

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 182/2001

Date of Decision: 21.10.2003

M.P. Madyalkar.

Applicant

Shri S.P. Kulkarni.

Advocate for Applicant(s)

Versus

Union of India & Ors.

Respondents


Shri V.S. Masurkar.

Advocate for Respondents

CORAM: HON'BLE SHRI S. BISWAS
HON'BLE SHRI MUZAFFAR HUSAIN

MEMBER (A)
MEMBER (J)

1. To be referred to the reporter or not? ~
2. Whether it needs to be circulated to other ~
Benches of the Tribunal?
3. Library. *yes*


(M. HUSAIN)
MEMBER (J)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 182/2001

THIS THE 21st DAY OF OCTOBER, 2003

CORAM: HON'BLE SHRI S. BISWAS. .. MEMBER (A)
HON'BLE SHRI MUZAFFAR HUSAIN. .. MEMBER (J)

Mahadeo Pandurang Madyalkar,
S/o Pandurang Keshav Madyalkar,
R/a Plot No.84, Vinayaka
Housing Society, Karuneshwarnagar,
P.O. Gulbarga-585 102. .. Applicant

By Advocate Shri S.P. Kulkarni.

Versus

1. Union of India through
Division Railway manager,
Central Railway,
AT PO Solapur-413 001.
2. Station Superintendent,
Central Railway, Shahabad,
AT Shahabad-585 229.
3. Financial Adviser and Chief
Accounts officer, FA & CAO's Office,
CST Central Railway,
Mumbai-400 001. .. Respondents

By Advocate Shri V.S. Masurkar.

O R D E R
Hon'ble Shri Muzaffar Husain. Member (J)

The prayer of the applicant in this OA is for upholding the right of the applicant for arrears and revision in pension, to quash and set aside letter dated 21.5.99, direct the respondents to draw and pay arrears of pay in the scale of Rs.2000-3200 from 18.7.90 to 28.2.91, to direct respondents to revise the pension on the basis of last pay drawn (i.e. 28.2.1991) and not on the basis of presumptive pay and pay arrears within three months, to direct respondents to pay interest on



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the difference of pension (so revised) at the rate of 12% to grant any other and such further order / relief as may be deemed fit and proper by this Hon'ble CAT, and to grant cost of OA of Rs.3000/-.

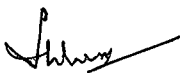
2. The applicant retired on attaining the age of 58 years on 28.02.1991. He was (supposed to be) drawing officiating pay in the scale of Rs.2000-3200 of Chief Goods Supervisor (CGS for short), (substantive pay as Goods Supervisor Rs.1600-2660) (IV Pay Commission Pay Scales fitment) as on 28.02.1991). However, he was not paid in that scale (Rs.2000-3200) for want of covering sanction from D.R.M. Solapur. As a result, the applicant was denied drawl of officiating (ad-hoc) pay of CGS Rs.2000-3200 from 18.7.1990 to 28.02.1991 (for the reason quoted in the impugned order dated 21.5.1999 (Ex.A). Consequentially, the applicant was also not paid Pension based on the last pay drawn actually but his pension was fixed on the presumptive pay (which he would have drawn but for his officiating as CGS in the scale of Rs.2000-3200 RPS IV Pay Commission) in the scale of Rs.1600-2660 (Goods Supervisor) as well as other retiral benefits were also paid to him based on the Pension so fixed (presumptive Pay in the scale of Rs.1600-2660 instead of in the scale of Rs.2000-3200 of CGS in which he actually worked till the last day of his service i.e. 28.02.1991. The applicant contends that he was denied the due/entitled pay and allowances of the



...3.

post in which he actually worked as also consequentially his pension was also fixed on the presumptive pay. Hence the present OA.

3. The applicant while working on adhoc basis as aforesaid, was given further promotion as CGS in the scale of Rs.2000-3200 in the following spells (a) 22.3.1988 to 14.6.1988, (b) 09.12.1988 to 30.01.1989, (c) 22.5.1989 to 19.6.1989. The applicant was paid officiating pay in the scale of Rs.2000-3200 as covering sanction was granted by competent authority. The applicant was promoted on adhoc basis from 01.12.89 and he held that post ~~on adhoc basis~~ till his retirement on 28.02.1991, but the respondents, by their impugned order dated 21.5.1999 Exhibit-A has declined to issue post facto sanction for the period from 18.7.90 to 28.02.91 (Here again the period from 01.12.89 to 17.7.90) was held as 4th spell coming within inadmissible category). Ironically however, the permissible adhoc promotion after empanelment as GS (Rs.1600-2600) i.e. after 18.7.1990 to 28.02.1991 is also held as not granted for want of post-facto sanction at a distant date. The applicant is deprived of his legitimate right to receive pay of the post in which he has physically worked and retired on attaining the age of superannuation on 28.02.1991 and further consequential pension based on such last pay drawn (due to be drawn) in the above scale. The applicant represented his grievance



immediately on 21.10.91 (Exhibit-F), 07.8.92 (Exhibit-G), 26.10.91 and 29.4.93 (Exhibit-H & I) ~~for~~ ^{for} for which the respondents replied on 26.8.93 (Exhibit-J) that the applicant was getting scale of pay of Rs.550-750 on local adhoc basis and though officiated in the Scale / Grade (CGS) of Rs.2000-3200 during the spells viz. 22.3.88 to 14.6.88, 09.12.88 to 30.01.89 and 22.5.89 to 19.6.89. The benefit of second officiation cannot be given as double adhoc promotion is not admissible.

4. The respondents have filed written statement and submitted that the applicant is raising his grievance for the period 18.7.90 to 28.02.91 in OA filed on 28.02.2001, the applicant retired on attaining the age of superannuation about 10 years back after paying all dues as full and final settlement and therefore the present application filed for cause of action of 1991 is clearly hit by principle of delay and latches and hence on this ground alone the OA deserves to be dismissed. The respondents submitted that the cause of action in the case is of 1991 and not the reply given by the respondents on 21.5.1999 to the applicant's representation which was made on 19.5.99 and therefore the present application not only suffers from delay and latches and lacks of merits and hence the OA deserves to be dismissed.




5. The respondents further submit^L that the applicant was working as commercial clerk in Grade Rs.1600-2660 (RPS) on adhoc basis from 16.9.87. He was regularly posed^t as goods supervisor in grade of Rs.1600-2660 (RSRP) from 28.9.90. Further the applicant retired from railway service on 28.02.1991. At the time of his retirement he was working in grade Rs.1600-2660 (RPS). He was regularly posted as Goods supervisor in grade of Rs.1600-2660 (RSRP) from 28.9.90. further, the applicant retired from railway service on 28.02.1991. At the time of his retirement he was working in grade Rs.1600-2660 (RPS) and last pay drawn was Rs.1900/- and paid the pension on average pay Rs.1880/-. The average pay has been taken on last ten months pay drawn by the applicant and not on presumptive basis. As per the records, the station superintendent, Shahabad has advised vide letter dated 01.9.1990^{L to L} the respondents that the applicant was officiating in higher grade from 22.5.1989. If the applicant was officiating from 18.7.1990 he would have also mentioned that the applicant was officiating in grade of Rs.2000-3200 (RPS). This means that the applicant was not officiating in Grade. 2000-3200 (RPS).

6. It was also submitted that the applicant was working in grade of Rs.1600-2660 on adhoc basis from 16.9.87 and further he was regularised in Grade Rs.1600-2660 from 28.9.1990. Earlier the applicant was



working in grade Rs.455-700 and put to officiate in grade Rs.550-750 from 04.4.86 vide letter dated 24.10.86 on local adhoc basis. It is correct that the applicant was paid the officiating allowance for the said period. The applicant was paid officiating pay for the following periods (i) 22.3.88 to 14.6.88, (ii) 09.12.88 to 30.01.89 and (iii) 22.5.89 to 19.6.89. The post of commercial clerks of grade Rs.550-750 was selection post and the applicant was selected regularly and posted as commercial clerk in the grade Rs.550-750, he was not eligible for officiating in grade Rs.700-900. It is general principle that no double officiating should be given. It does not mean that once a mistake has been committed the same should be repeated. The officiating is not a automatic course when there ~~is~~^{is} a vacancy of higher grade is available the person in lower grade managing the work is eligible for officiating. Shri Shankar Chinappa CGS/SDB was retired on superannuation from 30.11.89 i.e. the post of CGS SDB was occupied by a proper person though the CGS as available. The applicant has claimed officiating for the periods mentioned above. AT this stage, it is difficult to ascertain whether the applicant has shouldered higher responsibility or otherwise. The applicant was in service from 18.7.90 to 28.02.91 for the period he is claiming the officiating. While working and shouldering higher responsibility why he has not claimed during the period only. It is not possible to trace the record of

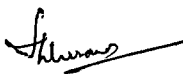


nearly 8 to 10 years old to ascertain whether the applicant he worked in officiating capacity.

7. We have heard learned counsel[^] for the parties and perused records.

8. Learned counsel for the applicant argued that the applicant was denied the due pay and allowances of the post in which he actually worked and also consequential pension was fixed on presumptive pay. As stated in impugned order dated 21.5.99 as competent authority has declined to issue post facto sanction for the period 18.7.90 to 28.02.91.

9. Learned counsel for the respondents has argued that applicant was working as commercial clerk in grade Rs.1600-2660 (RPS) on adhoc basis from 16.9.1985, he was regularly posted as Goods Supervisor in grade Rs.1600-2660 from 28.9.90. Further, the applicant retired from railway service on 28.02.1991. At the time of his retirement, he was working in Grade Rs.1600-2660 (RPS) and last pay drawn was Rs.1900/- and paid pension on average pay of Rs.1880/- and average pay has been taken on the last 10 month pay drawn by the applicant and not on presumptive basis. It has also been contended that applicant was posted on adhoc basis from 16.9.87 and regularly posted as Goods Supervisor in grade Rs.1600-2660 on 28.9.90 and he was working on that



post till his retirement and he was not eligible for officiating in the higher scale because he was officiating in the scale of Rs.1600-2660 on adhoc basis.

10. It transpires from record that applicant was working as commercial clerk in grade Rs.1600-2660 (RPS) on adhoc basis from 16.9.1987 and he was regularly posted as Goods Supervisor in grade of Rs.1600-2660 (RSRP) from 28.9.90 and he worked in that post till his retirement. It is an admitted case of the respondents in para 14 of the written statement that the applicant was paid officiating pay for the following periods:- (i) 22.3.88 to 14.6.88, (ii) 09.12.88 to 30.01.89 and (iii) 22.5.89 to 19.6.89. It has been admitted by the respondents that this officiating was passed on the basis of Station Superintendent letter dated 01.9.1990. Thus, the respondents have admitted that officiating pay and allowances was paid to the applicant. It has also been admitted that the applicant was in service from 18.7.90 to 28.02.91 for the period he is claiming officiating pay, but it has been contended on behalf of the respondents that while working shouldering higher responsibility why he has not claimed the officiating pay during the period itself. Learned counsel for the applicant has drawn our attention to the letter of Station Superintendent, Shahabad dated 02.12.1989 Exhibit C which reads as follows:-



"Shri M.P. Madyalkar, G.S. SDB grade 1600-2600 (RPS) put to officiate as CGS ACC siding Shahabad in grade Rs.2000-3200 (RPS) vice vacancy of Shri Shankar Chinappa CGS SDB retired on superannuation on 30.11.89 A/M.

Shri M.P. Madyalkar, G.S. SDB is holding the higher responsibility as CGS SD SG from 1.12.89 since Shri C.D. Taddi GS ACC Siding is absent from 10.10.89 to onwards.

Please accord sanction early."

Another letter of Station Superintendent Shahabad dated 28.12.90 (Exhibit-D) has also been referred to by learned counsel for the applicant which is a sort of reminder of the letter dated 02.12.89 in which the Station Superintendent, Shahabad has informed the DRM Solapur about the officiating of applicant in grade Rs.2000-3200 (RPS) vice vacancy of Shri Shankar Chinappa from 01.12.1989. The perusal of these two letters goes to show that the applicant was officiating from 01.12.1989 in the vacancy of Shri Shankar Chinappa who retired on 30.11.1989 for which sanction of competent authority was asked for by the Station Superintendent, but no sanction was given. Whereas the officiating of three spells of previous occasions was sanctioned on the basis of the Station Superintendent, Shahabad letter dated 01.9.1990.

10. Learned counsel for the respondents argued that two adhoc officiating are not permissible. It means to say that the applicant was officiating in grade Rs.1600-2660 (RPS) and he cannot be permitted to officiate in the higher scale of Rs.2000-3200 (RPS) on



ad hoc basis. But learned counsel has not shown any rule or authority on the subject. We would like to refer FR 49 on this point which reads as under:

"F.R. 49. The Central Government may appoint a Government servant already holding a post in a substantive or officiating capacity to officiate, as a temporary measure, in one or more of other independent posts at one time under the Government. In such cases, his pay is regulated as follows:-

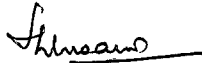
(i) where a Government servant is formally appointed to hold full charge of the duties of a higher post in the same office as his own and in the same cadre / line of promotion, in addition to his ordinary duties, he shall be allowed the pay admissible to him, if he is appointed to officiate in the higher post, unless the competent authority reduces his officiating pay under Rule 35; but no additional pay shall, however, be allowed for performing the duties of a lower post;"

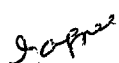
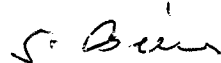
More over the applicant was sanctioned officiating pay and allowance for previous three spells as admitted by the respondents and also it is admitted that the applicant was regularly promoted in grade Rs.1600-2660 (RPS) with effect from 28.9.1990. Therefore, the respondents should not have declined the officiating pay and allowances for the period the applicant has actually and physically worked as provided under Rule 49. The simple distinction in this case is that no prior sanction was obtained by the applicant for officiating for the period from 18.7.1990 to 28.02.1991. But there appears, for no fault of the applicant, because the Station Superintendent, Shahabad has repeatedly referred the matter intimating through letters to the DRM Solapur



for according sanction for the period under question, but no sanction was accorded.

11. In view of the aforesaid discussion, we direct respondents to consider the representation for officiating pay and allowances in grade Rs.2000-3200 (RPS) from 18.7.90 to 28.02.91 keeping in view all the aspect of the matter that on all previous spells such sanction was accorded. Respondents are directed to pass a reasoned and speaking order after discussing the relevant rule on the subject within a period of four months from today. With this direction, the OA is disposed of. No costs.


(M. HUSAIN)
MEMBER (J)

 
(S. BISWAS)
MEMBER (A)

Gajan