

Before the Central Administrative Tribunal

Mumbai Bench

O.A. No: 172/94 & 912/94

Dr. in
O.A 172/94

Duplicate
for Iss
Sar

Pronounced, this the 15th day of November 1996

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

I) Miss.Brigida D'Souza,
Sr.Clerk, Sr.DOS(M)'s Office,
Central Railway,
Bombay V.T.

.. Applicant in
O.A. 172/94

II) Brijvir Singh Malik,
R/o. DRM(P) Settlement Central Bly.,
Bombay V.T.

Dilip Pawar,
R/o.Borse Building
M.Kolsawadi,
Kalyan (E)
Dist. Thane

.. Applicants in
O.A. 912/94

By Advocate Shr Y.R.Singh)

-versus-

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

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

.. Respondents in
all the above
OAs

By Advocate Shri S.C.Dhavan

-: ORDER :-

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

In these OAs the facts are similar and the issues raised are identical. They are, therefore, being disposed of by common order. The reasons for the order are given in O.A. 172/94 and where necessary the facts of the other case are referred to.

O.A. 172/94

2. The applicant is a sports person. She was appointed as Junior Clerk in the Railways with effect from 3-6-1986. In accordance with the policy of fixing up of pay of the sports persons to the maximum of the grade she was fixed at Rs.400/- in the Third Pay commission grade of Rs.260-400 w.e.f. 27-6-1986. Subsequently after coming into force of the Fourth Pay Commission pay scales her salary was fixed at Rs.1500/- in 1987. In the meanwhile the Railway Board issued instructions on the subject of "Recruitment of sportspersons in Revised pay scales and performance linked incentives to sportspersons" dt. 2-2-1988 to be seen at Annexure 'B', page 12. This states that Railway Administrations (GMs) will have the power to fix the pay of outstanding sportspersons at the time of initial recruitment with additional increments as follows:

- (1) Upto a maximum of Rs.1250/- in respect of grade of Rs.950-1500(RP)
- (2) Upto a maximum of Rs.1530/- in respect of grade of Rs.1200-2040(RP)

that
The applicant says these orders would come into force prospectively and had no applicability in her case. The applicant had, however, represented on 22-11-89 for grant of stagnation increment in her favour in accordance with the rule of granting stagnation increment after completion of two years after drawing maximum of the pay scale. It was

applicant's understanding that she having completed two years on 27-6-1988 was entitled to stagnation increment from that date over and above Rs.1500/- which she was drawing. The applicant contends that on this representation the railway administration instead of giving her stagnation increments informed the applicant informed by letter dt. 23-5-90 at page A-11, the impugned letter, that her pay has been fixed at Rs. 1350/- w.e.f. 27-6-86 (i.e. the date of appointment) in the scale of Rs.950-1500 and Rs.1470/- w.e.f. 15-9-88 in the grade of Rs.1200-2040. She was also informed that recovery would be worked out w.e.f. 27-6-86 to date and it will be recovered in suitable instalments. The applicant states that she made a representation against this action of the respondents. She was informed by letter dt. 25-10-1991, at page 14, Annexure 'C' as below :

"In this connection, it is stated that you were appointed in Class III service in Grade Rs.260-400(RS) at the maximum of the scale. In terms of recommendations of IV Pay Commission Gr.Rs.260-400(RS) and other grades were merged together into Gr.Rs.950-1500(RPS). Rs.400/- of the earlier grade is equivalent to Rs.1350/- of the Gr.Rs.950-1500(RPS) scale. As such all those who were appointed at the maximum of the old scale of Rs.260-400(RS) were fixed at Rs.1350/- in the new scale i.e. corresponding stage.

Sportsmen recruited after introduction of new scales by Pay Commission, they were given maximum of the prevalent grade Rs.950-1500(RPS). Hence, the sportsmen recruited after you were drawing Rs.1500/- and you were drawing Rs.1350/- (i.e. equivalent to Rs.400/- of old scale of Rs.260-400(RS))

Railway Board, vide their letter dt. 2-2-1988 have restricted the pay fixation of sportsmen in different grades e.g. in Grade Rs.950-1500 (RPS), the sportsmen should be fixed at Rs.1250/- Therefore the period between implementation of Revised Pay Scales and Board's directives dated 2-2-1988, sportsmen were recruited on maximum of scales, which was within the powers of General Manager."

The applicant has impugned the letter dt. 23-5-1990 read with letter dt. 25-10-1991 on several grounds.

Firstly it is contended that in effect the respondents have sought to make the Railway Board Instructions retrospectively dt. 2-2-1988 applicable to her/according to which the the maximum pay that can be granted to sports persons in respect of grade Rs.950-1500 has been fixed at Rs.1250/- Secondly the applicant has contended that the action to reduce the pay has been taken not by the GM but by the office of the CPO and the orders of grant of maximum pay scale which were passed by the GM could not have been altered to her disadvantage by an inferior officer. Thirdly she has stated that no notice was given to her before refixation of her pay to ~~to her~~ her disadvantage and therefore the action of the respondents is violative of the principles of natural justice. Fourthly, it is stated that the

action is discriminatory inasmuch as there are several junior colleagues who have been appointed in 1987 i.e. after ^{the} coming into force of the IVth Pay Commission but before the issue of Railway Board letter dt. 2-2-1988 ^{who} have been drawing the maximum scale of Rs.1500 in the grade of Rs.950-1500. The names of the employees are given in para 4.5(a) of the amended application. Lastly it is contended that the action is discriminatory because similar downward revision of sports persons' pay has not taken place in the Western Railway and in the North Eastern Railway. The applicant therefore has sought the relief of quashing and setting aside the letters dt. 23-5-90 from the DRM, 25-10-1991 from CPO and the Railway Board Circular dtd. 2-2-1988. The applicant also prays for refixation of her pay as was fixed earlier from her date of appointment and grant of consequential benefits.

3. Respondents have opposed the O.A. Firstly it is contended that O.A. is time barred because the cause of action arose in the first instance on 25-3-90 ^{at} and ^{the} latest on 25-10-91 but the applicant had approached the Tribunal on 9-12-1993. Secondly it is contended that the question of retrospective application of Railway Board circular dt. 2-2-1988 does not arise because in terms of circular her pay should have been fixed at Rs.1250/- whereas the administration fixed her pay at Rs.1350/- which corresponds to the maximum of the grade Rs.260-400. It is contended that the revised pay scale of Rs.950-1500 is arrived at

by merger of Rs.260-400(RS) and other grades. So far as fixation of certain sports persons appointed in 1987 at the maximum viz. Rs.1500/- is concerned it is contended that they were appointed after the recommendation of the 4th Pay Commission were implemented and prior to the issue of Railway Board instructions dt. 2-2-88 and therefore they were given maximum of the pay scale by General Manager which was within his competence and therefore there is no discrimination. Respondents contend that they are not aware of practice followed in other Railways like Western Railway and North Eastern Railway as stated by the applicant.

4. First of all I consider the question of limitation. The counsel for the applicant contends that in view of the Supreme Court Judgment in M.R.Gupta vs. U.O.I. & Others, 1995(2)ATJ 567 and the issue involved being that of fixation of the correct pay and it being a continued wrong giving rise to a recurring cause of action every month the employee was paid salary, the application cannot be dismissed on the ground of limitation. Counsel for the respondents however relies on the case of N.Segaran vs. U.O.I., 1995(1)ATJ 343 in which it is held that the cause of action arises from the date of grievance.

5. In my view the issue involved being that of right of the employee to receive her monthly salary at a particular rate and in view of M.R.Gupta's judgment of the Supreme Court the limitation would

apply to the arrears but it would not apply for considering the application on merit. The counsel for respondent contends that this court has held in the case of A.K.Ravi vs. U.O.I. in O.A.1091/94 that the Department has power to correct wrong fixation of pay. According to counsel the pay fixation of applicant at Rs. 1500/- was wrong and the applicant was made aware of the reasons for correct pay fixation to the extent ^a / reasoned reply has been given to her.

5. It is true that in A.K.Ravi's case it was held that the aspect of public interest involved in overpayment of money to a government servant which ^{been} aspect has / ^a considered in the relevant Audit/ Accounts manual has to be given due weight and it is open to the department to order recovery of overpayment after giving notice. However, that question would arise if it is held that the pay fixation was done correctly. It appears to me that the differential pay fixation done by the department in respect of sports persons appointed prior to announcement of IVth Pay Commission and sports persons appointed after the announcement of IVth Pay Commission does not have a basis in rules. There can be a differential pay fixation in respect of two employees ^{in accordance with rules} / one appointed prior to 1-1-86, the date of implementation of decisions of pay commission, and one appointed after pay commission ^{as} appointed / but there can be no discrimination / between the employees appointed after 1-1-86 unless a rule in this regard is

pointed out but the respondents have not been able to point out a rule beyond making a bare statement. I am, therefore, of the view that the applicant is entitled to succeed on the ground of discrimination and I need not go into further grounds like absence and of notice/ violation of principles of natural justice which would result in a different type of relief.

6. In the facts and circumstance of the case and in the light of above discussion I am of the view that the communications of the administration dt. 23-5-90 and 25-10-1991 cannot be sustained. O.A. is therefore allowed and the respondents are directed to refix the pay of the applicant in the pay scale of Rs.950-1500 and in the further pay scale of Rs.1200-2040 on the footing that the reduction of pay to Rs.1350/- in place of Rs.1500/- from 27-6-86 was unwarranted. It appears that in terms of the communication dt. 23-5-90 recovery has already been effected. However, following the ratio of M.R.Gupta the limitation would apply to the payment of arrears and accordingly I hold that the applicant would be entitled to payment of arrears only from one year prior to the date of filing of the application viz. 9-12-92. There will be no order as to costs.

O.A. 912/94

7. In this case Shri Brijvir Singh Malik and Dilip Pawar are the applicants. They were appointed as Senior Clerk and Junior Clerk respectively after 1-1-86 but prior to the announcement of the decision of 4th Pay Commission. As in the case of applicant in

O.A.172/94 their pay was revised downwards with this that difference whereas in the case of applicant in O.A. No.172/94 there was a formal communication reducing the pay and there was also a reply to the representation, there was no such communication/ reply. The counsel for the applicant therefore apart from grounds urged in O.A.172/94 has argued that violation of principles of natural justice is more flagrant in O.A.912/94 and in this connection he relies on the case of P.K.Ramakurup vs. The Senior Superintendent of Post Offices and Others where the Tribunal peremptorily quashed the order of the recovery of overpayment in respect of applicant in that case relying on the Supreme Court judgment in the case of State of Orissa v. Bina Pani Dei (1967)2 SCR 625. The arguments of the learned counsel for the respondent are identical plus he also urges that in this particular case there has been no impugned order as such. Learned counsel for the applicant, however, enclosed a copy of communication dt. 9-1-91 which is enclosed with MP 90/96 to the OA which refers to wrongful deduction of the pay without notice.

8. For the reasons given in the O.A.172/94 the applicants in this case are also entitled to succeed and the orders in O.A. No.172/94 would apply to the case of applicants in this case mutatis mutandis with payment of arrears being confined to the one year prior to the date of filing of the O.A. which in this

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case would be 23-2-93, O.A. having been filed on
23-2-94. There will be no order as to costs.

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(M.R.KOLHATKAR)
Member(A)