

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 359/96

Transfer Application No.

Date of Decision

12.11.96

S.K.Dholay

Petitioner/s

Shri G.S.Walia

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri V.G.Rege along with Shri

S.C.Dhawan

Advocate for
the Respondents

CORAM :

Hon'ble Shri. P.P.Srivastava, Member (A)

Hon'ble Shri.

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?


(P.P.SRIVASTAVA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 359/96

(West Bay) this the 12th day of NOVEMBER 1996

CORAM: Hon'ble Shri P.P.Srivastava, Member (A)

S.K.Dholay
Retired Guard 'A'(Special),
Central Railway,
Ch.Shivaji Terminus, Mumbai.

By Advocate Shri G.S.Walia

... Applicant

V/S.

1. Union of India through
The General Manager,
Central Railway,
Head Quarters Office,
Ch.Shivaji Terminus,
Mumbai.
2. Divisional Railway Manager,
Bombay Division, Central Railway,
D.R.M's office, Mumbai.
3. Sr.D.A.O., Central Railway,
Bombay Division, Mumbai.

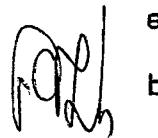
By Advocate Shri V.G.Rege
alongwith Shri S.C.Dhawan,
C.G.S.C.

... Respondents

O R D E R

(Per: Shri P.P.Srivastava, Member (A))

The applicant was working as a Guard 'A'
(Special) and retired on superannuation on 31.8.1995
in the pay scale of Rs.1400-2600 and his basic pay
at the time of retirement was Rs.2420/- p.m. The
applicant was inflicted upon a penalty of reduction
of pay to the minimum of the Grade for a period of
3 years, with further directions that after the
expiry of the penalty the future increments would
be postponed when he was working in the Grade of



Rs.425-640. On 13.5.1988 his punishment period was over and the applicant's pay was restored to Rs.530/- p.m. and that the period of 3 years was not taken into account for the purpose of granting any increment. The applicant has further stated that his pay was fixed at Rs.1900/-p.m. which was equivalent to Rs.530/- of the previous scale and the revised scale of pay was Rs.1350-2200 w.e.f. 14.5.1988. The applicant was promoted to the grade of Guard 'A' on promotion and his pay was fixed at Rs.2100/- p.m. and his pay at the time of retirement was Rs.2420/- p.m.

2. However, the respondents vide their letter dated 27.7.1995 informed him that his pay has been reduced and re-fixed retrospectively from 1.1.1986, thereby reducing the basic pay between the years 1986 to 1995, i.e. till his retirement. He was also informed that Rs.1,35,184/- shall be recovered from his wages and settlement dues being over-paid. This letter is placed at Exhibit 'D' of the OA. The applicant has further stated that vide letter dated 16.8.1995 his pay was re-fixed and an amount of Rs.1,00,851/- was shown to be recoverable. This letter is placed at Exhibit 'E' to the OA. The applicant has represented against the above refixation vide his letter dated 2.8.1995 which is placed at Exhibit 'F' and further representation dated 17.8.1995 placed at Exhibit 'G'.



3. The main issue involved in this OA. is whether the fixation of the pay after the punishment period was over was correctly made in the year 1988 or not. The Learned Counsel for the applicant has argued that no notice has been given before reducing the pay of the applicant and thereby the basic principles of natural justice have not been followed in this case and on this ground alone the impugned order is required to be quashed.

4. The respondents have brought out that since the applicant's pay was wrongly fixed after his punishment was over, the same has been corrected by the impugned letter.

5. The relevant portion of the punishment order dated 13.5.1985 which is placed at Exhibit-'B' reads as under :-

" I have therefore decided to reinstate you to the post of Guard (SUB) grade Rs.425-600 (RS) with lesser penalty of reduction to the minimum of the grade viz. Rs.425/- in the time scale Rs.425-600 (RS) for a period of three years with effect of postponing future increments on expiry of the penalty. The penalty will be effective from the date of your reinstatement."

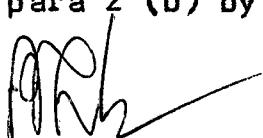
The applicant's pay was fixed at Rs.425/- on 13.5.1985. It was restored to Rs.530/- p.m. on 13.5.1988. Rs.530/- p.m. was the pay which the applicant was drawing in the scale of Rs.425-640 before imposition of the penalty. The case of the respondents is that restoration of the pay of the applicant after the period of 3 years to Rs.530/-



is wrong. The respondents have argued that the pay of the applicant should have been fixed at Rs.440/- on 1.1.1989 on completion of the penalty and not at Rs.515/- on 13.5.1988. The controversy, therefore, is confined only to the fixation of pay after the period of 3 years of punishment.

6. The Learned counsel for the applicant has argued that since the reduction is only for a period of 3 years, the applicant is entitled to be restored to his previous ~~pay~~ at the end of 3 years period. Since the applicant was drawing Rs.550/- before the punishment was imposed, after 3 years he would be entitled to draw a pay of Rs.550/-. The effect of ~~postponement~~ of future increment as mentioned in the punishment order would be that for the period of 3 years when the applicant's pay was reduced to Rs.425/- he would not draw any increment.

7. Since the respondents had brought out in their affidavit that there was difference of opinion between the Establishment Branch and Accounts Branch of the administration, the respondents were directed to file an affidavit from the Chief of Accounts Department, which was done on 24.10.1996. The respondents were also directed to give clarification and meaning of F.R.29 and the explanation given under that F.R. in para 2 (b) by applying the provision of F.R. in the



present case. In the affidavit filed the respondents have not clarified the position as was sought for and have simply reiterated the position which they had taken in the main written reply. Under F.R. 29 the Government of India's instructions have been laid down wherein at Instruction No. 2 which is Govt. of India D.M.No.F.2(34)-E.III/59, dated the 17th August, 1959 and the 9th June, 1960, reads as under :-

" (2) Reduction to a lower stage in time-scale. - Doubts have been expressed in regard to the exact interpretation of sub-rule (1) of F.R.29. The same are clarified as follows :-

(a) Every order passed by a competent authority imposing on a Government servant the penalty of reduction to a lower stage in a time-scale should indicate —

(i) the date from which it will take effect and the period (in terms of years and months) for which the penalty shall be operated;

(ii) the stage in the time-scale (in terms of rupees) to which the Government servant is reduced; and

(iii) the extent (in terms of years and months), if any, to which the period referred to at (i) above should operate to postpone future increments.

It should be noted that reduction to a lower stage in a time-scale is not permissible under the rules either for an unspecified period or as a permanent measure. Also when a Government servant is reduced to a particular stage, his pay will remain constant at that stage for the entire period of reduction. The period to be specified under (iii) should in no case exceed the period specified (i).

(b) The question as to what should be the pay of the Government servant on the expire of the period of reduction should be decided as follows:-



- (i) if the original order of reduction lays down that the period of reduction shall not operate to postpone future increments or is silent on this point, the Government servant should be allowed the pay which he would have drawn in the normal course but for the reduction. If, however, the pay drawn by him immediately before reduction was below the efficiency bar, he should not be allowed to cross the bar except in accordance with the provisions of F.R. 25 ;
- (ii) if the original order specifies that the period of reduction was to operate to postpone future increments for any specified period, the pay of the Government servant shall be fixed in accordance with (i) above but after treating the period for which the increments were to be postponed as not counting for increments.

(G.I., M.F., O.M. No. F.2(34)-E.III/59, dated the 17th August, 1959 and the 9th June, 1960).

NOTE - It has been decided that in future while imposing a penalty of reduction to a lower stage in the time-scale of pay, the operative portion of the punishment order should be worded as in the form given below :

"It is therefore ordered that the pay of Shri be reduced by..... stages from Rs..... to Rs..... in the time-scale of pay for a periodyears/months with effect from It is further directed that Shri.....will/will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will/will not have the effect of postponing his future increments of pay."



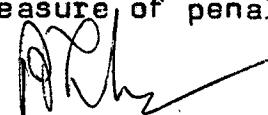
The reading of these instructions makes it quite clear that the period of reduction, i.e 3 years in this case would not earn any increment and therefore the pay of the applicant would be restored to what was before the punishment of reduction, after the expiry of punishment period of 3 years. Therefore the restoration of the pay of the applicant to Rs.515/- after the expiry of 3 years had been correctly done. The interpretation given by the respondents at Exhibit-'A' would mean that the applicant would be reduced permanently and his pay would be fixed at the minimum of the scale, i.e. at Rs.415/- and for 3 years thereafter the applicant would not earn any increment and his pay would remain at Rs.415/- and after the expiry of 3 years he will start earning increment from Rs.415/- onwards and would be fixed at Rs.440/- after expiry of one year. But this is not the order passed by the competent authority.

8. The order of punishment does not specify whether the applicant will or will not earn increment during the period of reduction. But since it has been mentioned that the punishment will have the effect of postponing of future increments on expiry of punishment, it can be read in the punishment order that for a period of 3 years(the period of reduction) the applicant would not earn increment and he will start earning increment only after the period of 3 years. The interpretation by the respondents in their written reply as well as in affidavit filed



by them is neither the correct interpretation nor is supported by any explanatory notification of the Government. In fact that Govt. of India instruction under F.R. 29 quoted above leaves no doubt in the meaning of fixation of pay. The restoration of applicant's pay to Rs.515/- after expiry of 3 years therefore cannot be faulted. The similar issue was raised in OA.NO. 141/86 decided on 19.5.1986 in the case of R.K.Bharati vs. Union of India, 1986 ATC 258 which supports the case of the applicant.

9. The Learned counsel for the respondents Mr. Rege has quoted the case of Kulwant Singh Gill vs. State of Punjab, 1991 Supp (1) SCC 504. However, the issue involved in the above quoted case has no relation with the present case. In this case, the question involved was whether the stoppage of two increments with cumulative effect would be treated as major penalty and therefore would entail conduct of the enquiry as laid down in the rules. The case did not deal with the fixation of pay at the end of punishment when the pay was reduced to the lower stage on the same grade. The Learned counsel for the respondents has also relied on Railway Board Circular No. E(D&A) 62RC6-46 dated 30.7.1964. However, a reading of the Circular shows that this is concerned with the fixation of seniority of a Railway servant reduced to a lower post/grade/service for a specified period as a measure of penalty and subsequently re-promoted



to higher post after the expiry of the period of punishment. Since this Circular did not deal with the fixation of pay but the fixation of seniority and deals with the reduction in grade or service which has no bearing on the facts and circumstances of the present case which is that on reduction in the same grade at the minimum scale.

10. In the end, I am, therefore, of the view that the fixation of the pay of the applicant by the order dated 16.8.1995 placed at Exhibit-'A' is wrong and is liable to be quashed and it is accordingly quashed.

11. It has been brought out during the arguments that the applicant was offered the payment of settlement dues by deducting the Rs.1,00,851/- but the same was not accepted by the applicant. The applicant's settlement dues should therefore be paid within a period of two months from the date of receipt of this order. The applicant will be entitled to interest @ 12% p.a. on Rs.1,00,851/- from the date of retirement to the date of payment. The applicant will also be entitled to payment of cost of Rs.500/-.


(P.P. SRIVASTAVA)

MEMBER (A)