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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: R.P.NO. 98/93

Transfer Application No: in
OA.NO. 98/91

DATE OF DECISION: 9.12.1994

Shri Bismillah Shaikh

Petitioner

Shri L.M.Nerlekar

Advocate for the Petitioners

Versus

The General Manager, C.Rly.B'By.& Ors.

Respondent

Shri S.C.Dhawan

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri M.R.Kolhatkar, Member (A)

The Hon'ble Shri

1. To be referred to the Reporter or not ?

2. Whether it needs to be circulated to other Benches of the Tribunal ?

M.R.Kolhatkar

(M.R.Kolhatkar)

MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

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R.P.NO. 98/93

in

OA NO. 98/91

Shri Bismillah Shaikh ... Applicant

v/s.

The General Manager,
Central Railway,
Bombay V.T. & Ors. ... Respondents

CORAM: Hon'ble Member (A) Shri M.R.Kolhatkar

Appearance

Shri L.M.Nerlekar
Advocate
for the Applicant

Shri S.C.Dhawan
Advocate
for the Respondents

Tribunal's Order

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

Dated: 9-12-94

This is a review petition against the judgement dated 30.7.1993. The issue involved was pay fixation of the applicant in terms of Railway Servants (Revised Pay) Rules, 1986 and also the right of the applicant to be repatriated to the original post, namely, the post of Guard 'A' which he held prior to his selection for the post of Section Controller. The judgement held that the applicant shall be at liberty to apply for repatriation under relevant Railway rules but so far as pay fixation is concerned, the judgement held as below :-

"The respondents produced the service record of the applicant and it shows that the pay of the applicant was fixed incorrectly on the basis of the date on which he gave the option. The applicant contended that he had not given any option; however, the option is to be found at page 111 of the service record. After considering the relevant rules this question was considered at various levels and thereafter the incorrect fixation was corrected by the order dated 6.9.90. As has been stated earlier it was also confirmed by Divisional Accounts Branch as shown by the order dated 18.1.91. As per the Railway Services (Revised Pay) Rules 1986, the fixation had to be done in reference to the SCOR cadre in which the applicant was initially appointed and was thereafter regularised and on his own application was also promoted to the higher post. I do not think therefore that there is any substance in the challenge of the applicant as regards the fixation of the salary is concerned. The respondents have fairly conceded that the earlier fixation was erroneous as it was based on the date of option exercised by the applicant and they were perfectly justified in correcting the fixation as per the date on which the applicant was promoted in the SCOR cadre and subsequently regularised."

2. The main contention of the review petitioner (original applicant) is that the Tribunal erred in not properly applying the relevant rule especially definition of existing scale and the explanation given thereunder in the Railway Services (Revised Pay) Rules 1986. The same are reproduced below :-

"Existing Scale" in relation to a Railway servant means the present scale applicable to the post held by the Railway Servant (or as the case may be, personal scale applicable to him) as on the 1st day of Jan. 1986 whether in a substantive or officiating capacity.

'Explanation' In the case of a Railway servant, who was on the 1st day of January 1986 on deputation out of India or on leave or on foreign service or who would have on that date, officiated in the or more lower posts but for his officiating in a higher post. 'Existing Scale' includes the scale applicable to the post which he would have held but for his being on deputation out of India or on leave or on foreign service or as the case may be, but for his officiating in a higher post."

3. According to the review petitioner since he was on foreign service to SCOR cadre, in terms of the rules, existing scale referred to the scale of the post of Guard 'A' to which he belonged. The applicant contends that he had given an option on 30.10.1986 to have his pay fixed in the existing scale and this option was ignored. According to him, he was not promoted in 1985 but he was promoted only on 11.8.1991.

4. The applicant has also raised certain other contentions for review but this is the main contention. The respondents in the review petition who are the original respondents have contended that the review petition is not maintainable as it is in the nature of Appeal against the judgement and final orders passed and as there is no error apparent on the face of the record committed by the Tribunal. The adhoc appointment of the applicant as SCOR was from 23.2.1985 but he was regularised by selection on 11.8.1987 and, therefore, the question of giving option in 1985 did not arise. No doubt the applicant had exercised option in October, 1986 but this was wrongly accented and the fixation done on that basis was subsequently corrected by the order dated 6.9.1990 and thereafter confirmed by the order dated 18.1.1991.

5. According to us, the question of applicant's exercising option under Rules does not arise because at that time he was promoted only on adhoc basis and he was not required to give an option. No doubt the regular promotion related back to 23.2.1985 but we are not concerned with that option but we are concerned with the option exercised by him actually on 30.10.1986 which was no doubt wrongly exercised. Therefore, the pay fixation

earlier done by the Railways was rightly corrected in terms of the option wrongly exercised and there was no error in the judgement dated 30.7.1993. There is also no substance in the other contention of the applicant. We are, therefore, of the view that this review petition is liable to be rejected and it is accordingly rejected. There will be no order as to costs.

MR Kolhatkar

(M.R.KOLHATKAR)

MEMBER (A)

mrj.