

(91)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH,
AT HYDERABAD.

O.A.No.1422/93.

Between:-

G.V.Subba Rao

... Applicant

and

General Manager,
South Central Railway,
Secunderabad and another.

... Respondents.

COUNTER AFFIDAVIT FILED ON BEHALF OF THE RESPONDENTS

I, K. Venkata Krishnaiah, S/o Narasaiah aged 57 years,
Occupation: Government Service, resident of Secunderabad
do hereby affirm and state as follows:

1. I am working as Senior Divisional Personnel Officer, in the Office of the 2nd Respondant herein, as such I am fully acquainted with all facts of the case. I am filing this counter affidavit on behalf of both the respondents as I am authorised to do so.
2. I submit that I have read the contents of O.A. filed by the applicant and deny each and every allegation and averments made therein except those which are specifically admitted hereunder and the applicant is put to strict proof of such allegations and averments. I submit that the O.A. does not disclose any valid and substantial grounds for the grant of relief prayed for in addition that it is barred by limitation.
3. The applicant was selected for the post of Pro.Asst. Station Master and he was sent for initial training course at Zonal Training School, Moula-Ali from 17-8-1988. After the training, the applicant was absorbed as Asst.Station Master and posted at Rotagaon (RGO) station in Hyderabad Division on initial pay of Rs.1200/- per month in the scale Rs.1200-2040(RSRP) with effect from 26-5-1989.

ATTESTOR

हायक कामेक अधिकारी द.म.रे सिक'बाद
Asst. Personnel Officer, S.C.Rly. SC

DEPONENT

Sr. Divisional Personnel Officer,
S.C. Railway./SC.

....2.

4. While working so, the applicant had sought for transfer to Secunderabad Division as ASM in Scale Rs.1200-2040(RSRP) accepting bottom seniority. The applicant's request was considered by the competent authority and he was transferred to Secunderabad Division in Scale Rs.1200-2040(RSRP) vide Office Order No. _____ issued under Letter No. _____ dated 17.7.1991 (ANNEXURE-R-I). On reporting to Secunderabad Division, he was posted to Vempalli Station by Office Order No. 162/Optg/91 dated 16-8-1991 and the applicant had reported at Vempalli Station on 20-8-1991. In the meantime he was promoted to scale Rs.1400-2300 in Hyderabad Division with effect ~~from~~ from 26-6-1991 and his pay was fixed at Rs.1400/-. Thus the applicant's last pay certificate received from Hyderabad Division showed his pay as Rs.1400/- (ANNEXURE-R-II). This pay was continued to be drawn until the receipt of his Service Register from Hyderabad Division. Eventhough he was promoted to Scale Rs.1400-2300 on Hyderabad Division, since he came on request transfer in the initial recruitment grade, accepting bottom seniority, to Secunderabad Division, his pay on joining Secunderabad Division ought to have been fixed at Rs.1260/- which pay he was drawing in scale Rs.1200-2040(RSRP) on Hyderabad Division before he was promoted to scale Rs.1400-2300 (RSRP) on 26-6-91. It is pertinent to mention here that the seniority unit for ASMs in Division-wise.

5. It is submitted that when the irregular drawal of pay came to the notice during February,1993, his pay was re-fixed at a stage which he would have drawn had he continued in scale Rs.1200-2040 (RSRP) as under:

Rs.1260/-	w.e.f.	01-5-1991
Rs.1290/-	w.e.f.	01-5-1992
Rs.1320/-	w.e.f.	01-5-1993

ATTESTOR

सहायक कार्मिक अधिकारी द.म.रे सिक'बाद
Asst. Personnel Officer, S.C.Rly. SC


DEPONENT

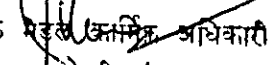
शारदा देवी कार्मिक अधिकारी
Sr. Divisional Personnel Officer,
S. C. Railway./SC.3.

6. In reply to para-6(ii) of the OA, it is submitted that as per Rules Inter-Railway or Inter-Divisional transfers are permissible only in the initial recruitment grade. If any Employee working in higher grade still insists and seeks Inter-Railway or Inter-Divisional transfer for personal reasons, he has to give a written declaration to the effect that he would go on transfer in the initial recruitment grade by accepting bottom seniority. When an employee is transferred to lower grade while working in Higher grade on request transfer, there shall be reduction of pay when absorbed in the lower grade.

7. The erroneous excess/under payments in favour of the applicant have been worked out and the difference (over payment) of Rs.2825-00 was proposed to be recovered in ten instalments.

8. In reply to para-6(iii) of the OA, it is submitted that the applicant was promoted to scale Rs.1400-2300(RSRP) on 26-6-91 and his pay was fixed at Rs.1400/- while working in Hyderabad Division. The applicant's request for Inter-Divisional transfer was considered and he was accordingly transferred in initial recruitment grade i.e., lower grade Rs.1200-2040(RSRP) on 17.7.1991. The applicant has accepted the service conditions as envisaged in the ~~24~~ rules pertaining to Inter-Divisional request transfers, that he is not entitled the pay in higher grade. Due to the application of the doctrine of waiver, the applicant has no right to claim the pay in higher scale when he was aware and accepted the lower post at his request, and reported in Secunderabad Division. The applicant has not even completed one month in the higher grade in Hyderabad Division. In these circumstances there is no rule to protect the pay drawn in higher grade when he was transferred on request to lower grade. Therefore, the applicant's pay has been correctly fixed on his joining


ATTESTOR
पहायक कर्मचारी द.म.रे सिक'बाद
Asst. Personnel Officer, S.C.Rly. SC


DEPONENT
बारिष्ठ (कर्मिक) अधिकारी
Sr. Divisional Personnel Officer,
S. C. Railway, SC.4.

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Secunderabad Division in Scale Rs.1200-2040(RSRP), in terms of para 602 (ii) of the Indian Railway Establishment Manual Vol.I 1989 Edition (ANNEXURE-R-III), which clearly stipulates that in the case of permanent Government servants officiating in higher posts and transferred to officiate in Railway Posts which are lower than the previous officiating posts, the previous officiating service in the higher post should be allowed to count for the increments. I submit that Rule 1313(a) (iii) of IREC-Vol.II is not applicable in the applicants case as his pay in the higher grade was much lesser than the maximum pay of lower grade to which he had sought for request transfer on bottom seniority from one Division to another Division. (Annexure-R-IV). The applicant has misconstrued the provision of Rule 1313 (a) (iii). Neither the maximum pay in the time scale of new post is less than substantive pay in old post nor the applicant is entitled for the maximum pay of the old post. Maximum pay of the new post is Rs.2040/- the substantive pay of the applicant in old post is Rs.1400/- and maximum pay of the old post is Rs.2300/-.

9. It is submitted that the applicant's pay was drawn inadvertently at Rs.1400/- and reduced to Rs.1200/- purely due to clerical error pending receipt of his personal records from his parent division (Hyderabad Division). The applicant's pay should have been drawn at Rs.1260/- from the date of joining in Secunderabad Division i.e., from 20-8-91. The applicant, who is aware that he is not entitled to draw the pay in higher scale as per the terms of his transfer to Secunderabad Division, has also not brought to the notice of the Administration about error and enjoyed the pay of higher scale. However, when the Administration error came to the notice, the same is rectified. Hence, the question of issuing notice does not arise.


ATTESTOR

हायक कार्यालय अधिकारी द.प.रे सि.का.बाद
Asst. Personnel Officer, S.C.Rly. SC


DEPONENT

वरिष्ठ विभागीय अधिकारी
द.प.रे सि.का.बाद
Sr. Divisional Personnel Officer,
S. C. Railway SC. 5.

10. The recovery of amount ordered was the difference due to excess payment made to him which fact came to the notice of Secunderabad (Broad-gauge) Division only on the receipt of the Service Record of the applicant from Hyderabad Division. The applicant was promoted in Secunderabad Division to scale Rs.1400-2300 vide Office Order dated 13-8-1993 (ANNEXURE-R-V) and his pay was fixed at Rs.1400/-.

11. In view of the facts and circumstances mentioned above, it is prayed that the Hon'ble Tribunal may be pleased to dismiss the OA as devoid of merits and pass such other order or orders as the Honourable Tribunal deems fit and proper.

Solemnly and sincerely affirmed
this ^{Twenty Ninth} day of July, 1994
at Secunderabad.

DEPONENT.

वरिष्ठ मेडल कार्मिक अधिकारी

द.म.रे सिक'बाद

Sr. Divisional Personnel Officer,
S. C. Railway./SC

before me

ATTESTOR.

सहायक कार्मिक अधिकारी द.म.रे सिक'बाद
Asst. Personnel Officer, S.C.Rly. SC

C. Venkate Malla Reddy
sc for Rlys