

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.956/92.

Date of Judgement : 8-11-93

S.J.Rao

.. Applicant

Vs.

Union of India, Rep. by

1. Director Training-I,
Railway Board,
New Delhi.
2. The General Manager,
S.E.Rly., Calcutta-43.
3. The Principal Financial
Adviser & Chief Accounts
Officer, S.E.Rly.,
Calcutta-43.

.. Respondents

Counsel for the Applicant :: Shri Y.Subrahmanyam Advocate

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

CORAM:

Hon'ble Shri A.B.Gorthi : Member(A)

Hon'ble Shri T.Chandrasekhara Reddy : Member(J)

J u d g e m e n t

{ As per Hon'ble Shri A.B.Gorthi : Member(A) }

The Applicant, having passed the Final Examination of The Institute of Cost & Works Accountants of India (I.C.W.A. for short) in December, 1975, claims in this application for the grant of 4 advance increments to which he became entitled on account of qualifying in the said examination.

His further claim is for the consequential revision of his pensionary benefits. He retired from service on 31.7.91

2. The Applicant was appointed as Clerk Grade-II on 18.10. and in due course was promoted to the level of Senior

Travelling Inspector of Accounts in Group 'C' category of

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Railway Accounts Department. In 1966, an incentive scheme of awarding increments for acquiring professional qualifications while in service was introduced in favour of Group 'C' employees. The Applicant was promoted as an Asst. Accounts Officer (A.A.O. for short) in Group 'B' category and was regularised in that post in October, 1977. He continued to be Group 'B' Officer till he was promoted as Deputy Financial Adviser & Chief Accounts Officer on 11.4.91. In the meantime the Applicant qualified in the Final Examination of I.C.W.A. in December, 1975. The Respondents treated him as a Group 'B' official and denied him the benefit of incentives which were applicable to Group 'C' employees only. Later, the Railway Board vide Circular No.E(Trg)89(28)/(29) dt. 4.5.90 extended the scheme of granting incentive for acquiring higher/additional qualifications to Group 'B' Railway Officers also. The said policy letter, however, stipulated that the benefit of extension would be applicable from the date of issue of the letter i.e., 4.5.90. Although the Applicant, as on 4.5.90, was in Group 'B' cadre, the Respondents wrongly treated him as a Group 'A' Officer and denied him the benefit under the Railway Board's policy letter dt. 4.5.90.

3. The Respondents refute the claim of the Applicant by stating that the Applicant was substantively appointed to the Junior Scale of the Indian Railway Accounts Service (I.R.A.S. for short) w.e.f. 26.2.90 vide Govt. of India, Ministry of Railways (Railway Board) Notification dt. 22.3.90. The contention of the Respondents is that w.e.f. 26.2.90 the Applicant was a Group 'A' cadre officer and is, therefore, not eligible to the benefit of advance increments which were allowed to Group 'B' officers only w.e.f. 4.5.90.

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4. The Applicant in the Rejoinder has further stated that even his promotion as A.A.O. in Group 'B' cadre w.e.f. 10.7.75 was only as a stop gap measure. In other words, his contention is that he continued to be a Group 'C' employee only till he was regularised in the Group 'B' post in October, 1977. As he qualified in the Final Examination of I.C.W.A. in December, 1975, by which time he was only a substantive Group 'C' employee he would be entitled to the benefit of incentives as per the scheme introduced in 1966.

5. We may first take up the last contention raised by the Applicant through the Rejoinder filed by him. Firstly we notice that in the O.A., in particular in the relief sought by him, there was no reference to his claim for advance increments as a Group 'C' Officer. His claim was only for the grant of advance increments while he was working as a Group 'B' Officer. Consequently, the Respondent had no opportunity to clarify whether the promotion of the Applicant to Group 'B' cadre on 10.7.75 was as a stop gap measure or on a regular basis. Claiming that ~~it was only~~ as a stop gap measure, the learned counsel for the Applicant has placed reliance on the judgement of the Bombay Bench of the Tribunal in O.A.No.543/91. In that case it was held that a Group 'B' employee would be entitled to the scheme introduced on 4.5.90 even if the said Group 'B' employee was promoted on adhoc basis to the Senior Scale. The Senior scale of pay for a Group 'B' employee is Rs.3000-4500 which is also the scale of pay in the Junior Scale Group 'A' Officer. On the same analogy the Applicant herein claims that he should have been declared as eligible for the incentives from the date of his qualifying in the examination in 1975 till he was regularly appointed to Group 'B' in October, 1977.

We do not accept this claim for two reasons. Firstly this was not the claim made in the O.A. nor a relief sought in this regard. It was only in the Rejoinder for the first time that this aspect has been raised. In any case, the claim of the Applicant pertaining to the period 1975-77 is rather too stale to deserve consideration by us at this stage. This part of the relief now claimed through the Rejoinder is, therefore, not tenable and is not allowed.

6. As regards the claim of the Applicant for the benefit of advance increments under the Railway Board's policy letter dt. 4.5.90, the same depends on whether on the relevant date i.e., 4.5.90 the Applicant was a Group 'B' Officer or a Group 'A' Officer. Paras 2A and 3(e) of the Railway Board's Circular dt. 4.5.90 are reproduced below:-

"2. Pursuant to the recommendations of the IV Pay Commission the Ministry of Railways have decided that the scheme of granting incentives for acquiring higher/additional qualifications should be extended to Group 'B' Railway Officers also. It has been decided that incentives should be granted to the Gr. 'B' Railway Officers as under:-

A. Group 'B' Officers of Accounts Departments should be granted two advance increments on passing Part I or Intermediate examination of ICWA or AICA and six advance increments (including two granted for Part I/Intermediate) on passing the final examination of these Institutes in case they acquire the qualification after joining service.

3. The following conditions will apply to the scheme of incentives for Group 'B' Officers as mentioned above:-

(e) The benefit of incentives shall also be admissible to such Gr. 'B' Officers who have qualified the recognised examination prior to the issue of these instructions, from the date of issue of this letter. in the time scale pay in which they are drawing pay as on the date of this letter. If this is an officiating grade, he should also be granted proforma benefit of advance increments in the lower grade and in the event of reverting to that grade, he should get his proforma pay in that grade. If on the other hand an officer is promoted to a higher grade, after being granted advance increments in a lower grade, the pay drawn by him at the time of promotion should be taken as pay for fixation of pay under the rules." (Underlined for emphasis).

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7. From the above it is evident that the incentive of advance increments is permissible only to Group 'B' Officers. The Applicant, while in Group 'B' cadre, was drawing pay in the Senior Scale which is the same as that of Group 'A'. Notwithstanding the pay he was drawing, he would, under the Railway Board's policy, be entitled to advance increments so long he remained a Group 'B' Officer. We have, therefore, to see as to what is the import of the Railway Board's letter dt. 22.3.90. The same is reproduced below:-

"The President is pleased to approve of the undermentioned Group 'B' Officers of the Accounts Department being appointed substantively to the Junior Scale of the Indian Railway Accounts Service with effect from 26.2.90 on the Railways mentioned against each.

<u>S.No.</u>	<u>Name (S/Sh).</u>	<u>Railway.</u>
x	xxxxx	xxxxx
18.	S.J.Rao	South Eastern.
x	xxxxx	xxxxx

A.N.SHUKLA
SECRETARY, RAILWAY BOARD."

8. The contention of the Respondents is that by virtue of the above notification the Applicant stood promoted substantively to the Junior Scale of I.R.A.S. which is in the Group 'A' cadre. The Applicant, however, contends that the said notification was only a nomination to Group 'A' cadre and that the Applicant never accepted the same. The Applicant had, in fact, addressed a letter to the Director(Training) on 6.9.90 declining the offer of appointment to Group 'A' cadre so that he could remain a Group 'B' Officer and be eligible for the incentives extended to Group 'B' Officers under the Railway Board's policy letter dt. 4.5.90. Thus, the Applicant asserts that as he did not

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accept the Group 'A' cadre post he remained a Group 'B' Officer only. In support of this contention, the learned counsel for the Applicant has drawn our attention to Union of India & Ors. Vs. K.K.Vadera & Ors., 1990(1) SLJ SC 106, wherein it was laid down that in the absence of any statutory provision a promotion should take effect from the date when a person is really promoted. In that case, Their Lordships stated that they are not aware of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. Their Lordships emphasised that after a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant. From this observation in K.K.Vadera's case it would be evident that in that case the question was whether a promotion became effective as soon as the post fell vacant or only when the promotion was granted.

The question was resolved by Their Lordships by holding that a promotion should take effect from the date when a person is really promoted. In the instant case, evidently, the Applicant was promoted to a substantive post in the Junior Scale of the I.R.A.S. w.e.f. 26.2.90. It cannot, therefore, be said that the Applicant would continue to be a Group Officer even after that date, notwithstanding his claim to decline the promotion to Group 'A', which he made six months after the issuance of the promotion order.

9. For a person in public service, promotion is an important incidence of his service career. He gets such promotion only when it is ordered by the competent authority after due selection conducted as per the relevant rules. The decision of the competent authority promoting an employee is usually promulgated by means of a formal order. The same order may specify a particular date when the promotion becomes effective

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but when it is not so specified the date of promotion shall be the date when the employee assumes charge of the promotional post. In the instant case, the Railway Board's notification dt. 22.3.90 leaves no room for any doubt that the Applicant was substantively promoted to Group 'A' cadre w.e.f. 26.2.90. Consequently he is not entitled to receive the benefits under the Railway Board's policy letter dt. 4.5.90 which came into effect only from that date.

10. The Applicant in his Rejoinder has stated that the recommendations of the IV Pay Commission were accepted by the Comptroller & Auditor-General of India (C.A.G. for short) who implemented the scheme of grant of advance increments to Group 'B' officials who qualified in the I.C.W.A. examination in respect of Group 'B' Officers under the C.A.G. w.e.f. 7.9.87. The Applicant contends that the Railway Board also should have given the benefit of the scheme with effect from the same date as that which has been decided by the C.A.G. To give the benefit to the Group 'B' Railway employees from a later date i.e., 4.5.90, is discriminatory and violative of Articles 14 and 16 of the Constitution of India. We are unable to accept this contention in view of the judgement of the Hon'ble Supreme Court in Union of India & Ors. Vs. Secretary, Madras Civil Audit & Accounts Association & Another, 1992 SCC (L&S) 382. Para 5 of the judgement is reproduced below:-

"One of the submissions of the learned counsel for the respondents is that the persons allocated to the Accounts wing, who possessed similar qualifications before and after entry into the department, were performing duties of the same nature as those allocated to the Audit wing, and that being so, allowing them lower scales of pay than those allowed to the Audit wing was violative of Articles 14 and 16 of the Constitution. It is true that all of them before restructuring belonged to one department. But that by itself cannot be a ground for attracting Articles 14 and 16 of the Constitution.

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As already mentioned, the new posts have to be identified as indicated by the Pay Commission and thereafter the implementation of the recommendations in respect of higher scales can be done. The Full Bench as well as the Bangalore Bench of the CAT have not correctly interpreted the scope of the recommendations. A combined reading of the Pay Commission Report and the Office Memo makes it abundantly clear that the second set of the recommendations could only be given effect to after identifying these posts. For that purpose the whole matter is required to be examined and the necessary decision has to be taken. In this context it is also necessary to note that the post of Assistant Accounts Officer was not in existence earlier which is now brought under a functional grade. For that purpose necessary rules have to be framed prescribing the eligibility etc., and the senior Accountants who have completed three years' regular service in the grade are upgraded to this post. It is evident that all this could have been done only in the year 1987 and in the said Organisation Accounts Office higher scales of pay were given with effect from April 1, 1987 i.e., from the beginning of the financial year. We are unable to see as to how the respondents can insist that they must be given higher scales with effect from January 1, 1986. This claim is obviously based on the ground that some of the officers belonging to the Audit wing were given scales with effect from January 1, 1986. But it must be borne in mind that they were eligible on that date for higher scales. Likewise some of the officers of the Accounts wing who were eligible for higher scales were also given. But with reference to the second part of the recommendations categories of posts in the functional grades in the Accounts wing had to be identified and created. The respondents who got that benefit of being upgraded now cannot claim that they must also be given same scales like others in respect of whom the recommendations of the Pay Commission were given effect with effect from January 1, 1986. There is a clear distinction between the two categories. Therefore, the submission that giving two different dates of implementation of the recommendations in respect of these two categories of persons of the Accounts wing and the Audit wing offends Articles 14 and 16, is liable to be rejected."

11. Although the above was a case of equal pay for equal work the ratio of the judgement ~~which~~ clearly supports the view that giving two different dates/for implementation of the recommendations of the IV Pay Commission in respect of and distinct two separate/departments of the Central Government cannot be violative of Articles 14 and 16 of the Constitution.

12. In view of what is aforesaid, we are of the considered view that the Applicant as on 4.5.90 was a Group 'A' Officer

and the Respondents, therefore, rightly rejected his claim for advance increments applicable only to Group 'B' Officers. The application is, therefore, liable to be dismissed and it is hereby dismissed but there shall be no order as to costs.

T. Chandrasekhara Reddy
(T.Chandrasekhara Reddy)
Member(J).

A.B.Gorthi
(A.B.Gorthi)
Member (A).

Dated: 8 Nov., 1993.

br.

18/11/93
Deputy Registrar(Judl.)

Copy to:-

1. Director Training-I, Railway Board, Union of India, New Delhi.
2. The General Manager, S.E.Railway, Calcutta.
3. The Principal Financial Adviser & Chief Accountant, S.E.Railway, Calcutta-43.
4. One copy to Sri. Y.Subrahmanyam, advocate, Narasimhanagar, Visakhapatnam-27.
5. One copy to Sri. V.Bhimanna, SC for Railways, Calcutta.
6. One copy to Library, CAT, Hyd.
7. Copy to All Benches & Reporters, as per CAT, Hyd.
8. One spare copy.
9. One copy to Dy. Registrar(Judl.), Calcutta.

Rsm/-

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OA-956/92

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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: 27/11/1993

ORDER/JUDGMENT:

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

in

O.A.No.

956/92

~~T.A.No.~~

(W.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

