered in OA 333/92 has been followed. Further the applicant relied on the Full Bench

Judgment in OA 912 and 961 of 1992 dated 7.6.1993

Smt. Sakkubai and another Vs The Secretary, Ministry of Communications, New Delhi and others (AT Full Bench Judgments (1991-93) -19). According to applicant that the respondents have no right to issue Annexure A3 and it is not binding on by whatever name they call it, either clarification or letter or cancellation, since it is only an executive order and for this he relied on the above said decision, namely, Smt. Sakkubai's case to the following:

"At the outset we must deal with the letter of the Director General of Posts dated 16.08.1991. So far as the letter is concerned it is enough to say that there are judicial pronouncements of the Ernakulam Bench, to which the Director General of Posts is a party in more than one case, holding that the benefits of the grant of temporary status is available to parttime casual labourers as well. The Director General cannot, therefore, arrogate to himself the power of neutralising the binding decisions of the Tribunal by means of issuing a clarification to the earlier order. If the Director General felt aggrieved by the decision rendered by the Ernakulam Bench on the question of grant of temporary status and consequential regularisation of parttime casual labourers, the proper course for him to adopt was to challenge the decision in the Supreme Court or to seek a review as per procedure, if the circumstances of the case so warranted. When we asked the learned counsel for the respondents whether these decisions have been challenged, he clarified that these

decisions have neither been challenged in the Supreme Court nor were sought to be reviewed. The learned counsel for the respondents tried to explain to us by saying that the letter was issued in a routine manner and not with a view to nullifying the judgment of the Ernakulam Bench. If that be so, the said letter may be ignored without any comment. Even otherwise it may still be ignored for the reason that no executive authority can neutralise a binding decision of the Tribunal by means of an executive order."

This decision is not applicable to the present facts of the case for the reason that it is with regard to only a clarification, but the present letter which is under challenge, namely, Annexure A3 is the cancellation of the earlier letter dated 5.8.92 as well as fixing the rules for fixation of pay of the persons who have been transferred to another division at their own request.

5. Applicant failed to produce any rules to the effect that the Chief Personnel Officer has no right to issue the Annexure A3, nor the respondent has shown any rules to the effect that he has got the right to issue the said letter as such.

6. It is an accepted principle that whenever the Government pass an order or issue any circular that it is being done so only in the normal course unless or otherwise it is shown at, that it has been done unauthorisedly or ~~i.e.~~ ^{W.} a presumption is being made under

Section 114 of the Indian Evidence Act that all the orders passed by the Government (both orders/ circulars) are being issued in rightful manner under the rules unless otherwise it is shown to be different or contra to the rules. Otherwise the burden of proof is always on the person who challenges that the orders/ circulars are not in accordance with the rules. In this case, the applicant has not discharged his liability with regard to the challenge of Annexure A3 is concerned.

7. Now we are concerned what is the effect of A3. Annexure A3 has been issued by the CPO/MAS dated 30.6.93 with the subject 'fixation of pay of employees on transfer to a new post on request' and para-4 is as follows:

"The above orders will also be applicable to the cases of employees coming on Inter Departmental Transfer at own request."

Without going into the question whether the circular has been issued rightly under the rules or not, it could be presumed as stated earlier that it is a valid one. Even then, it will not be applicable to the applicant for the reason namely, that the applicant was transferred at his own request from Hubly Division to Palghat Division and assumed charge on 14.12.92. This circular which makes a rule with regard to fixation of pay of employees on transfer to new posts on request is dated 30.6.93 and it is also a fact that this executive instruction will not

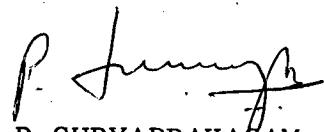
have retrospective operation at all. Further, it has not been stated in the said circular itself that it will have retrospective effect; and it has been stated by the Apex Court in State of Madhya Pradesh and others Vs Tikamdas (AIR 1975 SC 1429):

"There is no doubt that unlike legislation made by a sovereign Legislature, subordinate legislation made by a delegate cannot have retrospective effect unless the rulemaking power in the concerned statute expressly or by necessary implication confers power in this behalf."

8. Since the said circular (30.6.93) does not mention that it will have retrospective operation, I hold that it will not be applicable to the applicant as such. In the circumstance, Annexure A2 order which fixes the applicant's pay is being quashed, and the respondents are directed to refix the pay of the applicant according to law as was prevalent on 14.12.92 with regard to these matters. Applicant, if so desires within fifteen days from the receipt of this order, may also make a representation to the respondents with regard to the fixation of pay, detailing the rules and circulars under which he relies in the fixation of the pay is concerned.

9. With these directions the application is allowed partly. There will be no order as to costs.

Dated the 27th day of January, 1995.


P. SURYAPRAKASAM
JUDICIAL MEMBER

List of Annexures

1. Annexure-A1: True copy of the representation dt. 19.2.93 submitted by the applicant to the Sr.Divisional Personnel Officer, Palghat.
2. Annexure-A2: True copy of the Office Order No.J/P. 676/VIII/XII(Pilot)dt.25.11.93 issued by the 3rd respondent.
3. Annexure-A3: True copy of the letter No.J/P.524/P Vol.II dt.14.7.93 issued by the 2nd respondent.
4. Annexure-A6: True copy of the common Order in O.A. 333/92 etc. dt.26.2.93 of this Tribunal.