

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
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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

Respondent(s)

V/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/~~REVIEW~~ ORDER
passed by this Tribunal in the above said application(s) on 12-12-88.

[Signature]
SECTION OFFICER
~~REVIEWER~~
(JUDICIAL)

9c

[Signature]
23-12-88
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 an order dated 31.10.1988 passed by me in application No.

713/1988.

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

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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 as Instructors 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. L. S. I. S. E.

It is also a pity that due to retrospective promotion, the applicant could not avail the options 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 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.

Sd/-

MEMBER (A)

TRUE COPY

gr/Mrv.

AP May 22/10/88
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE