

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

R.A.No. 7/97 in
O.A.No.830/93.

Dt. of Decision : 27
28-1-97.

1. BSLV Prasada Rao
2. L.Sankara Rao
3. G.Venkateswarlu
4. Shaik Abdullah

.. Applicants.

Vs.

1. The Union of India rep. by the Secretary, Railway Board, Rail Bhavan, New Delhi.
2. The General Manager, SC Railway, Rail Nilayam, Secunderabad.
3. The Chief Personnel Officer, SC Railway, Sec'bad.
4. The Sr. Personnel Officer, SC Railway, Vijayawada Division, Vijayawada.

.. Respondents.



COUNSEL FOR THE APPLICANTS : Mr.G.V.Subba Rao

COUNSEL FOR THE RESPONDENTS : Mr.V.Bhimanna, Addl.CGSC.

CORAM:-

THE HON'BLE Mr.JUSTICE M.G.CHAUDHARI : VICE CHAIRMAN

ORDER

ORAL ORDER (PER HON.Mr.JUSTICE M.G.CHAUDHARI : VICE CHAIRMAN)

The 4 applicants seek review of the order passed in the OA by Hon'ble Mr.A.B.Gorthi, Member (A) dated 21-12-95. It is well established that a review application is not to be heard ^{as ^{an}} appeal nor it is permissible to reagitate the questions which

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The OA was contested by the respondents.

4. Learned Member has set out the relevant facts in the earlier order. That shows that although the applicants were selected for the higher grade of Rs.455-700/- however their names were not included in the panel showing 53 names published on 17-12-85. Later on 15 vacancies reserved for SC/ST were dereserved and released to be filled up by OC candidates and names of 15 more candidates including the present ~~petitioners~~ ^{applicants} were added to the panel. The candidates originally included in the panel were promoted on 17-12-85 to the higher grade of ASM Rs.455-700/- and the applicants came to be promoted to that grade only on 18-4-86. The case of the applicants in the OA was that they should be deemed to have been promoted on 17-12-85 as it was the same panel in which they were subsequently included and notwithstanding the date of their actual promotion viz., 8-4-86 they were entitled to be deemed to have been placed in the scale of Rs.455-700/- w.e.f., 17-12-85 i.e., prior to 1-1-86. With that position according to the ~~petitioners~~ ^{applicants} their pay ought to have been fixed in the revised scale of Rs.1400-2300/- as follows:-

- Applicant No.1 Rs.1720/- instead of Rs.1640/-, Applicant No.2 Rs.1640/- instead of Rs.1600/-, applicant No.3 Rs.1640/- instead of Rs.1600/- and applicant No.4 Rs.1560/- instead of Rs.1520/-.(Applicants are review petitioners).

5. The contention of the respondents was that the question of promoting the applicants w.e.f., 17-12-85 could not arise because as on that date the 15 vacancies that existed could be filled up



other grave error committed by the learned Member in disposing of the OA. I have also heard Mr.V.Bhimanna, learned standing counsel for the respondents who has appeared even at this stage and has made submission?

3. The applicants ~~petitioners~~ who were working as Assistant Station Masters in the scale of pay of Rs.425-640/- were included in the panel for promotion to the higher grade of pay of Rs.455-700/- on 02-04-86. The pay of the first three petitioners was also fixed at Rs.560/- p.m. and petitioner No.4 at Rs.485/- p.m. on ~~on~~ that hypothesis, the recommendations of 4th Pay Central pay Commission ~~however~~ were implemented w.e.f., 1-1-86 and the two scales of Rs.425-640/- and Rs. 455-700/- were merged in a revised scale of Rs. 1400-2300/-. The applicants however instead of being fitted in the merged scale of pay of Rs.1400-2300/- on the basis of their pay fixed in the earlier pay scale of Rs.455-700/- were fixed ^{on the basis of} in pay scale of Rs.425-640/-. That resulted in the difference in the amount of pay as they would have received if they were fitted in the new scale on the basis of earlier ~~grade~~ ^{scale} of Rs.455-700/-. By fitting them in the scale of Rs.425-640/- and because they were thus fixed on a pay lesser than what they contend would have been entitled ^{to} ~~to~~ the same, they say that there ^{has} been reduction of their pay and the amount of excess payment was also illegally recovered. They, therefore filed OA challenging the decision of fixation of their pay in the revised pay scale of Rs.1400-2300/- the basis of which, according to them, was erroneous.

could not have been fixed on the basis of earlier scale of pay of Rs.455-700/- the respondents had rectified that mistake by revising the scale and fixed it on the basis of Rs.425-640/- and it was held that since that was the pay of applicants as on 1-1-86 in the then "existing scale" of pay fixing them earlier in the scale of 455-700 was erroneous. That was wrong. In that connection provisions related to the manner of pay fixation in the revised pay scale introduced by the implementation of the 4th Pay Commission recommendation contained in the Railway Servant (Revised pay), Rule 1986 were examined. The Rule 7 thereof was analysed. It was held that under the said rule and having regard to definition of "existing emoluments" the basis adopted by the respondents was in accordance with the said rules ^{and was} correct. It was held that the error committed could have ^{been} validly rectified and the refixation was neither irregular nor illegal.

6. The learned Member also took notice of Government of India, Ministry of Finance OM.F.18(1)/IO/86-Pt. dated 15-12-86 and considered its impact. It was found by the learned Member that the principle enunciated in the OM indeed applied to the case of the applicants and even according to that the stand taken by the respondents was correct. It was noticed that the provision was to the effect that in case of a Govt. servant promoted to the 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 learned Member also

only by SC/ST candidates and thus the applicants had no vested right to claim the promotion from that date. According to the respondents therefore the whole hypothesis on which the grievance of the applicants was based in the OA was non-existent. The learned Member observed in this connection that but for the decision of the respondents to dereserve the 15 vacancies and released them for being filled up by OC candidates due to the non availability of SC/ST candidates, the applicants would not have had the opportunity to be promoted and therefore their promotion could be made only ^(date of order of promotion is 2-4-86) from 8-4-86, in the grade of Rs.455-700/-. The learned Member accepted the contention of the respondents that the applicants therefore cannot claim higher grade of pay from an earlier date. The learned Member also considered the question of the so-called reduction of pay as projected by the applicants contending that their pay in the 4th Pay Commission scale having been rightly fixed initially could not be subsequently reduced. The learned Member however was satisfied ^{with the} the applicants' explanation offered by the respondents on that aspect. It was noted that prior to the implementation of the 4th Pay Commission Scales of pay ^{were} thereby 2 grades of pay of ASM viz., Rs.425-640/- and Rs.455-700/-. The applicants were promoted to the higher grade of pay of Rs.455-700/- in April 1986 and their pay was fixed in that scale as per the extant rules. Both the scales of pay were replaced by single pay of Rs.1400-2300/- w.e.f., 1-1-86. Since under the ^{existing} instant rules the applicants

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✓ circumstances which led to the refixation of pay of
the applicants, ~~and nothing further~~ ^{had} to be achieved
by directing a notice to be given and the matter
being reconsidered. The Learned Member therefore,
held that the impugned orders were neither unfair
nor unjust and were issued in terms of the extant
rules and therefore did not call for interference.
The learned Member also noticed the decision in
Managing Director ECIL, Hyderabad etc., Vs
B.Karunakar etc., AIR 1994 SC 1074 but still was of
the afore-said view on the points noticed.

8. Mr.G.V.Subba Rao, learned counsel for the
petitioners reiterated all the above arguments.
~~as were urged in the OA~~
urged. He also additionally cited the decision of
Jabalpur Bench of CAT in Dhyaneshwar Nandanwar Vs.
UOI & Others 1993 (2) (CAT) 305.

9. After going through the record of the OA
and after examining the submissions urged by
Mr.G.V.Subba Rao, I find myself in total agreement
with the reasons adopted and conclusions drawn by
the learned Member in the original order. It is
not open to me ~~to sit in a~~ ^{take in a} review application and
~~also to take~~ any different view. No error apparent
on the face of the record can be seen in the order.
If a particular view about particular provision is
taken and the case law is carefully noticed and
applied ~~and~~ ^a disagreement with that on the part of
the ~~petitioners~~ ^{applicants} does not permit review of the said
decision.

10. Now, I find that the very basis of the
case of the applicants that their pay was reduced
~~their~~ and they are having created that impression in the
OA appears to me to be unsound. The case of the applicants

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noticed the decision of the Principal Bench of the Tribunal in A.K.Khannan Vs.U.O.I. 1994 (1) ATJ 37 and found that on facts it was distinguishable. The learned Member was of the firm opinion that none of the applicants ~~were~~ to be promoted to the higher scale prior to 1-1-86. He also held that the mere ~~existence~~ existing of vacancies 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 candidates. He ~~subsequently~~ ^{also} negatived the contention of the applicants ^{that} ~~they are~~ was entitled to claim promotion retrospectively from 17-12-85. The learned Member also noticed the provisions of para 228 of the IREM Vol.I, considered its impact and found that it had no relevance to the case. It was concluded that as the vacancies were reserved for SC/ST candidates prior to April 1986 and it is only after they were dereserved under the orders of the competent authority, that the applicants were promoted and therefore there did not arise any question of giving them the benefit of any antedated seniority or proforma fixation of pay from an earlier date.

7. The arguments urged on behalf of the applicants that no notice was given to them prior to refixation of their pay in the revised single scale of pay of Rs.1400-2300/- and a reduction in their emoluments was brought about by wrong fixation and that was contrary to the principles of natural justice and ^{was also considered} illegal. The Hon. Member was not impressed by the submission and was of the opinion that setting aside the impugned order would not further the cause of justice in as much as the respondents had clarified in detail the

difficulty in coming to the conclusion that under ~~existing~~ the instant rules their pay has to be fixed in the revised scale of Rs.1400-2300/- in accordance with the rules as were applicable and those whose clearly on the basis of direct fixation in the revised scale and it cannot be fixed first in the ~~prerevised~~ scale of Rs.455-700/- ^{under FR 22 C} form the basis of refixation in the revised scale on the date of promotion. In otherwords as on 8-4-86 the petitioners still continued in the ~~prerevised~~ scale of Rs.425-640/- since they had not been promoted to the scale of Rs.455-700/- and therefore that scale ⁽⁴⁵⁵⁻⁷⁰⁰⁾ could not form the basis for the fixation of their pay in the revised single scale of Rs.1400-2300/-. As already stated ~~assumption~~ assumption of the applicants that they stood promoted to the scale of Rs.450-700/- from 14-12-85 cannot be accepted. No question of erroneous application of FR 22 C can arise. The learned counsel also submitted that the letter of the Railway Board dated 25-9-86 has not been correctly applied. ^{that} ~~it is not open to consider in review.~~ That aspect as also those points of the required to canvas ^{at} for the hearing of the OA. Moreover, the said letter was never produced on the record and does not form a part of the OA or review application. The learned counsel also submitted that the view of the Tribunal that notice was not required to be given to the applicants before their pay was fixed in the single scale is erroneous. As already stated above, the learned Member has considered this question and has given his own reasons as to why that was not necessary and therefore the ground cannot be reagitated in a review application.

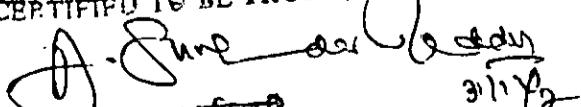
~~was~~ applicants there is not that from a particular pay they were reduced to a lower pay but their case is that the refixation of their pay in the new scale was wrongly done and had that been correctly done their pay would have been more ^{than} ~~than~~ what was fixed and in that ^{sense} ~~since~~ their pay was reduced. Both the impugned orders are not ~~ordere~~d~~~~ of reduction of pay nor of recovery of any excess amount. However, those arguments were permitted to be urged and have been considered. The ^{genesis} of the case of the applicants is that since they were selected to be eligible to be placed in the higher grade of ASM viz., Rs.455-700/- notwithstanding that they were not included in the panel published on 17-12-85, but they were subsequently promoted by including them in the panel subsequently and that was after 1-1-86 viz., from 8-4-86, they should be deemed to have been promoted with the scale of pay of Rs.455-700/- and therefore coupled with the circumstances that initially their ^{officializing} pay was fixed in that grade the respondents could not refix ^{it} at a lower figure. But the fallacy in the contention is that a mere eligibility to be considered for promotion is being ~~converted~~ ^{applicants to be} converted by the petitioners to a vested right of promotion and on that basis they seek to be promoted in the pay scale of Rs.455-700/- w.e.f., 17-12-85. As held in the original judgement until the applicants were to be included in the panel which was possible only after dereservation of some posts, their mere eligibility to be considered for promotion did not amount to their promotion. They came to be placed in that scale only from 8-4-86. Once that position is understood then there is no

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11. Lastly the decision of the Jabalpur Bench in Dhyaneshwar Nandanwar's case cannot be taken note^{of} for the first time but it should have been cited before the Hon'ble Member. Apart from that the question involved in that case was relating to criteria for fixation of pay under FR 22 (a) (ii) or FR 22 C on promotion. The ^{central} general question was whether the post of Inspector RMS is the post carrying higher responsibility. In that context it was held that the post was carrying higher responsibility. That was also held to be a selection post. The pay fixation of the applicant ~~was not~~ in that case therefore, found to be correctly done under FR 22 C. The applicant was Sorting Assistant in the lower selection grade. It was held that the post of Sorting Assistant, LSG, and that of Inspector, RMS are posts of equal importance, the pay has to be fixed in accordance with the provisions of FR 22 (a) (ii). The contention of the applicant in that case that the post of Inspector, RMS is a post carrying duties and responsibilities of greater importance was accepted. With those findings the order directing recovery from the applicant in that case was quashed. The instant case is clearly distinguishable from that case and no question of correct application of FR 22 C or determination of equivalent posts as in that case arises in this case. The decision in my opinion does not ^{help} hold the case of the ~~petitioners~~ applicants.

12. In the result, the review application is dismissed and is finally disposed of. No order as to costs.

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केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद आयर्ड
HYDERABAD BENCH