

Dated : 14 JUN 1988

/ 87(F)

Respondent(s)

The General Manager, Southern Railway, Madras
& 2 Ors

To

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

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(s) on 10-6-88

Encl : As above

DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THIS THE TENTH DAY OF JUNE, 1988

Present: Hon'ble Shri P. Srinivasan

.. Member (A)

APPLICATION NO.1060/1987

C. Chennappa
Chief Typist (Adhoc)
Senior Divisional Engineers Office
Southern Railway
Bangalore - 560 023.
(Shri M. Narayanaswamy, Advocate)

.. Applicant

Vs.

1. The General Manager
Southern Railway
Madras.
2. The Divisional Personnel Officer
Southern Railway
Bangalore - 23.
3. The Divisional Railway Manager
Bangalore Division
Southern Railway
Bangalore.

.. Respondents

(Shri M. Sreerangaiah, Advocate)

This application having come up for
hearing today before the Tribunal, Hon'ble Shri P.
Srinivasan, Member (A), made the following:

ORDER

The applicant before me was working as
a Chief Typist in the Office of the Senior Divisional
Engineer, Southern Railway, Bangalore, when the
application was filed and has since taken voluntary
retirement with effect from 11.12.1987. His grievance
is that a certain D.S. Srinivasan has been drawing
higher pay than himself in the grades of Typist,
Senior Typist and Head Typist since 1963, notwithstanding



the fact that Srinivasan has all along been junior to the applicant.

2. Shri M. Narayanaswamy, learned counsel for the applicant made the following submissions: Sreenivasan was appointed as Typist in the Southern Railway with effect from 25.9.1953. The applicant was appointed as a Typist in the same Railway from 6.4.1957. However, srinivasan asked for a change of cadre to that of Office Clerk and he was absorbed as Office Clerk in 1955, the pay scale of Office Clerk and Typist being the same. In 1963 Srinivasan requested that he be reappointed as Typist. Accordingly he was so reappointed and joined duty as Typist on 19.3.1963. As a condition of his reappointment as Typist, Srinivasan took the bottom seniority in that cadre as on 19.3.1963, but the pay he was drawing as Office Clerk was protected. It may here be mentioned that when Srinivasan was appointed as Office Clerk in 1955, the pay earlier being drawn by him as Typist was also protected. In this way in 1963 when Srinivasan joined back as Typist his pay was fixed at a higher figure than that of the applicant, because Srinivasan had worked in that pay scale for a longer period. Thereafter since Srinivasan was junior to the applicant, the applicant was promoted to the higher post of Senior Typist on 7.2.1973 and to that of Head Typist on 10.6.1981 while Srinivasan was promoted on 3.2.1975 as Senior Typist and on 22.12.1982 as Head Typist. In other words in every successive cadre Srinivasan



P. S. S. S.

continued to be junior to the applicant. However, since Srinivasan was drawing a higher pay in the initial cadre of Typist he was given higher pay in ^{the} ~~that~~ posts of Senior Typist and Head Typist than what the applicant was drawing at the relevant time.

3. Shri M. Narayanaswamy urged that in the first place Srinivasan could not have been retransferred as Typist from the post of Office Clerk because the Rules of Recruitment of Typist did not permit such transfer. If at all such a transfer had to be made, Srinivasan should not have been given protection of the pay he was drawing as Office Clerk. If the respondents, however, chose to give Srinivasan protection of such pay, the pay of the applicant being senior, should have been stepped up to equality with that of Srinivasan from 1963 itself, i.e., the date from which Srinivasan was reabsorbed as Typist. Under service law no junior could get a higher pay than a senior except in certain circumstances like the junior being given advance increments on passing an examination or for having acquired a higher qualification. Srinivasan's case does not come under any of those circumstances. That being so and the applicant being senior, his pay in all the grades from Typist onwards from the year 1963 should be raised to equal the pay of Srinivasan at all times.



4. The respondents have filed their reply to the application. Shri M. Srirangaiah,

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learned counsel, appearing for the respondents submitted that the cause of action in this case really arose in 1963 when Srinivasan was transferred back as Typist and his pay was fixed at a higher figure than that of the applicant. The applicant is asking for higher pay from 1963. The cause of action having thus arisen well before 1.11.1982, this Tribunal has no jurisdiction to adjudicate the matter in view of several decisions rendered by different Benches of this Tribunal. Even otherwise the applicant made a representation for fixation of his pay on 8.9.1985. Assuming that the cause of action was alive till that date he should have filed the application on or before 8.3.1987, the application was filed only on 14.12.1987 i.e., more than 9 months late. It is badly out of time and it should be dismissed for this reason.

5. At this point, Shri Narayanaswamy urged that the applicant's cause of action was a continuing one and in any case he came to know that Srinivasan was drawing a higher pay only in September, 1985. With reference to that date, the application is delayed by about 9 months. Since this Tribunal is a new Institution the applicant was not aware of the time limit for filing the application. He prayed therefore, that the delay, if any, be condoned.

6. After considering the contentions of both side, I am of the view that the cause of



action in this case did indeed arise long before 1.11.1982 and that this Tribunal has no jurisdiction to deal with the matter, as has been held by several Benches of this Tribunal. This application deserves to be dismissed for that reason itself. Moreover I find that even on merit, the application has no case, ^has I will explain presently.

7. I find nothing wrong in the pay of Srinivasan being protected on his appointment as Office Clerk and again on his reappointment as Typist. When he was reappointed as Typist at his request it is common ground that he was given bottom seniority in that grade as on that date, i.e., 19.3.1963. This is all that is required when a person is transferred at his own request. If there was anything wrong in Sreenivasan having been retransferred as a Typist in 1963 it should have been challenged at that time and it is too late now to do so. Similarly, even though I find nothing wrong in the protection of pay given to him on such appointment, it is at any rate too late now to up set it. Since therefore, Srinivasan was getting a higher pay all along and since it was not due to the fixation of his pay under FR 22 C, the applicant cannot as of right claim to have his pay fixed at the same figure as Srinivasan was drawing. All that the equality rule of Article 14 & 16 demands is that the pay scale for the same post should be the same. If a person is drawing higher pay because he had

P. Srinivasan



been working in that scale longer, the principle of equality is in no way offended. Srinivasan drew a higher pay only because he was in the same pay scale for a longer period. In view of all ^{this} ~~these~~ even on merits this application deserves to be dismissed.

8. Shri Narayanaswamy has referred to a Circular of the Railway Board dealing with fixation of pay of seniors and juniors as a result of the introduction of revised pay scales recommended by the 3rd Pay Commission. That circular has no application to the present case.

9. In the result the application is dismissed. Parties to bear their own costs.



sd/-

MEMBER (A)

10/6/80

mr.

TRUE COPY

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

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