

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 359/91
XXAXXNo.

100

DATE OF DECISION 23.4.92

D.Balakrishnan

Applicant (s)

Mr.P.Santhosh Kumar

Advocate for the Applicant (s)

Versus

Union of India, represented by the
General Manager, Southern Railway,
Madras and 3 others.

Respondent (s)

Mr.M.C.Cherian

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. N.DHARMADAN, 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? *M*
3. Whether their Lordships wish to see the fair copy of the Judgement? *M*
4. To be circulated to all Benches of the Tribunal? *M*

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 4.3.91 the applicant who has been working as Senior Section Officerder(Accounts) in the Divisional Accounts Office, Southern Railway, Palakkad has prayed that the impugned order dated 9.3.1982 at Annexure-X refixing his pay without reckoning the additional special pay of Rs.15/-, the order dated 15th January 1982 at Annexure-XI disallowing the special pay of Rs.35/-, the order dated 25.10.1982 (Annexure-XII) rejecting his representation and the order dated 10.9.1990 at Annexure-XVI rejecting his further representation, be set aside and the respondents directed to grant him additional special pay of Rs.15/- from 29.11.80 from the second year of the date of passing of Appendix-III A examination. The brief facts of the case are as follows.

2. The applicant commenced his service as Clerk Grade II and was promoted as Grade I Clerk after passing of Appendix II A examination. For ^{the} next promotion as SO/ Inspector of Accounts one has to pass Appendix III A examination. Previously as an incentive, immediately on passing of that examination some advance increments were used to be given. Later, on the recommendation of the Third Pay Commission, the Railway Board decided to grant a special pay of Rs.20/- per month to those

who pass that examination, from the date following the last date of examination (vide Annexure-I). Later the Railway Board modified this order vide Annexure-II order dated 23.4.80 enhancing the special pay to Rs.35/- per month from the second year onwards of the date of passing that examination to the employee who is awaiting promotion as Section Officer etc. Still by a third order dated 29.12.1981 (Annexure III) the Railway Board clarified that when a person has been offered promotion the condition of awaiting promotion for which the special pay is allowed ceases if the person has refused to accept the promotion and thus the continued grant of special pay ceases to be admissible. However, those who had refused the promotion prior to the issue of these orders were allowed to draw special pay till they are offered another chance of promotion and the special pay would be stopped thereafter if he refuses promotion again. The applicant passed the Appendix III A examination in November, 1979 and by the order dated 9.6.80 he was granted a special pay vide the order dated 9.6.1980 with effect from 29.11.79 at Annexure-IV. He was promoted as Section Officer on 10.10.80(Annexure-V) and had expressed his willingness without stipulating any condition. However, due to shortage of staff in the Accounts Office where he was working he was not relieved till 15.12.80 and he took over on 16.12.1980 at Mysore (vide Annexures VII and VIII). On promotion as Section Officer his pay was fixed duly taking into account his special pay of Rs.35/- vide Annexure-IX and he was drawing his pay according to that order when without any notice to the applicant, the respondents vide the impugned order dated 9.3.82 at Annexure-X refixed his pay with retrospective effect from 16.12.80 by reducing his special pay from Rs.35/- to Rs.20/-. This was ostensibly done on the basis of the clarificatory letter dated 15.1.82 at Annexure-XI in which it was stated that once an order of promotion is issued, the applicant cannot be held to be waiting for promotion. The applicant

submitted at Annexure-XII dated 9.3.82 and another representation at Annexure-XV to which he got the reply of rejection by the impugned communication dated 19.9.90 at Annexure XVI. He has referred to an application filed by another person similarly situated in this connection. His argument is that immediately on receiving the promotion order dated 10.10.1980 at Annexure-V he had indicated his willingness in the stub form and he should have been relieved immediately. But the Administration did not relieve him till 15.12.80 and he should not be penalised for no fault of his. He continued in the lower post till 15.12.80 and was thus entitled to get the special pay of Rs.35/- from the commencement of the second year of his passing the examination on 29.11.79. The commencement of the second year was from 29.11.80 when he was still in the lower grade. He has argued that his case cannot be placed at par with a promotee who refused the promotion and he has to be considered to be one awaiting promotion till he is relieved. He has referred to a similar case in which a person requested for time for accepting the promotion and he was not denied special pay during that period. He has also argued that the benefit of special pay cannot be taken away without giving him a notice.

3. In the counter-affidavit the respondents have accepted that the applicant was given a special pay of Rs.20/- during the first year of his passing the Appendix III-A Examination from 29.11.79. Before the second year could commence, on 10.10.1980 orders were issued promoting the applicant as a Section Officer and he was posted at Mysore. The order was received in the Divisional Office on 14.10.80. Barring the applicant and two others everybody carried out the promotional transfer immediately but in case of the applicant he carried out the transfer only on 15.12.80 and joined on 16.12.80. They have stated that at this distant date it is not possible to say as to what was the exact reason for the delayed joining thus. The respondents, however, have referred to the representation of another promotee Shri Prabhakaran

at Ext.R1 who was promoted along with the applicant, in which Shri Prabhakaran had requested that if posts are not available at Palghat to accommodate/retain him on promotion, he may be posted to a nearer place. On that basis the respondents presume that there was no dearth of employees to hold the posts at Palghat. Accordingly it cannot be said that the applicant could not be relieved for administrative reasons. The applicant and two others were continued to be given the special pay of Rs.35/- from the commencement of the second year of their passing the examination and they have derived the unintended benefit by getting their pay on promotion fixed on the basis of the enhanced special pay. It is to avoid such misuse of special pay that the impugned order at Annexure-XI was issued. As regards the case of one Shri Prabhakaran who was given the benefit of special pay during the period he sought postponement of his promotion, the respondents have conceded that in his case the order of promotion was kept in abeyance for two months but argued that even if the benefit was given to Shri Prabhakaran wrongly it will not entitle others to claim similar benefits. They have stated that correction of a mistake does not warrant serving of notice.

4. In the rejoinder the applicant has produced a copy of the stub form dated 15.10.1980 in which he had expressed his willingness to be promoted on transfer within 10 days. He has argued that he never requested at any time for extension of time to join the promoted post and the applicant was not relieved because of exigency of service. On the other hand, he has stated that had he been relieved immediately, he would have been able to get himself registered for re-transfer to Palghat where he is settled, earlier, as such registration is possible only after joining the new post. Because of the delay in his registration

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for re-transfer, he was compelled to remain at Mysore for 22 months. He has also produced the Railway Board's instructions at Annexures XVIII and XIX issued in 1991 directing that the staff should be relieved immediately on transfer.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The only point to be decided in this case is whether after the applicant's promotion was ordered on 10.10.80, he was retained at Palghat in the lower post till 15.12.80 at his own request or because of exigency of service. If he was not relieved because of exigency of service he cannot be denied the grant of special pay in the lower post in the second year of his passing the examination with effect from 29.11.1980. The applicant has made a specific averment that he had expressed his willingness in the stub form on 15.10.1980. The respondents have not denied it but have stated that at this distance of time, it is not possible to verify from records. However, they have themselves produced a representation dated 14.10.1980 at Ext.R1 by one Shri Prabhakaran who had also been promoted along with the applicant on 10.10.80. The respondents' contention, therefore, that documents are not available is not very convincing. The deductive logic of the respondents that since Shri Prabhakaran at Ext.-R1 had sought promotion near about Palghat, therefore it can be presumed that there was no dearth of staff at Palghat and the question of the applicant being retained in Palghat because of dearth of staff is unwarranted, is also not very convincing. The applicant was retained at Palghat in the lower post while Shri Prabhakaran's requirement was at the higher post. Therefore, if at all there was a dearth of staff at Palghat, it could not be at the level of Section Officer but at the lower level at which the applicant had been retained. If the applicant dilly dallied in handing over the lower post till the commencement of the second year of his passing the examination so that the enhanced special pay of Rs.35/- is taken into account for fixation of his pay on promotion, it was for the respondents

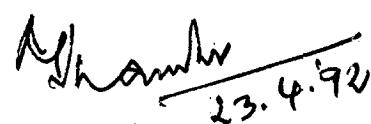
to issue orders relieving him from the lower post and directing him to join duty on promotion at Mysore. The respondents have neither averred nor produced any document to such an effect. We are, therefore, convinced that the applicant was retained at Palghat till 15.12.80 not at his request or by any complicity on his part but for administrative reasons. In that light, he cannot be denied the enhanced special pay of Rs.35/- with effect from 29.11.80 when the second year of his passing the Appendix-III A examination commenced.

6. Even otherwise, his pay could not be reduced unilaterally by the impugned order at Annexure-X without giving him a show-cause notice, as this will be in violation of the principle of natural justice. The fact that in case of Shri Prabhakaran the special pay was allowed to be continued even though he was retained for two months more at his own request shows that the applicant has been discriminated against in violation of Articles 14 and 16 of the Constitution. The respondents have not indicated that they took any action to correct the mistake in the case of Shri Prabhakaran as they did in the case of the applicant and one Shri Bhaskaran when all the three of them had been promoted and transferred in the same process.

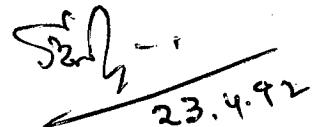
7. The only point which stands against the applicant is that he did not take any action after his alleged first representation dated 9.3.1982(Annex.XII) remained unresponded. His second representation dated 5.2.84(Annex.XIV) and the third one dated 1.2.1990 were made two and eight years after the first. Though reduction of pay is a continuing grievance and therefore, the application cannot be barred by limitation the fact that the applicant remained indifferent for eight years after the impugned order was passed would disentitle him to get arrears of pay beyond three years prior to the date of filing of the application.

8. In the facts and circumstances we allow the application, set aside the impugned order dated 9.3.82 at Annexure-X and the impugned order dated 15th January 1982 at Annexure-XI so far as they apply

to the applicant and also the impugned orders dated 25.10.82 and 10.9.90 at Annexures XIII and XVI respectively and direct that the applicant's pay as Section Officer be refixed notionally from 16.12.80 as if he was in receipt of the special pay of Rs.35/- on the date of his promotion. The arrears of the enhanced pay so fixed, however, will be admissible to him from the date preceding three years from the date of filing of this O.A. on 4.3.91. The payment should be made to the applicant within a period of three months from the date of communication of this order. There will be no order as to costs.


23.4.92

(N.Dharmadan)
Judicial Member


23.4.92

(S.P.Mukerji)
Vice Chairman

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