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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. 664/92.

Dt. of Decision : 15-11-95.

1. General Manager,
SC Rly, Secunderabad.
2. Divl. Rly., Manager,
SC Rly, Vijayawada. .. Applicant.

vs

1. D. Radhakrishna Murthy,
2. Presiding Officer,
Labour Court, Guntur. .. Respondents.

Ex

Counsel for the Applicant : Mr. N.R. Devaraj, Sr. CGSC.

Counsel for the Respondents : Mr. G.V. Subba Rao,

CORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN
THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

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DA 664/92..

Dt. of Order: 15-11-95.

(Order passed by Hon'ble Justice Shri V.N.Rao,
Vice-Chairman).

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The applicant was promoted as Head Clerk on 1-8-73 from the post of Senior Clerk, the post ⁱⁿ which he ~~has worked~~ ^{was} even by 31-12-72.

2. The revised pay scales in pursuance of 3rd Pay Commission Recommendations had come into effect from 1-1-73. An option was given to the effect that the concerned employee may come to the revised pay scales with effect from 1-1-73 or from the date of the increment subsequent to 1-1-73, in the post in which he was working by 31-12-72. The next date of increment of the applicant ~~was~~ in the post of Sr.Clerk was ~~on~~ 1-12-73.

3. It is the case of the applicant that even before the date stipulated in 1984, he exercised option to come over to revised pay scales with effect from 1-12-73, and as such his pay in the post of Head Clerk ~~is~~ ^{was} to be revised after the increment was sanctioned to him in the pre-revised scales in the post of Sr.Clerk as on 1-12-73. But the said claim of the applicant ~~was~~ rejected on two grounds by the Respondents, which are as follows :-

(i) The applicant was promoted to the post of Head Clerk on 1-8-73 and thus even earlier to 1-12-73 i.e. the date of his next in-

rement in the post of Sr.Clerk and

(ii) the applicant had not exercised option within the time stipulated.

As the option to come over to the revised scales had to be exercised in the post in which he was working and as by 1-12-73, the applicant was not working as Head Clerk, his pay was fixed in the revised scales on 1-8-73, the date on which he was promoted.

4. Being aggrieved, the applicant filed an application under 33(c)(2) of Industrial Disputes Act, which was registered as CMP 34 of 1989 on the file of the Labour Court, Guntur. The learned Presiding Officer of the Labour Court held that the option was exercised within the stipulated time and he is entitled to come over to revised scales with effect from 1-12-73 in view of the Board Lr. No.PC.III-75/Rpo-1/31 dt.16-9-75, which was marked as Exhibit P-I in the CMP and accordingly the CMP was allowed and the same is challenged in this O.A.

5. This Tribunal, ^{is} not sitting as an Appellate Court ^{or} for the Judgement of the Labour Court, constituted under the I.D.Act. In such cases the Tribunal is exercising powers under Article 226 of the Constitution of India. After going through the various reasons given by the learned Presiding Officer, Labour Court in holding that the option was exercised within the time, we see no valid reason to interfere with the said contention finding.

6. It is not in controversy that the applicant was working as Sr.Clerk by 31-12-72 and he continued in the said post by 1-12-73 he could have the next increment as on that date. But he was promoted as Head Clerk on 1-8-73 and he was confirmed in the said post on 1-2-74 (The Accounts Officer who was present at the time of hearing of this OA submitted after perusal of the relevant record that the applicant was confirmed in the post of Head Clerk on 1-2-74).

7. Para-2 of letter dt.16-9-75 (Exhibit P-IE), which is relevant for consideration of this OA reads as under :-

"2. It has been reported by the Railways that in a number of cases, the pay of the employee concerned in higher officiating post fixed in accordance with the instructions contained in Board's letter dt.2-1-1974 referred to above, becomes lower than his substantive pay fixed in the revised scale from the later date of his option, under rule 7 of RS (RP) Rules, 1973 in terms of the instructions contained in Board's letter No.PC.III-74/Rop/-1/4 dt.28.5.1974.

The question of protection of substantive pay in such cases has been considered by the Board in consultation with the Ministry of Finance and they have decided that in such cases the pay of the employee concerned should be regulated as under :-

(i) The difference between the Officiating pay and Substantive pay of the employee from time to time may, in addition to the officiating pay, be allowed as personnel pay to be absorbed in future increments; and

(ii) On confirmation in the higher post, the pay of the employee may be re-fixed at the stage in the time scale of the higher post, which is equal to his substantive pay in the lower post, and if there is no such stage, at the stage next below that pay plus personal pay equal to the difference. The personal pay will be absorbed in future increments."

8. It is manifest from the above that on confirmation in the higher post, i.e. in the post of Head Clerk in the case of the applicant herein, his pay has to be fixed at the stage in the time scale of the Head Clerk which is equal to his substantive pay in the earlier post i.e. in the post of Sr. Clerk in regard to the applicant and if there is no such stage at the stage below that pay plus personal pay equal to the difference. The Personal Pay has to be absorbed in the future increments.

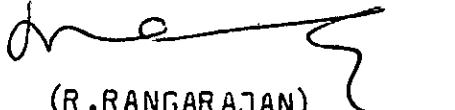
9. As the applicant elected to come over to the revised scales with effect from 1-12-73 and as by then his substantive post was Senior Clerk, his pay in the post of Sr. Clerk as on 1-12-73 had to be fixed as per the revised scale. The pay as on 1-12-73 which has to be fixed in the revised pay scale in the post of Sr. Clerk would be the substantive pay of the applicant in the post of Sr. Clerk as on 1-2-74, the date on which he was confirmed in the higher post i.e. Head Clerk. Hence the revised pay of the applicant in the post of Head Clerk as

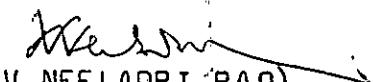
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on 1-2-74 in the revised pay scale had to be fixed and on that basis his pay had to be refixed in the post of Chief Clerk, the post to which he was promoted later, and he had to be paid the difference from 1-2-74 till the date of his retirement i.e. till 31-10-1986. Accordingly the pension and retirement benefits and the amounts due towards the leave encashment have to be revised and difference has to be paid.

10. But the learned Presiding Officer ordered such revision as on 1-12-73, the date of the next increment of the applicant in the post of Sr.Clerk. But the said order is not in accordance with para-2 of the Exhibit P1. Hence the impugned order requires modification to the extent referred to above.

11. In the result, the O.A. is ordered as referred to in para-9. If the amount due as per this order is not paid to the applicant by 15-3-1996, the same carries interest at the rate of 12% per annum from 16-3-1996. No costs. //


(R.RANGARAJAN)
Member (A)


(V.NEELADRI RAO)
Vice-Chairman

Dated: 15th November, 1995.
Dictated in Open Court.

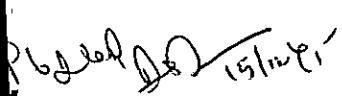

Deputy Registrar (J)C

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To

1. The General Manager, S.C.Rly, Secunderabad.
2. The Divisional Railway Manager, S.C.Rly, Vijayawada.
3. The Presiding Officer, Labour Court, Guntur.
4. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.
5. One copy to Mr.G.V.Subba Rao, Advocate, CAT.Hyd.
6. One copy to Library,CAT.Hyd.
7. One spare copy.

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P. V. M.

TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE V.NESLADRIKAO
VICE CHAIRMAN

AND

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

DATED: 15-11-1995

ORDER/JUDGMENT

M.A./R.A./C.A.NO.

in

O.A.No. 664/92

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

Admitted and Interim directions
Issued.

Allowed.

Disposed of with directions.

Dismissed..

Dismissed as withdrawn.

Dismissed for default.

Ordered/Rejected.

No order as to costs.

pvm.

