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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision : 03.9.93.

OA 766/92
(OA 758/88)

TARA CHAND AGRAWAL ... APPLICANT.

Vs.

UNION OF INDIA & ORS. ... RESPONDENTS.

COMAM:

HON. MR. GOPAL KRISHNA, MEMBER (J).
HON. MR. O.P. SHARMA, MEMBER (A).

For the Applicant ... SHRI J.K. KAUSHIK.

For the Respondents ... SHRI MANISH BHANDARI.

PER HON. MR. O.P. SHARMA, MEMBER (A).

The applicant, Tara Chand Agrawal, has filed this OA u/s 19 of the Administrative Tribunals Act, 1985, praying that the order of refixation of his pay vide letter dated 8.9.88 (Annexure A-2), whereby his pay has been reduced on transfer to the post of Guard Grade-C, may be declared illegal and quashed.

2. The facts of the case are that the applicant was earlier working as Senior Clerk in North Eastern Railway in the pay scale of Rs.130-300 (R). On divisionalisation of the railways he was declared as surplus in the N.E. Railway and was transferred to the Western Railway as Guard Grade-C in the scale of Rs.130-225 (Annexure R-2). Immediately before his transfer to the Western Railway as Guard Grade-C,

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he was drawing total pay of Rs.168/-. On joining the Western Railway as Guard Grade-C, his pay was initially fixed at Rs.166/- in the scale of Rs.130-225 (A) and he was granted Rs.2/- as Personal Pay in order to make the total of Rs.168/- (Annexure R-2), which was the amount of pay drawn by him before his joining the Western Railway. However, the applicant has stated that immediately before his joining the Western Railway he was drawing a total pay of Rs.176/- and on absorption in the Western Railway his pay was initially fixed at Rs.175/- and he was granted Personal Pay of Rs.1/- in order to make the total of Rs.176/-. This contention of the applicant has been admitted by the respondents in their reply. However, the contents of Annexure R-2 present a different picture.

3. Subsequently, in view of Railway Board's circular dated 15.6.68 (Annexure R-3), the respondents refixed the pay of the applicant. They put him at ^{the} minimum of scale of pay of Guard Grade-C i.e. of Rs.130/- and in lieu of his having rendered 7 years service as Senior Clerk in the N.E. Railway, they granted him 7 increments. According to Annexure R-2, his pay was fixed by the above method at Rs.158/- as on 3.5.70 instead of Rs.166/- + 2/- as Personal Pay. The applicant has also stated that as on 3.5.70 his pay was refixed at Rs.158/-.

4. The contention of the applicant is that refixation of his pay was wrongly done. He was a confirmed employee of the N.E. Railway at the time when he was posted in the Western Railway and therefore his pay could not have been reduced in the manner done by the respondents. If any question of refixation of his pay on account of his absorp-

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tion in the Western Railway was involved, the difference between the pay last drawn by him in the N.E. Railway and that granted to him on refixation should have been paid to him by way of Personal pay.

5. The respondents have stated that the applicant was declared as surplus in the N.E. Railway and since he had rendered several years service in the N.E. Railway and had been confirmed there, it was considered proper by the respondents to offer him appointment in the Western Railway. According to them, it was a fresh appointment in the Western Railway and they were entitled to refix his pay at the minimum of the scale of pay of Guard Grade-C, to which post he was appointed in the Western Railway. Accordingly, his pay was fixed at Rs.130/-. However, 7 increments were granted to him in this scale for the reason that the applicant had rendered 7 years service in the N.E. Railway. According to the respondents, it is not a case of transfer of an employee from one Railway to another on administrative or any other grounds, but it is a case of fresh appointment in another Railway after the applicant's being rendered surplus in the N.E. Railway. As an alternate to retrenching him from service he was offered employment in the Western Railway. There is, therefore, no case for grant of any higher pay over and above that already granted to him by refixation of the pay, as stated in Annexure R-2.

6. We have heard the learned counsel for the parties and have perused the records. The applicant was a confirmed employee in the N.E. Railway. Even if the applicant was declared as surplus in the N.E. Railway and was given a fresh appointment in the Western Railway, he was entitled to protection of the pay last drawn by him in the

N.E. Railway because he was a confirmed employee of the N.E. Railway. Personal Pay is normally granted to Govt. servants in the circumstances ^{whereon} refixation of their pay, their pay is likely to be lower than that earlier drawn by them. The definition of Personal Pay in FR 9(23) reads as follows :-

"(23) Personal pay means additional pay granted to a Government servant -

- (a) to save him from a loss of substantive pay in respect of a permanent post other than a tenure post due to a revision of pay or to any reduction of such substantive pay otherwise than as a disciplinary measure ; or
- (b) in exceptional circumstances, on other personal considerations."

The pay drawn by the applicant in the N.R. Railway was substantive pay and therefore any reduction therein for any reason should have been compensated by grant of Personal Pay to the applicant.

7. In the circumstances, we direct that the respondents shall grant Personal Pay to the applicant to make up the difference between the pay last drawn by the applicant in the N.E. Railway and that granted to him on revised fixation of his pay in the Western Railway, as stated in the last para of order dated 8.9.88 (Annexure R-2). In other words, the difference between Rs.176/- and 158/- shall be granted as Personal Pay to the applicant, which shall however be absorbed in the future increments. Since the applicant's total pay will not be reduced below that which was last drawn by him in the N.E. Railway as Senior Clerk, no recovery on refixation of the pay of the applicant shall be made.

8. The CA stands disposed of accordingly, with no order as to costs.

(D.P. SHARMA)
MEMBER (A)

GKrishna
(GOPAL KRISHNA)
MEMBER (J)