

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE- 560 038.

Dated: 7 OCT 1994

APPLICATION NO: 1005 of 1994

APPLICANTS:- Mr. Jamal Naveed Ahmed,
V/S.

RESPONDENTS:- The Sr. Divisional Accounts Officer, Southern
Railway, Mysore and two Others.

I.

1. Dr. M. S. Nagaraja,
Advocate, No. 11,
2nd Floor, 1st Cross,
Sujatha Complex,
Gandhinagar,
BANGALORE- 560009.
2. Sri. A. N. Venugopala Gowda,
Advocate, No. 8/2, 2epstairs,
R. V. Road, BANGALORE-4

Subject:- Forwarding of copies of the Order passed by the
Central Administrative Tribunal, Bangalore.

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Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/ passed by this Tribunal in the above
mentioned application(s) on 03.10.94

Issued on

9/10/94 SK

of


for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

APPLICATION NO. 1005/1994

DATED THIS THE THIRD DAY OF OCTOBER, 1994.

Mr. Justice P.K. Shyamsundar, Vice Chairman

Mr. T.V. Ramanan, Member(A)

Mr. Jamal Naveed Ahmed
Aged 34 years
S/o. Sri Abdul Sameed
2325/22, Anegundi Road
Idigah, 2nd Stage
Mysore.

.... Applicant

(By Dr. M.S. Nagaraja, Advocate)

vs.

1. The Senior Divisional Accounts Officers
Southern Railway, Mysore.

2. The Financial Adviser & Chief Accounts
Officer, Southern Railway, Madras.

3. Union of India represented by
Secretary to Government
Ministry of Railways
Rail Bhavan, New Delhi.

.... Respondents

(By Mr. A.N. Venugopal, Advocate)

ORDER

(Mr. T.V. Ramanan, Member (A))

In this application under Section 19 of the
Administrative Tribunals Act, 1985, the applicant has sought
the following reliefs:-

" a) To quash order No.P.481/Mis/Adm/ dated
4.3.1994 (Annexure-A5) and no.P.481/Mis/
Admn. dated 25.3.1994 (Annexure-A6)
confirming the downward refixation and
ordering recovery as illegal and unjust.

b) To declare that the pay fixed by the
respondents in order no.87 dated 7.3.1991
as correct and to implement the same by



granting all consequential benefits with interest at 18% per annum.

iii) To award the cost of this application.

iv) To pass such other orders as this Hon'ble Tribunal deems fit and expedient, in the circumstances of the case. "

2. The facts of the case in brief are that the applicant had joined the South Central Railway as a Junior Accounts Assistant in May, 1993 and later he was confirmed and promoted to the cadre of Accounts Assistants with effect from 1.4.1987 in the scale of Rs 1400-2600. Subsequently, he sought transfer to the Southern Railway which was considered and allowed. By an order dated 16.11.1990 (Annexure-A1), he was transferred to the Southern Railway on inter Railway transfer on bottom most seniority basis as Junior Accounts Assistant in the scale of Rs 1200-2040. The applicant joined the Southern Railway at Mysore on 27.11.1990. By an order issued on 7.3.1991 (Annexure-A2) the Southern Railway fixed his pay as Rs 1500/- plus Rs 20/- as personal pay in the scale of Rs 1200-2040 with effect from 27.11.1990 F.N. The order itself makes it clear that his pay on transfer to the Southern Railway at Mysore was fixed under Rule 1313 (FR-22)(a)(ii) R-II of the Indian Railway Establishment Code (IREC for short). This pay fixation recognised the last pay drawn by him as Accounts Assistant, a higher post, in the scale of Rs 1400-2600 in the South Central Railway. On 18.2.1993 (Annexure-A3) an office order was issued by the DAO's office, Mysore, Southern Railway, by which his pay as on 27.11.1990 when he joined the Southern Railway was refixed at Rs 1380/- in terms of para 603 of the Indian

Railway Establishment Manual (IREM for short). Aggrieved by this order, the applicant approached this Tribunal which struck down the impugned order at Annexure-A3 in so far as it pertained to the applicant on the ground that the principles of natural justice had not been followed in that the applicant was not given a show cause notice about refixation of his pay to his detriment. The Railway administration was directed to issue a show cause notice to him and to dispose of the matter relating to refixation of his pay after considering his submissions, if any. Accordingly, the Southern Railway issued a show cause notice to the applicant on 4.3.1994 (Annexure-A5) stating that his pay had been inadvertently fixed earlier under Rule 1313 (FR-22)(a)(ii) R-II of IREC and that his pay was to be refixed under Rule 1313(I)(a) (3)R-II of IREC and also as per the clarification issued by the Chief Personnel Officer, Southern Railway, Madras, vide his letter No.P(R)524/fixation of pay/vol.II, dated 30.6.1993, and that upon refixation the over payment made to him to the extent of Rs.10,849/- would be recovered at the rate of Rs.200/- p.m. from his salary. The applicant represented against the proposal to refix his pay to his disadvantage. But his representation was rejected (Annexure-A6). Aggrieved by this the applicant has come up with this application.

3. We have heard the learned counsel for the applicant and the learned standing counsel for the respondents.

4. It is an undisputed fact that the applicant on transfer to the Southern Railway at his own request and willing to hold a lower post in the scale of Rs.1200-2040 assumed charge



of the post of Junior Accounts Assistant in the Southern Railway on 27.11.1990. At the relevant time the rule that was applicable for fixation of his pay was rule 1313 (F.R-22). (a)(ii) of IREC. For the sake of clarity the entire Rule 1313(a) which has 3 sub-clauses and an Explanation is reproduced below:-

" 1313.(F.R. 22) Fixation of initial substantive pay. — The initial substantive pay of a railway servant who is appointed substantively to a post on time scale pay is regulated as follows:-

(a) If he holds lien on a permanent post, other than a tenure post, or would hold a lien on such a post had his lien not been suspended:-

(i) When appointment to the new post involves the assumption of duties or responsibilities of greater importance (as interpreted for the purpose of Rule 1325 i.e., F.R. 30) than those attaching to such permanent post, he will draw as initial pay, a stage of the time scale next above the substantive pay in respect of the old post.

(ii) When appointment to the new post does not involve such assumption, he will draw as initial pay, the stage of the time scale which is equal to his substantive pay in respect of the old post, or if there is no such stage, the stage next below that pay plus personal pay equal to the difference and in either case will continue to draw that pay until such time as he would have received an increment in the time scale of the old post or for the period after which an increment is earned in the time scale of the new post, whichever is less. But if the minimum pay of the time scale of the new post is higher than his substantive pay in respect of the old post, he will draw that minimum as initial pay:

(iii) When appointment to the new post is made on transfer at his written request under Rule 227 (2) F.R.15A) and maximum pay in the time scale of the post is less than the substantive pay in respect of the old post, he will draw that maximum as initial pay.

Explanation:- A confirmed Gangman of the Civil Engineering Department or a gangman who has completed two years regular service and whose probation has not been extended by a specific order, as envisaged in the orders governing confirmation, transferred at his own request as a Khalasi in the Mechanical and Transportation (Power) Department, Traffic and Commercial Department and work side of the Engineering Department, shall have his pay fixed in the time scale of Khalasi at the stage equivalent to the pay drawn as Gangman; if there is no such stage, at the stage next below, the difference being treated as personal pay to be absorbed in future increases in pay as Khalasi, subject to the

condition that in no case the maximum of the time-scale of the Khalasi is exceeded; and

In all other cases, the benefit of completed years of service in the higher post of Gangman may be given, for the purpose of advance increments in the lower post of Khalasi subject to not exceeding the pay drawn as Gangman or the maximum of the time-scale of Khalasi.

It is, therefore, surprising that Rule 1313 of IREC as amended by substitution as late as on 12.12.1991 and the clarification given by the Chief Personnel Officer, Southern Railway thereafter on 30.6.1993, which was with reference to the aforesaid amendment made to Rule 1313, should have been followed to the detriment of the applicant in the sense that his pay was sought to be refixed in accordance with the rule which was not in existence as on 27th November, 1990 when the applicant joined the Southern Railway. The revised rules came into force on 12.12.1991 only. (The amendment order dated 12.12.1991 makes it clear that the amended rules would come into force from the said date). Therefore, the amended rule 1313 of IREC, which is a set of rules framed under the proviso to Article 309 of the Constitution, applied only prospectively from 12.12.1991 and cannot have retrospective application. The applicant having joined the Southern Railway, on transfer, as long back as 27.11.1990, much prior to the amendment made to Rule 1313 of IREC on 12.12.1991, cannot certainly be brought under the purview of the amended provision contained in the said rule.

5. Learned Standing Counsel for the respondents contended that the earlier order refixing his pay was issued under para 603 of the Manual and the fixation done now after this Tribunal's order in O.A. No.994 of 1993 is also in line with the provision contained therein. No doubt, the first order refixing his pay (Annexure-A3), which was quashed by this Tribunal in O.A. 994/1993 was purported to have been issued under para 603 of the said Manual. However, that issue is not quite relevant now,

because the impugned letter at Annexure-A6 which was issued later does not make any mention at all about para-603 of the Manual, but refers to Rule 1313 I (a) (3)

R-II of IREC. In any case the aforesaid para 603 of the Manual does not have any legal validity for, even as the learned Standing Counsel admitted, it is only a compendium of instructions, and unlike IREC, not rules framed under the proviso to Article 309 of the Constitution of India. We, therefore, see no substance in this argument.

6. It is, therefore, crystal clear that it was rule 1313 (FR-22)(a)(ii)R-II of IREC, as it then existed, prior to the amendment made therein on 12.12.1991, that applied to the case of the applicant as regards fixation of his pay as on 27.11.1990 (P.N.) on his transfer from a higher post (Rs 1400-2600) in the South Central Railway to a lower post (Rs 1200-2040) in the Southern Railway and the pay fixation in his case was, therefore, correctly done by the office order dated 7.3.1991 (Annexure-A2).

7. In view of the foregoing, this application succeeds and is allowed. The letter dated 25.4.1994 (Annexure-A6) by which revised pay fixation to the disadvantage of the applicant has been made and recovery of a sum of Rs 10,849/- stands ordered is hereby quashed. The applicant will stand governed by the office order no.87 dated 7.3.1991(Annexure-A2) and his pay as Junior Accounts Assistant will be regulated accordingly. Any recovery made shall be refunded. In the circumstances of the case there will be no order as to costs.

[Signature] Sd/-
Section Officer
Central Administrative Tribunal MEMBER(A)

Central Administrative Tribunal
Bangalore Bench
Bangalore

Mr.

[Signature]
VICE CHAIRMAN

B-751

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BANGALORE BENCH, BANGALORE

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Mr. T.V. Ramanan, Member(A)

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S/o. Sri Abdul Sameed
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O R D E R

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TRUE COPY

167/10/94
Section Officer

Central Administrative Tribunal

Bangalore Bench
Bangalore

MEMBER(A)

Mr.

Sd-

Sd-

VICE CHAIRMAN