

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 411/00

Dinesh Tamnaprasad Choudhari

(By Advocate Shri S. S. Karkera)

VERSUS

H.O.S. 200

(By Advocate Shri V.S. Masurkar)

CORAM : Hon'ble Shri Justice R.R.K.Trivedi- Vice Chairman
Hon'ble Shri Shankar Prasad - 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 ?

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(Shankar Prasad)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this the 9th day of July, 2003

Coram: Hon'ble Mr. Justice R.R.K.Trivedi - Vice Chairman
Hon'ble Mr. Shankar Prasad - Member (A)

O.A.411 of 2000

Dinesh Jamnaprasad Choudhari,
Yard Master,
C.S.T.M. Yard, Mumbai
R/o 18th Acharwala Building,
First Marine Cross Lane,
Dhobitalao, Mumbai - 400 002.
(By Advocate Shri S.S.Karkera) - Applicant

Versus

1. Union of India
through the General Manager,
Central Railway,
CST, Mumbai.
2. The Divisional Railway Manager,
Central Railway,
Bombay Division,
CST, Mumbai - 400 001.
3. The Senior Divisional Personnel Officer,
O/o Divisional Railway Manager,
Mumbai Division, Central Railway,
C.S.T., Mumbai - 400 001.
(By Advocate Shri V.S.Masurkar) - Respondents

O R D E R

By Hon'ble Mr. Shankar Prasad, Member (A) -

Aggrieved by the order dated 30.3.1998 not granting him the benefit of pay upgradation/proforma fixation, the applicant has preferred the instant OA. He has asked for the following reliefs -

- (i) This Hon'ble Tribunal be further pleased to hold and declare that applicant is entitled for fixation of his pay in the promotional post of CASM in the grade of Rs.1400 - Rs.2300 w.e.f. 1.1.1989.

(ii) This Hon'ble Tribunal be further pleased to direct the respondents to fix the pay of the applicant in the grade of Rs.1400 - 2300/- w.e.f. 1.1.1989 and grant all consequential benefits such as regular increments, revised fixation of pay as per Fifth Pay Commission recommendation.

2. The case of the applicant in brief is that he was promoted and posted as LR CASM GIT vide order dated 7.12.1988 (Exhibit - B). He was not relieved inspite of representation (Exhibit-D). His name also does not appear in subsequent order dated 6.5.1990. A subsequent order dated 13.7.1990 (Exhibit -C) clearly indicates that Sr.No.1 K.N.Damodaran Nambiar was posted vice him and he was posted as CASM, Dadar instead of CASM, GIT. He was relieved on 26.8.1990. On the other hand his juniors were relieved and joined on promotion. He is accordingly receiving less pay compared to his juniors. The matter was taken up through the Union when no reply was forthcoming. The impugned order was the reply sent to the Union.

It has further been contended that pay fixation being a continuing cause of action the application is maintainable. By way of abundant caution an application for condonation of delay has also been filed.

3. The case of the respondents in brief is that case of applicant is hit by delay and laches. The applicant had a cause *for*

of action for being relieved when he was not relieved in 1998, when he joined on promotion in 1990 or when the decision was communicated in 1998. The Three Judge Bench of the Apex court in the case of O.P.Saxena Vs. Union of India, 1997 SCC (L&S) 1667 has held that it is not a continuing wrong.

The further case of the respondents is that as per Railway Board's circular of 1991 (Annexure-R-2) reiterated vide RBE 98/97 dated 11.7.1997 stepping up of pay is not permissible in such circumstances. There is no legal right for stepping up of pay.

4. In reply to para 4.8 and 4.9 of the OA in which the applicant had referred to the facts there is no specific denial. The reply to facts in Para (12) of the Written statement refers to para 4.7 & 4.10 of the OA only. Except for the fact of representation other facts are specifically admitted in other paragraphs. Para 12 of the Written Statement is as follows -

"(12) With reference to Para 4.7 and 4.10 of the OA, the contentions are denied. The applicant is raising a stale grievance of 1989 and therefore no further comments save and except whatever is stated in Para 5 to 11 above."

We cannot read Para 4.7 and Para 4.10 as para 4.7 to 4.10. Thus it is an admission by law of pleadings. *Am*

5. The Railway Board circular of 1991, which has been reiterated in 1997, and which rules out pay upgradation/proforma fixation in these circumstances can only be prospective in nature. They cannot regulate cases coming from before.

We also note that this circular casts an obligation on the Controlling Officer to relieve the officer. There is nothing on record to indicate what action was taken against the Controlling Officer.

6. We also note that Rule 224 of Indian Railway Establishment Manual provides that if employee refuses promotion in case of selection posts, expressly or otherwise, he is debarred for one year but is allowed to be retained. promotion after one year is ~~st~~ validity of panel. If he refused promotion for the second time after one year his name will be automatically deleted and the administration can transfer him out station. He loses seniority vis-a-vis his juniors for delayed joining.

Similar provision exists in case of non-selection posts.

There is nothing on record to indicate that any of these action was taken. This also indirectly supports the making of representation. *Am*

7. The applicant has relied on the decision of the Apex Court in the case of M.R.Gupta Vs. Union of India & others, 1995 SCC (L&S) 1273. The Apex Court held -

"6. The Tribunal misdirected itself when it treated the appellant's claim as "one time action" meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a government servant to be paid the correct salary throughout his tenure according to computation made in accordance with the rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See Thota China Subba Rao V. Mattapalli Raju).

7. Learned counsel for the respondents placed strong reliance on the decision of this Court in S.S.Rathore Vs.State of M.P., 1990 SCC (L&S) 50. That decision has no application in the present case. That was a case of termination of service and, therefore, a case of one time action, unlike the claim for payment of correct salary according to rules throughout the service giving rise to a fresh cause of action each time the salary was incorrectly computed and paid. No further consideration of that decision is required to indicate its inapplicability in the present case."

8. The respondents on the other hand have relied on the decision of the Apex Court in the case of Union of India and others Vs. O.P.Saxena, 1997 SCC (L&S) 1667. The Apex Court was considering the matter as to whether the pay anomaly can be removed at any point of time. In this case the applicant had retired on 31.3.1988 and he approached the Tribunal in July, 1991. *An*

The applicant has also relied on a decision of the Apex Court in the case of Union of India and another Vs. R.Swaminathan and others, 1997 SCC (L&S) 1852. This is a case of Department of Posts and Telegraph and Telecommunications where certain cadres are organised Circle-wise. The question that arose for consideration was as to whether local officiating promotion granted in a particular circle would entitle seniors in other circles to claim higher pay scale. This case is clearly distinguishable.

The third judgment cited by the respondent is in the case of E.Parmasivan & others Vs. Union of India & others, 2002 (5) SLR 307. In that case too the applicant had retired from service.

9. It would be clear from the above that the two decisions cited by respondents have been delivered in the context of retired government employees while the decision cited by the applicant is in case of serving Government employees. It would therefore be appropriate to follow the decision in the case cited by the applicant.

10. In the result the application is allowed and the applicant is granted the benefit of proforma pay fixation from *h*

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the date his junior joined the post of promotion i.e. - 1.1.1989. He would also be entitled to refixation of pay as on 1.1.1996. However, the cash benefits will be restricted to one year. No order as to costs.

Shankar Prasad

(Shankar Prasad)
Member (A)

R.R.K.Trivedi

(R.R.K.Trivedi)
Vice Chairman

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