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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH ::

O.A.No.495/1991.

Date: 25.8.1993.

Between:

Dr. P.Ramaswamy .. Applicant

And

1. Union of India, rep. by the Secretary (E), Railway Board, Ministry of Railways, Rail Bhavan, New Delhi-110 001.
2. The General Manager, South Central Railway, Secunderabad-500 017.
3. Chief Personnel Officer, Headquarters office, S.C.Railway, Secunderabad. .. Respondents

APPEARANCE:

For the applicant : Sri P.Krishna Reddy, Advocate
For the respondents : Sri N.V.Ramana, Addl. CGSC

CORAM:

THE HON'BLE MR.JUSTICE V.NEELADRI RAO, VICE-CHAIRMAN
THE HON'BLE MR. P.T. THIRUVENGADAM, MEMBER (ADMN.)

I JUDGMENT OF THE BENCH DELIVERED BY HON'BLE SRI P.T. THIRUVENGADAM, MEMBER (A) X

Prior to 1-1-1966 the Medical Officers and Dental Surgeons in Railways were a common cadre and designated as Assistant Surgeons. They were in the pay scale of Rs.335-650. From 1-1-1966, the Assistant Surgeons (Medi) were placed in the grade of Rs.350-900 (Class-II) and designated as AMOs. The Assistant Surgeons (Dental) were given the lower grade of Rs.325-800 and designated as

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Dental Surgeons (Class-II). Aggrieved by this, the Dental Surgeons had filed a Writ Petition in the High Court of Assam and Nagaland. The High Court ordered that the Dental Surgeons appointed prior to 1-8-1968 should be deemed to have held the posts of Assistant Medical Officer, Class-II in the scale of Rs.350-900, and the said Judgment was upheld by the Supreme Court. Accordingly, 17 Dental Surgeons appointed before 1-8-1968 were given the scale of Rs.350-900 and were designated as AMOs (Dental).

2. The 3rd Pay Commission recommended two different grades for Group 'B' (earlier Class-II) Medical Officers and Group 'B' (earlier Class-II) Dental Surgeons on the Railways. The general cadre Doctors were recommended for Group 'A' (earlier Class-I) scale of Rs.700-1600 whereas Group 'B' Dental Surgeons ^(in both grades) were granted the scale of Rs.650-1200 with a recommendation that in the case of latter, 10% of the posts shall be in selection grade namely, Rs.900-1400. Although the III Pay Commission recommended a lower scale of Rs.650-1200 (Group 'B') for the Dental Surgeons, as compared to the Group 'A' scale of Rs.700-1600 recommended for Assistant Medical Officers, the question as to how the 17 AMOs (Dental) who had earlier been assigned the same grade as given to Asst. Medical Officers Class-II viz. Rs.350-900 (RS) was examined by the Railway Ministry in consultation with the Ministry of Law and it was found that assigning them a lower scale may be difficult to sustain in the context of the earlier judgment of Assam and Nagaland High Court which was subsequently upheld by the Supreme Court. It was, therefore, decided in consultation

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with the Ministry of Finance to allot the scale of Rs.700-1600 (RS) as personal to them.

3. The applicant in this O.A. was appointed as Dental Surgeon on adhoc basis with effect from 2.9.1970 and his services were regularised with effect from 15.5.1971 in Class-II Service on the recommendations of U.P.S.C. unlike those who were appointed as Dental Surgeons prior to 1-8-1968 who were given the scale of Rs.700-1600 with effect from 1.1.1973 on personal basis. The applicant and others recruited subsequent to 1-8-1968 were given the scale of Rs.650-1200 (Group 'B') with effect from 1.1.1973.

As referred in para 2 above,
4. The 3rd pay Commission also recommended that 10% of posts of Dental Surgeons in Group 'B' to be upgraded to the Selection Grade of Rs.900-1400. Accordingly, the Ministry of Railways, vide their letter No.PC-3/74/PS-1/Ptd.v dt. 23.2.1981 issued the following order:-

" Sub:- Creation of Selection Grade posts for the category of Dental Surgeons in scale of Rs.650-1200.

In pursuance of the Third Pay Commission's recommendation made in para-71 Chapter 16, Vol.I of their report, the President is pleased to decide that two of the existing posts of Dental Surgeons /AMO(Dental) in scale of Rs.650-1200 should be sanctioned in the selection grade of Rs.900- 1400-1100-EB-50-1400(RS).

2. Only Dental Surgeons in pay scale of Rs.650-1200 (RS) are eligible to the aforesaid selection grade which will be controlled by the Railway Board.

3. These orders will take effect from the date of their issue."

This was followed by a further communication from the Railway Board bearing No.E(GP)81/1/30 dt. 16.7.1981 which reads as under:-

"Reference is invited to Board's letter No. PCIII/74/PS-12(Pt.IV) dt. 23.2.1981 conveying sanction to the placement of two of the existing posts of Dental Surgeon (Class-II) in the selection grade of Rs.900-1400.

2. The Railway Ministry after considering the cases of Dental Surgeons in grade Rs.650-1200 (RS) have decided that Dr.P. Ramaswamy, Dental Surgeon, S.C.Railway should be placed in the selection grade of Rs.900-1400/- with effect from 3.7.1981. For this purpose, the permanent post of Dental Surgeon in grade of Rs.650-1200 held by Dr.Ramaswamy, will be operated in the grade of Rs.900-1400 with effect from 3.7.1981."

5. In pursuance of the 4th pay Commission recommendations, all the posts of Dental Surgeons in the scales of Rs.650-1200 and Rs.700-1600 (personal scale) and the selection grade scale of Rs.900-1400 were replaced by a common scale of Rs.2200-4000. Accordingly, the applicant was given the pay scale of Rs.2200-4000 with effect from 1.1.1986.

6. The short issue which has come up for consideration is whether the selection grade posts of Dental Surgeon in the grade of Rs.900-1400 against which the applicant was fitted with effect from 3.7.1981 should be deemed to be in Group 'A' or Group 'B', is relevant from the point of view of eligibility for further promotions. The claim of the applicant is that the selection grade posts should be held to be in Group 'A' and since the respondents have not agreed with this contention this O.A. has been filed.

7. In support of his contentions, the applicant referred to Railway Board's letter No.PC.III/75/PS-I/CS, dt. 21.5.1976 under the subject of "Classification of Services - Change in the Classification consequent on the introduction of Railway Services (Revised Pay) Rules, 1973". The said letter reads as under:-

"Consequent upon the decision taken by the Govt. on the recommendations of the Third Pay Commission as contained in para-7, Chapter-65 of their report, the President is pleased to decide that with effect from 1.4.1976 all Gazetted and Non-gazetted posts on Railways shall be re-classified as Group A, Group B, Group C and Group D, as the case may be, as indicated below:

<u>Existing Classification</u>	<u>Revised Classification</u>
Class-I	Group-A
Class-II	Group-B
Class-III	Group-C
Class-IV	Group-D

Provided that:

- (i) the classification of any posts created or deemed to have been created on or after 1st Jan., 1973, in the revised scale but before 1st April, 1976 as specific additions to cadres existing prior to 1st Jan., 1973, shall be the same as that of the posts in the cadres to which they have been added, and,
- (ii) any other posts not covered by (i) above created or deemed to have been created in the revised scale of pay on or after 1st January, 1973 but before 1st April, 1976 having a classification higher than the one envisaged by Para 2 of this order shall be classified in terms of that paragraph but without prejudice to the status of the existing incumbents of such posts.

2. Subject to reclassification of posts as indicated above, and also subject to such exceptions as Railway Ministry may, by any general or special order, make from time to time, all gazetted and non-gazetted posts created subsequent to 1st April, 1976 shall be classified as follows:-

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Classification
of posts

Sl. no.	Description of posts	Classification of posts
1.	A post carrying a pay or a scale of pay with a maximum of not less than Rs.1,300-00	Group-A
2.	A post carrying a pay or a scale of pay with a maximum of not less than Rs.900-00 but less than Rs.1,300-00.	Group-B
3.	A post carrying a pay or a scale of pay with a maximum of over Rs.290 but less than Rs.900-00.	Group-C
4.	A post carrying a pay or a scale of pay the maximum of which is Rs.290-00 or less	Group-D

Provided that posts created subsequent to 1st April, 1976 as specific additions to existing cadres shall have the same classification as posts in the cadre to which they are added."

8. It was the contention of the applicant that the selection grade posts in the scale of Rs.900-1400 are to be classified as Group 'A' posts since the posts carried a maximum of not less than Rs.1300/- . However, the respondents argued that the selection grade posts were created out of the existing Group 'B' posts and as per proviso should be deemed to have the same classification. On this, the applicant argued that two posts in the selection grade were carved out of the Group 'B' posts as well as the 17 posts of Dental Surgeons who were in the scale of Rs.700-1600/-, ^{which} were admittedly ⁱⁿ Group 'A' scale. But, it is to be noted that the scale of Rs.700-1600/- to 17 Dental Surgeons was purely personal ~~one~~ and the posts as such were basically only in Group 'B'. If for any reasons one of those posts was vacated by any of those Dental Surgeons enjoying the personal scale of Rs.700-1600

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the post was getting filled up only in Group 'B' in the scale of Rs.650-1200.

9. The applicant placed reliance on a notification issued at the time of adopting the Fourth pay Commission Scales. In the notification No.PC.IV/86/RSRP/1 dt. 14.3.1987 under the General Classification of posts (part-A) for the pay scales of Rs.700-1600 and Rs.900-1400 which were shown to be existing in Group 'A', the revised equivalent scale of Rs.2200-4000 was indicated. In the same notification in Part-B in columns pertaining to certain specified groups, the following position was indicated:-

"2.

Posts	Present Scale	Revised scale
DENTAL SURGEON		
(i) AMO(Dental)	650-30-740-35-810-	2200-75-2800-EB-
Group 'B'	EB-35-880-40-1000-	100-4000
	EB-40-1200	
(ii) D.M.O.(Dental)	1300-50-1700	3700-125-4700-
		150-5000.

NOTE: The scales for Dental Surgeons who are in the grade Rs.900-1400 and Rs.700-1600 (Personal) would be notified later.

In a subsequent notification dt. 19.11.1987, the equivalent scales were indicated as under:-

"2. In the Railway Services (Revised pay) Rules, 1986 In the first Schedule in Part (B) for the existing item-2. DENTAL SURGEON along with the NOTE thereunder the following may be substituted:-

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Sl. no.	Posts	Present scale (Rs.)	Revised scale (Rs.)

2. DENTAL SURGEON			
	(i) A.M.O.(Dental)	(a) 650-30-740-35- 810-EB-35-880- 40-1000-EB-40- 1200.	X X X X 2200-75-2800-
		(b) 700-40-900-EB- 40-1100-50-1250- EB-50-1600 (Personal)	X X X X EB-100-4000.
		(c) 900-40-1100-EB- 50-1400 (SG)	X X
	(ii) D.M.O.(Dental)	1300-50-1700	3700-125-4700- 150-5000.

Reference to the above notifications does not in any way bring out that the selection grade scale of Rs.900-1400 for Dental Surgeons was classified as a Group 'A' post. In the notification dt. 14.3.1987 though all posts in the scale of Rs.900-1400 were indicated as Group 'A' posts in the general classification in Part 'A', a separate provision was made in the same notification for certain specified posts like 'Dental Surgeons ' in Part 'B'. In this Part 'B' there is no indication about the classification for the selection grade of Rs.900-1400. Similarly even in the later notification dt. 19.11.1987 there is no indication as to what is the classification of the selection grade of Rs.900-1400.

10. Considering that the selection grade posts are carved out of the existing base posts and are filled by a simple process of seniority-cum-fitness (as mentioned in Railway Board Letter No.PC.III/74/PS-I/2/(Pt.V) dt.9.1.1980) we feel that the selection grade posts should also be only in Group 'B'. In any case Railway Ministry was vested with the powers to make any exceptions with regard to the classification as could be seen in Railway Board's letter dt.21.5.76 (referred to in para-7 above).

11. In view of the above, the O.A. is dismissed.

No costs.

P. J. Thiru
P. J. Thiru

(P.T.Thiruvengadam)
Member (Admn.)

V. Neeladri Rao
(V. Neeladri Rao)
Vice-Chairman

Date 25/08/1993.

8/13/93
Deputy Registrar (J)

grh.

PS: After the judgement was pronounced and signed, the learned counsel for the applicant submitted that dismissal of this OA may not be a bar for consideration of the applicant's representation in accordance with Railway

Board's letter No.PC.III/2/PS-I/2/(Pt.V) dated 21-5-76

The said submission is just and not unreasonable. Hence, we make it clear that the dismissal of this OA should not come in the way of consideration in accordance with

Board's letter dated 21-5-1976 referred to supra.

P. J. Thiru
P. J. Thiru

(P.T. Thiruvengadam)
Member (Admn.)

V. Neeladri Rao
(V. Neeladri Rao)
Vice-Chairman

8/13/93
Deputy Registrar (J)

To

1. The Secretary(E), Union of India,
Railway Board, Ministry of Railways, Railbhavan,
New Delhi-1.
2. The General Manager, S.C.Railway, Secunderabad-17.
3. The Chief Personnel Officer, Headquarters Office,
S.C.Railway, Secunderabad.
4. One copy to Mr.P.Krishna Reddy, Advocate, CAT.Hyd.
5. One copy to Mr.N.v.Ramana, Addl.CGSC.CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

pvm

*P. J. Thiru
25/08/1993*

TYPED BY

6/9/93

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE V.NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR.A.B.GORTHY : MEMBER(A)

AND

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

AND

THE HON'BLE MR.P.T.TIRUVENGADAM:M(A)

Dated: 25-8-1993 ✓

CRDRE/JUDGMENT:

M.A/R.A/C.A.N.

O.A. No. 495/91
in

T.A. No. (H.P.)

Admitted and Interim directions
issued.

Allowed

Disposed of with directions

Dismissed

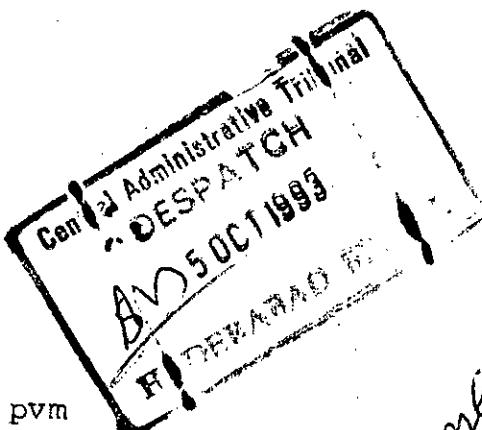
Dismissed as withdrawn

Dismissed for default.

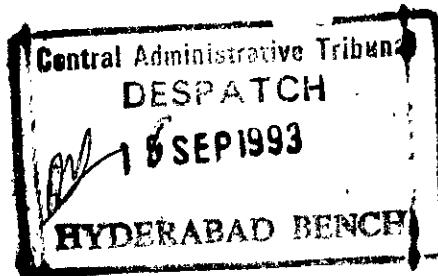
Rejected/Ordered

No order as to costs.

pvm



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