

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

* * * * *

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 7 NOV 1988

APPLICATION NO.

713

/ 88(F)

W.P. NO.

Applicant(s)

Shri N. Venkatesh Reddy

To

1. Shri N. Venkatesh Reddy
Instructor
System Technical School
Southern Railway
Bangalore - 560 023

2. Shri M. Madhusudan
Advocate
914, 7th Cross, 7th Main
Ashok Nagar
Bangalore - 560 050

3. The General Manager
Southern Railway
Park Town
Madras - 600 003

4. The Chief Personnel Officer
Headquarters Office
Southern Railway
Park Town
Madras - 600 003

Respondent(s)

v/s The General Manager, Southern Railway,
Madras & 3 Obs

5. The Divisional Personnel Officer
Southern Railway
Bangalore Division
Bangalore - 560 023

6. The Principal
System Technical School
Southern Railway
Bangalore - 560 023

7. 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 31-10-88.

*Arreved
K. N. Reddy
9-11-88*

Encl : As above

o/c

A. R. Reddy
SECTION OFFICER
SOUTHERN RAILWAY
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 31st DAY OF OCTOBER, 1988

Present : Hon'ble Sri P.Srinivasan

Member (A)

APPLICATION No.713/88

N.Venkatesh Reddy,
working as Instructor,
System Technical School,
Southern Railway,
Bangalore - 23.

Applicant

(Sri M.Madhusudan Advocate)

vs.

1. The General Manager,
Southern Railway,
Park Town, Madras.
2. The Chief Personnel Officer,
Headquarters Office,
Personnel Branch,
Madras - 3.
3. The Divisional Personnel
Officer, Divisional Office,
Personnel Branch,
Bangalore - 23.
4. The Principal,
System Technical School,
Southern Railway,
Bangalore - 23.

Respondents

(Sri M.Sreerangaiah Advocate)

This application having come up before the Tribunal
today, Hon'ble Member (A) made the following :

O R D E R

The applicant, who was working as a Train Examiner in
the Southern Railway, Bangalore Division, in the scale of
Rs.425-700, was appointed as an Instructor in the Institute of
Rolling Stock Technology (IRST), Bangalore, with effect from
18.8.1983. According to the instructions in force, employees
in other departments of the Railways can be taken as Instructors



in training institutes run by the Railways. Each post of Instructor in the training institutes is assigned a specific pay scale. The instructions provide that only persons from the field who are holding posts in the same scale of pay or two grades below can be drafted as Instructors and on such deputation, they would be eligible to special pay. The post of Instructor in the IRST to which the applicant was appointed from 18.8.1983 carried a pay scale of 425-700, namely the same scale in which the applicant was working at that time. He was sanctioned a special pay of Rs.75/- on his joining IRST as Instructor. He actually drew the special pay from 18.8.1983 to 17.8.1984. He was not paid special pay thereafter, pending sanction of extension of the tenure of the post which he was holding. By memorandum dated 9.11.1987 (Annexure B to the application) sanction was accorded for payment of special pay at the rate of 12½ % of pay subject to a maximum of Rs.75/- per month to the applicant for the period 18.8.1984 to 31.1.1986 upto which the applicant worked in that post. But before this sanction could be acted upon, the Chief Personnel Officer, Southern Railway, at Madras, issued a letter in December 1987 (Annexure A to the application) clarifying that

1) For the period 20.9.1983 to 17.12.1983 (wrongly mentioned as 7.12.1983) for which the applicant had already drawn special pay, he was not entitled to the same because he was undergoing training :

2) For the period 1.1.1984 to 31.1.1986, the applicant was not entitled to special pay because by an order dated 29.8.1985, the applicant had been promoted retrospectively with effect from 1.1.1984 to the scale of 550-750: only persons who are drawing the same scale of pay (as the scale of pay fixed for the post to which they are deputed), or two grades below in their parent cadre would be eligible for special

P.J. - 40

day in pay in accordance with the Board's instructions dated 18.10.1958; since the applicant's scale of pay had been raised to 550-750 from 1.1.1984 i.e., two scales above the scale of pay attached to the post of Instructor, he would not be eligible to special pay from 1.1.1984. Thereafter the impugned memorandum dated 30.12.1987 (Annexure F) was issued by the Divisional Personnel Officer, Southern Railway, Bangalore, directing recovery of special pay given to the applicant from 20.9.1983 to 17.12.1983 (wrongly stated as 7.12.1983) and from 1.1.1984 to 31.1.1986. Since special pay was earlier disbursed to the applicant only upto 17.8.1984, this order meant recovery of amount paid to him for the period 20.9.1983 to 17.12.1983 and from 1.1.1984 to 17.8.1984: that is objected to in this application as well as withdrawal of special pay for the period 18.8.1984 to 31.1.1986.

2. Sri Madhusudan, learned counsel for the applicant, urges that when the applicant was appointed as Instructor on 18.8.1983, the scale of pay being drawn by him as Train Examiner (Rs.425-700), was the same as the scale of pay of the post of Instructor and therefore, he was rightly allowed special pay. There was no error in the grant of special pay while he was working as Instructor. Merely because by order dated 29.8.1985, he was promoted to the higher grade of 550-750 retrospectively from 1.1.1984 under the restructuring scheme, he cannot be denied special pay for the period after 1.1.1984. He should have been allowed special pay during the training period. Some other persons working in the Railways had been allowed special pay during training period and again in the case of others, on the upward refixation of their pay under the restructuring scheme special pay which was being drawn by them earlier as Instructor was not withdrawn. Thus discrimination had been practised against the applicant.



3. Sri Srirangaiah, learned counsel for the respondents, stoutly resisted the contentions of Sri Madhusudan. When the rule was that only persons drawing the same scale of pay ~~as~~ ^M that assigned to the post of Instructor can be given special pay, the applicant, whose scale of pay was fixed at two grades higher from 1.1.1984, albeit as a result of a promotion given retrospectively by an order of a later date, could not get special pay as Instructor unless the scale of pay of ~~the~~ ^H Instructor ~~unless the scale of pay of the Instructor was also up-~~ ^M graded to the same extent from that date. Thus the moment the applicant was put on the higher grade of 550-750 he became dis-entitled to special pay as Instructor. During training, a per-son does not perform the duties of an Instructor and so he is not eligible to special pay. Thus, the respondents had rightly denied special pay to the applicant during the period of training i.e., 20.9.1983 to 17.12.1983 and again from 1.1.1984 to 31.1.1986 and as a result, recoveries of payments made to him for that period had been ordered. The applicant had asserted in his rejoinder that some other persons who had been retrospectively promoted to a higher pay scale on restructuring, had been allowed to retain special pay earlier drawn by them as Instructors, but this statement was not supported by any affidavit and since they are said to be cases relating to other Divisions, full details are not available with the respondents. Sri Srirangaiah submitted that instructions relied upon by him in this case apply equally to employees in all other Divisions and if there was a departure from these instructions in any other Division, it could be a mistake or something which had not come to notice of the Adminis-tration. Merely because a wrong thing had been done in other cases, it cannot be done here also.

P. S. - 8

4. I have considered the rival contentions very carefully.

I have gone through the instructions of the Board dated 18.10.1958.

The import of these instructions ~~are~~ that only persons working in other departments on the same scale as that assigned to the post of Instructor should be appointed as Instructors and on such appointment, they would be eligible for special pay. In this case, on 18.8.83, when the applicant was appointed as Instructor, he was drawing pay in the same scale as that of the post of Instructor to which he was so appointed. In ~~the~~ ^M these circumstances, he was entitled to special pay. Upto 29.8.1985, the applicant was on the pay scale of 425-700 in his parent cadre. However, by order dated 29.8.1985, under the restructuring scheme introduced in the Railways, he was given two jumps to reach the level of 550-750 with retrospective effect from 1.1.1984. The question for determination is whether such retrospective promotion can operate to deprive him of the special pay to which he was eligible before his retrospective promotion. It could be argued that at least upto 28.8.1985, i.e., a day prior to the date of the order giving him retrospective promotion, the applicant was rightly sanctioned special pay and there was no error. The moment the order dated 29.8.1985 was passed giving him retrospective promotion, can it be said that grant of special pay to him from 1.1.1984 became an error? The contention~~s~~ of the respondents is that retrospective promotion carried with it the right to draw pay in the revised scale from 1.1.1984. If the applicant had not actually drawn arrears of pay on this basis from 1.1.1984 till now, he is entitled to do so even now. Can he at the same time claim the right to the higher pay scale from 1.1.1984 and ask for the benefits attached to a lower pay scale by way of special pay? Can ^M he thus blow hot and cold? It does seem unreasonable on the part of the applicant to claim that while he was rightly promoted to the higher pay scale from 1.1.1984, he should also be given special pay from that date as



if he was still in the lower grade of 425-700. I am, therefore, satisfied that on a proper interpretation of the ~~rule~~ relevant instructions that the applicant is not entitled to special pay from 1.1.1984. Sri Madhusudan submitted that there are some cases in other divisions where, in similar cases, special pay had not been withdrawn and no recoveries of past payments had been effected. But neither he nor counsel for respondents have been able to furnish the facts of those cases to see if they were similar to those prevailing here. I would, however agree with Sri Srirangaiah that once the pay scale of the incumbent in his parent cadre is raised above that of the post of Instructor held by him and he is allowed to draw pay in that scale, he is not entitled to draw special pay thereafter according to the prevailing instructions and on that basis the action of the respondents in this case has to be upheld.

5. As for the training period from 20.9.1983 to 17.12.1983, the training was obviously meant to enable the applicant to carry out his duties as Instructor ~~teaching assignment~~, and was therefore, part of his appointment as Instructor : he was sent for training from 20.9.1983 after he was appointed as Instructor from 18.8.1983. I see no reason why special pay should be denied to him for the period of training.

6. In the result, the following directions are issued :-

1) The respondents are directed not to recover special pay given to the applicant from 20.9.83 to 17.12.1983 when he was on training.

2) The applicant's claim that he is entitled to special pay from 1.1.1984 to 31.1.1986 is rejected: it is up to the respondents to consider whether they should insist on recovery of amounts already paid to the applicant before the order was passed in 1985 giving him retrospective promotion.

7. Before parting with this application, I must refer to the contention of Sri Madhusudan that the Railway being one organisation a benefit (special pay in this case) given to employees in one Division could not be denied to similar employees (like the applicant in this case) in an other Division. The respondents will examine the position in this regard and ensure uniformity of treatment as between employees similarly circumstanced in every division as regards grant or denial of special pay.

8. The application is disposed of on the above terms. But in the circumstances, we direct the parties to bear their own costs.



Sd/-
MEMBER (A)

TRUE COPY

AP [Signature] 7/11/88
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 22 DEC 1988

REVIEW APPLICATION NO. 131
IN APPLICATION NO. 713/88(F) 88
W.P. NO. /

Applicant(s)

Shri N. Venkatesh Reddy

To

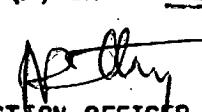
v/s

Respondent(s)
The General Manager, Southern Railway,
Madras & 3 Ors

1. Shri N. Venkatesh Reddy
Instructor
System Technical School
Southern Railway
Bangalore - 560 023
2. Shri M. Madhusudan
Advocate
914, 7th Cross, 7th Main
Ashok Nagar
Bangalore - 560 050

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

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


SECTION OFFICER
~~RECORDED~~
(JUDICIAL)

Encl : As above

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 12TH DAY OF DECEMBER, 1988

Present:Hon'ble Shri P. Srinivasa, Member (A)

REVIEW APPLICATION NO. 131/1988

Shri No. Venkatesh Reddy,
Instructor,
System Technical School,
Southern Railway,
Bangalore-23.

.... Applicant.

(Shri M. Madhusudan, Advocate)

v.

1. The General Manager,
Southern Railways,
Park Town. Madras.
2. The Chief Personnel Officer,
Head Quarters Office,
Personnel Branch,
Madras.
3. The Divl. Personnel Officer,
Divl. Office, Personnel Branch,
Bangalore.
4. The Principal,
System Technical School,
Southern Railway,
Bangalore-23.

.... Respondents.

This application having come up for hearing to-day,

Shri P. Srinivasan, Hon'ble Member (A) made the following:

ORDER

By this application, the applicant seeks a review

of order dated 31.10.1988 passed by me in application No.



P. Srinivasan

2. The applicant, who was working as a Train Examiner in the scale of Rs.425-700 was appointed as Instructor in the Institute of Rolling Stock Technology (IRST) at Bangalore from 19.8.1983. The said post of Instructor also carried the same scale of pay i.e. Rs.425-700. The rules in force provided for special pay being granted to officials engaged in instructional duties provided their pay scale in their parent department before their appointment as Instructor was the same as the scale of pay attached to the post of Instructor to which they were appointed or a lower scale. The applicant was promoted to the higher grade of Rs.550-750 retrospectively from 1.1.1984 by an order dated 29.8.1985. Since this pay scale was higher than the pay scale attached to the post of Instructor, the respondents sought to withdraw the special pay actually paid to him for the period from 1.1.1984 to 17.8.1984. He challenged this in the original application.

3. After hearing both sides, I took the view that under the rules, special pay was admissible only if the pay scale of the applicant in the parent department was either the same as the pay scale attached to the post of Instructor to which he was appointed or a lower scale. That being so, the applicant having been allowed to draw pay in the higher scale of Rs.550-750 albeit retrospectively from 1.1.1984 and that scale being higher than the scale of pay attached to the post of Instructor to which he was appointed, the respondents had rightly held that he was not entitled to special pay after 1.1.1984 and directed recovery of excess payments on this account actually made in the past.

4. Shri M. Madhusudan, learned Counsel, who appeared for the applicant, submitted that there was a mistake apparent

from the record in the original order passed by me. He contended in the first place that the post of Instructor to which the applicant was appointed was also upgraded to the scale of Rs.550-750 from 1.1.1984 in the order dated 29.8.1985 by which the applicant was given retrospective promotion to the grade of HTXR in the scale of Rs.550-750. By that order, he was posted as "HTXR/IRST to work at DME/ O/SBC." This meant that the post which he held from 1.1.1984 also stood upgraded. I may in this connection mention that in the original application, the respondents denied that the pay scale of the Instructor had been upgraded and that was why he was not allowed special pay after his retrospective promotion. In the face of such an assertion by the respondents, it cannot be assumed that the pay scale of Instructor in IRST held by the applicant was also upgraded from 1.1.1984, from a cryptic entry in the order of promotion dated 29.8.1985 issued to the applicant. Shri Madhusudan further contended that on his promotion retrospectively from 1.1.1984 the applicant's pay had been fixed at Rs.610 while he was drawing pay in the lower scale of Rs.425-700 at the stage of Rs.600 on that date, plus a special pay of Rs.75/- Thus he had gained only Rs.10/- in pay as a result of promotion, but had lost the special pay of Rs.75/- which he was getting earlier. Moreover, Shri Madhusudan urged, the pay scale of Rs.550-750 was not two scales above the scale of Rs.425-700 as stated in the original order. Thirdly on promotion to the higher scale in his parent department, the applicant would have been entitled to exercise an option to go back to his parent cadre; if he had gone back to his parent cadre in the scale of Rs.550-750 from 1.1.1984, he would, in addition to the pay of Rs.610/- get several allowances which were not admissible to an Instructor. He was also eligible for opting for



the pay scale of the post to which he was appointed or the pay in his parent cadre. That option also may have been exercised by him to his advantage. Since, he was deprived of all these options by retrospective promotion, denying him special pay only because he was put in a higher scale of pay gaining an addition of only Rs.10/- was unfair and discriminatory. Shri Madhusudan points out that in two other cases namely those of Shri Anthony Paul and Shri R.K. Rajagopal who were working in Palghat Division, they had not been denied special pay on their promotion to higher scale in their parent department. Denying the same to the applicant amounted to discrimination. This fact had been overlooked in the original order.

5. I have considered the matter carefully. I am not impressed by the argument that the original order should be reviewed only because the benefit of pay obtained by the applicant on promotion to the higher grade of Rs.550-750 was only Rs.10/- in basic pay and that being so, he should not have been denied special pay as well. The rule as understood by me earlier and now is that if the pay scale in the parent cadre is higher than that to the scale attached to the post of Instructor, no special pay is admissible while working as Instructor. This may in individual cases like that of the applicant result in loss of emoluments, but so long as the rule remains in force, this result cannot be helped. The applicant did not challenge the rule in the original application and the decision was rendered in the light of the said rule which cannot be challenged in review.

P. S. Iyer

It is also a pity that due to retrospective promotion, the applicant could not avail the option that would otherwise have been open to him, but that also cannot affect the operation of the rule. I have perused the orders promoting Shri Anthony Paul and Shri R.K. Rajagopal to which Shri Madhusudan has made reference. I find that in neither case was a promotion given in the parent department retrospectively as in this case. Secondly specific order was passed in Anthony Paul's case on 7.2.1983 that one post at Salem of HTXR was transferred to Podanur where Anthony Paul was working as Instructor. Thus a post of HTXE in the scale of Rs.550-750 was specifically transferred to the Training Institute and Shri Anthony Paul was fitted against that post. The result was that on his promotion, in his parent department to the scale of Rs.550-750, the post at the Training Institute was also upgraded by transferring a post in that grade from Salem to Podanur and he continued to be entitled to special pay. As such, it has no bearing on the present application. So far as Shri R.K. Rajagopal is concerned, the order dated 18.4.1988, in his case also, indicates that a higher grade post was transferred from Mangalore to Podanur and that he was posted as Instructor against that post in the grade of Rs.2375-3500. In other words, in his case also, simultaneous with his promotion to the higher grade, the post of Instructor was also upgraded by transferring a post in the higher grade to the Institute in which he was working. In his case also, the situation was not as if on his promotion to the higher grade, the post of Instructor ^{H Continued in the} was of a lower grade as in the case of applicant. The result in the case of the applicant is



indeed unfortunate, but it was inevitable in view of the rule on the subject. The applicant could have approached the authorities to upgrade the post of Instructor which he was holding to the higher pay scale of Rs.550-750 from 1.1.1984 and if they had acceded to his request, he would have been entitled to special pay from 1.1.1984. Shri Madhusudan submits that several representations were made in the past, but no reply had been received by the applicant. I hope the authorities will now consider the matter and give a decision in the light of what has been done in other cases.

6. As the discussion above clearly indicates, there has been no mistake apparent in the order justifying review of the original order. I have still discussed the matter at some length because the applicant was present in court and Shri Madhusudan pleaded that injustice had been done to the applicant.

7. In the result, the application for review is rejected at the stage of admission itself.

sdl-

MEMBER (A)

TRUE COPY

gr/Mrv.

R. D. 22/12/88
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE