

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

Review Application No.41 of 1996.

IN

Original Application No.1207/95.

Dt. of Order:19-6-96.

Between :-

P.Krishna Rao

...Applicant

And

1. Sr.Divisional Personnel Officer,
S.C.Railway, Vijayawada Division,
Vijayawada.

2. Divisional Railway Manager,
South Central Railway, Vijayawada,
Division, Vijayawada.

3. General Manager, S.C.Railway,
Rail Nayam, Secunderabad.

...Respondents

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Counsel for the Applicant : Shri B.Narasimha Sarma

Counsel for the Respondents : Shri J.R.Gopal Rao, SC for Rlys

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CORAM:

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

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(Orders per Hon'ble Shri R.Rangarajan, Member (A)).

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The applicant in this O.A. has filed this Review Application for reviewing the direction given in regard to payment of arrears which restricts payment of arrears only one year from prior to the filling of this O.A. The applicant who was transferred on a request transfer from Guntakal Division to Vijayawada Division was fixed in the scale of pay of Rs.1200-2040 without ~~breakin~~ protecting the pay which he was drawing at Guntakal Division at the time of transfer.

2. The applicant in the O.A. prayed for protecting the pay and the consequential benefits by way of arrears. That O.A. was disposed of by order dt.22-11-95 directing the respondents to notionally fix the pay of the applicant by protecting his pay in accordance with para-1313(a)(iii) of the Indian Railway Establishment Code, Vol.II. Consequential monetary benefits accruing to the applicant ~~has to be~~ calculated from the period one year prior to the filing of the Original Application.

3. The main contention of the learned counsel for the applicant in this Review Application in modifying the direction of payment of arrears are as follows :-

(i) This Tribunal in OA 1094/95 decided on 15-9-95 and in OA 1252/95 decided on 14-11-94 does not restrict the payment of arrears from one year prior to the filling of the OAs.

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A direction was given to pay the arrears on the basis of the rule position as indicated above. Further it is submitted by the learned counsel for the applicant in those OAs had got the arrears right from the beginning i.e. from the date of their absorption in the other division. These orders have been fully implemented by the Railways. Hence restricting arrears for the applicants in this O.A. will be a case of discrimination violating article 14 and 16 of the constitution. It is further amplified that the direction in the above referred OAs having become final, the impugned action in not extending the same benefit of the earlier decision of the Tribunal in the case of the applicant in this OA is not tenable."

4. Before going into the contentions raised by the applicant in this O.A. study of Rule 1313(a)(iii) is necessary. The above rule does not indicate any date for payment of arrears. It only says that the pay as was drawn by him at the time of absorption in the other division had to be protected. Further the earlier decisions of this Tribunal also directs fixation of the pay from the date they are absorbed and does not indicate anything further. The rule position as it exists has to be read as provided ~~as~~ in the rule. We cannot add or deduct anything from that rule as there is no

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ambiguity and as I said earlier the rule is very silent about the payment of arrears. In view of the rule position as it exists in the rule book, a decision was taken in this O.A. to restrict the arrears from one year prior to the filing of this O.A. Even though OA 1094/95 does not specifically restrict the arrears from one year prior to the filing of that O.A., the order stipulates that the arrears had to be paid as incorporated in para-1313(a)(iii) of IREM. As stated earlier, the rule position does not indicate from which date the arrears had to be paid. The learned Member in the present O.A., after considering all facts and keeping in view that the applicant was transferred to Vijayawada way back in 1988 and filed the application only in 1995, had come to the conclusion that the Government cannot be burdened for payment of arrears from an earlier date other than from one year prior to filing of the O.A. Such considerations cannot be challenged even if extra benefit had been given to the applicants in other OAs. The Bench which took this decision to restrict the arrears from one year prior to the filing of the O.A. followed the same direction in some other cases also. Discrimination arises only if an irregularity which has been pointed out and has to be rectified on the basis of rule is not set right if the same is rectified in other cases. If the rule is silent, in regard to payment of arrears and a decision to suit the facts of the case is rendered the same cannot be called as discrimination. The Government has fulfilled their obligation in other cases by implementing the orders given by the Tribunal. The Government cannot be blamed for not giving the same benefits to the

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applicants herein as was given to the applicants in the other OAs as the railways have implemented the orders of this Tribunal in Toto in this O.A. also. For not following the direction of this Tribunal in other OAs for payment of arrears by the Railways in the present case, cannot be a reason for review of the judgement in this O.A.

5. The next contention of the applicant is that not extending similar benefits for similarly situated employees is discrimination. For this the learned counsel for the applicant relied on the reported judgement in ATR 1988 (2) CAT 518 (A.K.Khanna Vs. Union of India & others). Before I discuss this issue, it is to be made clear that the observation made in the above citation is in some other context i.e. in the case of pay fixation of some computer staff. A reading of the facts of the case cited does not indicate that case was filed belatedly or any other reason to come to the conclusion that case was ~~barely~~ ^{based} by limitation. In this case it is an admitted fact that the applicant waited till a similar case was disposed of by the Tribunal and on that basis ^{he} ~~they~~ approached the Tribunal for similar benefits. If the applicants are eager to get the benefits they need not have waited for some other case to be decided by this Tribunal and approach this Court for getting similar benefits. Immediately after their representation was not considered by the Railway authorities they could have approached the Court/Tribunal or else atleast they could have filed O.A. along with the other applicants as it is very likely that the applicants in ~~these~~ ^{these} all cases would have decided the course of action in their

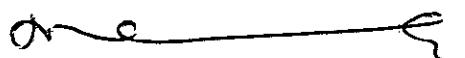
(12)

congregation. They filed the first case as a test case to test the water and then resorted to filing of Original Applications in similar cases. Under these circumstances, the orders given in two different cases cannot be similar and if different orders given on the facts of each case, the same cannot be called as discrimination violating Article 14 and 16 of the Constitution. Hence I am of the opinion that the learned Member who decided this O.A. had come to a Judicious conclusion after taking into account all the facts and circumstances of the case.

6. There are no other contentions advanced by the applicant in this Review Application.

7. The reason attributed for reviewing the O.A. is not based on any error in the judgement. It is only a perception of a case as looked into from the view point of the applicant. As the Hon'ble Member of this Bench who had taken a different view different from the view of the applicant, the same cannot be assailed and advanced as a reason for reviewing the order passed in the O.A.

8. In the result, the R.A. is dismissed. No costs.



(R.RANGARAJAN)
Member (A)

Dated: 19th June, 1996.
Dictated in Open Court.

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DY. Registrar (S)

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R.A.NO.41/96 in O.A.NO.1207/95

Copy to:

1. Senior Divisional Personnel Officer,
South Central Railway,
Vijayawada Division,
Vijayawada.
2. Divisional Railway Manager,
South Central Railway,
Vijayawada Division,
Vijayawada.
3. General Manager,
South Central Railway,
Railnilayam,
Secunderabad.
4. One copy to Mr.B.Narasimha Sarma, Advocate,
CAT, Hyderabad.
5. One copy to Mr.J.R.Gopal Rao, SC for Railways,
CAT, Hyderabad.
6. One copy to Library,CAT, Hyderabad.
7. One duplicate copy.

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20/4/96
O/A 1207/95 ① 20/7/96

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THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

DATED: 19/6/96

ORDER/JUDGEMENT

O.A. NO./R.A./C.P. No. 41/96

in.

O.A. NO. 1207/95

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

R.P. DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS.

YLKR

II COURT

No Spare Copy

केन्द्रीय प्रशासनिक अधिकार
Central Administrative Tribunal
प्रेषण/DESPATCH
25 JUL 1996 NAM
हैदराबाद न्यायपीठ
HYDERABAD BENCH