

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR.

O.A.NO. 797/90
TR.A.NO.

199

DATE OF DECISION 22-8-1994

Shri G.Hanumaiah

Applicant(s)

Versus

G.M.C.Rly.Bombay V.T.

Respondent(s)

1. Whether it be referred to the Reporter or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A)

M.S.Deshpande
(M.S.DESHPANDE)
VICE CHAIRMAN

mbm:

(11)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

CAMP : NAGPUR

OA.NO. 797/90

Shri G.Hanumaiah

... Applicant

v/s.

General Manager, Central Railway
Bombay V.T.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri M.R.Kolhatkar

Appearance

Shri M.M.Sudame
Advocate
for the Applicant

Smt. Indira Bodade
Advocate
for the Respondents

JUDGEMENT

Dated: 22-4-1984

(PER: M.R.Kolhatkar, Member (A))

The applicant has been working in the Central Railway since 16.10.1964 having joined as Apprentice Bridge Inspector. He was successfully promoted as per rules as Bridge Inspector Gr.III, Bridge Inspector Gr.II, Bridge Inspector Gr.I and Assistant Engineer. It is his grievance that two of his juniors, namely, Shri Hasmukh Lal ^{been} Parikh and Samar Mitra have ~~been~~ drawing a higher pay of Rs.3050/- w.e.f. 1.9.1989 as against Rs.2975/- which is drawn by him from 1.10.1989. The statistical material as conveniently given at page 31 which is an Annexure to the application is reproduced below :

" Postings	Sri.G.Hanumaiah (Applicant)	Sri.Samar Mitra	Sri.H.S. Parikh
1. Date of Regularisation in BRI-III	15.3.66	June, 68	6.4.66
2. Date of promotion in BRI-III	07.11.77	24.1.79	23.2.79
3. Date of promotion in BRI-I	29.11.80	9.11.81	10.3.81
4. Date of promotion in Class-II	23.8.84	27.9.88	30.9.88
5. Pay drawn in Group 'B' service in the grade.	Rs.3050/- Rs.2995/-	Rs.3050/-	Rs.3050/-
	from 1.10.89	from 1.3.89	from 12.7.89"

2. The applicant had earlier approached this Tribunal in OA.NO. 121/90 which was disposed of/by directing respondents to decide the applicant's representation dated 27.11.1989. Accordingly, the respondents have decided the representation on 26.4.1990 which has been challenged by the applicant.

3. The respondents have stated that the reason for the disparity has arisen because the applicant was promoted as Assistant Engineer from the post of Bridge Inspector Gr.I in the scale Rs.2000-3200 in which his pay fixation was made whereas Parikh and Samar Mitra were promoted from the post of Chief Bridge Inspector in the pay scale of Rs.2375-3500 and hence their pay was fixed higher than that of the applicant.

4. The respondents relied on the Railway Board Circular dated 24.12.1987 (Ex.-R-I) Para 3 of which states as below :-

"3. In the above background, in the new scales of pay, there should be no occasion for a Railway servant to be promoted to officiate in a higher grade without officiating in the intermediate lower grade. If this happens in any rare or exceptional situation, the appropriate course of action would be to allow the Railway servant to revert to the intermediate lower post, if he wants the benefit of pay admissible in that post. If he elects to remain in the higher post in his own interest, considering the long term advantages, there should be no question of protection of officiating pay in the intermediate grade or of stepping up of pay with reference to a junior promoted via the intermediate grade."

It is in terms of this Circular that representation of the applicant has been rejected.

5. The applicant has brought to our notice Annexure-VII page 28 being the copy of letter dated 12.9.1989 from the Chief Personnel Officer (Engg.) of the Headquarters Office, Central Railway which indicates that the applicant is entitled to the benefit of stepping up of pay in terms of Railway Board's letter dated 5.1.1967. This letter appears as Annexure-VIII vide page 29 of the application. This states as below :-

" The Board have been considering for some time post whether after introduction of Rule 2018-B(F.R.22-C) R-II A railway servant while holding a post is appointed to officiate in a higher post, can be allowed protection of officiating pay of an intermediary post to which he would have been appointed in an officiating capacity but for his officiating appointment in the higher post, if such officiating pay of the intermediary post happens to be higher than the officiating pay admissible in the higher post. They have decided as under :-

(i) The pay that the railway servant would have got from time to time in the intermediary post but for his appointment in the higher post shall be protected by grant of personal pay, from the date his next (eligible) junior in the relevant seniority (promotion) group is promoted to the intermediary post. It is to be clearly understood that the pay in the higher post will not be refixed under 2018-BRII with reference to the proforma pay in the intermediate grade."

6. It is not disputed that the disparity in the pay drawn by the applicant on the one hand and his juniors on the other arose consequent on the promotion of the applicant to Class-II from 23.8.1984. Therefore in his case, the Railway Board's instructions dated 5.1.1967 would apply and not the Railway Board's instructions dated 24.12.1987 which cannot have retrospective effect. We are, therefore, satisfied that the applicant is entitled to the stepping up of his pay with reference to his juniors who began to get

a higher pay than him from 1.3.1989 (Shri Samar Mitra) and from 12.7.1989 (shri H.S.Parikh). Since Shri Samar Mitra was promoted to Class-II from 27.9.1988 and Shri H.S.Parikh from 30.9.1988, the applicant is entitled to this higher pay scale. It is claimed by the applicant that he should be given a higher pay scale from 1.10.1988. We are unable to accept this contention since the higher pay began to be drawn by Samar Mitra from 1.3.1989 and not from 27.9.1988. The applicant is entitled to get that higher pay scale only from 1.3.1989.

7. we, therefore, dispose of this case by passing the following order :-

ORDER

1. The order dated 26.4.1990 is hereby quashed and set aside.
2. The respondents are directed to fix the pay of the applicant to Rs.3050/- from 1.3.1989 and pay to him the arrears from this date upto the date of orders. They should be drawn and paid to him as personal pay. We grant interest @ 12% p.a.
3. There will be no order as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)

MEMBER (A)

M.S.Deshpande

(M.S.DESHPANDE)

VICE CHAIRMAN

mrj.