

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 392
T. A. No.

1990

DATE OF DECISION 18.2.1991

P. P. Narayanan Nair Applicant (s)

Mr. P. Sivan Pillai Advocate for the Applicant (s)

Versus

UOI rep. by Gnl. Manager,
Southern Rly and others Respondent (s)

Smt. Sumathi Dandapani Advocate for the Respondent (s) 1 to 3

CORAM:

The Hon'ble Mr. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. To be circulated to all Benches of the Tribunal? *no*

JUDGEMENT

SHRI N. DHARMADAN, JUDICIAL MEMBER

The applicant is a retired Railway servant. His grievance is simple. It pertains to the allotment of post retirement complimentary privilege passes from the Railway Administration considering his past service under Rule 8(2) read with schedule IV of the Railway (Pass) Rules, 1986.

2. The applicant after a long service under the Railway Administration retired on 31.7.1988 as a Group 'C' Officer. He was drawing the scale of Rs. 825-1200/-. He submitted that he is eligible to get two sets of post retirement privilege passes under the Rules. Since the required number of passes were not issued to him he was forced to undertake the journey from Ernakulam to Howrah by Cochin Gauhati Express on 21.2.1989 and returned on 28.2.1989 after purchasing tickets

paying full fare. Thus he has incurred a loss of Rs. 374/- towards the ticket charges which he is entitled to be reimbursed by the Railway.

3. Accordingly he filed this application for the refund of Rs. 374/- in view of the denial of the privilege pass towards his journey to Gauhati and for a direction to the respondents to issue post retirement complimentary passes to the applicant in terms of Rule 8(2) read with Schedule IV of the Railway Service (Pass) Rules 1986. according to the respondents ^h

4. The decision depends on the interpretation of the Rule 8(2) Schedule IV clause (iv). It reads as follows:

"Retired Railway servants, who were officiating in higher grades at the time of retirement shall be granted pass of the same class and number to which they are entitled in their substantive appointment provided that a permanent railway servant who has been officiating in a higher post continuously for three years or more on the date of quitting or resigning or retiring from service may be treated as if he has held the officiating post in a substantive capacity for this purpose."

5. Under the provision of this Rule, the applicant will have to establish that he was officiating in a higher grade i.e. Group 'C' in the scale of Rs. 825-12000 and that he was continuously occupying that post in the same capacity for three years ^h before his actual retirement from service as if he has held the officiating post in a substantive capacity for this purpose. The applicant's case does not fall within this clause.

6. Admittedly the applicant was promoted to Group 'C' post having a scale of Rs. 825-1200 as per Annexure A-1 office order No. P(RR)No. 94/87, P(S)524/III/RR/Review Vol.II dated 16.10.87. This order shows that the applicant was ~~xxxxxxx~~ promoted as Head Waiter, in the scale of Rs. 825-1200 w.e.f. 16.9.87. The promotion order indicates that the posting was only provisional and ^{he ^h} was allowed to continue in that capacity on a temporary measure until further directions. He retired from service on 31.7.88.

7. The applicant contended that even though he was promoted provisionally as per Annexure-I to the post of Head waiter he was occupying a substantive vacancy till his retirement. There is no order treating his posting in an officiating capacity. In service according to him there are only two types of posting viz. temporary and permanent. He submitted that since he was posted as Head Waiter in a substantive capacity, he is entitled to two sets of pass under Rule 8(2) read with Schedule IV of the Railway Servant (Pass) Rule 1986.

8. The respondents contended that the applicant was promoted to the post of Head Waiter only temporarily and he officiated in that post for about ten months. He was not regularised in that post. Therefore he was not a regular Group 'C' servant with more than 25 years of service in the Railway. He is not eligible to get two sets of post retirement benefit passes annually. They further submitted that even if it is admitted for arguments sake that the applicant had been promoted regularly on 16.9.87, he has not put in the minimum period of service for the entitlement of the benefit of two sets of passes in the light of the Railway Board's letter dated 20.11.89 produced as Annexure R-2 along with the additional counter affidavit. In any case, according to the respondents, the applicant is not eligible for two sets of passes as claimed by him under the existing rules and regulations.

9. In Annexure R-2 Railway Board's letter, there is detailed discussion with regard to the eligibility of post retirement passes to temporary railway employees who retire from service without completing the full term. The relevant portion of Annexure A-2 is extracted below:

"Ministry of Railways have accordingly decided that full benefit of post retirement passes

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as to their number and class, may be given to those Railway employees who are eligible for the deemed benefits after working for two years after regular promotion in the grade. In cases, however, of those employees who are officiating in the grade without regular promotion, i.e. on ad hoc basis, benefit will accrue after three years of officiating service as hitherto fore."

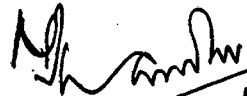
9. In this case the contention of the applicant that even if the Railway employee who have worked in a Group 'C' post for a period of ten months should be considered to be an officer eligible for two sets of pass under Rule 8(2) read with Schedule IV of the Railway Servants (Pass) Rules 1986 cannot be accepted.

10. Generally an officiating appointment is being made to the post held by some other person. (See Lashkar Sing V. Municipal Corporation of Delhi, 1978 SLJ 695). Such appointment may be for a fixed period or for indefinite period, but the nature of the appointment is of temporary character. 'Officiating Service' in a permanent post is also held to be temporary service by the courts. It is true that the applicant was not specifically appointed in an officiating capacity in the promoted post of Head Waiter. But admittedly he was not appointed to the post in a regular manner. Annexure-I, on the other hand, shows that he was posted in the promoted post only as a temporary basis. He had not completed two years in the promoted post as envisaged in Annexure-2 letter of the Railway Board issued in this behalf. This letter applies to the case of the applicant. He has not challenged this letter. But he argued that this letter issued by the Board should be ignored. I am not inclined to accept this argument of the applicant.

11. In the light of the aforesaid clear provision contained in Annexure R-2 letter read with Rule 8(2),

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the applicant has no case and it is only to be dismissed.
Accordingly, I dismiss this application as devoid of
any substance.


(N. DHARMADAN) 18.2.91.
MEMBER (JUDICIAL)

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Shri NV Krishnan, Administrative Member

12 I agree with the conclusions of my learned brother, though for somewhat different reasons.

13 I am of the view that the application can be rejected in terms of the conditions set out in Schedule-IV of the Railway Servants (Pass) Rules, 1986 (Ext.R1) - Schedule, for short, - without calling in aid the letter dated 20.11.89 of the Railway Board (Est.R2). For, it is clear that the Ext.R2 letter has effect only from 20.1.89 as mentioned in para-5 thereof, while the applicant's entitlement to retirement pass arose on the date of his retirement, namely on 31.7.88.

14 As seen from para- 4 of the applicant's rejoinder, he has sought to make a distinction between promoting a person on an officiating basis and promoting him temporarily. During the course of arguments, he relied upon the



~~xxxxxxx~~ definition of the expression "officiating"
in para 33 of Rule 103 of the Indian Railway Establishment
Code which reads as follows:

"33. Officiating means the railway servant officiates in a post where he performs the duties of a post on which any other person holds a lien or when a competent authority appoints him to officiate in a vacant post on which no other railway servant holds lien".

15 The contention of the learned counsel is that the expression "officiating" used in clause IV of the third column of the schedule extracted in para 4 of my learned brother's judgment, - clause for short - should be construed only in accordance with this definition. He contends that Annexure A1 order by which the applicant was temporarily promoted as Head Waiter/ Head Bearer does not indicate that any person had a lien on those vacancies. On the contrary, Annexure A1 state that the applicant and others are posted against 24 new posts of Head Waiters/Head Bearers in the scale of Rs 825-1220. Further, Annexure A1 does not appoint the applicant on an officiating basis to the post of Head Waiter/Head Bearer. Therefore, it is claimed that it is not an officiating promotion. He should, therefore, be deemed to be substantive for the purpose of that clause.

16 *u* I am of the view that this contention has to be ~~repealed~~ because the definition in Rule 103 on which the learned counsel relies upon, *u begins* with the well known phrase " Unless there is something repugnant in the subject or context, the terms defined below

are used in this Code in the sense herein explained".

No doubt, there is no definition of the expression

"officiating" in the Railway Servants (Pass) Rules, 1986.

Apparently, there is no provision either that the expression not defined in those Rules, will be construed as defined the Indian Railway Establishment Code.

Nevertheless, it makes sense to interpret the expression in the light of the definition given in the Indian Railway Establishment Code. Yet, I am of the view that in the context in which the expression "officiating" is used in Clause IV in the 3rd column of Schedule IV (Ext.R1), it has to be interpreted in contra-distinction with the expression 'substantive'. Thus, every person who is not substantive has to be treated as officiating for the purpose of this clause, irrespective of whether his appointment is on an officiating basis conforming to the definition of para 33 of Rule 103, or otherwise.

17 This interpretation alone will give meaning to that clause. Otherwise, it can be argued, equally forcefully, that since that clause does not make any reference to temporarily promoted officials its provision would not apply to that category at all. That would be an absurd situation. Hence, the expression "officiating" in that clause merely means a person appointed in any capacity other than substantive.

18 The learned counsel's argument that confirmation is now made only in one grade and confirmation has been

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dispensed with in other grades and hence such an interpretation is not possible does not stand scrutiny for, it is clear from the Ext. R2 letter of the Railway Board that the concept of confirmation in each grade has been done away with only with effect from 20.1.89 and not earlier.

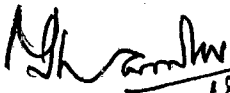
Annexure-R2 letter really explains how that clause in Schedule IV should be interpreted after the decision to do away with the confirmation in every grade was taken from 20.1.89.


19. That Ext. R2 circular does not apply to the facts of the case. The case of the applicant has to be disposed of only in terms of clause (iv) of the third column of Schedule IV, Exbt. R1. Under that clause, he cannot be treated to have held the officiating post of Head Waiter/Head Bearer in a substantive capacity for the purpose of getting the benefit of the provisions in that clause, as he has, admittedly, rendered less than 3 years officiating service on that higher post. Accordingly, he is not entitled to the relief claimed by him. Hence, his application is liable to be dismissed.



(N.V. Krishnan)
Administrative Member

In the result this application is only to be dismissed. Accordingly we dismiss the same, but without any order as to costs.


(N. DHARMADAN) 18.2.91
MEMBER (JUDICIAL)


(N. V. KRISHNAN)
ADMINISTRATIVE MEMBER