

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.N. 1103/94

Date of Decision 25-04-96

O.K.Narayanan & 3 ors.

Petitioner

Mr. B.S.Thingore

Advocate for the Petitioner.

Versus

U.O.I. & Ors.

Respondent

Mr. N.K.Srinivasan

Advocate for the Respondents.

Coram:

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

The Hon'ble Mr.

1. To be referred to the Reporter or not?

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

M.R.Kolhatkar
(M.R.KOLHATKAR)
Member(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

MUMBAI

O.A.1103/94

Pronounced this, the 25th day of April 1996

CORAM: HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

O.K.Narayanan & 3 Ors.

(By advocate Shri B.S.Thingore) .. Applicants

-versus-

Union of India

(By counsel Shri N.K.Srinivasan) .. Respondent

ORDER
(Per M.R.Kolhatkar, Member(A))

The four applicants in this O.A. are working as Personal Asstts. in Head Quarter^s Office of the Western Railway in the scale of Rs.2000-3200. In the year 1990-91 they were working as C.As in the grade of Rs.1600-2660. By order dt. 20-6-91 from the Western Railway Headquarter Office, Churchgate, Bombay, the posts of C.As attached to the Junior Administrative Grade Officers (to the extent of 25%) were upgraded to the scale of Rs.1640-2900. The orders were to take effect from 1-5-1991 and the fixation of pay on promotion against the upgraded posts was to be done under Rule 1316 of Indian Railway Establishment Manual, corresponding to FR 22-C.

Accordingly orders were issued fitting the applicants in the scale of Rs.1640-2900 vide Headquarters Office Churchgate, Bombay ^{memo} dt. 24-8-92 at Ex.A-2. Subsequently orders regarding fixation of pay were issued by the Headquarter Office vide memorandum dt. 14-1-1993 at Ex.A-3. However, the applicants submit that they did not receive revised salary in terms of these orders. The applicants made individual representations and these have been turned down by the respondents by letter dt. 26-10-93 at Ex.A-11. The

same is reproduced below because it also gives the reason why the ~~payment~~ in terms of order dt. 14-1-1993 had not been made.

"Your representation for stepping up of pay as well as for exercising of option from a future date for giving you the benefit of fixation in scale Rs.1640-2900 (RP) has been examined and it is advised that as per the extant rules there is no provision to allow option for fixation of your pay in an intermediary grade. Option is allowed only in respect of fixation after drawing increment in the time scale in which an employee is working at the time of ordering promotion.

Shri P.J.Paul has already touched the grade in scale Rs.1640-2900(RP) and as such he is drawing a higher pay whereas in your case you have been promoted directly from scale Rs.1400-2600(RP) to scale Rs.2000-3200(RP) and as per the extant rules there is no provision to grant stepping in such cases.

However, you have liberty to seek voluntary reversion in terms of para-3 of Board's letter No.E(P&M)II/PC-III/78/183/3 dt. 24-12-87 circulated vide PS.No.4/88 and avail the benefit of fixation of pay in the intermediary grade viz.Rs.1640-2900(RP). The reversion so obtained will be with prospective effect and you will be debarred for a period of one year from the date of reversion for your further promotion.

It is this letter dt. 26-10-93 which has been impugned by the four applicants in this O.A. According to applicants that payment in terms of pay fixation given to the applicants has been made to the employees in Divisions and Units working on adhoc basis on the scale of Rs.2,000-3,200 but the same has been denied to the applicants arbitrarily and in a discriminatory manner.

2. Respondents have opposed the O.A. Their main contention is that at the time of pay fixation, instructions of the Railway Board dt. 24-12-87 dt. Ex.R-III were not kept in view. The material para of the same read 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 terms 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."

3. Thus the main contention of the respondents is that in relation to the three grades viz. Rs.1600-2660, Rs.1640-2900 and Rs.2,000-3200, employees who have been promoted to the higher grade of Rs.2000-3200 by skipping the intermediate grade of Rs.1640-2900 cannot be given benefit of pay fixation because they have not worked in the intermediate grade at all and this is not in accordance with the rules viz. para 1302 of the Indian Railway Establishment Code Vol.II which reads as below:

"1302(R.R.17)(I) - Pay and Allowance - Subject to any exceptions specifically made in these rules and to the provision of sub-rule (2) a railway servant shall begin to draw the pay and allowances attached to his tenure of post with effect from the date he assumed the duties of the post and shall cease to draw them as soon as he ceased to discharge those duties."

It appears that there were instructions dt. 27-7-1967 which allowed the benefit of pay fixation without actually working in the intermediate scale provided it is certified that the Govt. servant would have held the post for a period not less than 22 days but for his promotion to the higher post. This instruction dt. 27-7-1967 has been superseded by Railway Board instruction dt. 24-12-87 referred to in Annexure R-3.

4. What is envisaged by instructions dt. 24-12-87, however, may become an impossibility in case where the orders relating to fitment of the employees in the scale/s of Rs.1640-2900 were issued ~~after a long~~ ~~time lag~~. The fact of the matter is that Railway Board's instruction dt. 7-5-91 were circulated by Head Quarter's office on 13-5-92 and these orders were to take effect from 1-5-91 and in terms of Railway Board's order dt. 13-5-92 the orders of promotion were issued by the CPO HQ Office, Churchgate, Bombay on 24-8-92. Thus there was a gap of 16 months between the notified date of implementation of the order (1-5-91) and the actual date of implementation of the order viz. 24-8-92. Thus the option if any to the employees to revert to the intermediate grade becomes an impossibility. The principle of the law is that a person cannot be asked to perform the impossible. Thus in the facts and circumstance of the case the Railway Board's instruction dt. 24-12-87 become impossible ~~of~~ performance in the present case. I am therefore of the view that the applicants are entitled to the relief viz. the implementation of the order of pay fixation dt. 14-1-1993.

5. Although no case law was cited before me on a perusal of annexures to the O.A. it is seen that the applicants in their representation dt. November 1993 Ex:A10 have referred to the binding ratio of judgment of C.A.T. in O.A. 470/88, K.V. Govindan vs. U.O.I. & Ors.

which has been relied upon and followed in a case decided by this very Tribunal in O.A. 572/93 in the case of R.N.Udupa & Ors. vs. U.O.I. decided on 13-10-95. That judgment deals with all the relevant Railway Board circulars and even the contrary CAT Madras Bench judgment in O.A. 324/85 and 343/86 and the Tribunal held that it is bound by Govindan's judgment as a matter of judicial discipline. In that case the issue was the same except that pay scales referred to pre-revised scales viz. 425-700, 550-750 and 550-900. Thus the facts and circumstance in the present case are similar to the facts and circumstance of the decided cases of Govindan & R.N.Udupa. This is an additional reason as to why the applicants are entitled to succeed apart from rule of law referred to above. I heard that Shri G.S.Walia, Advocate who was present in the court very kindly made available copy of judgment in O.A. 572/93.

6. O.A. is therefore disposed of by passing the following order :

O R D E R

O.A. is allowed. The orders of the Western Railway dt. 26-10-93 at Annexure A-11 are quashed and set aside. The respondents are directed to make payment to the applicants in terms of orders of pay fixation dt. 14-1-1993 at Ex.A-3 and the pay fixation should be done on notional basis from 1-5-1991 and the arrears of pay should be paid from one year prior to the date of filing of the O.A.

(Signature) There will be no order as to costs.

M.R.Kolhatkar
(M.R.KOLHATKAR)
Member(A)