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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.265/92

DATE OF JUDGEMENT: 18th DEC., 1992

Between

K.Venkatas^wamy Gopal .. Applicant

and

1. Union of India rep by
General Manager
South Central Railway
Secunderabad

2. The Divisional Railway Manager
South Central Railway
Secunderabad BG Division
Secunderabad

.. Respondents

Counsel for the applicant : Mr V.Krishna Rao

Counsel for the respondents : Mr V.Bhimanna,SC for R1

CORAM:

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER(JUDL.)

JUDGEMENT

As delivered by Hon'ble Shri T.Chandrasekhara Reddy, Member(J

This is an application filed under Section 19 of the Central Administrative Tribunals Act, to direct the respondents to protect the pay of the applicant at Rs.1320/- w.e.f. 1.4.90 and pay all consequential benefits and arrears of pay and pass such other orders as may deem fit and proper in the circumstances of the case.

The facts giving rise to this OA in brief may be stated as follows:

The applicant was initially appointed as Khalas in Loco Shed Lallaguda on 3.2.1955. He was transferred as Khalasi to Dornakal on 22.6.56. He was promoted as Basic Fitter from 29.11.65. Afterwards, he was transferred to Nizamabad Division and again to Locoshed, Kazipet as R Basic Fitter. He was retrospectively promoted as

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Skilled Grade III Fitter in the scale of Rs.260-400(RS) with effect from 1.8.78 under re-classification orders of the Railway Board. Further he was promoted as Skilled Grade-II Fitter in scale of Rs.330-480(RS) w.e.f. 1.1.84.

Due to conversion of traction from steam to electric, the number of sanctioned posts were reduced from May 1988. The applicant was one among the persons who were rendered surplus due to the reduction of sanctioned posts in the category of Skilled Grade-II Fitter. The staff rendered surplus were asked to exercise their option for alternate post of Ticket Collector in the Grade of Rs.950-1500 (RS) on the terms and conditions stipulated in the Railways letter dated 23.12.89. The applicant exercised his option and accordingly was appointed as Ticket Collector. In the Railways, the post of Skilled Grade II Fitter was in the scale of Rs.1200-1800(RSRP) and the applicant was drawing a basic pay of Rs.1320/- at the time of retrenchment. After the applicant was posted as Ticket Collector, his basic pay was fixed at Rs.1175/-. So, there is a fall in the basic pay of the applicant in the post of Ticket Collector. Hence, the applicant has filed the present OA for a direction to the respondents to protect his pay at Rs.1320/^{in the present post of Ticket collector} which the applicant was drawing at the time of retrenchment, in the present post of ~~Ticket Collector~~ ^{Skilled Grade II Fitter}.

Counter is filed by the respondents opposing this OA.

It is not in dispute that the post of Skilled Grade II Fitter in which the applicant was working prior to his retrenchment was a higher post than that of Ticket Collector in which the applicant was reappointed after retrenchment. Further that the scale of Skilled Grade II

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Fitter is Rs.1200-1800 and that the scale of Ticket Collector is Rs.950-1500 ~~is~~ also not in dispute in this case.

It is also not in dispute that the applicant was drawing a ~~an~~ basic salary of Rs.1320/- in the post of Skilled Grade II Fitter whereas, after retrenchment in the post of Ticket Collector i.e. in which post the applicant was reappointed after retrenchment, his basic pay was fixed at Rs.1175/-.

It is the contention of the learned counsel appearing for the respondents, that as per the extant instructions for fixation of pay contained in Railway Board's letter No.F(E)/53/PA-5(1) dated 11.6.53 and No.E(NG)II-67-RE-I/58 dated 29.4.68 and para 604 of the Railway Establishment Manual, that the pay of the applicant has been fixed in the grade of Ticket Collector (which is in the scale of Rs.950-1500 (RSRP)) duly giving him 12 advance increments for corresponding 12 completed years of service, in the equal higher grade and as on 1.4.90 that the pay of the applicant has been rightly fixed at Rs.1175/-, and so the prayer of the applicant to get his pay fixed at Rs.1320/- is liable to be rejected.

The main prayer of the applicant in the OA is, that his pay ~~has~~ ^{is liable} to be fixed in the present scale of ticket collector at the pay last drawn by him in the ^{skilled} grade of Grade II Fitter. It has got to be seen whether the fixation of pay of the applicant in the present post, in the present scale, at the stage last drawn by him would contravene any of the instructions ~~or~~ or rules of the Railways. So, in this context, we may straightaway refer to a decision of the Division Bench of the AP High Court reported in 1982(2) SLJ Page 382 (Union of India and another - appellants Vs P.Malakondaya -respondents.)

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The facts of the reported case are as follows:

The respondent therein was appointed as Secondary Grade Assistant in the Adult Literacy Centre, Kalichedu Nellore District on 23.5.67 in the scale of Rs.100-142. On the abolition of that post, the respondent who was the junior most assistant was transferred and posted as Higher Grade Teacher in the scale of Rs.80-100 at Palamani in a leave vacancy and that leave vacancy terminated consequent upon the incumbent joining the duty. The respondent then was transferred and posted as a Secondary Grade Assistant which was a new post created on 17.4.72 at Talupur. That post carried a pay scale of Rs.90-200. While posting him against that new post his pay was fixed at Rs.90/-. The respondent therein protested and made a representation that since he was transferred and posted as Secondary Grade Assistant, his pay should be protected. On 18.12.71 by an order dated 2.7.75, the representation of the respondent was rejected. So, he filed a writ appeal in the High Court of AP for direction ^{petition} No. 6011 of 75 to give him ~~in the~~ pay protection by giving him the pay last drawn by him in the higher post when he was transferred on 12.2.72 to a lower post and he should also be given pay protection in the State Scale as a Secondary Grade Assistant.

The learned single Judge who heard the writ petition of the respondent therein held that the respondent therein was entitled for the protection of pay as claimed by him and which claim was upheld. The other relief was refused by the learned single Judge for which the respondent therein did not prefer any appeal writ

The Union of India and another preferred an appeal No. 474 of in the High Court of AP which came up before the Division Bench consisting of the Hon'ble Mr Actg. Chief Justice K. Madhava Reddy and the Hon'ble Mr Justice Lakshminaray Reddy.

The Bench referred to Annexure to Rule 27 of the Central Services Fundamental Rule which reads as follows

ANNEXURE
(See GIO(5) below FR 27)

No. Powers delegated (1)	Principles to be observed in exercising the powers (2)	Remarks (3)
1. Fixation of pay of Govt. servants promoted/transferred from one officiating post to another or re-appointment after retrenchment including fixation of pay of temporary Govt. servants on transfer from a higher to a lower post and from a lower post to higher post, etc. (incl. transfer from one post to another post)	(a) Temporary Govt. servants transferred from a higher to a lower post:- completed years of service in the higher post will count for purposes of advance increments in the lower post to which he is appointed or reverted. But initial pay should not exceed pay last drawn in the higher post.	Pay will be fixed under and personal pay any, will be all under (23) (b)

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The very same contentions raised by the learned counsel Sri V. Bhimanna appearing for the respondents, were also raised by the Standing Counsel for the Government in the High Court of AP in the Writ Appeal. The ~~said~~ Bench in their Judgement observed as follows:

" 7..... the appointing authority may terminate the services of a person who has been appointed against that post but that is not automatically affected by the fact of abolition of that post. It is open to the appointing authority by abolishing the post to appoint an incumbent to any other post in lieu of that post or as envisaged by Fundamental Rule 27 to a lower post which may be available. The appointing authority in the case of the respondents, evidently having to his long service and in view of fact that even by the date of his transfer he had drawn four increments and had put in four years of service thought that his services should not be terminated, but that he should be transferred against another post though of a lower grade and carrying a lower scale of pay. While it was perhaps open to the authorities to terminate his services, when they themselves have not chosen to do so, but transferred him and that is permitted by FR 27 there is no reason why we should read the word 'transfer' as termination of service and re-appointment. It is precisely for meeting such a situation FR 27 contemplates fixation of pay ~~within~~ the scale of pay applicable to the lower post or a higher post as the case may be. Col. 2 of Annexure to Rule 27 directs that when a temporary Govt. servant is transferred from a higher post to a lower post the completed years of service in the higher post will count for purposes of advance increments in the lower post to which he is appointed or reverted, the only restriction imposed being that it should not exceed pay last drawn in the higher post. When the claim of the petitioner is merely to fix his pay in the present scale at the pay last drawn by him, obviously it does not contravene this rule....."

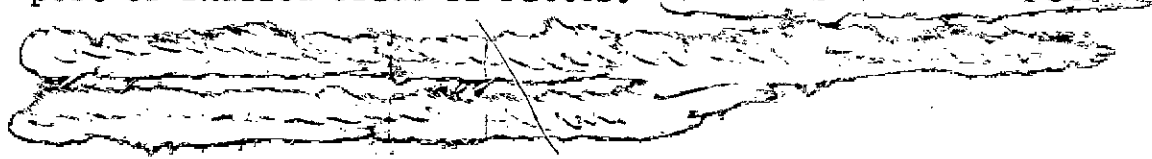
The position of the applicant herein is ^{same} as that of the respondent in the said Writ Appeal. The instructions of the Railway Board ^{in their} letter and para 604 of the Railway Establishment manual drawn to our attention are in no way different from FR 27 to which a reference is made in the said Judgement of AP High Court. So, the observations in the said judgement apply on all fours to the facts of this case, and hence an appropriate direction is liable to

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be given to the respondents.

As could be seen, the applicant is in service of the Railways w.e.f. 1955. He was declared surplus on 1.4.90 ^{due to reduction of sanctioned posts}. So, in view of the long service that the applicant had put in and as retrenchment/termination was not due to the fault of the applicant, it would be just and equitable to give pay protection to the applicant in the ~~post~~ post of Ticket Collector taking into consideration his pay at the time of retrenchment in the post of Skilled Grade II Fitter, ^{as this is not a case where the Applicant had been re-employment or retirement on the eve of superannuation}. The learned counsel for the respondents ^{Ticket Collector} contended that while accepting the post of ~~TC~~ that the applicant had exercised his option to work in the lower post as TC and that ^{that were} the applicant also accepted to the terms and conditions/stipulated before the applicant, before he accepted the appointment of Ticket Collector with reference to the pay scale. Nowhere the applicant has stated that he would not claim pay protection of the pay which he was drawing in the higher post even though he was absorbed in the lower post. ~~The~~ ^{for} terms and conditions stipulated to ^{of} appointment the applicant as TC (Ticket Collector) do not also go to show that the applicant ^{is} ~~was~~ not entitled for pay protection which he was drawing in the skilled grade II fitter, even though the applicant had been absorbed in the post of Ticket Collector. The ~~material~~ material placed before us do not go to show that the applicant is not entitled to get his pay fixed in the present post of ~~TC~~ Ticket Collector at the pay drawn by him in the post of Skilled Grade II Fitter.



Even though the services of the applicant have been retrenched/terminated as early as on 1.4.90,

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To

1. The General Manager, Union of India,
South Central Railway, Secunderabad.
2. The Divisional Railway Manager,
S.C. Railway, Secunderabad BG Division,
Secunderabad.
3. One copy to Mr. V. Krishna Rao, Advocate, CAT. Hyd.
4. One copy to Mr. V. Bhimanna, SC for Rlys, CAT. Hyd.
5. ~~One copy to Mr. D. Chandra Sekhar Reddy, member (J) CAT, Hyderabad.~~
6. One copy to ~~Mr.~~ Deputy Registrar (J) CAT. Hyd.
7. Copy to All Reporters as per standard list of CAT. Hyd.
8. One spare copy.

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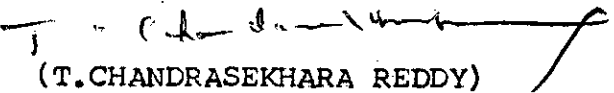
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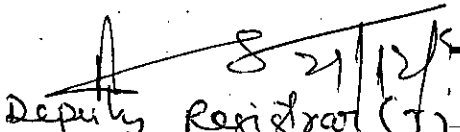
the applicant has approached this Tribunal only on 25.3.92. So, there is roughly ~~a~~ two years delay in filing this OA. In view of the provisions contained in Section 21 of the Administrative Tribunals Act, the applicant will not be entitled for the actual monetary benefits of this Judgement w.e.f. 1.4.90 ^{as} prayed for by him; but, will only be entitled for actual monetary benefits w.e.f. 25.3.91 which is one year prior to filing of this OA.

In the result, we direct the respondents to give notional pay protection to the applicant at Rs.1320/- in the present grade of Ticket Collector with notional consequential benefits w.e.f. 1.4.90, but to pay ^{to} the ^{applicant} actual arrears from 25.3.91 only. We make it clear that the applicant is not entitled to the same pay scale in the skilled grade II fitter while working as Ticket Collector. The applicant will be governed only by the pay scale of Ticket Collector even though we have directed the respondents to give the applicant the pay protection by giving him the last pay drawn by him in the higher post of Skilled Grade II Fitter when the applicant's services were ~~retrenched~~ terminated.

The OA is disposed of with the above said directions leaving the parties to bear their own costs.


(T. CHANDRASEKHARA REDDY)
Member (Judl.)

Dated: 18 December, 1992


Deputy Registrar (G)

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TYPED BY _____ COMPARED BY _____
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CHECKED BY _____ APPROVED BY _____
HYDERABAD BENCH
HYDERABAD

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: AT HYDERABAD

THE HON'BLE MR. _____ V.C.

AND

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

AND

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

AND

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

Dated: 18-12-1992

ORDER/JUDGMENT:

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

in

O.A.No. 265/92

T.A.No. _____ (W.P.No. _____)

Admitted and Interim Directions issued

Allowed

Disposed of with directions

Dismissed

Dismissed as with drawn

Dismissed for default

M.A. Ordered/Rejected

No order as to costs.

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Central Administrative Tribunal
DESPATCH
29 DEC 1992
HYDERABAD BENCH.

22/12/92
C/O S. S. S. (S. S. S.)