

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.N. 121/96

Date of Decision 9-6-97

Y.K.Singh

Petitioner

Shri R.Ramamurthy

Advocate for the Petitioner.

Versus

Union of India & Ors.

Respondent

N.K.Srinivasan.

Advocate for the Respondents.

Coram:

The Hon'ble Mr. M.R.Kolhatkar, Member(A).

The Hon'ble Mr.

1. To be referred to the Reporter or not?

2. Whether it needs to be circulated to other Benches of the Tribunal?

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER (A).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

Original Application No.121/96.

Pronounced, this the 9th day of January 1997.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

Y.K.Singh,
Head T.T.E.,
Western Railway,
Bombay Division,
Bombay Central,
Bombay - 400 008.

... Applicant.

(By Advocate Shri R.Ramamurthy)

V/s.

1. Union of India,
through the General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.

2. The Senior Divisional
Commercial Manager,
Western Railway,
Bombay Central,
Bombay - 400 008.

3. Additional Divisional
Rail Manager (O),
Western Railway,
Bombay Central,
Bombay - 400 008.

... Respondents.

(By Advocate Shri N.K.Srinivasan).

O R D E R

(Per Shri M.R.Kolhatkar, Member(A))

In this O.A. the applicant is claiming the relief of payment of difference of T.A. for the period from February, 1989 to August, 1991 consequent on change in the rate of pay under following circumstances.

2. The penalty of reduction from the post of Senior T.T.E. in the scale of Rs.1200-2040 to the post of Ticket Collector in the scale of Rs.950-1500

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...2.

on the applicant was imposed by the competent departmental authorities and the same was confirmed in appeal. In O.A. No.908/89 this penalty came to be challenged and the Tribunal by its decision dt. 19.8.1991 set aside the penalty with liberty to proceed with the disciplinary case. Subsequently, a penalty of withholding of the next increment for a period of one year with the effect of postponing future increment by Memo dt. 26.5.1992 was imposed on the applicant, the same was revised in appeal to that of withholding the privilege of two sets of passes. By way of consequential benefits the applicant claimed difference of T.A. on the basis of correct basic pay, but the request of the applicant was turned down by the Respondents vide their communication and which is impugned in the O.A. dt. 28.7.1995 which is at page 60. The applicant refers to Rule 1602 of the Railway Establishment Code along with the Note thereunder, which reads as under :

"(2) Where a railway servant is promoted or reverted or is granted an increased rate of pay with retrospective effect, no revision of claims for travelling allowance is permissible in respect of the period intervening between the date of promotion or reversion or grant of increased rate of pay, and that on which it is notified, unless it is clear that there has been an actual change of duties.

NOTE - In the case of late authorisation/ drawal of increments with retrospective effect. Other than those where increments were withheld or where the increments take an officer above the stage of efficiency bar, there is no objection to the supplementary claims relating to Travelling Allowance, if any, being admitted, on the basis of the enhanced pay including the increments."

3. According to the applicant, this Rule has

been wrongly pressed into service to deny the difference of T.A. to him because the Rule does not of a judicial order restoring ~~cover the case of a~~ the status quo ante ~~by~~ setting aside the penalty order and the appellate order. The applicant further contends that during the period, though the applicant was paid in the lower scale of Rs.950-1500 his services were utilised during the same period as Coach Conductor which officer is always paid in the higher scale of post viz. Rs.1200-2040 or Rs.1400-2300. According to the applicant the T.A. of any Railway employee is calculated according to basic pay and since it was earlier calculated ~~on the basis of~~ a wrong basic pay, because of penalty order, the same ~~the~~ is required to be re-calculated according to ~~correct~~ basic pay.

4. The applicant has therefore prayed for payment of difference of T.A. along with interest.

5. The Respondents have opposed the O.A. ~~the~~ payment of difference of According to them ~~the~~ claim for ~~T.A.~~ has been rightly refused. Apart from Rule 1602(2) to which the applicant has made ^a reference, the Respondents contend that the claim of the applicant cannot also be considered in terms of Rule 1324 of Railway Establishment Code which corresponds to F.R. 29-A, ~~which~~ reads as below :

"Where an order of penalty of withholding of increment of a railway servant or his reduction to a lower service, grade or post, or to a lower time-scale, or to a lower stage in a time-scale, is set aside or modified by a competent authority on appeal or review,

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the pay of the railway servant shall, notwithstanding anything contained in these Rules, be regulated in the following manner.

- (a) if the said order is set aside, he shall be given, for the period such order has been in force, the difference between the pay to which he would have been entitled had that order not been made and the pay he had actually drawn;
- (b) if the said order is modified, the pay shall be regulated as if the order, as so modified, had been made in the first instance.

Explanation :- If the pay drawn by a railway servant in respect of any period prior to the issue of the orders of the competent authority under this rule is revised, the leave salary and allowances (other than travelling allowance) if any, admissible to him during that period shall be revised on the basis of the revised pay."

6. According to Respondents, the Rule 1602(2) which has also been relied upon by the applicant does not help him because it also applies to cases where any whatsoever rate of pay has been revised on account of Orders ~~or~~ whether Administrative or Order ~~or~~ by Court or Tribunal. According to the Respondents there has been no change of duties in the case of the applicant. Therefore, the Rule 1602(2) along with Note thereunder also does not help the applicant.

7. On a perusal of Rule 1324 corresponding to F.R. 29-A it is seen that the explanation refers to the revision of pay in respect of any period prior to the issue of the orders of the Competent Authority. It says that the Leave Salary and allowances shall be revised on the basis of the revised pay, ~~an~~ ~~XXXXX~~ but there is/absolute bar to the revision of the T.A. when the pay drawn by Railway servant is revised. The case, therefore, appears to turn on the

definition of the term "revision". According to The Shorter Oxford English Dictionary on Historical Principles 1984 Edition 'Revise' means "looking over or examining again, to look or read carefully over, with a view to improving or correcting, to re-examine, in order to improve or amend". On a plain reading of the Rules it is clear that there has been no revision of the pay of the applicant. What has happened is that the applicant has been restored to the original pay and the bar to the payment of T.A. contained in the explanation to Railway Establishment Code Rule 1324 does not therefore apply in the case of the applicant. The case of the applicant also appears to be covered by Note under Rule 1602(2) which talks of late authorisation/drawal of increments with retrospective effect, other than those where increments were withheld. This is clearly a case of late authorisation with retrospective effect under the circumstances which have been referred to above. I am therefore, of the view that the applicant is entitled to the relief claimed. Accordingly, the impugned Western Railway communication dt. 28.7.1995 is hereby quashed and set aside and the respondents are directed to calculate the T.A. for the period February, 1989 to August, 1991 as per revised rate of pay as fixed under order dt. 7.7.1992 and pay the difference of T.A. to the applicant. In the facts and circumstances of the case,

I am not inclined to grant interest. There will be no order as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A).

B.

Date | Office Report |

Orders

C.P.No. 72/97
 filed by applicant
 heard for order
 on 17.10.97
 25/9

17-10-1997

Heard m. M.S. Ramamurthy
 Counsel for applicant.

Issue notice on C.P.W.O. 72/97 returnable
 by 12-12-97.

M.R. Kolhatkar

(M.R. KOLHATKAR)

MCA

(R.G. VAIDYANATHA)

V.C.

for

Notices issued to
 Applican, Respondents on
 12.11.97

8/1/97

9) 12-12-1997

C.P. NO. 72/97

Shri R. Ramesh for the
 applicant.

Shri V.S. Masankar for
 the respondents seeks time to file
 reply to C.P.

Adjourned to 16.1.1998.

M.R. Kolhatkar
(M.R. KOLHATKAR)
 MCA

(B.S. Hegde)
MCA

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