

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.67/87

Balwant Singh,
C/o.G.S.Walia,
89/10,Western Rly.Colony,
Matunga Road,
Bombay - 400 019.

... Applicant

vs.

1. Union of India
through
The General Manager,
Western Railway,
Churchgate,
Bombay 400 020.
2. Chief Personnel Officer,
Western Railway,
Churchgate,
Bombay 400 020.
3. Divisional Railway Manager,
Western Railway,
Bhavnagar Para. Respondents

Coram: Hon'ble Member(A)Shri P.Srinivasan

Appearances:

1. Mr.G.S.Walia
Advocate for the
Applicant.
2. Mr.A.L.Kasturey,
Advocate for the
Respondents.

ORAL JUDGMENT:
(Per P.Srinivasan,Member(A))

Date: 10.4.1989

The applicant who was working as Chief Power Controller(CPCR)in the grade of Rs.700-900 in the Western Railway at Bhavnagar was promoted to the higher grade of Rs.840-1040 with effect from 1.1.1984 as a result of restructuring of posts in the Railways. A certain C.J.Pinto who was junior to the applicant as CPCR was also promoted to the grade of Rs.840-1040 from 1.1.1984. In the higher grade also the applicant retained his seniority over Shri Pinto. Thereafter the applicant was promoted as Asstt.Mechanical Engineer ^(AME) at Churchgate,Bombay with effect from 10.8.1984. The

initial pay of the applicant in the grade of Rs.840-1040 was fixed at Rs.960/- with effect from 1.1.1984, the date of his promotion to that grade. The pay of Shri Pinto in the same grade was however fixed at Rs.1000/-, again from 1.1.1984. The applicant represented to the authorities that his pay should also notionally be fixed at Rs.1000/- from 1.1.1984 as was done in Pinto's case and on that basis the pay that he would have drawn immediately before promotion as AME should be worked out and his initial pay as AME be fixed with reference to that pay under Rule 2018 of the Railway Establishment Code Vol.II. The respondents rejected this request by their letter dtd. 8.10.1986(Ex.5 page 37 of the application). The applicant is aggrieved with this decision.

Shri G.S.Walia learned counsel for the applicant submitted that the applicant being admittedly senior to Shri Pinto, his initial pay in the higher grade of Rs.840-1040 should have been fixed notionally at the same figure as that of Shri C.J.Pinto. The respondents had stated that Shri Pinto was given promotion to the grade of Rs.840-1040 on adhoc basis from 21.11.1981 and worked in that grade upto 4.4.1983. On his adhoc promotion on 21.11.1981 his pay in that grade was fixed under Rule 2018 with reference to the pay he was drawing in the lower grade at that time. As a result of this, on 4.4.1983 when Pinto was reverted back to the lower grade he was drawing a pay of Rs.1000/- . On his regular promotion to the higher post with

effect from 1.1.1984 his pay was fixed at the same figure of Rs.1000/-. Shri Walia submitted that the applicant being senior he should have been given ad hoc promotion from 21.11.1981 and not Pinto. No doubt the applicant went on deputation to the RITES sometime in December, 1981 but if he had been given adhoc promotion to the higher grade of Rs.840-1040 in the Western Railway itself he may not have gone on deputation. The applicant was at that time working at Bhavnagar while Pinto was working at Bombay. The respondents could have promoted the applicant and posted him at Bombay. But they did not do so. According to Shri Walia this can be considered to be an administrative error and that being so, as per Railway Board's letter dtd. 17.9.1964(Ex.G to the application)the applicant's pay on regular promotion with effect from 1.1.1984 should have been stepped up to that of his junior, Shri Pinto. It was no fault of the applicant that Pinto was given adhoc promotion while the applicant was not.

Shri A.L.Kasturey learned counsel for the respondents vehemently opposed the contentions of Shri Walia. In the first week of December 1981 the applicant was relieved to join RITES on deputation. When Pinto was given adhoc promotion on 21.11.1981, the deputation of the applicant to RITES was under process. Therefore there was no question of promoting the applicant in what was a purely temporary vacancy which arose because the regular appointee did not join. In fact there were

P. J. Kasturey

.4/-

others senior to the applicant who were also not given promotion. There was no administrative error but exigencies of service required that Pinto who was available on the spot be promoted to the grade of Rs.840-1040 urgently for otherwise the running of the power system of the Railway would have been adversely affected. The higher pay fixed in the case of Pinto was not purely as a result of the application of Rule 2018 of the Railway Establishment Code but due to the fact that Pinto had held the post earlier. Therefore the applicant was not entitled to have his pay fixed notionally at the same figure as that of Pinto with effect from 1.1.1984 and for the other reliefs which he has sought in the application.

I have considered the matter very carefully. At the hearing, counsel for both the parties informed me that the applicant had taken voluntary retirement from service with effect from 30.9.1986. He is claiming in this application that his initial pay be fixed notionally at Rs.1000/- with effect from 1.1.1984 and on that basis the pay he would have drawn immediately before his promotion as AME(10.8.1984) be determined and his initial pay as AME be fixed under Rule 2018 accordingly. In other words, the applicant wants a slightly higher fixation of his pay as AME from 10.8.1984 to 30.9.1986 the date on which he retired voluntarily, i.e. for a period of about 2 years. There is no dispute that if the applicant had been available he would have been promoted to the grade

P. D. Me

.5/-

of Rs.840-1040 in place of Pinto on 21.11.1981. It is also not disputed that he was not passed over on merits for such promotion,nor was it the case that Pinto was considered more suitable than he for such promotion. It was fortuitous that adhoc promotion was given to Pinto and not to the applicant for no fault of the latter,though the applicant was the senior of the two. In the peculiar circumstances of this case,therefore,I feel that a practical and equitable solution to the problem would be to direct the respondents to fix the pay of the applicant in the grade of Rs.840-1040 notionally at Rs.1000/- with effect from 1.1.1984 and to extend to him all consequential monetary benefits arising therefrom from 10.8.1984 when he was promoted as AME; his pensionary benefits will also stand modified accordingly. The respondents are directed accordingly. The arrears due to the applicant as a result of this order should be paid to the applicant within three months from the date of receipt of this order.

The application is disposed of on the above terms, leaving the parties to bear their own costs.)



(P.SRINIVASAN)
Member(A)