

38

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD.

O.A.NO. 724 of 1995.

Between

Dated: 18.3.1996.

D.Venkata Subbaiah

...

Applicant

And

1. Chief Personnel Officer, South Central Railway, Railnilayam, Secunderabad.
2. Divisional Railway Manager, South Central Railway, Vijayawada.
3. Senior Divisional Accounts Officer, South Central Railway, Vijayawada.
4. Senior Divisional Personnel Officer, South Central Railway, Vijayawada.

...

Respondents

Counsel for the Applicant

: Sri. P.Krishna Reddy

Counsel for the Respondents

: Sri. D.Francis Paul, SC for Rlys

CORAM:

Hon'ble Mr. R.Rangarajan, Administrative Member

Contd:...2/-

39

O.A.No.724/95.

Date: 18/2/96

J U D G M E N T

{ as per Hon'ble Sri R.Rangarajan, Member(Administrative) }

Heard Sri P.Krishna Reddy, learned counsel for the applicant and Sri D.Francis Paul, learned Standing Counsel for the respondents.

2. The applicant in this OA joined Railways as Fireman 'C' on 15.3.1958. It is stated that he had rendered military service from 17.11.1952 to 23.12.1955 prior to his appointment in Railways. He progressed in the running cadre and was promoted as Driver 'C' with effect from 13.5.75. While he was working as Driver 'C' in the scale of Rs.330-560 he was posted as Traction Supervisor with effect from 15.5.1983 as Area Power Controller on adhoc basis. ~~with effect from 15.5.1983~~ He was regularised in the post of Running Supervisor with effect from 8.7.1986 i.e. after introduction of IV Pay Commission Scales of pay.

3. A proposal ^{was} sent to Associate Accounts to refix his pay in the IV Pay Commission Scales as Running Supervisor as if he would have been continued in the parent cadre as Driver 'B' just prior to his regularisation as Supervisor with effect from 8.7.1986. The above pay fixation was certified by Associate Accounts and necessary Memorandum No.B/P.487/III/PC/Vol.II dt. 4.4.1989 was issued duly fixing his pay as under:-

Pay already fixed		Scale	Revised fixation	
Pay	Date		Pay	Date
2060	8-7-1986	2000-3200	2300	8-7-1986
2120	1-5-1987	-do-	2375	1-7-1987
2180	1-5-1988	-do-	2450	1-7-1988

4. Later it was pointed out by the Accounts that the applicant remained in supervisory cadre prior to 1-1-1986 (i.e. 15-5-1983) and after regular promotion as Supervisor w.e.f. 8.7.1986. Hence, the Accounts department observed that there was no necessity to refix his pay on regular promotion based on assumed pay as Driver 'B' as if he had continued in running cadre. It is further stated that there was no provision in the code/rules to fix his pay again on regular promotion. Hence, the pay fixed by memorandum dated 4.4.1989 was withdrawn by the Accounts vide their letter No.A/EN/E/IV/5 dated 26.2.1990. Memorandum No.B/P.487/III/PC/Vol.III dt. 6.3.1990 (Annexure-1A) was issued duly refixing the pay of the applicant as below:

Already fixed		Scale	Now Revised	
Pay	w.e.f.		Pay	w.e.f.
2300	8-7-86	2000-3200 (RSRP)	2060	1-5-1986
2375	1-7-87	-do-	2120	1-5-87
2450	1-7-1988	-do-	2180	1-5-88
2525	1-7-89	-do-	2240	1-5-89

The pay of the applicant which was earlier fixed by memorandum dt. 4.4.1989 was brought down by memorandum dated 6.3.1990. The applicant finally retired from Railways on 31.3.1990 and hence his pension was calculated on the basis of the revised pay fixation memorandum dt. 6.3.1990.

...4/-

1

(91)

5. Aggrieved by the above reduction in pay and the resultant reduction in pension, he has filed this OA praying to set aside the Memorandum No.B/P.407/III/PC/VOL.III dt. 6.3.1990 of R-4 and for a consequential direction to refix the pension by restoring his pay as it stood prior to the impugned memorandum dt. 6.3.1990 and also for inclusion of military service rendered by him earlier to his joining in Railways for fixation of pension.

6. There are two prayers in this O.A. The first prayer is to set aside the impugned memorandum dt. 6.3.90 whereby his pay was brought down by cancelling the earlier pay fixation memorandum dt. 4.4.1989 and to refix his pension on the basis of the pay fixation chart dt. 4.4.1989. The second prayer is to count his military service from 17.11.1952 to 23.12.1955 for calculation of qualifying service in order to fix his pension.

7. The applicant herein was appointed as Traction Supervisor in the grade of Rs.550-750 with effect from 15-5-1983 while he was working as Driver 'C' in the grade of Rs.330-560. The learned counsel for the respondent submitted that his pay was fixed in higher scale while he was working as Traction Supervisor on adhoc basis. When he continued as Traction Supervisor even after introduction of IV Pay Commission Scales of pay, there is no necessity to refix his pay once again when he was regularised on 8.7.1986 as Running Supervisor taking into account his position in running category as Driver 'B'. The fixation once done is final and no second fixation can be ordered.

As his pay fixation in supervisory cadre when

he joined on 15.5.1983 has been done by taking his substantive grade as Driver 'C' in the running cadre he cannot demand fixation in IV Pay Commission scales of pay taking his position in the running ~~XXXXXXX~~ cadre as Driver 'B'.

8. The learned Standing Counsel further contended that the applicant came to the running cadre on his own volition by his representation dt. 12.4.1983 and hence he cannot claim any higher pay fixation even if his juniors are promoted to Driver 'B' grade subsequently. His pay fixation in the grade of running supervisory cadre with effect from 15.5.83 taking into account his substantive grade as Driver 'C' is final and cannot be reopened after introduction of IV Pay Commission scales of pay.

9. The learned counsel for the applicant is that the applicant came to the cadre of Traction Supervisor only on adhoc basis from the running cadre. He continued to maintain his lien in the running cadre till he was regularised with effect from 3.7.1986. Till he was regularised in the running cadre, he had option to go back to his parent unit viz. the running cadre in which case he would have been posted as Driver 'B' as at the time of introduction of IV Pay Commission scales of pay viz. 1.1.1986 his juniors were working as Driver 'B'. If he had opted to come to Traction Supervisor category after 1-1-1986 by which time he was Driver 'B' his pay in the said category will be much higher and hence fixation of pay when he was regularised in that cadre in 1986 in Traction Supervisor cadre taking into account his substantive position as Driver 'B' in running cadre is in order.

(43)

Had he gone back to his parent cadre earlier to 8.7.86 and posted back as Traction Supervisor later he would have got all the benefits in fixation and his pay would have been fixed taking into account his status in the running cadre as Driver 'B'. Just because he came to supervisory cadre earlier to 1-1-1986 on adhoc basis and continued after 1-1-1986 he cannot be denied the benefit of his officiation as Driver 'B' in the running cadre for fixation of pay when he was regularised on 8.7.1986. As a matter of fact when some of the running staff came to supervisory cadre earlier to 1-1-1986 and their juniors after having been promoted to the higher grade came to the supervisory cadre after 1-1-1986 the pay of ~~the~~ such juniors were fixed higher than their seniors. When the seniors represented their case for stepping up on par with their juniors Railway themselves had stepped up the pay of the seniors on par with the juniors as can be seen from the letter dt. 7.3.89 bearing No.B/P.535/III/Grievances (Annexure-I page-10 of the OA). If that be the position the reduction of pay of the applicant in the present case cannot be held to be tenable.

10. The pay fixation chart issued on 4-4-1989 takes into account the substantive pay of the applicant as Driver 'B' in IV Pay Commission scales of pay and the running allowance to the extent of 30% on the basis of the post held by the applicant in the running cadre. But the revised pay fixation chart dt. 6.3.1990 takes into account the status of the applicant as Driver 'C' in the running cadre ~~and also pay scales as applicable prior to the introduction of IV Pay Commission pay scales.~~

...7/-

Hence, the revised pay fixation chart reduces the pay of the applicant drastically and hence affects the pension. Hence, the pay fixation chart of 6.3.1990 for the reasons mentioned supra cannot be held as valid and has to be set aside submits the learned counsel for the applicant.

11. The contention by the learned counsel for respondents that the pay fixation cannot be done twice in the post is not very clear. Probably he means that once the pay fixation has been done when the applicant was posted as Supervisor in 1983 on adhoc basis, the pay fixation when he was regularised in that post on 8.7.1986 cannot be done.

12. No fixation chart which was issued in 1983 was produced. Even if assuming that such a chart was issued in 1983 whether fixation can be done when the applicant was regularised as Supervisor in 1986 is a point to be considered. It is an admitted fact that the applicant kept his lien in his parent cadre till he was regularised on 8.7.1986 in Supervisory cadre. If he has kept his lien in his parent cadre he is due for all promotions in that cadre though he was discharging his duties as Supervisor. When his junior is promoted in his parent cadre the applicant should also be given the paper promotion en par with his junior. If his junior is promoted to the post of Driver 'B' before his regularisation as Supervisor he should also be promoted to that grade from the date his immediate junior was promoted. When such a promotion is given the concerned departmental

Ug

: 8 :

authorities should ask the applicant whether he is willing to go back to his parent cadre as Driver 'B' or he will continue in the Supervisory cadre foregoing his promotion. In case the applicant opts to continue in the supervisory cadre foregoing his promotion probably the stand of the respondents that the fixation done in 1983 when he joined on adhoc basis is final and no further second fixation can be done as the applicant refused promotion. In case the applicant opts to go back to his parent cadre accepting the promotion he has to be relieved to join his parent cadre on promotion. If on account of need for retaining the applicant as Supervisor without relieving him to go back to his parent cadre on promotion he has to be given all consequential benefits that would occur in the supervisory cadre, as he was retained in the Supervisory cadre on administrative reasons. The consequential benefits would be to refix his pay in the cadre of Supervisor as if he was transferred to that cadre as Driver 'B'. This fixation should not be construed as second fixation as he was not allowed to go back to his parent cadre on promotion. If he had carried out his promotion as Driver 'B' and once again joined back as Supervisor he would have got the benefit of higher fixation as his status on the running cadre will be Driver 'B' at that time. No records were produced to show that he was permitted to go back to his parent cadre as Driver 'B' before his regularisation and that he refused to go back to his parent cadre on his own volition. In the absence of such records it is to be held that he was retained as Supervisor on administrative grounds and hence the fixation chart

...9/-

1

issued by memorandum dt. 4.4.1989 cannot be treated as second fixation and is the fixation done as if he joined as Supervisor when he was working as Driver 'B' in his parent cadre.

13. The running staff are very reluctant to come over to the cadre of supervisors as they will loose heavily monetarily if they come as Supervisor. But, due to exigencies of service and to maintain train operations in practice the administration forces the running staff on supervisory duties cajoling them for the posting as Supervisor. Some times the running staff do give in writing to work as Supervisor because of pressure from administration. The applicant's acceptance to come over to Supervisor category in 1983 may be due to some such circumstances. When once a running staff come over to supervisory cadre they are not relieved even if they get promotion in their parent running cadre as there is always perennial shortage of supervisors. Hence, it will not be out of place to assume that the applicant was not relieved to join as Driver 'B' before his regularisation as Supervisor due to shortage of Supervisors. In the absence of any record to show that the applicant herein did not like to be repatriated even on promotion the presumption that he was retained as Supervisor on administrative grounds cannot be treated as incorrect.

14. The contention of the learned counsel for the respondents that he was fixed in the scale of pay of Rs.550-750 when he was posted as Supervisor in 1983 while

he was in the scale of pay of Rs.330-560 as Driver 'C' at that time and as he gained considerably in pay fixation in 1983 because of higher scale in which he was fitted he cannot demand fixation when regularised in 1986 treating his status in running cadre as Driver 'B' has no sanction of law/rule. The applicant being posted as Supervisor on adhoc basis his pay on regularisation in that cadre has to reflect his status in running cadre and on that basis the fixation has to be done for the reasons stated in the above paras. This is also in consonance with the stand taken by this Tribunal in O.A.No.536/91 decided on 5.10.1994.

14. The second prayer of the applicant is that his military service from 17.11.1952 to 23.12.1995 has to be taken into account for calculating the qualifying service and compute the pension on that basis. The respondents in para-2 of the reply statement state that as per Serial Circular No.71/82, Rly.Board letter No.F.(E)/III/82-PN-I/2 dt. 10.5.1982 re-employed military pensioners who were in service on 30.7.1981 and who had opted or deemed to have opted for the benefits should be given another opportunity so that they may earn a single pension based on the combined Military and Railway services and that the option should be exercised before 31.8.1983. The applicant having failed to submit his option within the stipulated time cannot claim now to addition of service for the purpose of calculation of qualifying service. The learned counsel for the applicant submit that the contents of the letter quoted above should have been specifically brought to the notice of the applicant and as it was not done he could not exercise his option. When he came to know of that he exercised his option and hence it has to be counted.

15. The applicant had submitted his representation addressed to R-4 by his representation dt. 27.1.1992 (Annexure-V). A Lawyer notice was also issued to that effect on 15.6.1992 (Annexure-XVI), but it is stated that no reply has been given in this connection. It is seen from Annexure-IV letter dt. 31.10.1991 the applicant was informed by R-4 that his request for counting the military service for the purpose of calculating the qualifying service has been rejected. But that letter does not ~~xxx~~ indicate whether the Railway Board letter dt. 10.5.1982 was brought to the notice of the applicant specifically and even then he did not submit his option. The issue in this regard revolves around the factual verification of the records to come to conclusion whether he is entitled for counting military service as qualifying service for calculation of pension. As it involves factual verification of records, it is necessary that a direction has to be given to R-2 to dispose of the representation dt. 27.1.1992 by a speaking order in accordance with rules after verifying the records.

16. In the result, the following directions are given:-

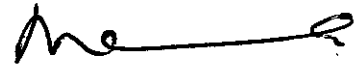
(1) The impugned memorandum dt. 6.3.1990 is set aside. and the pay of the applicant has to be governed by the pay fixation chart conveyed to him by memorandum dt. 4.4.1989, and based on the said pay fixation his pension has to be fixed.

...12/-

49

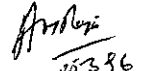
(ii) Respondent No.2 has to dispose of the representation of the applicant dt. 27.1.1992 by a speaking order after verifying the records in accordance with rules within 3 months from the date of receipt of a copy of this order. If the applicant is aggrieved by the order to be passed, he is at liberty to approach this Tribunal by filing a fresh O.A. if so advised.

17. The OA is ordered accordingly. No costs.



(R.Rangarajan)
Member (Admn.)

Dated 18th March, 1996.


15396
DNOL

Grh.

Copy to:-

1. Chief Personnel Officer, South Central Railway, Railnilayam, Secunderabad.
2. Divisional Railway Manager, South Central Railway, Vijayawada.
3. Senior Divisional Accounts Officer, South Central Railway, Vijayawada.
4. Senior Divisional Personnel Officer, South Central Railway, Vijayawada.
5. One copy to Sri. P.Krishna Reddy, advocate, CAT, Hyd.
6. One copy to Sri. D.Francis Paul, SC for Rlys, CAT, Hyd.
7. One copy to Library, CAT, Hyd.
8. One spare copy.

Rsm/-

0
3/4/96
TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD.

HON'BLE SHRI *R. Rangarajan* : MEMBER(A)

HON'BLE SHRI

DATED: 18/3/96

ORDER/JUDGMENT

M.A. NO./R.A./C.A. NO.

IN 724/95

O.A. NO.

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

* * *

No Spare Copy

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
अवकाश/DESPATCH

29 MAR 1996

हैदराबाद न्यायापीठ
HYDERABAD BENCH