

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.230/86.

Shri P.V.Hambardikar,
Ram Niwas,
Municipal Park,
Bhusawal 425 201

...Applicant.

V/s.

1. The Union of India.
2. The Chairman,
Railway Board,
New Delhi.
3. The General Manager,
Central Railways,
Bombay V.T. Bombay.
4. The Chief Personnel Officer(Stores)
Central Railway,
Bombay V.T.
5. The District Controller of Stores
(ACL) Central Railway, Bhusawal.
6. The Assistant Controller of Stores
(Signal) Central Railway,
Bhusawal.

... Respondents.

Coram: Hon'ble Vice-Chairman, Shri B.C.Gadgil.

ORAL JUDGMENT:

(Per Shri B.C.Gadgil, Vice-Chairman).

Dated: 7.12.1987.

The applicant is a retired railway employee and his grievance is about the fixation of pay as on 1.8.1983 i.e. the date on which there was restructuring of the two posts viz. Ward Keeper and Assistant Store Keeper.

2. The controversy is a very short one. The applicant after joining service in 1946 was promoted as a Ward Keeper in 1964. After the recommendations of the IIIrd Pay Commission, the pay scale for this post was Rs.425-600. The next promotional post is that of Assistant Store Keeper. The applicant was promoted on ad hoc basis to this promotional post in 1977, the pay scale of the said promotional



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post is 455-700. The applicant was reverted to his substantive post of Ward Keeper on 8.4.1981. Prior to that he had reached the maximum pay of Rs.700 in the scale of Assistant Store Keeper. On reversion his pay was reduced to Rs.600/-. On 1.9.1982 he was again promoted Assistant Store Keeper on a pay of Rs.700/- and on 31.7.1983 he was reverted from that post.

3. The Railway Administration decided to restructure and merge a number of posts. Circular dt. 29.7.1983 (vide Ex.'A' to the application) has provided for such restructuring of Group 'C' and Group 'D' posts. The Circular covers a number of posts. What is material is that the posts of Ward Keeper with a pay scale of Rs.425-600 and the post of Assistant Store Keeper with a pay scale of Rs.455-700 have merged w.e.f. 1.8.1983. For this merged post new scale of Rs.425-700 was prescribed. The applicant's grievance is that after this merger and restructuring his pay should have been fixed at Rs.700/- and that on account of failure to do so he has not only lost substantial salary, but he is also suffering in the pensionary benefits to which he is entitled. It is common ground that the applicant's pay has been fixed at a figure less than Rs.700/-. The applicant has therefore filed this application for an appropriate relief that his pay on restructuring and merging of the two grades be fixed at Rs.700/-.

4. The respondents resisted the claim. In substance their contention is that the pay that is relevant for refixation is the one that was prevailing on 1.8.1982 and 1.8.1983. The Circular dt. 29.7.1983 prescribed that persons should be eligible to draw pay on an higher scale from 1.8.1983 with a benefit to proforma fixation from 1.8.1982.

As I have stated earlier the applicant's pay on 1.8.1982 and 1.8.1983 was Rs.600/- and it is on that basis that his pay in the scheme has been refixed.

5. It was contended by Mr. Atre that the fact that the applicant

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has worked in the promotional post for two spells i.e. from 1977 to 1981 and again from 1.9.1982 to 18.3.1983 would be relevant. He drew my attention to the audit instructions (vide Ex.'B' to the application) the relevant part of those instructions is as follows:

"If a government servant has held substantive, or officiating in, a post in the cadral or class prior to the introduction of a new time scale and has drawn during the period salary or pay equal to a stage, or intermediate between two stages in the new time scale then the initial pay in the new time scale may be fixed at the salary or pay last drawn and the period during which it was drawn may be counted for increment in the same stage or if salary or pay was intermediate between two stages, in the lower stage of that time scale".

It was contended that the above two spells of promotion should have been taken into account and that therefore pay of Rs.700/- which the applicant got during the said promotion should have been treated as a pay in the new scales. It is however, material to note that the Respondents have alleged in the reply that the post of Assistant Store Keeper was a Selection Grade post and that the applicant though appeared for the selection test has failed on a number of occasions viz. 1978, 1979 and 1980. Mr.Nilkanth contended that here is a case where a person not eligible under the rules to hold the post of an Assistant Store Keeper was promoted to that post on ad hoc basis to meet the exigencies of the service and that therefore such ad hoc appointment will not enure for the benefit of the applicant. There appears to be much substance in this contention of Mr.Nilkanth. It is true that a substantive or an officiating promotion in the higher scale would be relevant while fixing the pay under the new scale. But it would be very difficult to accept the contention of Mr. Atre that the promotional pay of an ad hoc appointee should also be relevant for such fixation.

6. Mr.Atre then contended that under the Railway Circular of 1966 a promotee who has continued to work for more than 18 months is not liable to be reverted to his substantive post and that in the

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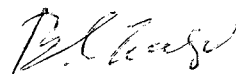
background of this Circular the applicant who has worked for more than 18 months between 1977 and 1981 was not liable to be reverted.

It is in this manner he contended that this spell of 1980 will have to be treated as a spell of an officiating promotion. In my opinion, there is a falacy in this submission. In the first place factually the applicant stood reverted on 4.8.1981 and he has not made any valid grievance about that reversion till he reitred. It will not therefore be possible to hold that the applicant's ad hoc promotion would be an officiating promotion. Secondly one cannot forget that the applicant was inherently ineligible for the promotion as he has not passed the selection test. It will not be correct to interpret the Circular of 1966 to mean that an ad hoc appointee who is not eligible to hold the post would not be liable to be reverted simply because he continued on ad hoc basis for 18 months.

7. The applicant has also contended that the case of Patil and Vitale were similar to that of the applicant and that these two employees got an advantage of a higher fixation of pay. The respondents have denied that vitale did get any such higher fixation.

As far as Patil is concerned they contended that the matter has been reconsidered and Patil's pay has been reduced. Thus it will not be possible for the applicant to contend that there was no discrimination in fixation of pay of Patil and Vitale.

8. Under the above circumstances, I do not think that the applicant can validly contend that he is entitled to have his pay fixed at Rs.700/- after the restructuring and merger of two posts. The application is thus dismissed; there would however be no orders as to costs.



(B.C.GADGIL)

VICE - CHAIRMAN