

(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. NO: 596/87

199

T.A. NO: ----

DATE OF DECISION 7-4-1992

Mangla K.Kutty

Petitioner

Mr.G.S.Walia

Advocate for the Petitioners

Versus
Union of India and ors.

Respondent

Mr.A.L.Kasturey

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice U.C.Srivastava, Vice-Chairman

The Hon'ble Mr. M.Y.Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

MD
mbm*


(U.C.SRIVASTAVA)

(2)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.596/87

Mangla K. Kutty,
C/o.G.S.Walia,
Advocate High Court,
89/10, Western Railway
Employees' Colony,
Matunga Road,
Bombay - 400 019. Applicant

vs.

1. Union of India
through
General Manager,
Western Railway,
Churchgate,
Bombay.
2. General Manager,
Western Railway,
Churchgate,
Bombay - 400020.
3. Chief Personnel Officer,
Western Railway,
Churchgate,
Bombay - 400 020. Respondents

Coram: Hon'ble Shri Justice U.C.Srivastava,
Vice-Chairman.

Hon'ble Shri M.Y.Priolkar, Member(A)

Appearances:

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

ORAL JUDGMENT: Date: 7-4-1992
(Per U.C.Srivastava, Vice-Chairman)

This application is made against reduction of basic pay from Rs.390/- per month to Rs.330/- per month in the scale of Rs.330-560(R). The applicant was selected by the Railway Service Commission and was posted as a Junior Clerk in scale of Rs.260-400(R) on or about 29-5-1974. Thereafter she was further selected departmentally for the post of Lady Berth Reservation Clerk (hereinafter called as 'LBRC') and was so posted on or about 26-5-1977 at Churchgate. She was asked to ~~not~~ appear for the suitability test and then

for interview for the post of a Senior Clerk in scale Rs.330-560(R) in which she passed. Thereafter she was posted as a Senior Clerk in Claim Section of Commercial Branch in Headquarters Office, Western Railway on or about 9-12-1983. She was regularised as Lady-cum-Reservation Clerk vide order dtd. 31-8-1978. On 8-3-1983 she made a request for posting her as a Senior Clerk in scale of Rs.330-560(R) because of some domestic difficulties. Accordingly vide order dt.20-12-1983 she was posted as a Senior Clerk in the same scale and pay with effect from 9-12-1983 in Claim Section of Commercial Department and another person was posted in her place. When she discovered from her pay packet that her pay was reduced from Rs.390/- to Rs.330/- she challenged it and filed representation against the same. The Union also made representation to the authority. Failing to get any remedy she approached this Tribunal praying that it may be declared that the reduction of pay from Rs.392/- to Rs.330/- paid in January, 1984 and thereafter was illegal, improper, unconstitutional and the applicant is entitled to get her basic pay fixed at Rs.392/- from 1.1.1984 and entitled to all consequential benefits. The applicant claims that in view of Railway Board's letter dt.1971 she was to be deemed to have been confirmed in view of the fact that the post in which she was appointed is a permanent post.

2. The respondents have resisted the claim of the applicant and has placed reliance on para 2018-B(F.R. 22C) which reads as under:

"Notwithstanding anything contained in these rules, where a railway servant holding a post in a substantive,

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temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage ~~next~~ next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued.

~~Provided~~ Provided that the provisions of this rule shall not apply where a railway servant holding a class I post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to higher post which is also a Class I post.

Provided further that the provision of sub-rule (2) of Rule 2027(F.R.31) shall not be applicable in any case where the initial pay ~~is fixed~~ is fixed under this rule;

Provided also that where a railway servant immediately before his promotion or appointment to a higher post is drawing pay at the maximum of the time-scale of the lower post, his initial pay in the time-scale of the higher post shall be fixed at the stage in that time scale next above such maximum in the lower post.

Provided that if a railway servant either-
 (1) has previously held substantive or officiated in
 (i) the same post, or
 (ii) a permanent or temporary post on the same time scale or
 (iii) a permanent post other than a tenure post or a temporary post (including a post in a body, incorporated or not, which is wholly or substantially owned or controlled by the Government) on

an identical time scale or
(2) is appointed substantively to a tenure post on a time scale identical with that of another tenure post which he has previously held substantively or in which he has previously officiated; then proviso to Rule 2017(F.R.22)-RII shall apply in the matter of initial fixation of pay and counting of previous service for increment."

They have also ~~claimed~~ pleaded that that as the post of LBRC is an ex-cadre post and the applicant on ~~her~~ request was transferred to this cadre post and is governed by Para 2018-B(F.R.22C) as quoted above. Proviso to above para makes it clear that a railway servant either (1) has previously held substantively or officiated in (i) the same post, or (ii) a permanent or temporary post on the same time-scale, or (iii) a permanent post other than a tenure post or a temporary post on an identical time-scale or (2) is appointed substantively to a tenure post on a time-scale identical with that of another tenure post which he has previously held substantively or in which he has previously officiated; then proviso to Rule 2017(F.R.22) RII shall apply in the matter of initial fixation of pay and counting of previous service for increment, which itself makes it clear that so far her pay is concerned it will be the same and it cannot be reduced because the transfer had been made in the identical pay scale. A reference has been made to the Western Railway letter 17.12.1974, which is placed on record, enclosing Rly. Board's letter dt. 12-6-1974 which reads as under:

"The Board have considered the matter and desire to clarify that in respect of appointments to ex-cadre posts on the time scale of pay identical with the time scale of pay of ex-cadre posts held on an earlier occasion, the benefit of

last pay drawn in the previous ex-cadre post is admissible under proviso to Rule 2017(FR-22)RII without imposition of the conditions introduced to the rule under advance correction slip No.231-RII, circulate under Board's letter No.E(E)65 RRI/5 dt. 18.11.68, even after the issue of Board's orders contained in their letter No.E(P&A)ii-70/PP/22 dt.23.9.71."

3. A reading of the said rule also indicates that the proviso to rule 2017 which has been annexed to the above rule and the meaning of the rule according to us is that the pay scale cannot be reduced and the applicant's pay has been wrongly reduced. Accordingly the respondents are directed to restore the same basic pay to the applicant to which she was placed earlier and the applicant may be given all arrears and consequential benefits within three months from the date of communication of this order.



(M.Y.PRIOLKAR)
Member(A)



(U.C.SRIVASTAVA)
Vice-Chairman

MD