

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO. : 397/99

Dated this _____, the 1st day of May 2001.

Shri H.S. Dixit Applicant.

Shri G.S. Walia Advocate for the
Applicant.


VERSUS

Union of India and others Respondents.

Shri V.D. Vadhavkar. Advocate for the
Respondents.

CORAM : Hon^{ble} Shri Kuldip Singh, Member(J)
Hon^{ble} Ms. Shanta Shastry, Member(A)

- (i) To be referred to the Reporter or not ?
(ii) Whether it needs to be circulated to other Benches of the Tribunal ?
(iii) Library. ✓


(Ms. Shanta Shastry)
Member(A)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:397/1999
DATED THE 1st DAY OF APRIL 2001
May 4**

**CORAM: HON'BLE SHRI KULDIP SINGH, MEMBER(J)
HON'BLE SMT. SHANTA SHASTRY, MEMBER(A)**

H.S.Dixit,
Retired Sr. Section Engineer,
under Chief Workshop Manager,
Central Railway,
Parel Workshop,
Parel,
Mumbai - 400 012.

... Applicant

By Advocate Shri G.S.Walia

V/s.

1. Union of India, through
General Manager,
Central Railway,
Head Quarters Office,
Mumbai CST,
Mumbai - 400 001.

2. Chief Workshop Manager,
Central Railway,
Loco - Workshop,
Parel,
Mumbai - 400 002.

... Respondents

By Advocate Shri V.D.Vadhavkar

(O R D E R)

Per Smt. Shanta Shastri, Member(A)

The reliefs sought by the applicant in this OA are as follows:-

- a) This Hon'ble Tribunal will be pleased to set aside the order dated 23/11/1998, Exhibit A hereto.
- b) The Hon'ble Tribunal be pleased to hold and declare that the pay of the applicant was fixed at Rs.370/- on 1/8/1979 and on that basis subsequent fixation of pay is correct and legal.
- c) Respondents be directed to release the amounts withheld by the Respondents on

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account of the impugned order with the interest thereupon.

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- d) Any other or further order as to this Hon'ble Tribunal may deem fit and necessary in the circumstances of the case may be passed.
- e) Cost of this Original application be provided for.

2. The applicant was working under Respondent No.2 as Senior Section Engineer in the pay scale of Rs.7450/- to 11500/- (RSRP) and his basic pay was Rs.10,150/-. He retired on superannuation on 31/1/1998. On 24/198, i.e. just a few days before his retirement his pay was reduced from Rs.10,150/- to Rs.9,475/- in the scale of Rs.7,450/- to 11,500/- w.e.f. 22/1/98. The applicant received the order on 27/1/98.

3. The brief facts are: The applicant was promoted and posted as Chargeman Grade-B in the Machine Shop vide Office Order dated 15/7/75 in the scale of Rs.425-700 (RS). He was appointed further to officiate as Chargeman Grade-A in the scale of Rs.550-750(RS) from 7/11/77 to 10/12/77. In the year 1978, while he was working as Chargeman Grade-B in the Machine Shop, in the scale of Rs.425-700 a vacancy of Yard Supervisor in the scale of Rs.550 - 700 (RS) occurred in the Yard Shop. The applicant applied for the same and got selected. He was approved for appointment as Yard Supervisor in the scale of Rs.550-750. He was allowed to continue there upto 25/5/81 when he was repatriated to the machine shop to his parent cadre on the same rate of pay and scale as he was draing in the scale of Yard Supervisor. In the meantime, a certificate of proforma promotion was issued to him vide letter dt. 24/12/79, promoting him to Chargeman Grade-A in the scale of Rs.550-750, according to his turn in his parent cadre w.e.f. 1/8/79. Thereafter, he was further promoted as Deputy Shop Superintendent in the scale of

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found that the pay fixation had not been done properly. The whole refixation was based on pay of Rs.675/- on 1/3/1984 as Chargeman A. According to the respondents this was erroneous because it was based on the applicant's pay in the post of Yard Supervisor which is an ex cadre post. The applicant made representations. The respondents issued order of refixation in favour of the applicant vide letter dated 8/4/91. Thereafter the applicant filed the first OA No.205/91 against the order dated 29/4/91 wherein recovery of over payment involved due to erroneous fixation in Chargeman Grade A scale was ordered. The Tribunal disposed of the same on 11/3/93 directing the respondents that the authority to consider and decide the representation of the applicant may dispose it within three months from the date of receipt of order. The recovery shall not be made until the representation is decided or within a period of one month thereafter. On receipt of the applicant's representation dated 11/4/94, the same was examined and it was replied that action taken by the CWM.PR was in order and action be taken to recover the over payment made to him. The applicant filed a second OA No.1307/93 on 24/12/93. It was disposed of on 1/2/94 directing that the applicant may be given opportunity to meet the position taken by the competent authority by giving him notice stating the reasons on which the pay is sought to be reduced and earlier sought to be recovered and that he should be permitted to make a representation against the notice and after hearing him the competent authority shall pass a reasoned order about the action proposed to be taken.

3. It is the contention of the applicant that respondent no.2 has discriminated and deprived the applicant of the benefit of ex cadre service whereas many seniors from his parent cadre have enjoyed and are still enjoying the benefit of ex cadre service. The applicant has named Shri K.V.Samant, Shri S.M.Naidu, Shri P.K.Ghosh in this context.

4. The applicant submits that his service in the post of Yard Supervisor cannot be directly called ex cadre service. It was a adhoc service for which persons from other categories were eligible to apply and get promoted. Such posts as a matter of fact are called general posts and not ex cadre post. Therefore such adhoc service has to be counted for fixation of pay. There is also no declaration from the Railways that the Yard Supervisors service is ex cadre service. The applicant had made no mistake. His pay was fixed by respondents themselves on his repatriation to the parent cadre. Therefore the respondents themselves are responsible for the erroneous pay fixation if any. The applicant cannot be punished for their fault. Besides, revised pay fixation cannot be effected after such a long time and delay when it was actually fixed in the year 1979.

5. The learned counsel for the applicant has referred to a few judgements in this connection. He is relying on the judgement in the case of D.G.Employees State Insurance Corporation and Anr. V/s. B.Raghava Shetty and Ors 1975 SCC (L&S) 1014, Chairman, Railway Board and Ors. V/s. C.R.Ranga Dhamaiya & Ors 1997 SCC (L&S) 1527, Sub Inspector Rooplal & Anr. V/s. Lt. Governor Through Chief Secretary, Delhi & Ors. 2000 SCC (L&S) 213 and lastly Shyam Babu Verma and Ors. V/s. Union of India & Ors

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1992 SCC (L&S) 683. These judgements deal with pay fixation. It has been held in Sub Inspector, Rooplal's case, that service rendered by a deputationist on equivalent post in his parent department before absorption in deputation department counts for seniority. In Ranga Dhamaiya's case, it has been ruled that retrospective amendment of statutory rules adversely affecting the pension of employees who already stood retired on the date of the notification is invalid. Similarly, retrospective reduction of pension is unreasonable and arbitrary. In Shyam Babu Verma and Ors, the Hon'ble Supreme Court held that higher pay scale erroneously given to petitioners since 1973 and reduced in 1984 is not proper since the petitioners received the higher scale due to no fault of theirs, therefore it shall only be just and proper not to recover any excess amount already paid to them.

6. The applicant has further drawn our attention to a Railway Board order No.RBE of 198/91 on the subject of amendment to rules 1313 (FR 22) 1316 (FR 22C) 1325 (FR 30) and 1326 (FR 31).

a. It has been stated therein that notwithstanding anything contained in the rules, whether a Railway servant holding an ex cadre post is promoted or appointed regularly to a post in his cadre, his pay in the cadre post will be fixed only with reference to his presumptive pay in the cadre post which he would have held but for his holding an ex cadre post outside the ordinary line of service by virtue of which he becomes eligible for such appointment. However, prior to this amendment, the Railway Board had issued letter No.PC-16/PB dated 21/6/1966. The position in regard to application of Rule 1316 (FR

22C) has been discussed therein. The point had been raised as to how the pay of a person reverting from an ex cadre post to an identical/equivalent cadre post in the parent department is to be fixed. It has been decided that where a person goes from post 'A' in his parent department to a post 'B' elsewhere and reverts to post 'C' in his parent department and post 'C' is higher than post 'A' but not higher than post 'B', the pay in the post 'C' should be fixed under Rule 1316 (F.R.22-C) with reference to pay in post 'A'. However, the service rendered against post 'B' upto 17/11/66 shall be taken into account in fixing the pay against post 'C' if this is more advantageous to the railway servant.

7. Since the applicant's pay was fixed in 1981-82, he cannot be governed by the later orders of the Railway Board dated 12/12/91. He is to be governed by the earlier orders in this respect and therefore he is entitled to the counting of pay fixed in the ex cadre post of Yard Supervisor.

8. The respondents however are not agreeable to give the applicant the benefit of the pay fixed in the ex cadre post of Yard Supervisor. According to them it being an ex cadre post, the applicant cannot be given the benefit of the pay fixation in that post. According to the respondents, there are nine such cases and action has already been taken in two similar cases and ordered similar recovery as in the case of applicant. None of the employees had been granted benefit of the service of ex cadre post in cadre service on date. The respondents have also relied on the case of Upadhyay decided by the Full Bench of Tribunal that pay of ex cadre post is not protected on repatriation to cadre post though pay scale of cadre post as well

as ex cadre posts are the same - increments earned on ex-cadre post do not count on cadre post." (1976) 32 ATC 589 (FB). The respondents also submit that there is a catena of judgement of Hon. Supreme Court that wrong order cannot be perpetuated, infringement of service rules cannot be continued."

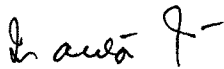
9. The applicant states that there is discrimination. It is seen that employee has no right of fixation of pay in cadre post based on pay in ex cadre post. Hence the plea of discrimination is baseless. Respondents further argue that the applicant knew that he was being posted in an ex cadre post. This is evident from the notification issued on 22/6/1977 whereby it was decided to hold selection for ex cadre post of yard supervisor.

10. We have heard the learned counsel for the applicant as well as the respondents. The short issue is whether the pay in the ex cadre post of yard supervisor is to be taken into consideration while fixing the pay in the cadre post in equivalent pay scale. Though it has been held that the pay in the ex cadre post cannot be protected for purposes of pay fixation in the higher cadre post, the Railway orders in this connection have been issued on 2/12/91 whereas prior to that there were other orders of the Railways issued vide letter dated 7/9/1966 of the Railway Board which clearly stated that the service rendered against the ex cadre post shall be taken into account in fixing the pay against the cadre post if it is more advantageous to the Railway servant. Considering this position, the applicant's pay fixation on the basis of the pay drawn in the ex cadre post of yard supervisor cannot be said to be erroneous and therefore the applicant is entitled to pay of Rs.10,150/- before reducing

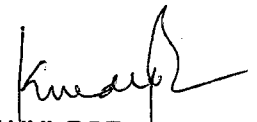
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it to Rs.9,470/-. Consequently, the recovery ordered of the excess payments made also needs to be cancelled. In any case as has been held in the case of Shyam Babu Verma(supra), the recovery cannot be ordered after a long lapse of time. In the present case, the pay fixation was done in 1981-82 and the payments made accordingly cannot be recovered by order issued in 1998. Therefore also the Impugned orders need to be set aside and quashed. In the facts and circumstances of the case, the order dated 23/11/98 is set aside and quashed. The OA is allowed. We do not order any costs.



(SHANTA SHASTRY)
MEMBER(A)



(KULDIP SINGH)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

REVIEW APPLICATION NO:
36/2001 in OA.No.397/94

Dated:12/7/2001

CORAM:HON'BLE SHRI KULDIP SINGH, MEMBER(J)
HON'BLE SMT. SHANTA SHASTRY, MEMBER(A)

1. Union of India Through
The General Manager,
Central Railway,
Mumbai.
2. The Chief Workshop Manager,
Locomotive Workshop, Parel,
Mumbai - 400 012.

... Review Petitioners

V/s.

Shri H.S.Dixit

... Original Applicant

(ORDER)

Per Smt.Shanta Shastry, Member(A)

This review petition has been filed by the original respondents in OA No.397/94 which was allowed by order dated 1/5/2001, setting aside and quashing the order dated 23/11/98.

2. We have carefully perused the grounds advanced for reviewing of this Tribunal's order. In our considered view the review petitioners are ~~not~~ trying to reargue the matter by expanding their earlier arguments. This cannot be a ground for review. The Review petition is rejected.


(SHANTA SHASTRY)
MEMBER(A)


(KULDIP SINGH)
MEMBER(J)

abp

dt. 12/7/01
order/Judgment despatched
to Applicant, respondent (s)
on 3/9/01
ms

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Contempt Petition No.106/2001
in
Original Application No.397/99

Dated this Tuesday the 2nd Day of April, 2002.

Hon'ble Shri Justice Birendra Dikshit, Vice Chairman
Hon'ble Smt. Shanta Shastry, Member (A)

H.S. Dixit
Retired Sr. Section Engineer,
Under Chief Workshop Manager,
Central Railway Parel Workshop,
Parel, Mumbai-400012.

.. Petitioner
(Original
Applicant).

(By Advocate Shri Rahul Walia holding the
brief of Shri G.S. Walia)

Versus

1. Shri B.S. Sudhir Chandra,
General Manager,
or his successor in office
Central Railway,
Headquarters office, Mumbai CST,
Mumbai - 400 001.
2. Shri P.S. Gupta,
Workshop Manager,
or his Successor in Office,
Central Railway's Parel
Workshop, Parel,
Mumbai - 400 012.

.. Proposed
Contemnor
(Original
Respondents).

(By Advocate Shri V.D. Vadhavkar)

ORDER (Oral)

{ Per : Smt.Shanta Shastry, Member (A) }

The respondents have filed affidavit in support
of their statement that the Order of the Tribunal dated
1.5.2001 in O.A.No.397/99 has been fully complied with.
The Learned Counsel for the applicant submits that the

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order has been complied with. Nothing survives now. The Contempt Petition is accordingly dismissed. Proceedings are dropped and the notices are discharged.

2. M.P.No.994/2001 was filed by the respondents seeking extension of time to comply with the order dated 1.5.2001 upto 31.12.2001. Now that the order has been complied with, the M.P. has become infructuous and is accordingly dismissed.

Shanta
(Smt.Shanta Shastry)
Member (A)

B. Dikshit
(Birendra Dikshit)
Vice Chairman.

H.

FF: 2.4.2002.
order/Judgement despatched
to Applicant/Respondent (s)
on 17.4.2002

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19/4.