

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
BANGALORE

DATED THIS THE EIGHTEENTH DAY OF JUNE, 1993

Present: Hon'ble Shri S. Gurusankaran, Member (A)
Hon'ble Shri A.N. Vujjaneradhya, Member (J)

REVIEW APPLICATION NO.85/1991
IN O.A. 383/1987

Shri B.N. Dasarathy
S/o. Shri B.C. Narasimha Iyengar
Retired Senior Clerk
Divisional Operating Superintendent's
Office, Southern Railway, Mysore Division
Residing At No.277, Laxmivilas Agrahar
Mysore - 570 024. Applicant
(DR. M.S. NAGARAJA, ADVOCATE)

Vs.

1. The Secretary
Railway Board
Rail Bhavan
New Delhi.
2. The General Manager
Southern Railway
Madras.
3. The Divisional Railway Manager
Southern Railway, Mysore Division
Mysore. Respondents

(SHRI A.N. VENUGOPAL, Advocate)

This application having come up for orders before this Tribunal today, Hon'ble Shri S. Gurusankaran Member (A), Made the following
This Review Application has been filed by the

applicant who was also applicant in O.A. 383/1987. The applicant has submitted that there are mistakes apparent on the face of the record in the order dated 23.9.1991 disposing of O.A. 383/1987 and has prayed for recalling the orders dated 23.9.1991 and reviewing and modifying portions of the order on merit correcting the mistakes apparent on the face of the record.

2. The review application was admitted and notice issued to the respondents, who were also respondents in O.A.383/1987. The respondents have not filed any reply to the review application.

3. We have heard Dr. M.S. Nagaraja for the review applicant and Shri A.N. Venugopal for the respondents. The first point

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submitted by the applicant is that the scale of Rs 80-160 was upgraded to Rs 160-250 with effect from 1.4.1956 and therefore, his pay should have been fixed in that scale from 1.4.1956 instead of 1.4.1957 as indicated in para 10 (i) of the order. There is no dispute regarding the date of introduction of the upgraded pay scale of Rs 160-250

namely, 1.4.1956 and the respondents also do not contest the same. Accordingly, the applicant's pay has to be fixed in the upgraded pay scale of Rs 160-250 with effect from 1.4.1956. In fact, since these are old pay scales and there were some doubts regarding the equivalent pay scales, the orders have indicated that the other fixations in accordance with the rules, consequent on the above fixation has to be done subject to verification.

4. Similarly, the revised pay scale from 1.7.1959 is shown correctly as Rs 210-380 with effect from 1.7.1959, but its equivalent pay scale with effect from 1.1.1973 is Rs 425-700 and not Rs 330-560 as indicated in para 10 (i) of the order. There is no dispute on this submission also and the respondents have also produced the Indian Railway Establishment Manual to show that the equivalent pay scale of Rs 210-380 is Rs 425-700 with effect from 1.1.1973. Hence, the applicant's pay has to be fixed from 1.1.1973 in Rs 425-700 instead of Rs 330-560.

5. The next point urged by Dr. Nagaraja is that if the applicant's pay is fixed in Rs 425-700 from 1.1.1973 his next promotion would be to the grade of Rs 550-750. He, therefore, submits that the directions given in para 10(ii) of the order should direct the respondents to grant the applicant fixation in scale Rs 550-750 in case he is due for the same by verifying the available records with particular reference to the other 17 persons referred to in Annexures-A5 & A6. We find

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that the review applicant has stated in para-4 of his application that his next promotion would be to the scale of Rs 550-750, that is the scale of Head Clerk with effect from 2.1.1973. We find that this is not correct and the scale of pay of Head Clerk is Rs 425-700 and his next promotion is to the scale of Rs 550-750, that is the scale of Chief Clerk/Office Superintendent (Grade-II). However, the submission of the applicant that since his pay as a Head Clerk has to be fixed in Rs 425-700 with effect from 1.1.1973, ^{is} which is equivalent to scale Rs 210-380 prior to 1.1.1973, his next promotion would be to the grade of Rs 550-750 cannot be disputed. To this extent his next promotion to the grade of Rs 550-750 with effect from 2.1.1973 has to be considered by the respondents by verifying the available records with particular reference to the other 17 persons referred to in Annexures A5 and A6 to see whether they had also been promoted to grade Rs 550-750 with effect from 2.1.1973 and if so grant notional promotion to the applicant with effect from 2.1.1973 or any subsequent date and fix his pay accordingly till 31.7.1975, that is the date of his superannuation. In case he is not eligible for promotion to the grade of Rs 550-750 before the date of his superannuation he should still be given stagnation increment of Rs 20/- with effect from 2.1.1975, since he would have been fixed at the maximum of the grade Rs 425-700 from 1.1.1973. The respondents have not disputed this submission of the applicant.

6. Finally, Dr. Nagaraja referred to para 10(iii) of the order, wherein the payment of arrears of pension has been restricted to one year prior to the date of the application and also the payment of backwages etc., have been denied..He vehemently argued as per the orders of the Supreme Court extracted in para-2 of the order, the Tribunal has been directed to dispose

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of the case afresh treating the order dated 13.5.1986 as the final order against which the applicant's claim had been preferred. He, therefore, submitted that since the administration has wrongly fixed his salary in different grade on the due dates, the applicant cannot be denied payment of backwages as well as arrears of pension. He stressed the fact that it is by now well settled that if a promotion due to the applicant has not been given and the claim is granted subsequently with retrospective effect the principle of 'no work no pay' could not be attracted and backwages have to be paid from the deemed date of promotion. We are of the view that since the scope of a review application is limited, the submission of the review applicant regarding payment of backwages and arrears of pension has to be rejected. While it is true that in compliance with the directions of the Supreme Court, O.A. 383/1987 has been heard afresh treating the order dated 13.5.1986 as a final order, we have specifically brought out in para-9 of our order that we agree with the contention of the respondents that the request for arrears of pay is ^{time} hopelessly barred and if the applicant had filed the application only for payment of arrears for the relevant period, it would have been rejected at the admission stage itself as hopelessly time barred. Hence, the request of the applicant for payment of backwages and arrears of pension has been specifically considered and rejected. In the case of Thungabhadra Industries Limited Vs. Government of Andhra Pradesh reported in 1964 (5) SCR 174 it has been pointed out by the Supreme Court that a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for a patent error. We find no apparent error in the judgement as far as the denial of the backwages and arrears of pension are concerned.

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7. In view of the above, we recall the order dated 23.9.1991 and modify the operative portion of the order in para-10 as follows:

- (i) The respondent shall refix the pay of the applicant in scale Rs 80-160 with effect from 1.4.1950 and other fixations in accordance with rules consequent to the above fixation, subject to verification like in scale Rs 160-250 with effect from 1.4.1956, in scale Rs 210-380 from 1.7.1959, in scale Rs 425-700 with effect from 1.1.1973 etc.
- (ii) The respondents shall also examine whether in view of the above fixation in scale Rs 80-160 with effect from 1.4.1950 and Rs 210-380 from 1.7.1959, the applicant would have become eligible for promotion to grade Rs 550-750 with effect from 2.1.1973 by verifying the available records with particular reference to the other 17 persons referred to in Annexures-A5 and A6 to see whether they had also been promoted to Rs 550-750 on that date or any subsequent date and if so grant the applicant fixation in scale Rs 550-750 with effect from that date. Even if the applicant is not eligible for grade Rs 550-750 till the date of his actual superannuation on 31.7.1975, he will still be eligible for one stagnation increment of Rs 20/- with effect from 2.1.1973 in scale Rs 425-700.
- (iii) The applicant shall be entitled to revised pension and other pensionary benefits as a result of the above fixation. But the payment of arrears



of pension will be restricted to one year prior to the date of filing of this application, viz., 12-5-1986. He shall not be eligible for payment of backwages etc., and also will not be entitled for any interest.

(iv) The above directions shall be carried out within 3 months from the date of receipt of this order.

8. The application is disposed of as above.

Sd-

Sd-

(A.N. VUJJANARADHYA)
MEMBER (J)

(S. GURUSANKARAN)
MEMBER (A)

TRUE COPY



SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

7/7/93

Recd. by Post. Enter in S. list
S. P. Registrar, Main Registrar. Add to file
3. Note. Thereafter, Ote a copy of this with a copy of
O. A. Order to Hon. V.C. & Hon. Members, as per R. 143 of Reg. 193.
K 20/6/94
S. P. Registrar
S. P. Registrar

From:-

The Registrar,
Supreme Court of India
New Delhi.

D.NO. 2824/94/SEC. IV A
SUPREME COURT OF INDIA
NEW DELHI.

DATED:- 6-6-94

7/6

To

The Registrar,
Central Administrative Tribunal -
Additional Bench,
Bangalore

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL/CRL.) NO. 6927/94
(Petition under Article 136(1) of the Constitution of India
from the judgment and Order dated 23-9-91 -
of the High Court of Judicature at CAT
Bangalore Bench in Appln. No. 383/87).

B. N. Dasarathy -

...PETITIONER(S)

-VERSUS-

The Secy. Railway
Board - An

...RESPONDENT(S)

Sir,

I am directed to inform you that the petition above
mentioned filed in the Supreme Court was dismissed
by the Court on 15-4-94. -

Yours faithfully,

Deant.

For Registrar