

25

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 295/92.

Dt. of Decision : 13.6.94.

Mr. V. Ravindra Gupta

.. Applicant

Vs

1. The General Manager,
SC Rly, Rail Nilayam,
Secunderabad.
2. Financial Adviser and Chief
Accounts Officer,
SC Rly, Rail Nilayam,
Secunderabad.
3. Works^hop Accounts Officer,
SC Rly, Lalaguda,
Secunderabad.

.. Respondents.

Counsel for the Applicant : Mr. S. Satyam Reddy

Counsel for the Respondents ; Mr. N.V. Ramana, Addl. CGSC.

CORAM:

THE HON'BLE S^rRI JUSTICE V.NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE S^rRI R. RANGARAJAN : MEMBER (ADMN.)

101

J. U D G M E N T

X as per Hon'ble Sri R.Rangarajan, Member(Administrative) X

Heard Sri S.Satyam Reddy, learned counsel for the applicant and Sri N.V.Ramana, learned Standing Counsel for Railways.

2. The applicant was appointed as Works Mistry in the Engineering Department of South Central Railway on 15.10.1965 through the Railway Service Commission in the scale of Rs.150-240 (A.S.) which was later revised to Rs.380-560 with effect from 1.1.1973 under the III Pay Commission. While so, the applicant was declared surplus in the Civil Engineering Department during the year 1975. As an alternative arrangement, the applicant was offered the post of Clerk Gr.II in the scale of Rs.260-400 (R.S.) in the Accounts Department and posted as such on 25.6.1975. The applicant states that his pay was fixed at Rs.368/- comprising of Basic pay at Rs.260/- and personal pay of Rs.108/-. He was given no increment and the increment earned was progressively reduced from the personal pay. On 7.12.1977 upon passing the departmental tests, the applicant was promoted as Clerk Gr.I in the scale of Rs.330-560 and his Basic Pay was fixed at Rs.330/- and he was also given a personal pay of Rs.38/- totalling Rs.368/-. His basic pay was raised to Rs.370/- from 7.12.1981 when the personal pay was fully set off against the increments.

3. The applicant contends that he should have been given a Basic pay of Rs.428/- when he was posted to Accounts Department. He had also represented his case to R-1 and R-2 in this connection and also quoted in his representation, cases of some staff who were made surplus from Engineering Branch like him and absorbed in other departments who were given pay protection.

98

4. As his request for pay protection was not acceded to, he had filed this OA on 2.4.1992 under sec.19 of the Administrative Tribunals Act, 1985 praying for a direction to the respondents to fix his pay at Rs.428/- in the appropriate scale of pay which he was drawing in the Civil Engineering Department at the time of his allotment to the Accounts Department in the year 1975 and to grant annual increments and payment of arrears.

5. It is not in dispute that the applicant had joined the Civil Engineering Branch as Works Mistry and declared surplus in the year 1975. It is also not in dispute that he was absorbed as Clerk Gr.II in the Accounts Branch in the grade of Rs.260-400 fixing his initial pay at the time of absorption as Clerk Gr.II in Accounts Branch at Rs.368/- comprising of Basic pay of Rs.260/- and personal pay of Rs.108/-.

6. Whenever any employee is made surplus due to shrinkage of cadre or due to other reasons, the employee is liable to be retransferred from service following the extant rules if he does not accept alternate appointment offered to him by the administration. The above has been upheld by the Supreme Court also. In this case, the applicant who worked as a Works Mistry in the Civil Engineering Branch in the pay scale of Rs.380-560 drawing a pay of Rs.428/- in 1975 was rendered surplus and was absorbed as Clerk Gr.II in the Accounts Branch in the scale of Rs.260-400 which he had accepted without any hesitation.

7. The mute question that arises here is at what stage his pay has to be fixed in the cadre of Accounts Clerk Gr.II in the scale of Rs.260-400 when he was absorbed in the post.

...4/-



Page

99

8. The respondents state that the pay has to be fixed in terms of para-2(I)(a) of the Railway Board's Letter No.E(NG)II-67/CEI/58 dt. 29.4.1968 copy of which is filed as Annexure R-1. ^{The} This relevant para reads as under:-

"(1) when staff recruited through Railway Service Commission are rendered surplus (a) when appointment is from a higher to a lower or equivalent alternative post.

Increments equal to the number of years of service rendered in the post from which the Railway Servant has rendered surplus, should be given in the post in which he has been absorbed."

As per the above instruction, the applicant is entitled for fixation of pay at the initial stage plus increments equal to number of years of service he had put in, in the post from which he has been rendered surplus. This fixation appears to be logical as it gives the applicant the benefit of his service in the earlier cadre ^{for increments} even though he was absorbed in other lower cadre. Fixation of his pay at Rs.368/- as done in this case by the respondents does in no way fulfil the above rule of fixation of pay. Even as per the admission of the respondents, fixing his pay at Rs.368/- is erroneous. The applicant relies on the Pay Fixation Rules as embodied in Establishment Serial Circular No.101/68 at pages 145-148 of South Central Railway's Establishment Serial Circulars with Classified Summary published in the year 1968. This establishment circular also relies on the Board's circular dt. 29.4.68 quoted above. The relevant portion of fixation of pay of a Railway servant transferred from a higher post to a lower post as given in the classified summary reads as below:

"(a) Transfer from a higher to a lower post.
(i) Temporary Railway servants.

In such cases, the benefit of completed years of service in the higher posts may be given for purposes

of advance increments in the lower posts to which a Railway servant is appointed, provided, of course this does not exceed the pay drawn in the higher post at the time of transfer. In case the appointment to the lower post involves appointment to a regular cadre with immediate or future prospects of absorption as a permanent Government Servant, case should be taken to see that the grant of advance increments does not come into conflict with the pay fixed for other Railway servants in the cadre. In such cases, normally, it may be preferable to fix a Railway Servant's pay at the minimum of the time scale and to grant a personal pay equal to the appropriate number of increments instead of fixing the pay at a higher stage at the time scale. The personal pay will be absorbable in future increments."

A careful perusal of the above quoted para will clearly indicate that the benefit of completed years of service in the higher posts may have to be given to the transferred employee in this case for purposes of advance increments in the lower posts to which the railway servant is appointed. The other fixation rules for a permanent railway servant does not apply to him as he is a temporary railway servant posted to Accounts Branch on becoming surplus in the Engineering Department. Hence, there is no doubt that the fixation of pay of the applicant who was recruited as Works Mistry in the Civil Engineering Department through the Railway Service Commission and rendered surplus from that post and absorbed to the lower post of Accounts Clerk Gr.II in the pay scale of Rs.260-400 has to be regulated in terms of the Railway Board's letter dt. 29.4.1968 (Annexure R-1). He has to be given advance increments in the lower posts to which he is appointed for the completed years of service in the higher post. His pay fixation on his promotion to Clerk Gr.II on 7.12.1977 in the Accounts Branch has to be done on that pay fixation basis taking his pay he was drawing on 7.12.1977 in the grade of Clerk Gr.II.

31

9. The respondents submitted that the applicant was allotted to the Accounts Department in the year 1975 and this means that the cause of action for this case arose to the applicant in the year 1975. He had approached this Tribunal, after a lapse of 17 years and hence this O.A. is liable for dismissal for the laches of the applicant. No doubt the applicant approached this Tribunal on 2.4.1992 by filing this O.A. As pay fixation and granting of increments is a continuous process the law of limitation may not apply in such cases. However, the applicant will be entitled for arrears, if any, only ^{from} one year prior to the date of filing of this O.A.

10. The applicant has quoted the names of a few employees who were rendered surplus and absorbed in lower posts in other departments and alleged to have ^{been} given pay protection. Railway Board's circular dt. 29.4.1968 referred to by the respondents does not provide for such pay protection. The Establishment Serial Circular cited by the applicant is also in tune with the Railway Board Circular dt. 29.4.1968. As the applicant cannot get a benefit for which he is not entitled, taking an example of erroneous fixation of the pay done for another employee cannot sustain his contention.

11. Under the above facts and circumstances of the case, the following direction is given:-

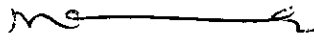
The pay of the applicant at the time of his absorption as Accounts Clerk Gr.II should be regulated in terms of para 2(1)(a) of Railway Board's letter No.E(NG)II-67/CEI/58 dt. 29.4.1968. This would mean that his pay at the time of his absorption as Clerk Gr.II shall be the initial basic pay plus the advance increments in the lower post to which the Railway servant is appointed giving him the benefit of completed years of service in the higher post. His pay shall be fixed on his promotion as Clerk Gr.I on 7.12.1977 on that basis. He is

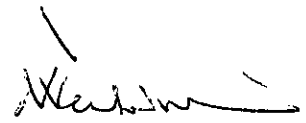
D

26/11/77

entitled for arrears of pay, if any, from one year prior to filing of this O.A. i.e. from 1.4.1991 (this O.A. was filed on 2.4.1992). As he was absorbed in a lower post when he was rendered surplus and had already suffered monetary loss it is fair not to recover excess payment, if any, made to him due to the above fixation. His service as Works Mistry from 15.10.1965 onwards should be treated as qualifying service and counted for purposes of final settlement at the time of his retirement.

12. The O.A. is ordered accordingly. No costs.


(R. Rangarajan)
Member (Admn.)


(V. Neeladri Rao)
Vice Chairman

Dated 13th June, 1994

Grh.


Dy. Registrar (Judl.)

Copy to:-

1. The General Manager, S.C. Railways, Rail Nilayam, Secunderabad.
2. Financial Adviser and Chief Accounts Officer, S.C. Rlys, Rail Nilayam, Secunderabad.
3. Workshop Accounts Officer, S.C. Rlys, Lallaguda, Secunderabad.
4. One copy to Sri S. Satyam Reddy, Advocate, Shop No. 10, APHB Complex, Adj. Yuvathi Mandali School, Barkatpura, Hyderabad-27 A.P.
5. One Copy to Sri N.V. Ramana, Addl. CGSC, CAT, Hyderabad.
6. One copy to Library
7. One spare.
- 8) Copy to All Reporters & All Benches as per standard list of kku. CAT. Hyd.

For typing.

Roneo
30/6/94

89-295/92

TEMPED BY

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. GURTHI : MEMBER (A)

AND

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

AND

THE HON'BLE MR. R. RANGARAJAN : MEMBER (A)

Dated: 13-6-1994.

ORDER/JUDGMENT:

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

in

O.A.No. 295/92

F.A.No.

(W.P.)

Admitted and Interim Directions
Issued.

Allowed

Disposed of with directions

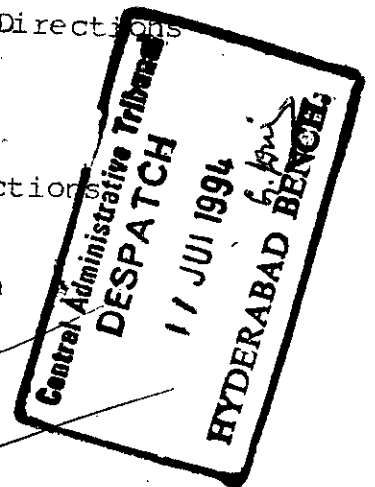
Dismissed.

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered.

No order as to costs.



pvm

CO
Pls send copies to
the Registrar
[Signature]

[Signature]
27/6/94

sr.
marked