

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, P A T N A

O.A.NO.: 308/96

DATE OF DECISION: 26 OCT-1996.

P.K.SINHA. : APPLICANT.

Vrs.

UNION OF INDIA & ORS. : RESPONDENTS.

COUNSEL FOR THE APPLICANT. : SHRI R.N.TIWARY.

COUNSEL FOR THE RESPONDENTS: SHRI GAUTAM BOSE.

C O R A M

HON'BLE MR. D.PURKAYASTHA, MEMBER (JUDICIAL)

O R D E R

HON'BLE MR. D.PURKAYASTHA, MEMBER (J) :

The applicant in this O.A. challenges the fixation of his pay made by the respondents, Divisional Personnel Officer (for short, DPO), E.Rly., Maldah, by order of fixation dated 14.03.1991 (Annexure-A/5) of the application on his appointment in the lower time scale of Rs.950-1500/- against the post of Ticket Collectors from the higher time scale of pay of Rs.1200-2040/- against the post of Clerk Gr.I, Rly. Establishment and also prayed that the respondents be directed to fix his pay in the newly absorbed category from 01.04.1990, as per Annexure-A/6 of this application, without treating a portion of pay as personal pay which he was drawing in the Clerk Gr.I. He has further prayed that the respondents be directed to pay the applicant arrears arising out of re-fixation of his salary from 01.04.1990 as per Annexure-A/6 of this application.

2. The brief facts of the case are that the applicant was appointed as a Clerk Gr.II in the year 1982

✓ 24/10

in scale Rs. 950-1500/- in the E.Rly. and was posted to work in the Jamalpur Mechanical Workshop. Thereafter, he was promoted to Clerk Gr.I in scale Rs.1200-2040/- in the year 1984 and continued to work in that capacity till 16.03.1990. While he was serving as such, in pursuant to the notification dated 21.07.1989 (Annexure-A/3) for formation of a panel for filling-up the vacancies of Ticket Collectors in grade of Rs.950-1500/-, the applicant applied for the said post and ultimately he was found qualified and he was appointed as a Ticket Collector and posted to work at Bhagalpur in scale Rs.950-1500/- w.e.f. 16.07.1990 vide office order ~~No. 78/90~~. It is stated that the applicant was absorbed in the cadre of Ticket Checking category on administrative ground and his pay has wrongly been fixed vide letter no.ET-2/Panel/TC/MLDT, dated 14.03.1991 treating a part of his salary as his personal pay as per table mentioned below (Annexure-A/5) :

<u>Previous</u>			<u>As Ticket Collector</u>		
<u>Pay</u>	<u>Scale</u>	<u>Date</u>	<u>Pay</u>	<u>Scale</u>	<u>Date</u>
1320	1200-2040	1.5.90	1130	950-1500	1.5.90
			+ 190 (PP)		

It is also stipulated that ~~the~~ personal pay will be absorbed in future increments of pay. It is alleged that due to wrong fixation of pay by treating Rs.190/- as personal pay by Annexure-A/5, the petitioner's future increments of pay had been effected and his increments for another nine years would remain stopped for no fault of him.

Being aggrieved by the said wrong fixation of his pay, the applicant made a representation to the Chief Personnel Officer (for short, CPO), E.Rly., Calcutta on 03.12.1995, vide Annexure-A/6 of this application, but his representation has not yet been disposed of by the authority. Hence, the applicant had approached Tribunal for

Final Verified

getting relief by way of re-fixation of his pay by involving the provisions of Rule 1313 (FR 22) (3) (ii) contained in the Rly. Establishment Manual, Vol.II.

2. The respondents filed written statement denying the claim of the applicant. It is stated by the respondents that the application is bad due to non-joinder and mis-joineder of necessary parties, and also it is hit by principles of res-judicata, estoppel, waiver and acquiescence. It is also averred in para-6 of the written statement that the applicant at that point of time was working in the grade of Rs.1200-2040/- (RP) and his pay was fixed at Rs.1320/-p.m.. It is also stated that the applicant had opted for the post of Ticket Collector in the lower time scale pay voluntarily with a hope that channel of promotion in that cadre of Ticket Collector, will be much more open and wide. Hence, applicant voluntarily switched over to the Ticket Collector for his own interest and, therefore, his fixation of pay was rightly done as per Annexure-A/5 applying the provisions of Rule 1305 (FR 9) (23) and Rule 1331 (FR 37) of the Rly. Establishment Code Vol. II (1987 Edition) (for short, IREC). So, fixation of pay as done by the authority as per Annexure-A/5 of the application is correct and thereby the petitioner is not entitled to get any relief as prayed for in this application.

3. Shri R.N.Tiware, learned counsel appearing on behalf of the applicant contented that the fixation of pay in the present circumstances ought to have been done as per Rule 1313 (FR 22) of the IREC Vol.II since the applicant has been appointed on selection to a new post and his substantive pay under no circumstances could be reduced

h/Julio

lower to basic pay which he was drawing on the date of appointment as substantive pay in the old post i.e. Clerk Grade-I.

4. Shri Gautam Bose, learned counsel appearing on behalf of the respondents resisted this argument and supports the fixation of pay (Annexure-A/5) contenting that the fixation was rightly done following the provisions of Rule 1331 (FR 37) and Rule 1305 (FR 9 (23), since the applicant had opted for recruitment in the lower time scale of pay on the basis of notification (Annexure-A/1) for his own interest. Shri Bose refers to Clause-2 of the notification (Annexure-A/1) and submits that the applicant being a departmental employee had been posted to a lower scale on the basis of selection for his own interest and thereby his fixation of pay would be guided by Rule 1305 (FR 9 (23) and Rule 1331 (FR 37) and his substantive pay was protected by allowing personal pay as per provisions of the said Rule.

5. Next submission of the learned counsel Shri G. Bose is that the instant application is hopelessly barred by limitation in view of the Section 21 of the A.T. Act because he approached the Hon'ble Tribunal on 02.04.90 though the letter of fixation was issued on 14.03.1991 (Annexure-A/5). He slept over the matter without raising any objection against that fixation till 03.12.1995. The learned Advocate, Shri G. Bose refers to ~~the~~ decision reported in AIR 1990 SC 10 (S.S.Rathore vrs. State of Madhya Pradesh) on that point of law.

6. In view of the divergent arguments advanced by the learned counsels for both the parties it is to be seen whether the respondent ~~no. 3~~ ^{was} right in the matter of fixation of pay of the applicant as per Annexure-A/5 or

D. S. Gill

not ? And, in other words, whether fixation of pay of the applicant in the present circumstances should be re-fixed as per Rule 1313 (FR 22) (3) (ii) as contained in IREC Vol.II ? Rule 1313@ (FR 22) (3) (ii) runs as follows :

"When appointment to the ^{new} post does not involve such assumption, he will draw as initial pay, the stage of the time scale which is equal to his substantive pay in respect of the old post, or if there is no such stage, the stage next below that pay plus personal pay equal to the difference and in either case will continue to draw that pay until such time as he would have received an increment in the time scale of the old post or for the period after which an increment is earned in the time scale of the new post, whichever is less. But if the minimum pay of the time scale of the new post is higher than his substantive pay in respect of the old post, he will draw the minimum as initial pay."

The expression "Personal pay" has been defined in Rule 1305 (FR 9(23) which runs as follows :

"Personal Pay means additional pay granted to a Rly. servant -

- (a) to save him from a loss in substantive pay in respect of a permanent post other than a tenure post due to a revision of pay or to any~~x~~ reduction of such substantive pay otherwise than as a disciplinary measure, or
- (b) in exceptional circumstances, on other personal considerations."

Rule 1331 (FR 37) runs as follows :

"personal pay - Except when the authority sanctioning it orders otherwise, personal pay shall be reduced by any amount by which the recipient's pay made by increased, and shall cease as soon as his pay is increased by an amount equal to his personal pay."

Null

7. It is not in dispute that the applicant being a departmental employee applied for the post of Ticket Collector in the lower time scale of pay of Rs.950-1500/- in view of the notification dated 21.07.1981 while he was enjoying the higher time scale of Rs.1200-2040/- in the cadre of Clerk Gr.I knowing that he would lose his seniority on his appointment in that cadre of Ticket Collector. So, on a careful reading of the Clause-2 of the Annexure-A/3 it is found clear that the candidates who would have volunteered and have been empanelled ~~were~~ treated as direct recruits against the RRB quota and they became junior to all Ticket Checking Staff (Permanent & Temporary). So, it leaves no doubt that such appointment of the applicant was a fresh appointment in the cadre of Ticket Collector in the lower scale of Rs.1200-2040/- (EP) as departmental candidate. The contention of the learned counsel for the applicant is that since he is a departmental candidate his substantive pay under no circumstances be reduced less than the substantive pay which he was drawing on the date of appointment in the cadre of Clerk Grade-I. According to the learned counsel for the applicant, on 17.07.1990, the applicant's basic ~~pay was~~ (i.e. substantive pay) was fixed Rs. 1320/- in the time scale of Rs.1200-2040/- and he did not exceed the maximum time scale of pay Rs.1500/- in the scale of Rs.950-1500/- so the question of giving protection of substantive pay does not arise in view of the provisions of Rule 1313 (FR 22) of the IREC. Accordingly, he made a representation to the CPO, E.Rly., Calcutta, vide Annexure-A/6, dated 03.12.1995, ^{^A file suspt No 2,} neither disposed of his representation nor had he come forward to deny the claim of the applicant in respect of re-fixation ^{demanded} ~~revised~~ by him. The learned counsel, Shri Gautam Bose submits that Rly. authorities are not supposed to give reply of each and every

M. S. J. B.

representation submitted by the employees and the Annexure-A/2 of the application shall be deemed to a reply of the Annexure-A/5 of this application.

8. Now, it is to be seen under what circumstances the "Personal Pay" as defined in Rule 1305 (Fr 9 (23) in the said IREC is required to be granted by the authority in the matter of fixation of pay. The expression of the word "Personal Pay" as made in FR-9 has been embodied in Rule 1305 of the IREC Vol. II. On a careful reading of the expression of the word "Personal Pay" it is found that the "Personal Pay" was treated as Additional pay. That can be granted to the employees in the following contingencies, namely,

(a) to save him from a loss in substantive pay in respect of a permanent post other than a tenure post due to a revision of pay or to any reduction of such substantive pay otherwise than as a disciplinary measure, or (b) in exceptional circumstances, on other personal considerations. The FR 22 has been embodied in Rule 1305 of the said Manual which indicates that when an appointment to the new post does not involve the assumption of duties or responsibilities of greater importance than those attaching to such permanent post, he will draw his initial pay in respect of old posts or if there is no such stage, the stage next below that pay plus personal pay equal to difference and in either case will continue to draw that pay until such time as he would have received an increment in the time scale of the old post or for the period after which an increment is earned in the time scale of pay of the new post whichever is less. In view of the said provisions, the  fixation of  pay of the applicant by



granting personal pay under Rule 1313 and Rule 1305 of the IREC has no manner of application in this case because it is admitted by the Railway Authorities that his appointment shall be deemed to be appointment on direct recruitment by losing his seniority in the cadre of Ticket Collector in view of the terms and conditions laid down in Clause-2 of the notification (Annexure-A/3). The Rule 1305 (FR 9(23) and Rule 1331 (FR 37) are applicable to other contingencies of service, ^{not for} ~~except~~ appointment to the new post carrying no higher duty and responsibility attached to the post.

9. In view of the aforesaid circumstances, I am of the view that respondents had committed wrong by applying the Rule 1305 (FR 9 (23) and Rule 1331 (FR 37) of the IREC for the purpose of fixation of pay of the applicant on the date of appointment in the cadre of Ticket Collector in the time scale of Rs. 950-1500/-.

In view of the reasons stated above, the applicant was/is entitled to get order of re-fixation of pay applying the provisions of FR 22 which has been embodied in Rule 1305 of the IREC Vol.II as per Annexure-A/6 of the application.

10. Regarding question of limitation as raised by the learned counsel for the respondents Shri G. Bose, I am afraid that the ruling referred to by Mr. Bose is not relevant for determination of the issue involved in the present case. The S.S. Rathore's case (AIR 1990 SC 10) stood on different footings, as it was relating to the date of first accrual of cause of action i.e. when the first cause of action arose for filing the appeal or revision in respect of dismissal of the employees by the authority. But, case at my hand relates to wrong fixation of pay on his appointment to a new post carrying a lower time scale of pay in the scale of Rs. 950-1500/- against the post of

[Signature]

Ticket Collector after enjoying a higher time scale of pay of Rs.1200-2040/- against the post of Clerk Gr.I of the same department. Since, it is found by me the method of fixation of pay of the applicant on his new post was done wrongly. In view of the reasons stated above, such wrong fixation of pay cannot be allowed to continue. In the case of Madras Port Trust Vrs. Himanshu, reported in AIR 1979, P.1144, their Lordship's of the Hon'ble Supreme Court held that "The plea of limitation based on this section is one which the Court always looks upon with dis-favour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that Govts. and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating claims of citizens and do what is fair and just to the citizens." So, in view of the aforesaid binding decisions of the Hon'ble Apex Court, I find that the just claim of the applicant should not be denied on the basis of technical plea taken by the learned counsel Shri G. Bose, appearing on behalf of the respondents. Besides, I am of the view that cause of action shall be deemed to be a continuing one since the applicant is getting less pay than that the pay what he is entitled to get every month, had there been correct fixation has been made by the respondents.

11. In view of the aforesaid circumstances, the letter of fixation of pay (Annexure-A/5) made by the department is, therefore, quashed and the department is hereby directed to re-fix the pay of the applicant on

1/16

✓
79/KEC

the basis of Rule 1313 (FR 22) (3) which was correctly reflected in the Annexure-A/6 of the application. In view of above, it is ordered that the fixation of pay may be done notionally upto the period of filing of representation on 03.12.1995 and the applicant shall not be given any arrears of pay before the period of 03.12.1995. However, he shall be paid arrears of salary as per fixation w.e.f. 03.12.1995 i.e. the date of filing of representation on 03.12.1995 and fixation of pay should be done within three months from the date of passing of the judgment. Application is allowed accordingly.

12. NO costs.

M. Pur Kayastha
(D. PUR KAYASTHA)
MEMBER (J)