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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH
HYDERABAD.

Q.A.No. 1424 of 1995.

Between

Dated : 23-11-1995.

V. Srinivasa Reddy

...

Applicant

11/12/95

And

1. Senior Divisional Personnel Officer, S.C. Railway,
Vijayawada Division, Vijayawada Krishna District.
2. Divisional Railway Manager, South Central Railway,
Vijayawada Division, Vijayawada, Krishna District.
3. General Manager, South Central Railway, Rail Nilayam,
Secunderabad.

...

Respondents

Counsel for the Applicant : Sri. M.C. Jacob

Counsel for the Respondents : Sri. J. Siddaiah, SC for Rlys.

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CORAM :

Hon'ble Mr. A.B. Gorthi, Administrative Member.

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O.A.No. 1422/95.

Dt. of Decision : 23-11-1995.

ORDER

As per Hon'ble Shri A.B. Gorthi, Member (Admn.)

The relief claimed by the applicant is for a direction to the respondents to protect his pay under Rule 1313 of the Indian Railway Establishment code, Vol. II on his transfer from Hyderabad (MG) Division to Vijayawada Division.

2. The applicant was working as an Assistant Station Master in the scale of pay of Rs. 330-560/- in Hyderabad (MG) Division. He was promoted to the higher grade of Rs. 425/- - 640/- on 18-08-1984. On his request thereafter he was transferred to Vijayawada Division on bottom seniority in the lower scale of Rs. 1200-2040/- vide order dated 12-05-1987. At the time of transfer the applicant was drawing pay of Rs. 1,520/- in the higher scale of Rs. 1400-2300/-. His claim is that his last pay drawn should be protected on his transfer to Vijayawada Division as per the extant rules.

3. Heard learned counsel for both the parties.

4. Learned counsel for the applicant has drawn my attention to a judgement of this Bench of the Tribunal in OA.1252/94 where in the applicants were similarly situated as the applicant herein. The said OA was decided on 14-11-1994 with a direction to the respondents to fix the pay of the applicants therein by protecting their pay in accordance with para 1313 (a) (iii) of the Indian Railway Establishment code, Vol.II.

5. As the applicant before me is similarly situated to those in the afore-stated OA.1252/94, there is no reason why similar benefit should not be granted to him.

6. During the hearing of the case learned standing counsel for the respondents has drawn my attention to an amendment to para 604 of Indian Railway Establishment Manual Volume.I 1989 Edition which has come into effect from 24-02-95. Vide the said amendment the following was inserted as sub-para (a) (iii) in 604 of IREM 1989 Edition:-

"When a Government servant, holding the higher post substantively on regular basis seeks transfer from that higher post to a lower post at his own request and the pay drawn in such higher post is less than or equal to the maximum of the scale of pay of the lower post, then the pay drawn in such higher post will be protected.

When a Government servant seeks transfer to a post from which he was promoted, it will be treated as a case of reversion and his pay will be fixed at a stage what he would have drawn, had he not been promoted.

When appointment on transfer from a higher post to a lower post is made on his own request under Rule 227 (a)(2)-RI (RR-15-A(2) and the maximum pay in the time scale of that post is lower than his pay in respect of the old post held regularly, he shall draw that maximum as his initial pay in accordance with FR 22(1)(a)(3)".

(Authority Railway Board's letter No.F(E)-II/91/Misc-2 dated 24-02-1995.

7. Learned standing counsel has contended that the case of the applicant is covered by the 2nd paragraph of the amendment. A careful reading of the 2nd paragraph would indicate it applies only to such a Government servant who seeks transfer to a post from which he was promoted (underlined for emphasis). In the instant case there is nothing on record to indicate that the applicant was working in Vijayawada Division in the lower grade of pay and came to Hyderabad (MG) Division on promotion to the higher grade of pay in the post of ASM. Consequently what applies to the case in hand is para I under which the

the date for consequential past monetary benefits same namely 1-12-1994 as in O.A.1586/95. The review is sought to the same extent.

5. Facts in O.A.(G.R.348/96) with M.A.143/96

For the reasons stated the delay of 26 days in filing R.A., is condoned and M.A., is disposed of.

The applicant was appointed as Assistant Station Master at Hyderabad on 18--8--1984 in the scale of Rs.1200--2040 and was later on given the scale of Rs.1400-2300. He was transferred to Vijayawada on 12-5-1987 and was placed on the lower scale of Rs.1200-2040. Subsequently he has been given the scale of Rs.1400-2300 on 3-12-1988. The O.A., was filed on 9-11--1995. The contentions raised and relief claimed was same as in O.A.1586/95. Similar relief has been granted as in that O.A., except specifying the date for past benefits as 1.11.1994 by order dated 23--11--1995. Review of the order is sought to the extent of the past benefits and it is prayed that it should be instead specified as the date of transfer to Vijayawada.

6. REASONS: (Common to all the three Review Applications)

The only argument advanced by the learned counsel Mr. M.C.Jacob on behalf of the applicants (in the respective review applications) is that having stated that the applicants

are similarly situated to those in O.A.1252/94 and there is no reason why similar benefit should not be granted to them the learned single Member who passed the orders in the respective O.As., has erred in ^{confining} ~~confining~~ the monetary benefit consequential to the relief granted only from the date specified instead of granting it from the date of transfer and this has been done without assigning any reasons; hence it amounts to error apparent on the face of the record and that needs to be rectified by reviewing the order to that extent and by granting the monetary benefits from the respective dates of transfer of applicants to Vijayawada from Hyderabad with reference to which the pay stands protected under the orders. The counsel submits that the applicants would suffer monetary loss unless the review is granted.

7. Mr. V.Rajeswara Rao, the learned Standing counsel for the respondents opposes the review submitting that there is no error apparent on the face of the record as is being contended and the grievance made cannot be a ^{for} ground ~~for~~ review.

8. We find that the submission made by Mr. V. Rajeshwara Rao has considerable force in it. At the same time we are not happy with the situation that has emerged.

9. The case of the applicants in the O.As., was that although they were transferred to Vijayawada at their own request and with bottom seniority yet they were entitled to have their pay protected at the figure where they had

reached in the scale of Rs.1400--2300 even though on transfer they were placed in the lower scale of Rs.1200-2040. They relied on para 1313 of IREC in support. That contention has been accepted negating the contentions of the respondents and protection of pay has been ordered under para 1313(a)(iii) of IREC. That relief ~~is~~ could be available to the applicants from the date of their transfer respectively and they would be entitled to get the consequential monetary benefit from that date consistently with the relief granted relating to the protection of pay. The consequential benefit, however, could be made available at the discretion of the Court either prospectively or from the date of filing of the O.A., ~~or~~ ^{or} from the date of transfer. However, it has been granted from the period of one year prior to filing of the O.A. No reason is ~~discernable~~ ^{discernable} from the orders as to on what basis that date was chosen. It is not therefore possible to know as to for what reason the applicants have to suffer the loss of the available monetary benefit calculated on the basis of the period from the date of transfer till the date specified which would be material for protection given from the specified date. That would have effect on the fixation of pay from the specified date onwards. Similarly from the point of view of the respondents as to why they should pay for one year prior to the date of order the proportionate additional amount when the intention was not to grant monetary benefit from the dates of transfer

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is also not stated and in the absence of any reasons it is not possible to know as to why it has been so ordered.

10. Then having said that the applicants were similarly placed as in O.A.1252/94 and were entitled to be granted similar relief the orders do not spell out as to why departure was made confining the monetary benefit only from one year prior to the order when the order in O.A.1252/94 which has been produced shows that the benefit was not confined to any period but was granted as consequential to protection of pay and refixation on that basis (necessarily from the date of transfer.)

11. As the O.As., of the present applicants were disposed of at admission stage we have no advantage of a written statement filed by the respondents. Had a reply been filed it is possible that the fact that the applicants had already been placed in the scale of Rs.1400-2300 prior to the dates of filing the O.A., and even prior to the specified dates i.e., 1-11-1994 and 1-12-1994 would have been brought to the attention of the learned Member pointedly although it is revealed from the annexures to the O.As., produced by the applicants but does not seem to have been noticed presumably because the applicants did not state that material fact in the O.As. That is likely to give rise to some anomaly. That is because unless past benefit of protection and refixation on that basis is carried out, which cannot be done on terms of the order because of the

restrictive clause of past one year, and as the applicants were already in the scale of Rs.1400-2300 on 1-11.94/1.12.1994 (respectively). Thus that it becomes a vexed question.

12. We thus find that the grievance of the applicants for seeking review is not without substance. However, we find it difficult to grant them relief as our powers in review are limited and it is not open to us to take a contrary view to the one taken in the original orders on merits howsoever applicants may feel that the matters have been erroneously decided. We cannot act as appellate court and reverse the view taken on merits. There is no error apparent shown on facts. No new material which was not available has been produced now. Mere ground of injustice flowing from an order passed on merits nor for not following earlier decision on point of moulding the relief when the ratio thereof has been followed cannot afford a ground for review. We are therefore constrained to reject the review applications.

13. Even so we hope that having regard to earlier orders of this Tribunal in O.A.1252/94 and other cases the or Senior Divisional Personnel Officer/such other competent higher authority of the respondents may ~~may~~ administratively take a decision to remove the anomalies and adopt uniform policy in respect of the applicants and others similarly placed persons and grant them benefit if considered feasible

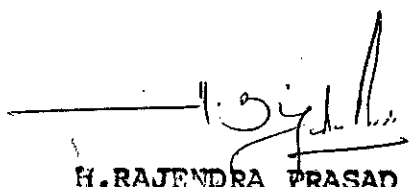
for which the restrictive clause in the orders may not pose a difficulty. We, however, Xx make it clear that these observations are intended by way of guidance to the respondents and in no manner shall be understood as creating any enforceable right in the applicants nor as in any manner altering the original orders. The orders would be fully binding upon both the parties save and except any administrative decision if thought fit to be taken by the respondents in the light of above observations which matter we hope will receive due consideration.

14. In the result following Order is passed:

ORDER.

- I. (1) R.A.19 of 1996 in O.A.1587/95 is rejected subject to observations made in the Judgment. No order as to costs.
- (2) R.A.23/96 in O.A.1586/95 is rejected subject to observations made in the judgment. No order as to costs.
- (3) M.A.143/96 in R.A.S R.No.348/96 - Delay condoned. M.A., disposed of.
- (4) R.A.(S.R.348/96) is rejected subject to observations made in the Judgment. No order as to costs.

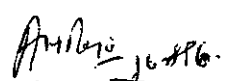
- II. Copy of this Order shall be separately kept in each of the above proceedings and true copies from the original copy shall be issued in each proceeding separately carrying appropriately the number of that proceeding.
- III. The regular number of R.A.S.R.No.348/96 when registered may be inserted in the copy issued to the respondents.


H. RAJENDRA PRASAD
MEMBER (A)
07 Aug 96


M.G. CHAUDHARY, J
VICE-CHAIRMAN.

Date: 7th August, 1996.

Pronounced in open Court.


Deputy Registrar D.C.C.

R.P. 60 /96

To

1. The Senior Divisional Personnel Officer,
S.C.Rly, Vijayawada Division,
Vijayawada, Krishna Dist.
2. The Divisional Railway Manager,
S.C.Rly, Vijayawada Division,
Vijayawada.
3. The General Manager, S.C.Rly,
Railnilayam, Secunderabad.
- 4. One copy to Mr. M.C. Jacob, Advocate, CAT, Hyd. Bench.
5. One copy to Mr. J. Siddaiah SC for Rlys, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare copy.

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act

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE M.G. CHAUDHARI
VICE-CHAIRMAN

AND

THE HON'BLE MR. H. RAJENDRA PRASAD: M(A)

Dated: 7 - 8 - 1996

ORDER / JUDGMENT

~~M.A.R.A./C.A.~~ No. 61/96

in

O.A.No. 1424/95

T.A.No. (w.p.)

Admitted and Interim Directions
Issued.

Allowed.

Disposed of with directions

Dismissed

Dismissed as withdrawn.

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

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केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण/DESPATCH
- 2 SEP 1996
हैदराबाद बेंच
HYDERABAD BENCH