

(61)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD.

O.A.No.210/91.

Date of Judgement 11.11.91.

Joseph Mathew

.. Applicant

Vs.

1. The Union of India,  
Rep. by Secretary(E),  
Railway Board,  
New Delhi.
2. GM/S.C.Railway,  
Secunderabad.
3. CPO/S.C.Railway,  
Secunderabad.
4. FA & CAO/S.C.Railway,  
Secunderabad.
5. Chief Engineer, S.C.Rly.,  
Secunderabad.
6. DRM(BG)/S.C.Rly.,  
Secunderabad.
7. Sr. DPO(BG)/S.C.Rly.,  
Secunderabad.
8. Sr. DAO(BG)/S.C.Rly.,  
Secunderabad.

.. Respondents

---

Counsel for the Applicant :: Shri M.C.Pillai

Counsel for the Respondents:: Shri V.Bhimanna, SC for Rlys.

---

CORAM:

Hon'ble Shri R.Balasubramanian, Member(A)

Hon'ble Shri C.J.Roy, Member(J)

I Judgement as per Hon'ble Shri R.Balasubramanian, Member(A)

---

This application has been filed by Shri Joseph Mathew against the Union of India, Rep. by Secretary(E), Railway Board, New Delhi & 7 others under section 19 of the Administrative Tribunals Act, 1985 with the prayer to declare the impugned letter No.E(G)90-EM-1-4 dt. 3.5.90 illegal and to direct the respondents to refix the pay of the applicant taking into account his 10 years of service in the Indian N as laid down in the Railway Board's letter dt. 23.7.63 with all consequential benefits like backwages etc.

23

14/11

....

(62)

2. The applicant, an ex-serviceman was appointed on 5.7.80 as a Junior Clerk on the minimum pay of Rs.260/- in the scale Rs.260-400. He was promoted as Senior Clerk w.e.f. 27.8.87 and he is currently working in that capacity. Prior to his appointment he had served the Indian Navy for 10 years from 18.3.67 to 31.3.77. The applicant was holding a post in the Indian Navy equivalent to that of Naik in the Indian Army. In July, 1985 the applicant came to know for the first time about the Serial Circular No.63/1985 to the effect that a Combatant Clerk (Sepoy and above and equivalent to the ranks in Navy and Air Force) may be treated as equivalent to service as Clerks/Junior Clerks in the Railways irrespective of the pay drawn in the Armed Forces and that when such persons are absorbed in such posts on the Railways their pay in the post of Clerks/Junior Clerks may be fixed at a higher stage in the scale above the minimum equal to the number of completed years of service as Combatant Clerks. The applicant represented to the respondents for this benefit and after several stages of correspondence by their impugned letter No.E(G) 90-EM-1-4 dt. 3.5.90 the Railway Board advised the General Manager, South Central Railway that the request cannot be agreed to. Hence this petition.

3. The respondents have filed a counter and oppose the application. It is pointed out that the applicant who was appointed as Junior Clerk in July, 1980 had, for the first time, represented only on 29.7.85 claiming the benefit of pay fixation in terms of the Railway Board letter dt. 25.7.63. They also point out that the benefit of such pay fixation in the Railway Board's letter dt. 25.7.63 should be read the letter dt. 19.11.70 and the applicant had not opted for refixation of his pay within the stipulated time.

4. We have examined the case and heard the rival sides. The impugned letter dt. 3.5.90 of the Railway Board states that it is not feasible to allow an exemption being given in the case of the applicant to exercise an option for refixation of his pay. This letter is in reply to a letter dt. 13.6.89 which the Chief Personnel Officer had addressed to the Railway Board. In that letter, the South Central Railway requested the Board to consider the case of exemption being given to Shri Joseph Mathew to exercise an option for refixation of his pay beyond the permissible period. The short question, therefore, to be examined is whether an option is required to be exercised by the applicant and, if so, why he has not done it within the stipulated time. The question of relaxation would arise ~~at all~~ only if <sup>as</sup> the option is required. ~~at all~~. The applicant relies heavily on the letter dt. 25.7.63 of the Railway Board. In this letter, the Board had conveyed its decision that service rendered <sup>as</sup> of Combatant Clerks (Sepoy and above and equivalent ranks in the Navy and Air Force) may be treated as equivalent to service as Clerks/Junior Clerks in the Railways irrespective of the pay drawn in the Armed Forces and that when such persons are absorbed in such posts on the Railways their initial pay in the posts of Clerks/Junior Clerks may be fixed at a higher stage in the scale above the minimum equal to the number of completed years of service as Combatant Clerks. The orders were to take effect from 11.4.63. In this letter there is no mention whatsoever about any option required to be exercised. As against this, the respondents depend on the Railway Board letter dt. 19.11.70. This letter refers to the earlier letter of 25.7.63 and by way of giving further retrospective effect to the orders states that effect can be given ~~even~~ from 1.1.56. It further adds

that ex-Combatant Clerks employed in the Railways may be given the option to get their pay refixed w.e.f. 1.1.56 or from the date of their appointment, as the case may be, whichever is later. Such option should be exercised within six months from the date of issue of that letter and the option should be final. We fail to see how at all this letter is applicable to the applicant. While there is no reference whatsoever to option in the letter of 25.7.63, an option is indicated in the letter of 19.11.70 only, for those who want the benefit from 1.1.56 itself. The applicant has no case for this. Moreover, this option is required to be exercised within six months from the date of issue of the letter viz: 19.11.70 which means the last date for exercising the option was 19.5.71 on which date the applicant was not in the Railways and was still serving the Navy. ~~at that time~~. It is, therefore, abundantly clear that the letter of 19.11.70 is just not applicable to the applicant. The applicant is fully entitled to be regulated in terms of the letter dt. 25.7.63 as contended by him.

5. Nowhere has the other aspect been disputed whether he was a Combatant Clerk and was eligible to get the benefit of added increments at the time of fixation of his pay when he joined the Railways. It is, however, open for the Railways to examine this aspect and if he is eligible ~~on this score~~ he should be given the benefit of additional increments in view of the service that he had rendered to the Navy. The respondents are, therefore, directed to ensure this aspect and apply the letter dt. 25.7.63 in granting the benefits.

.....5

J. J.

6. The next question is about limitation. But in a matter like pay and allowances which are of a recurring nature we cannot throw out an application merely on this plea. ~~although consequential~~ <sup>however</sup> benefits, if any, can be regulated within the scope of limitation.

7. As regards arrears, the applicant has approached the Tribunal late. In the event of refixation of his pay on notional basis with effect from the date he joined the Railways on 5.7.80, the respondents are directed to pay the arrears also from 26.2.90 (i.e., one year prior to his filing the O.A.) to satisfy the provisions of section 21 of the Administrative Tribunals Act, 1985.

8. With the above directions, the application is disposed of thus with no order as to costs. The respondents are directed to comply with the directions within 4 months of receipt of this order.

R. Balasubramanian  
( R. Balasubramanian )  
Member (A).

C. J. Roy  
( C. J. Roy )  
Member (J).

Dated: 11/11/92 November, 1992.

823/11/92  
Deputy Registrar (J)

To

1. The Secretary (E) Union of India, Railway Board, New Delhi.
2. The General Manager, S.C.Rly. Secunderabad.
3. The CPO, S.C.Railway, Secunderabad.
4. F.A & C.A.O, S.C.Railway, Secunderabad.
5. The Chief Engineer, S.C.Rly, Secunderabad.
6. The Divisional Railway Manager (BG) S.C.Rly, Secunderabad.
7. The Sr. Divl. Personnel Officer (BG) S.C.Rly, Secunderabad.
8. The Sr.DAO/(BG) S.C.Rly, Secunderabad.
9. One copy to Mr.M.C.Pillai, Advocate, CAT.Hyd.
10. One copy to Mr.V.Bhimanna, SC for Rlys, CAT.Hyd.
11. One spare copy.

pvm.

2011-12  
2011-12

*To Comptt*  
TYPED BY

*AKR 20/11/92*  
COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : HYDERABAD

THE HON'BLE MR

AND

THE HON'BLE MR.R.BALASUBRAMANIAN:M(A)

AND

THE HON'BLE MR.T.CHANDRASEKHAR REDDY:  
M(JUDL)

AND

THE HON'BLE MR.C.J.ROY : MEMBER(JUDL)

Dated: 11 - 11 - 1992

ORDER/JUDGMENT:

R.A. /C.A. /M.A.No

in

O.A.No. 210/91

T.A.No.

(wp.No

Admitted and interim directions  
issued.

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default

M.A.Ordered/Rejected

No orders as to costs.

pvm

