

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Registered

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 25 APR 1988

APPLICATION NOS 764 to 771 /87(F)

W.P. NO. _____

Applicant

Shri A.G. Chandrashekaran Nair
To & 7 Ors

Respondent

V/s The Chairman, Railway Board, New Delhi
& 2 Ors

1. Shri A.G. Chandrashekaran Nair
Assistant Station Master
Ugarkhurd
South Central Railway
Belgaum District

6. Shri A.K. Basu
Assistant Station Master
Sangli
South Central Railway
Sangli District (Maharashtra)

2. Shri G. Srinivasa Rao
Assistant Station Master
Dharwad
South Central Railway
Dharwad District

7. Shri C.K. Karunakaran
Assistant Station Master
Kared Railway Station
South Central Railway
Post : Ogalewad
District : Satara (Maharashtra)

3. Shri B.N. Sharma
Assistant Station Master
South Central Railway
R/o Swamihalli
Hospect Taluk
Bellary District

8. Shri K.P. Punnose
Assistant Station Master
Southern Railway
Ernaculam Junction
Cochin, Kerala

4. Shri E.C. Cherian
Assistant Station Master
South Central Railway
R/o Cansaulim
Goa

9. Shri S.R. Bannurmeth
Advocate
No. 57, 'Laxmi Nivas'
5th Cross, Vasanthnagar
Bangalore - 560 052

5. Shri M.G. David
Station Master
Alandi

10. The Chairman
Railway Board
Rail Bhavan
New Delhi - 110 001

South Central Railway, Post : Chorachi Alandi, District : Pune
Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY~~/INTERIM ORDER
passed by this Tribunal in the above said application on 12-4-88.

11. The General Manager
South Central Railway
Rail Nilayam
Secunderabad (A.P.)

DEPUTY REGISTRAR
(JUDICIAL)

Encl : As above

12. The Divisional Superintendent
South Central Railway
Hubli
Dharwad District

13. Shri M. Sreerangaiah
Railway Advocate
3, S.P. Building
10th Cross, Cubbonpet
Bangalore - 560 002

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE TWELFTH DAY OF APRIL, 1987.

Present : Hon'ble Justice Sri K.S.Puttaswamy

Vice-Chairman

Hon'ble Sri P.Srinivasan

Member (A)

A.NOs. 764 to 771/87(F)

1. A.C.Chandrashekaran Nair,
Asst.Station Master, SC Rly.,
Ugarkhurd, Dist.Belgaum.
2. G.Srinivasa Rao,
Asst.Station Master,
SC Rly., Dharwad.
3. B.N.Sharma,
Asst.Station Master,
R/o Swamihalli,
Hospet Taluk,
Bellary District.
4. E.C.Churian,
Asst.Station Master,
SC Rly., R/o Cansaulim,
Goa.
5. M.G.David,
Station Master,
SC Rly., Alandi Rly.Station,
Post: Chorachi Alandi,
District-Pune.
6. A.P.Basu
Asst.Station Master,
SC Rly., Sangli.
7. C.K.karunakeran,
Asst.Station Master,
SC Rly., Karad Rly Station,
Post : Ogalewad,
Dist.Satara.
8. K.P.Punnose,
Asst.Station Master,
South Railway, Ernakulam
Junction, Cochin. ...

Applicants

(Sri S.R.Bannurmath ... Advocate)

vs.

1. The Chairman,
Rly.Board, M/o Railways,
New Delhi.
2. The General Manager,
South Central Railway,
Secunderabad.

P. S. Srinivasan



3. The Divisional Superintendent,
SC Rly, Hubli. ...

Respondents

(Sri M.Sreerangaiah ... Advocate)

These applications have come up before the court today. Hon'ble Sri P.Srinivasan, Member (A) made the following :

O R D E R

In these applications filed under Section 19 of the Administrative Tribunals Act, 1985 the applicants are aggrieved with the order dated 23.6.1987 passed in their cases by the Divisional Railway Manager, South Central Railway, Hubli turning down their request to cancel the refixation of their pay made by order dated 22.7.1974 (Annexure-B) and to restore the pay fixation made in their cases earlier.

2. The subject matter of these applications came up once before the High Court of Andhra Pradesh as Writ Petition No.5592 of 1974 and after that writ petition was disposed of, it came up again before this Tribunal as Application No.162 of 1986 and connected cases. The pity is that even after the said applications were disposed of by this Tribunal, the dispute between the parties has still been kept alive and has come before us yet once more for determination in these applications.

3. All the applicants before us were employed in the Dandakaranya Balangir kirbura Project (DBK Project) upto 1967 as Work Maistries. The work of the DBK project was abandoned and all the applicants were rendered surplus. All of them were absorbed in the South Central Railway as Assistant Station Masters in corresponding pay scales. Their initial pay on their absorption in the South Central Railway was fixed with effect from 1.4.1967 in the scale of Rs.150-240 by giving increments

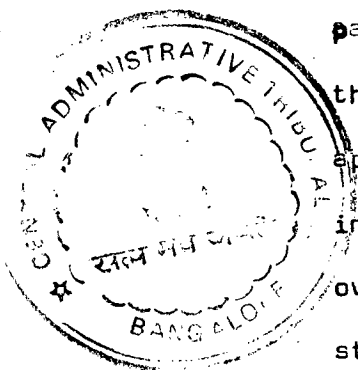


equal to the number of years of service rendered by them in the DBK project. By way of illustration, the initial pay of the applicant in Application No.770 of 1987-C.K.Karunakaran- was fixed at Rs.175/- with effect from 1.4.1967. The minimum of the pay scale was Rs.150/-. He had worked for 5 years in the DBK project and the annual increment in the scale was Rs.5/-. Thus, his initial pay was fixed at Rs.150-00 plus 5 increments of Rs.5/-, that is, Rs.25/- yielding a total of Rs.175/-. Thereafter he was allowed increments ^{at} of periodical intervals according to the scale of pay. However, on 22.7.1974 the Divisional Personnel Officer, South Central Railway, Hubli passed an order altering the pay fixation in respect of all the applicants. Again by way of illustration, the pay of Sri C.K.Karunakaran as on 1.4.1967 was refixed at Rs.150-00 plus personal pay of Rs.25/- to be absorbed in subsequent increments. The result of this action was that even though the total of initial pay plus personal pay on 1.4.1967 would still remain at Rs.175/- as before he would not get any increments for the next five years because the personal pay of Rs.25/- was to be absorbed in future increments. Some of the applicants went before the High Court of Andhra Pradesh challenging this refixation in Writ Petition No.5592 of 1974. Disposing of the Writ Petition, that High Court ^{by} ~~observed the High Court~~ referred to a letter dated 20.8.1973 of the Railway Board, the effect of which was that ex-Works Maistries should be allowed to progress further in the time scale of posts in which they had been absorbed and weightage for service rendered as Works Maistries should be treated as advance increments and not as personal pay to be absorbed in future increments. The High Court directed the respondents to consider the cases of pay fixation of the applicants ^{having} ~~in~~ view the said letter. Thereafter, the respondent Railway passed

P. S. - 6



an order on 14.12.1978 sticking to their earlier stand and holding that the applicants were not entitled to progress in the time scale or to have the personal pay component in the initial pay converted into advance increments. Some of the applicants and others filed fresh writ petitions before the High Court of Karnataka challenging this action of the respondents. These writ petition came up before this Tribunal as Applications Nos. 162 of 1986 and connected cases. While disposing of those applications, this Tribunal referred to the contention of the applicants that ex-Works Maistries absorbed in the Central Railway had their pay fixed by giving credit to the service rendered in DEK project, but that benefit was denied to the applicants. This Tribunal observed in its order dated 29.9.1986 that "on careful consideration of the matter we are prima facie satisfied that no valid ground has been spelt out by the respondents for fixing the pay scales differently". Having observed thus, this Tribunal directed the respondents in those cases to examine the grievance of the applicants therein in the light of the said observation and in accordance with law. The fresh consideration of the grievance of the applicants led to the same old result. The respondent-Railway still stuck to their old decision. In his letter dated 23.6.1987 which is impugned in these applications, the Divisional Railway Manager reiterated that the pay fixation made by letter dated 22.7.1974 was in conformity with the instructions of the Railway Board on the subject and that the applicants were not similarly circumstanced with those absorbed in the Central Railway but however the question of recovery of overpayments made in the past was still under consideration. As stated earlier, it is this letter which is challenged in these applications.



4. Sri S.R. Bannurmath, learned counsel for the applicants submits that the respondent-Railway was not justified in

P. J. - k

changing the basis of pay fixation made earlier by their subsequent letter dated 22.7.1974 and in insisting that that was still right by their letter dated 23.6.1987. He referred to Government of India's letter dated 28.12.1965 on the subject of absorption of surplus staff of DBK project(Annexure A), according to which surplus staff of the DBK project, whose services are continued, should have their pay fixed under the normal Rules while those not continued in their project service but absorbed elsewhere in the railway should have their initial pay fixed at a suitable stage based on the ^{experience} ~~experience~~ gained by them on the DBK project. In either case the person who is continued in service or who is absorbed in another Division of the Railway was entitled to protection of the pay he was earlier drawing in the DBK project, which is the same thing as saying that he should be given the same number of increments on absorption as the number of years of service put in in the DBK project. In view of this, the respondents had initially rightly fixed the pay, for example, of Sri Karunakaran at Rs.175/- with effect from 1.4.1967 adding 5 increments to the minimum of the basic pay. Converting the said 5 increments into personal pay by the subsequent letter dated 22.7.1974 was totally illegal and unjustified. The High Court in its order had referred to the letter of 1973 which provided for grant of advance increments to persons working in projects absorbed in Railways and ^{by this} ~~the~~ Tribunal had in its order expressed a clear opinion that the fixation of pay in the case of the persons like the applicants on a different basis from those who were absorbed in the Central Railway was not justified. Even so, the respondents had stood by their illegal action and this should be struck down by this Tribunal.

5. Sri M.Sreerangaiah, learned counsel appearing for the respondents strongly opposed the contentions of Sri Bannurmah. He

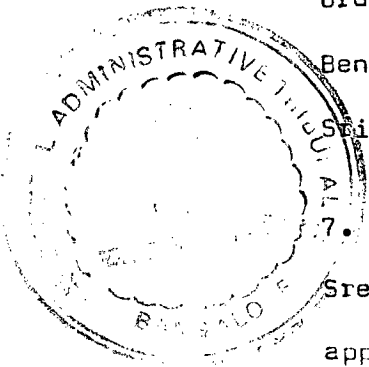
P. J. - 12



raised a preliminary objection that applicants 2,3 and 5 were not the applicants in the earlier applications which were decided by this Tribunal. He also pointed out that applicant in Application No.771 of 1987 is not currently working within the territorial jurisdiction of this Bench of the Tribunal and his application cannot be entertained by us.

6. We may first dispose of these preliminary objections. That all the applicants before us were not applicants in the earlier application is neither here nor there. All the present applicants have a grievance against an order passed in 1987 and therefore they have come up before us. These are fresh applications. It is not necessary that merely because these applications are a sequel to earlier applications, that the applicants herein should be the same as those in the said earlier applications. These being fresh applications and all the applicants before us sharing a common grievance arising out of the same order, we see nothing illegal in these applicants filing fresh applications before us. So far as Applicant in Application No.771 of 1987 is concerned, the original order fixing his pay which is really the subject matter of challenge was passed on 22.7.1974 when the said applicant was working under the Divisional Personal Officer, Hubli. His grievance stems from that order which was passed within the territorial jurisdiction of this Bench of the Tribunal. We, therefore, reject this contention of Sri Sreerangaiah.

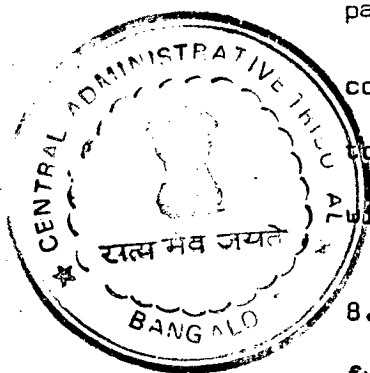
7. Turning to the merits of these applications Sri Sreerangaiah submits that there cannot be a comparison between the applicants and those persons who were absorbed in the Central Railway. Persons junior to those who were absorbed in the Central Railway were continued in the project and the latter continued to draw increments of pay in the project. It was, therefore,



decided that those absorbed in the Central Railways who were seniors should not suffer in the matter of pay vis-a-vis their juniors who continued in the project. It was because of this that their earlier pay was protected and they were allowed to draw increments. So far as the applicants were concerned, they were retrenched on being rendered surplus on the principle of "last come first go" and so there was no question of any juniors to them continuing to draw pay in the Project at higher rates than the pay the applicants would draw if they had been fixed at the minimum of the pay scale. Therefore, the protection which was given to the persons absorbed in the Central Railway would not be available to the applicants. Sri Sreerangaiah also submitted that the re-fixation of the pay of the applicants by treating the increments in pay allowed earlier as personal pay was in accordance with the instructions of the Railway Board dated 11.6.1953 and 29.4.1968. He also clarified in the course of the arguments that a decision had since been taken that no recoveries would be made from the applicants for over payments in the past. He also expressed an apprehension that if the original pay fixed in the case of the applicants was to be restored, an anomalous position would be created in that persons senior to the applicants may draw less pay than the applicants. Sri Sreerangaiah also produced, in this connection, a letter dated 31.3.1987 issued by the Railway Board to the General Manager, South Central Railway, Secunderabad along with the report of the Director, Establishment, Railway Board.

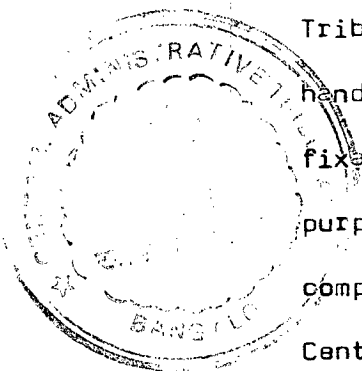
8.

We have considered the rival contentions very carefully. The only question for determination before us is whether the fixation of pay made in the case of the applicants in the first instance, was right. On this would depend the answer to the question whether the change in the basis of fixation made in



P. J. - K

the year 22.7.1974 was right. We are not concerned as to how a decision on these questions would affect persons other than the applicants because that is not within the purview of the applications before us. For deciding whether the initial fixation of all the applicants in the first instance was right, the letter of the Government of India dated 28.12.1965 (Annexure-A to the applications) is relevant. That letter deals specifically with absorption of surplus staff of DBK project in other divisions like the applicants before us. The letter says that where the services of such persons are continued in the projects, their pay should be fixed under the normal operation of the Rules. In respect of persons whose services are not continued in the projects, who ^{OS} are absorbed in other divisions of the Railway, their initial pay should be fixed at a suitable stage based on the experience gained by them in the DBK Railway Project. There cannot be any doubt that this letter squarely applies to the cases of the applicants. As we have already mentioned, the pay of the applicants on absorption in the South Central Railway was initially fixed by taking into account the services rendered by them in the DBK project. This was in consonance with the aforementioned letter of the Government of India and cannot be considered to be ^{by a} mistake. It is not necessary to allude to the observations made by the High Court or by this Tribunal in their earlier orders for this purpose. On the other hand, there is no apparent justification to change the basis of pay fixation as was done in the letter dated 22.7.1974. For the purpose of these applications, it is not even necessary to make a comparison with ex-works Maistries of DBK project absorbed in the Central Railway. Under the instructions specifically issued on the subject by the Railways, the Railways were authorised to take into account service rendered in the project for the fixation of initial pay and that was done in the first instance in respect of

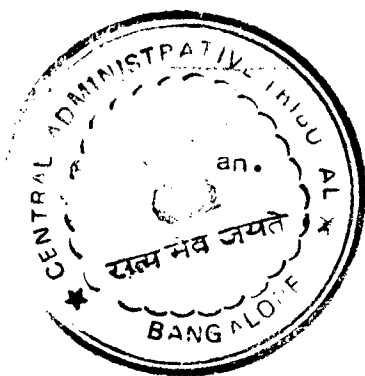


P. L. - 62

all the applicants. There is no question of this being a mistake to be rectified later to their disadvantage. We are satisfied that the letter of 22.7.1974 which adversely affected the applicants with retrospective effect deserves to be quashed ⁰¹ ~~ad~~. Along with the said letter the letter dated 23.6.1987 which is impugned in these applications also deserves to be quashed. We, therefore, quash both these letters. The earlier fixation of pay with effect from 1.4.1967 in respect of all the applicants will stand.

Arrears of pay arising out of this direction, if any, should be calculated and paid to the applicants as early as possible.

9. In the result, all the applications are allowed.
Parties to bear their own costs.



Sd/-

VICE-CHAIRMAN

Sd/-

MEMBER (A)

TRUE COPY

[Signature]
DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE