

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD

O.A. NO.485/94

Between:

Date of Order: 19.4.96.

A.N.Murthy

...Applicant

And

1. The General Manager,
South Eastern Railway,
Garden Reach, Calcutta - 43.
2. The Chief Personnel Officer,
South Eastern Railway,
Garden Reach, Calcutta-43.
3. The Project Manager(CON),
South Eastern Railway,
Visakhapatnam.
4. FA & CAO (S & C),
South Eastern Railway,
Visakhapatnam.
5. The Divisional Railway Manager,
South Eastern Railway,
Visakhapatnam.
6. The Senior Divisional Accounts Officer,
South Eastern Railway,
Visakhapatnam.

...Respondents.

Counsel for the applicant : Mr.Y.Subrahmanyam

Counsel for the respondents : Mr.C.V.Malla Reddy

CORAM:

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

contd...

4. A perusal of the Annexures to the OA reveals that there is conflicting view in regard to the seniority of the applicant. In that extract of the seniority list dated 12-3-77 (page-43 of the OA) the applicant is shown as senior to Mr.P.V.Raju. The Controller of Stores (Con.), Visakhapatnam in his letter No.COS (C)/VSKP/E02/2652 dated 26-4-90 (page-15 of the OA) had addressed letter to the Chief Personnel Officer for issuing a letter to the effect that the pay of Mr. P.V.Raju, CA to CEE (C)/GRC is Rs.2825/- w.e.f., 1-9-89 in the scale of Rs.2000-3200/- (RSRP) so as to enable his office to dispose of the case of Mr.A.N.Murthy. This letter seems to imply that Mr.A.N.Murthy, the applicant herein is senior to Mr.P.V.Raju and hence his pay had to be stepped up. The reply to that letter was issued by the Chief Personnel Officer vide letter No.P/H-2/Misc/Stepping up/ANM dated 2-5-1990 (At page-16) indicating the pay particulars drawn by Mr. P.V.Raju so as to enable the COS (Con.) to decide the pay fixation of the applicant. In the note submitted by O.S.(E) at page-17 dated 21-05-1990 it has been stated that the applicant is senior to Mr. P.V.Raju and hence his pay has to be stepped up equal to that of Mr.P.V.Raju w.e.f., 1-9-89 in the scale of Rs.2000-3200/- (RSRP). This note was approved by Dy.COS(C)-II. This also goes to prove that the applicant was treated ^{as} senior to Mr. P.V. Raju and office order No.58/90 dated 21st May 1990 (at page-18) had also been issued stepping up his pay in pursuance of the note quoted above. However in letter No.ACW/Insp/92-93/Accounts/Spl. Lr./1092 dated 24/30-06-92 (at page-19) a doubt has been raised by the FA & CAO (Con.), Vishapatnam in ^{regarding} the seniority of the applicant vis-a-vis Mr. P.V.Raju and the stepping up of pay of the applicant by COS(Con.). The Controller of Stores(Con.) Vishakapatnam vide his letter No.COS(Con.)/VSKP/E2 dated 23-7-92 at folio-21 stuck to his view in implementing the stepping up

that grade due to his officiating on adhoc basis in the grade earlier. It is further stated that the Controller of Stores (Con.) SE Railway, Vishakapatnam, who is one of the officers attached to R-2, under whom the applicant was working, issued an office order stepping up of pay of the applicant w.e.f., 1-9-89 on par with his junior Mr.PV.Raju and thereafter he was regularly paid on that basis by the construction account. When the local account inspection party visited the office they found fault with this stepping up of pay and advised the concerned to review and recover the over payment. Though the reason for stepping up of pay of the applicant was clarified to FA & CAO (S&C) SE Railway Vishakapatnam vide letter No.COS/Con./VSKP/E2 dated 23-7-92 the same was not considered and orders were given to reduce his pay and recover an amount of Rs. 25,089/- in addition to reducing of terminal benefits i.e., pension, D.C.R.G., Commutation and Leave Salary when he retired.

3. Aggrieved by the above, the applicant prays for stepping up of his pay equal to that of Mr. P.V.Raju in the scale of Rs. 425-700, 1600-2660 and 2000-3200/- from the date his junior Mr. P.V.Raju was drawing more pay than him and refix his pension, Commutation, D.C.R.G., and Leave Salary with reference to stepped up pay and payment of arrears after deducting the final settlement amount already paid and also refund the amount Rs.25,089/- recovered from his D.C.R.G., with interest at market rate. He also prays for interest at 12% per annum of difference of pension and D.C.R.G., Commutation and Leave Salary etc., on the basis of restored pay equal to that of Mr.P.V.Raju.

less than the applicant till 01-01-1984. But nowhere it is stated in the reply that Mr. P.V.Raju did not draw more pay than the applicant after 01-01-1984. The reply does not also state that Mr.P.V.Raju is senior to Mr. AN.Murthy and also that the applicant failed to fulfil the necessary conditions such as passing selection etc., for promotion to the post of Confidential Assistant in the scale of pay of Rs.550-900/- when Shri P.V.Raju was promoted on adhoc basis to that grade in Headquarters. The learned standing Counsel submitted that the case is very old dating back to 1965 and hence he is not able to get the old records.

But they admit in the reply that Mr. P.V.Raju was appointed as senior stenographer/Confidential Assistant to Controller of Stores w.e.f., 1-6-84 and he was given the scale of pay of Rs.550-900/-(RS) in terms of Establishment Sl.No.180/78.

That grade was further revised to 1640-2900/- in terms of the IV Pay Commission Scales of pay. Nowhere it is stated in the reply that at the time when Mr. P.V.Raju was promoted to the grade of 550-900/- the case of the applicant was also considered for promotion to that grade and he was not found fit to hold that post. Hence it has to be presumed that Mr. P.V.Raju was promoted to the grade of 550-900/- to work under the Controller of Stores, Garden Reach, Calcutta as he was available at that time in Calcutta and since Mr. AN.Murthy was working at Vishakapatnam at that time his case went by default for that adhoc promotion. The administration appeared to have forgotten the case of Mr. AN.Murthy even though he was senior to Mr. P.V.Raju as per the seniority list (at page-13 of the OA) for consideration for promotion to the post of 550-900/- to work under the Controller of Stores, Garden Reach, Calcutta. In case the applicant is not found fit to hold the post in grade 550-750/- even on adhoc basis or if

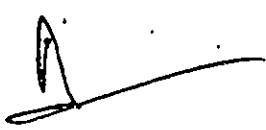
of his pay and stated that the stepping up is as per rules as Mr. A.N.Murthy is senior to Mr. P.V.Raju. However PA & CAO/S&C, SE Railway, Vishakhapatnam by his letter No.ACW/Insp./92-93/A/Cs Spl.letter/2061 dated 10/14-2-92 (at folio-22) had rejected the implementation of stepping up of pay to the applicant and further instructed the Controller of Stores (Con.), SE Railway, Vishakhapatnam to bring down the pay of the applicant and ~~for~~ recovery of excess thereon. A show cause notice was also issued to the applicant in terms of folio-23 before effecting the recovery from D.C.R.G. at the time of his superannuation on 31-12-1993. The applicant vide his letter at Folio-25 had objected to this re-fixation of pay and recovery thereof which was forwarded to the Chief Personnel Officer, Garden Reach, Calcutta. The applicant has also sent another letter at Folio-27 dated 3-2-1994 to the Chief Personnel Officer, Garden Reach, Calcutta against the re-fixation of pay and effecting recovery. Thus from the above narration it will be clear that the seniority of Mr. A.N.Murthy, the applicant herein, over that of Mr. P.V.Raju is not decided conclusively. There is every possibility that the applicant may be senior to Mr. P.V.Raju. But that factor has not been denied in any of the correspondences on the basis of the relevant records and other details.

5. The respondents have filed the reply dated 5th August '95. In para-4 the contention of the applicant that Mr.P.V.Raju was granted adhoc promotion as he was in headquarters is denied. It is further stated in that paragraphs that the comparative pay of Mr.A.N.Murthy, the applicant, with that of Mr. P.V.Raju, his junior shows that Mr. P.V.Raju was drawing

7. In view of the above analysis a direction has to be given for stepping up of pay of the applicant on par with his junior Mr. P.V.Raju from the date Sri P.V.Raju was drawing higher pay than the applicant in the scale of pay of Rs.550-900 setting aside the erroneous order of re-fixation and consequent reduction in pay, recovery of excess amount and the re-fixation of final settlement dues. The pay fixation in the higher grade when he was promoted and posted further while in service should also be done on that basis. As the applicant had retired on 31-12-1993 his pension has to be re-fixed on the basis of the revised pay fixation as given above. The amount deducted from his D.C.R.G. irregularly if any has to be returned on the basis of the revised pay fixation. As the case itself is a complicated one and the pay fixation is required to be done after a long period it is not a fit case to award any interest in this connection.

8. In the result, the following direction is given:-

The pay of the applicant has to be stepped up notionally in the grade of Rs.550-900 on par with his junior Mr.P.V.Raju from the date he was promoted and was drawing more pay than the applicant in the cadre of Stenographers in the scale of pay of Rs.550-900. The pay fixation of the applicant in the higher grades higher than 550-900 when he was promoted while in service should also be fixed notionally on the basis of his fixation of pay in the scale of pay of Rs.550-900 as directed above provided he was promoted to those higher grades in the first instant itself. The arrears if any due to the applicant on the basis of the revised notional ~~re-fixation~~ fixation in 550-900 and higher grades as directed



he has given his refusal to accept that post when promoted on adhoc basis, then only the case of his junior Mr.PV Raju should have been considered for promotion on adhoc basis to that post. There is no material placed before me showing such consideration had been taken into account before promoting his/junior Mr. P.V.Raju. The reply is silent in regard to the above points. Even the learned standing counsel could not enlighten me in regards to these points. From the above it had to be held that Mr. P.V.Raju was promoted on adhoc basis overlooking the claim of the applicant.

6. Under the circumstances quoted above it has to be held that the applicant, who is senior was not considered for promotion to the post of Stehographer in the grade of 550-900/- before Mr. P.V.RAJU who is his/junior, was promoted on adhoc basis to that grade at Garden Reach, Calcutta. Because of that reasoning only the applicant was allowed the stepping up of pay on par with his junior by his controlling officer namely COS(Con.) on the basis of the note dated 21-05-90. A perusal of the note dated 21-5-90 indicate that and all pros and cons were considered/then only a decision for stepping up of pay of the applicant was taken. The pay of the applicant was stepped up on par with his/junior Mr.PV.Raju and office order was issued subsequent^{-ly} to that effect in terms of office order No.53/90 dated 21-05-90 with the approval of the competent authority. The FA&CAO while examining this case had not given thought to the above points mentioned and had the applicant to a lower stage and also ordered recovery from the final settlement dues. Because of the re-fixation of his pay his terminal benefits and pension was also reduced.

above is to be given only one year prior to filing of this OA i.e., from 18-04-1993 (this OA was filed on 18-04-1994). The fixation of pension and other terminal benefits for the applicant has to be done on the basis of his last pay drawn as per revision of pay as above. The amount if any recovered from the D.C.R.G., from the applicant has to be returned back if it is irregularly recovered. The applicant is not entitled for any interest on the arrears if any to be paid to him on the basis of this direction.

9. The OA is ordered accordingly. No costs.

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY

न्यायालय अधिकारी
COURT OFFICER
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद बेंच
HYDERABAD BENCH

Contd...

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

C.P.No.12/97 in OA.485/97

Date of Order: 20.3.97

BETWEEN:

A.N.Murthy

.. Applicant.

AND

Union of India, rep. by
Sri D. Sridhakar Rao Manager,
S.E.Rly., Visakhapatnam.

.. Respondent.

- - -

Counsel for the Applicant

.. Mr.Y.Subrahmanyam

Counsel for the Respondents

.. Mr.C.V.Malla Reddy

CORAM:

HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

HON'BLE SHRI B.S. JAI PARAMESHWAR : MEMBER (JUDL.)

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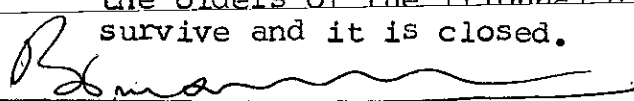
O R D E R


1 Oral order as per Hon'ble Shri R.Rangarajan, Member (Admn.)

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Heard Mr.K.Venkateswara Rao for Mr.Y.Subrahmanyam,
learned counsel for the applicant and Mr.C.V.Malla Reddy,
learned standing counsel for the respondents.

2. Mr.C.V.Malla Reddy produced a letter No. WPE/22/OA.485/94,
dt. 28.2.97 (letter is taken on record) addressed to the applicant
in regard to the fixation of pay, fixation of pension and pension-
ary benefits and payment of arrears on the basis of the
revised fixation. The CP was filed on 28.1.97. The compliance
letter was issued to him on 28.2.97 after the filing of the CP.
Hence it has to be held that the respondents have complied with
the orders of the Tribunal given in the CP and the case cannot
survive and it is closed.


(B.S. JAI PARAMESHWAR)
Member (Judl.)

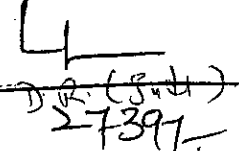

(R.RANGARAJAN)
Member (Admn.)

20.3.97

Dated: 20th March, 1997

sd

(Dictated in open court)


27397

TYPED BY
COMPILED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL

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

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR:
M(J)

DATED: 20/3/97

ORDER/JUDGEMENT

R.A./C.P/M.A. No. 12197

B.A. NO. 48197

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS.

II COURT

YLKR

