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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD.

O.A.NO.830 of 1993.

Between

Dated: 21.12.1995.

1. B.S.L.V.Prasada Rao.

2. L.Sankara Rao.

3. G.Venkateswarlu.

4. Shaik Abdullah

... Applicants

And

1. The Union of India Rep. by the Secretary, Railway Board,
Rail Bhavan, New Delhi.

2. The General Manager, South Central Railway, Railnilayam,
Secunderabad.

3. The Chief Personnel Officer, South Central Railway, Rail
nilayam, Secunderabad.

4. Senior Personnel Officer, South Central Railway, Vijayawada.

... Respondents

Counsel for the Applicants : Sri. G.V.Subba Rao

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

CORAM:

Hon'ble Mr. A.B.Gorthi, Administrative Member

Contd:...2/-

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C.A.No.830/93

dt. of decision: _____

JUDGEMENT

I As per the Hon'ble Sri A.B. Gorthi, Member (A) I

The applicants were working as Asst. Station Masters (ASMs for short) in the scale of pay of Rs.425-640 and by order dt.244-1986 were included in the panel for promotion to the higher grade of pay of Rs.455-700. Their pay in the higher grade was fixed at Rs.560/- per month in respect of applicants No.1 to 3 and at Rs.485/- p.m. in respect of applicant No.4. With the implementation of the 4th Pay Commission recommendations, their pay was refixed, but was later on reduced as per details given below:

	<u>Pay fixed</u>		<u>Reduced to</u>
Applicant No.1	1720	..	1640
" No.2	1640	..	1600
" No.3	1640	..	1600
" No.4	1560	..	1520

2. The prayer of the applicants is to quash the orders enforcing the reduction of their pay and to fix their pay by ante-dating the promotion to 17-12-85, when an official junior to them was promoted, with all consequential benefits.

3. The applicants while working as ASMs (Rs.425-640) were selected for the higher grade ASMs (Rs.455-700), but when a panel showing 53 names was published on 17-12-85, the applicants' names were not included in it. Later on, when 15 vacancies

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reserved for SC/ST were dereserved and released to be filled up by O.C. candidates, the names of 15 more candidates, including these four applicants were added to ^{the} panel between candidates of S.No.52 and 53. Admittedly, candidate at Sl.No.53 belonged to SC and was junior to the applicants. Although the candidates in the original panel were promoted on 17-12-85, the applicants could be promoted only on 8-4-86 after the SC/ST vacancies were dereserved.

issue

4. The first ^{issue} agitated by Sri G.V. Subba Rao, learned counsel for the applicants is that the promotion of the applicants also should be w.e.f. 17-12-85, because their names were added to the original panel and the names of the applicants were shown between the names of candidates appearing in the original panel at Sl.No.52 and 53. As the candidate at Sl.No.53, junior to the applicants was promoted on 17-12-85, the applicants too are entitled to be promoted from that date.
5. Sri V. Bhimanna, learned standing counsel for the respondents refuted the claim of the applicants and urged that the question of promoting the applicants w.e.f. 17-12-85 would not arise at all because as on that date the 15 vacancies that existed could be filled up only by SC/ST candidates. In other words, the applicants had no vested right to claim promotion from that date. The mere fact that the candidate at Sl.No.53

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was junior to the applicants would not entitle them to claim promotion along with him as he was promoted not by virtue of his seniority but in the vacancy reserved for SC candidate.

6. It is obvious that but for the decision of the respondents to dereserve the 15 vacancies and release them for being filled up by O.C. candidates, due to the non availability of SC/ST candidates, the applicants would not have had the opportunity to be promoted. Soon after the vacancies were released for OC candidates, the applicants were promoted to the higher grade of Rs.455-700. There is thus merit in the contention of the respondents' counsel that the applicants cannot claim the higher grade of pay from an earlier date. The plea of the applicants in this regard has therefore to be repeated.

7. The next issue on which elaborate arguments were adduced by Sri Subba Rao is that the pay of the applicants in the 4th Pay Commission Scale having been correctly fixed initially could not have been reduced at a subsequent date as was done by the respondents. There is no dispute that the pay of the applicants was revised and reduced, ^Land ^Lthat too, without prior notice. The clarification given by the respondents is summed up in the succeeding para.

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8. Prior to the implementation of the 4th Pay Commission scales of pay, there were two grades of pay for ASMs viz. Rs.425-640 and Rs.455-700. As already noticed the applicants were promoted to the higher grade of pay of Rs.455-700 in April, 86 and their pay was fixed in that scale as per extant rules. Consequent to the acceptance of the 4th Pay Commission recommendations, both the above mentioned scales of pay were replaced by a single of pay of Rs.1400-2300 w.e.f. 1-1-86. As the pay of the applicants in the meantime was fixed at Rs.560/- p.m. in the grade of Rs.455-700, the respondents revised their pay in the corresponding amount in the revised scale of Rs.1400-2300. To this, the applicants had no objection. Later on the respondents took the view that the applicants' pay in the revised scale (Rs.1400-2300) should be fixed, based on the pay drawn by the applicants as on 1-1-1986 in the then 'existing scale' of pay. The correctness of this view is under challenge in this O.A.

9. The contention of the applicants' counsel is that as the pay of the applicants was already fixed in the scale of Rs.455-700, their pay should have correspondingly been fixed at the appropriate level in the revised scale of Rs.1400-2300. It is further contended that the respondents should not have taken the pay of the applicants as on 1.1.86 as the basis for fixing their pay in the revised scale.

10. The manner in which pay has to be fixed in the revised pay scale introduced with the implementation of the IV Pay Commission Recommendations is governed by the Railway Services (Revised Pay) Rules, 1986, Rule 7. The relevant portion of the same is reproduced below:-

"7. Fixation of initial pay in the revised scale:-

- (1) The initial pay of a Railway servant who elects, or is deemed to have elected under sub-rule (3) of rule 6 to be governed by the revised scale on and from the 1st day of January, 1986, shall, unless in any case the President by special order otherwise directs, be fixed separately in respect of his substantive pay in the permanent post on which he holds a lien or would have a lien if it had not been suspended, and in respect of his pay in the officiating post held by him, in the following manner, namely:-

(A) in the case of all employees, -

- (i) an amount representing 20 per cent of the basic pay in the existing scale, subject to a minimum of Rs.75/-, shall be added to the "existing emoluments" of the employee;
- (ii) after the existing emoluments have been so increased, the pay shall thereafter be fixed in the revised scale at the stage next above the amount thus computed:

Provided that -

- (a) if the minimum of the revised scale is more than the amount so arrived at, the pay shall be fixed at the minimum of the revised scale;
- (b) if the amount so arrived at is more than the maximum of the revised scale, the pay shall be fixed at the maximum of that scale.

Explanation - For the purpose of this clause "existing emoluments" shall include, -

- (a) the basic pay in the existing scale;
 - (b) dearness pay, additional dearness allowance and ad hoc dearness allowance appropriate to the basic pay admissible at index average 608(1960=100); and
 - (c) the amounts of first and second instalments of interim relief admissible on the basic pay in the existing scale; "
- B*

11. As the ~~term~~ "existing emoluments" have to be calculated on the basis of the basic pay in the "existing scale", the definition of the term "existing scale" as given in Rule 3(2) of the C.C.S.(Revised Pay) Rules, 1986 becomes relevant. The same reads as under:

"3(2) "existing scale" in relation to a Government servant means the present scale applicable to the post held by the Government servant (or, as the case may be, personal scale applicable to him) as on the 1st day of January, 1986 whether in a substantive or officiating capacity."

12. Thus, the rule position is that in fixing the pay of an employee in the revised pay scales, the pay scale applicable to the employee as on 1.1.86 only is relevant. Admittedly, in the instant case, the applicants being in the scale of pay of Rs.425-640 as on 1.1.86 the pay they were drawing in the said scale as on 1.1.86 has to be made the basis for calculating the corresponding pay in the revised pay scale. The respondents erroneously took into consideration the pay that was given to the applicants subsequently in April, 1986 in the higher grade of Rs.455-700 and refixed their pay in the revised pay scales. The said fixation is contrary to the provisions of the Railway Services (Revised Pay) Rules, 1986. The error was rectified and a fresh order issued refixing the pay of the applicants taking into consideration the pay drawn by them as on 1.1.86 in the then applicable scale of pay of Rs.425-640. The said refixation cannot be said to be either irregular or illegal.

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13. Learned counsel for the respondents has drawn my attention to Govt. of India, Min. of Finance O.M.No.F.18(1)/IC/86-Pt. dt. 15.12.86, reproduced as Govt. of India's Decision No.(9) at page 17 of Swamy's Compilation of C.C.S.(Revised Pay) Rules, 1986. The same is to the effect that in case of a Government servant promoted to a higher post on or after 1.1.86 the pay in the revised scale should be fixed with reference to the lower post and then the pay refixed in the revised scale of the higher post under normal rules. The principle enunciated in the said O.M. squarely applies to the case of the applicants also.

14. Shri G.V.Subba Rao has referred to the decision of the Principal Bench of this Tribunal in Shri A.K.Khanna Vs. U.O.I., 1994(1) ATJ 37. Shri Khanna was given ad hoc promotion as Research & Development Inspector (RDI) on 30.5.1989 against a vacancy reserved for SC/ST candidate. The order of promotion stipulated that "the above arrangement was on ad hoc basis pending approval of the Railway Board for de-reservation of points reserved for SC/ST". On receipt of orders de-reserving the vacancies, Shri Khanna was promoted on a regular basis w.e.f. 24.11.1989. The Tribunal, however, allowed the plea of Shri Khanna that he is deemed to have been promoted regularly w.e.f. 30.5.1989, that is, the date on which he was initially promoted on an ad hoc basis

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Relevant portion of the judgement is reproduced below:-

"We have carefully considered the submissions made by the learned counsel for the petitioner and the respondents and perused the record. We are of the opinion that it is clear from the pleadings that the petitioner was promoted on ad hoc basis against a long term vacancy, pending approval of the Railway Board for dereservation of point reserved for SC/ST. It is nobody's case that this arrangement was stop gap arrangement. The vacancy was there. There were also no SC/ST candidates. In the circumstances, there was no alternative but to fill up the post by a general category candidate. In such a situation when the approval for de-reservation was received from the Railway Board the regular promotion cannot but be related back to the date on which the vacancy arose and the petitioner was promoted against the said vacancy. This happened on 30.5.1989. The date of approval by the Railway Board is not the material date. What is material is that the petitioner was promoted against a long term vacancy which was admittedly reserved for the SC/ST candidates who were not available for consideration for promotion against the said vacancies. This was done pending the approval of the Railway Board. Once the approval is received it has to be related back to the occurrence of the vacancy and the date of ad hoc promotion for regular promotion. In case the approval to dereservation has not been granted, the ad hoc arrangement would have been terminated."

15. The decision of the Tribunal in the above case was given on the basis that Shri Khanna was actually promoted on 30.5.1989 in a long term vacancy for which there was no SC/ST candidate available. In the instant case before me, none of the applicants was so promoted. Similar benefit cannot therefore be claimed by any of them. It is settled law that mere existence of a vacancy does not give a vested right to an employee to claim promotion against that vacancy more so when the vacancy is reserved for SC/ST candidate. The applicants cannot, therefore, make a justifiable claim to be promoted retrospectively from 17.12.1985. My attention has been drawn to para 228 of the Indian Railway Establishment Manual Vol.I which provides for action to be taken in case of

erroneous promotions. Relevant portion of the same is reproduced below:-

"228. Erroneous Promotions.- (I) Sometimes due to administrative errors, staff are over-looked for promotion to higher grades could either be on account of wrong assignment of relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotion or some other reasons. Broadly, loss of seniority due to the administrative errors can be of two types:-

- (i) Where a person has not been promoted at all because of administrative error, and
- (ii) Where a person has been promoted but not on the date from which he would have been promoted but for the administrative error.

Each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative errors should on promotion be assigned correct seniority the date of promotion. Pay in the higher grade on promotion may be fixed proforma at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts

16. The above para has no relevance to the case of the applicants as there was no error whatsoever in the order of their promotions issued in April, 1986. Prior to April, 1986 the vacancies were reserved for SC/ST candidates and it is only when the orders of the competent authority were received de-reserving the vacancies the applicants were promoted. Hence there is no question of giving them the benefit of any ante-dated seniority or proforma fixation of pay from an earlier date.

17. Last but not the least, it was contended for the applicants that the impugned order by which the pay of the applicants was reduced was issued without any prior notice to the applicants and that this was in violation of the

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principles of natural justice. It is not disputed that the impugned order was issued without notice to the applicants. The question for my consideration now is whether the impugned order deserves to be set aside merely on that count at this stage when the case was heard on merits extensively. I am of the considered view that it would not further the cause of justice in case the impugned order is set aside with liberty to the respondents to proceed further after issuing a notice, because the respondents have clarified in detail the circumstances which led to the refixation of the pay of the applicants. To the counter filed by the respondents clarifying the situation the applicants have filed a rejoinder too. After taking all these into consideration I find that the decision of the respondents in reducing the pay of the applicants is in terms of the extant rules and cannot be said to be either unfair or unjust. In Managing Director, ECIL, Hyderabad etc., etc., Vs. B.Karunakar etc., etc., AIR 1994 SC 1074, it was observed, inter-alia as under:-

"Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished. The courts should avoid resorting to short-cuts. Since it is the Courts/Tribunals which will

Copy to:-


1. The Secretary, Railway Board, Union of India, Rail Bhavan, New Delhi-001.
2. The General Manager, South Central Railway, Rail Nilayam, Secunderabad.
3. Nilayam, Secunderabad-Station South Central Railway, Rail
4. Senior Personnel Officer, South Central Railway, Vijayawada.
5. One copy to Sri. G.V. Subba Rao, advocate, CAT, Hyd.
6. One copy to Sri. V. Bhimanna, SC for Railways, CAT, Hyd.
7. One copy to Sri. V. V. S. Rao, CAT, Hyd.
8. One spare copy.

Rsm/-

apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principle of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment.

18. Though the case of Managing Director, ECIL, Hyderabad etc., etc., Vs. B.Karunakar etc., etc., pertained to the non-furnishing of a copy of the Inquiry Officer's report in a disciplinary enquiry, the ratio of the decision can as equally be applied to the case in hand, the failure of the respondents to give a show cause notice to the applicants would have made no difference to the final decision in this case.

... as the result, the application does not succeed and the same is dismissed. No costs.


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

Dated: 21 Dec., 1995.

br.

A.B.G.
27/12/95
DY. Registrar

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