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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 98/91

~~Transferred to the Bench~~

DATE OF DECISION 30 July 93

Shri Bismillah Shaikh Petitioner

Shri L.M. Nerlekar Advocate for the Petitioners

Versus

Union of India and others Respondent

Shri P.R. Pai Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri V.D. DESHMUKH, Member (J)

The Hon'ble Shri

1. ~~Whether Reporters of local papers may be allowed to see the Judgement?~~
2. To be referred to the Reporter or not? no
3. ~~Whether their Lordships wish to see the fair copy of the Judgement?~~
4. Whether it needs to be circulated to other Benches of the Tribunal? no


(V.D. DESHMUKH)
MEMBER (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 98/91

Shri Bismillah Shaikh

...Applicant.

V/s.

Union of India through
The General Manager,
Central Railway, Bombay V.T.

The Divisional Railway Manager,
Central Railway,
Bombay V.T.

The Senior Divisional
Personal Officer
Central Railway,
Bombay V.T.

...Respondents.

CORAM: Hon'ble Shri V.D.Deshmukh, Member (J)

Appearance

Shri L.M.Nerlekar, counsel
for the applicant.

Shri P.R. Pai, counsel
for the respondents.

JUDGEMENT

DATED: 30 July 93

¶ Per Shri V.D.Deshmukh, Member (J) ¶

The applicant was appointed in Central Railway as Guard in Operating Department and in due course was promoted in the grade of Guard 'A'. He was working in Bombay Division of Central Railway as Guard 'A' in the grade 425 - 600. As some vacancies for the post of Section Controller/Ballast Controller in the grade of Rs. 470 - 750 were to be filled in, the applicant applied for the same and was promoted as Section Controller while working as Guard 'A' on adhoc basis. He was promoted as Section Controller (SCOR) in the grade of Rs. 470 - 750 with effect from 23.2.85. The applicant who was promoted on adhoc basis was regularised by selection on 11.8.87 and his pay was fixed in the grade as SCOR at Rs, 2540/-.

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The applicant got another promotion and was promoted to the post of Deputy Chief Controller on 15.3.88 in the grade of Rs. 2000 - 3200 under the order dated 15.3.88. His pay was fixed at Rs. 2675/- in the revised pay scale vide letter No. BB/P/T/4/BB dated 27.4.88. The applicant was drawing the basic pay of Rs. 2825/- p.m. at the time of filing the present application.

The applicant makes a grievance about the letter dated 6.9.90 under which he was informed that his basic pay was refixed as the earlier fixation was not correct. He contends that by this refixation his basic pay was reduced by about Rs. 500/- and he was put to a loss of additional dearness allowance also. He made representations but as the representations were not decided, he filed O.A. 754/90 before this Tribunal. This Tribunal by the order dated 9.11.90 held that the application ^{could} be disposed of at the admission stage by directing the Divisional General Manager, Central Railway, Bombay V.T. to dispose of the representation made by the applicant on 28.9.90 within a period of two months from the date of receipt of the order, and such directions were given. ^{and} The applicant has challenged the said order dated 9.6.90 in the said O.A. 754/90. The representation of the applicant was decided pursuant to the order passed ^{and} by this Tribunal / an order was passed by DRM on 18.1.91. The order specifically states that the representation of the applicant was considered pursuant to the directions given by this Tribunal in OA 754/90. By this order the pay of the applicant ^{was} fixed under the order dated 16.9.90 and was confirmed. The order states that the fixation is verified by the Divisional Accounts branch. The applicant challenges in the present application the order dated 18.1.91.

Another claim of the applicant is that after he was selected as Section Controller (SCOR) he along with other persons namely D.R.Pathak, S.A. Siddiqui, Devanand Sharma and Farid Khan had applied to the Railway administration that they should be repatriated to the parent cadre. The Railway administration however repatriated all the other persons but not the applicant. The applicant and the other persons had applied for re-fixation of the pay as per the recommendations of the IVth Pay Commission. The applicant was given proforma fixation of Rs. 2540/- . The applicant challenges this refusal by the administration for repatriation to the parent cadre also in the present application.

The respondents have filed the written statement and they contend that the pay of the applicant was fixed correctly as per the existing rules under the order dated 6.9.90. They admitted that this order has to be passed as earlier the pay of the applicant was wrongly fixed on the basis of the date of option exercised by the applicant when it had to be fixed from the date on which the applicant was promoted on adhoc basis to the post of SCOR.

So far as the claim for repatriation is concerned the respondents contend that although the applicant applied for repatriation on 30.11.87, he subsequently applied on 15.12.87 for being promoted in the SCOR cadre and therefore the repatriation could not be granted. As regards the applicant's claim for repatriation, they rely upon the letter of the H.Q. Churchgate dated 2.2.62, the copy of which is Exhibit -4 to their reply.

I heard the learned counsels for both the sides. The un-disputed facts are that the applicant himself had applied for being promoted to the post of SCOR and he was promoted as such from 23.2.85. It is also ~~not~~ in dispute that he was regularised with effect from 23.2.85 under letter dated 11.8.87. The impugned order dated 6.9.90 was challenged in O.A 754/90 and as per the directions given by this Tribunal the representations of the applicant was decided under the order dated 18.1.91. It was contended on behalf of the applicant that the adhoc service put in by the applicant in the post of SCOR could not be taken into consideration for the purpose of fixation of his pay. However once the applicant was regularised after proper selection with effect from 23.2.85, his pay had to be fixed from that date itself. There is nothing to show that the applicant had refused to be regularised in the cadre of SCOR. Not only that but he himself had applied for promotion in the said cadre and he was promoted as Deputy Chief Controller with effect from 15.3.88. The applicant relied upon the decision of the Hon'ble Supreme Court in the case of Union of India Vs. S.K. Sharma (1992 S.C.(L&S) 601). In this case the Hon'ble Court held that adhoc service could not be counted for determining ^{and} seniority/even though the arrears of pay and allowances for actual working on the post on adhoc basis were paid, that ^{would} not confer any right to claim seniority on the post by reckoning the adhoc service. Having gone through the decision of the Hon'ble Supreme Court I find that this question does not arise in the present case and the case is not applicable to the controversy in the present application.

As has been stated earlier , the representation of the applicant was decided as per the directions given by this Tribunal in OA 754/90. This order was on the application filed by the applicant himself . He contended that the order dated 6.9.90 was illegal as no notice was issued to him. Considering his claim and grievance made by him the directions were given that the representation be decided. The applicant in the present case however relies upon the decision of the Hon'ble Supreme Court in the case of H.L. Terhan and others Vs. Union of India and others. (1989 S.C. (L&S) 246). In this case it was held that the conditions of service could not be altered without affording opportunity of a predecisional hearing to the employees. It was also held that post decisional hearing would not validate the action. The facts in the case before the Hon'ble Supreme Court were however entirely different. The circular dated ^{8.3.78} ~~2~~ issued by the respondents was ~~not~~ challenged before the Supreme Court and admittedly the persons who were likely to be affected by the circular were not heard before it was issued. It was submitted before the Hon'ble Supreme Court ^{that} post decisional opportunity of hearing was given to the employees with regard to alterations made in their service conditions after the circular was issued, ^{and} the Supreme Court held that the post decisional opportunity did not subserve the rules of Natural Justice. It was the case in which the post decisional hearing was given by the authorities themselves. In the present case there was no question of pre decisional hearing, as the conditions of service or even the pay of the applicant was not to be altered , but only proper fixation of the pay was to be done. The representation which was filed by the applicant was directed to be

decided by the order passed by this Tribunal. The applicant himself had filed the application inviting this order. The said order has become final and the applicant cannot ^{now} challenge ^{it} on the ground that the Tribunal could not direct post decisional opportunity of hearing. I do not find therefore that the applicant can receive any benefit from the above said decision.

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.

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The applicant claims that he had filed the application for repatriation on 30.11.87. This fact is not disputed by the respondents, however they have rightly pointed out that on 15.12.87 the applicant himself had applied that he be promoted as Deputy Chief Controller. The copy of the said application is Exhibit 3 to the written reply of the respondents. Respondents were therefore justified in holding that the applicant did not press his claim for repatriation. Once the claim was made for repatriation on 13.11.87, the applicant ought to have pressed his claim if he was genuinely interested in repatriation at ^{that} this stage. However inspite of doing so he applied for promotion in the SCOR cadre which necessarily meant that he had given up his request for repatriation. The applicant had produced the zerox copy of the note of Senior DOS Bombay on 21.9.89 to APO (T) Bombay to the effect that the applicant was to be repatriated in his parent department immediately and orders to that effect should be issued without any delay. However the service record shows that after this office note dated 21.9.89 ^{an explanation on} was put in giving all the particulars such as that the applicant was promoted as SCOR on adhoc basis, thereafter regularised and promoted as Deputy Chief Controller. The note further states that as per the existing instructions the employee who volunteered for selection could not be withdrawn, once he was placed on the panel. There is an endorsement of the DRM on this note that in view of the background of the case explained to him no orders were required to be issued in the case of the applicant. The respondents also rely upon the instructions issued by the Headquarters office dated 2.2.62 and claim that the application by the applicant for repatriation would be barred by time. No doubt paragraph 1 of these


instructions laid down that where the employee ~~desired~~ desired to go back to the former post to suit his own convenience, his request ~~for~~ ^{for} being sent back to the parent cadre within a period of one year may be agreed to without loss of seniority in his original cadre. However the right to claim for repatriation is not barred after the expiry of period of one year. Para 2 of the said instructions provides that if the request ~~is~~ made by an employee for being sent back to the parent cadre after one year it may not be ordinarily entertained, but if the employee presses for the acceptance of his request it may be done subject to the condition that the employee should not be given the protection of seniority in the higher grade. As per these instructions such employee should be promoted in the first vacancy but should be considered junior to all who had been promoted earlier to him. This paragraph shows that the claim for repatriation to the parent cadre is not completely barred after the expiry of the period of one year. The applicant still therefore can apply for repatriation, but ofcourse, subject to the conditions in paragraph 2 of the said letter (Exhibit 4 to the reply).

The applicant claims that he has been put to the loss of about Rs. 75,000/- because his request for repatriation made on 30.11.87 and also 6.10.87 was not granted. I have already discussed and found that because of the conduct of the applicant himself it was not necessary for the respondents to consider his request for repatriation at that stage. The applicant therefore is not entitled to alleged reimbursement of the

alleged loss suffered by him.

In the circumstances and for the reasons discussed above the application is dismissed. However the applicant shall be at liberty, if he so desires, to apply for repatriation under paragraph 2 of the letter of Headquarters dated 2.2.62 (Exhibit 4 to the reply) but subject to the conditions in the same paragraph and if ^{such} ~~the~~ application is otherwise permissible. If the application is made for repatriation by the applicant, the respondents shall consider and decide the same as per existing rules and regulations.

There shall be no order as to costs.


(V.D. DESHMUKH)
MEMBER (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

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

Transfar Application No: in
DA.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 ? X
2. Whether it needs to be circulated to other Benches of the Tribunal ? X



(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 :-

.. 2/-

"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.

M.R. Kolhatkar

(M.R. KOLHATKAR)

MEMBER (A)

mrj.