

20

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION No.1444 of 1995.
Dt. of Decision: 15-07-96.

Abdul Khader ..Applicant.

Vs

The Chief Personnel Officer,
South Eastern Railway,
Personnel Branch,
Garden Reach, Calcutta-43. .. Respondents.

Counsel for the applicant : Mr.N.V.Rama Rao for
Mr.M.Panduranga Rao

Counsel for the Respondent : Mr.N.R.Devaraj, Sr.CGSC.

CORAM:-

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

ORDER

Oral Order (Per Hon'ble SHRI R.RANGARAJAN : MEMBER (ADMN.))

Heard Mr.N.V.Rama Rao for Mr.M.Panduranga Rao, learned counsel for the applicant and Mr.N.R.Devaraj, learned counsel for the respondent.

2. A notice in this OA was issued on 04-12-95 and it was admitted on 30-01-96 as no reply was filed in pursuance of the notice dated 04-12-95. Though this OA came up for hearing number of times it was adjourned for want of reply from the respondents. On 28-08-96 when it came up for hearing, as no reply was filed, it was ordered that the respondent lost their chance to file reply due to the delay and the OA will be heard without reply. When it was posted for hearing today the learned standing counsel submitted that the reply had already been sent for signature to the respondent but as it is not received so far after duly signed he could not file the reply. But, he was permitted to read his contentions from the para-wise remarks and also permitted to make further submission on that basis. The case was heard on the above basis and disposed of by the following order:-

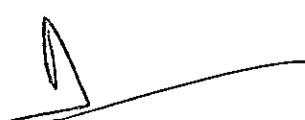


3. The applicant while working as IOW Grade-II was promoted regularly as Chief IOW Grade-I vide order No.P/ENG/W/03/91 dated 6-8-91 in the scale of pay of Rs.2375-3500/- w.e.f., 2-12-91. His reported juniors viz., Mr.K.V.D.Acharyulu and Mr.G.R.Rao when promoted by the same panel on regular basis were given higher fixation compared to the fixation of the applicant in the scale of pay of Rs.2375-3500/-. Hence, the applicant submitted representations from 1987 onwards for stepping up of his pay on par with his juniors. But he has not pursued his case vigourously for the relief. By the impugned order No.P/Eng./W/SRT/83/87/pt.II dated 17-5-95 (Annexure-9) his claim for higher fixation on par with his juniors when the juniors were promoted on regular basis as IOW Grade-I was rejected. The above was conveyed to him by the impugned order No.P/G/C/1531 dated 19-5-95 (Annexure-10).

4. This OA is filed assailing the above quoted impugned order holding them as illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India and for a further direction to fix the pay of the applicant at Rs.3200/- in the scale of pay of Rs.2375-3500/- w.e.f., 1-9-92 with all consequential benefits.

5. The applicant filed this OA on 31-10-95 after his retirement in the later part of 1993.

6. The contention raised by the learned standing counsel for dismissing this OA filed for higher fixation on par with his juniors is on two counts:- 1) His juniors viz., Mr.K.V.D.Acharyulu and Mr.G.R.Rao were promoted on adhoc basis as IOW Grade-I w.e.f., 1-10-87 and 1-1-88 respectively in different organisation and on the regular promotion they were given higher fixation in the IOW Grade-I due to the earlier adhoc promotion. If the applicant felt aggrieved by the adhoc promotion of his



juniors he should have challenged the same way back in 1988 or 1989. But he failed to do so. When he came to know in the year 1992 that his pay is less than his juniors in the grade of IOW Grade-I on his regular promotion, he should have challenged the fixation in the year 1992 or 1993. But he kept silent and filed this OA on 31-10-95 about two years after his retirement. Hence, this OA is hopelessly barred by limitation. 2) The applicant was in the construction organisation of the Bilaspur Division as IOW Grade-II and his juniors viz., Mr.K.V.D.Acharyulu and Mr.G.R.Rao were working in the grade of IOW Grade-II in Waltair construction organisation. Both are different organisation and hence the applicant cannot claim adhoc promotion in the year 1987 when his juniors in the different organisation were promoted on adhoc basis. When he was regularly promoted to the IOW Grade-I his pay was fixed in accordance with rules under FR 22 (C). Hence, he cannot claim higher fixation comparing his pay with that of his juniors on his regular promotion as IOW Grade-I.

7. I take up the second contention first. The learned standing counsel submits that the Waltair and Bilaspur construction organisations are two different organisation and hence the question of stepping up does not arise. But he has not stated that the two different organisations have different seniority group in IOW Grade-II category. Organisation may be different, but it is very likely that the seniority unit of IOW Grade-II may be one. In which case wherever the adhoc promotion is made from IOW Grade-II to IOW Grade-I the senior should be asked whether he is willing to take up this adhoc ~~adhoc~~ promotion even if it involves transfer. If the senior refused to take up the adhoc promotion then only the junior can be considered for adhoc promotion to the higher grade. As in this case it has not been said that the seniority unit in which the applicant was

working as IOW Grade-II and the seniority unit of his juniors are two different distinct seniority units and hence the applicant case has to be dismissed on the ground that they are working in two different organisation having different seniority units. In view of the above, the willingness of applicant should have been ascertained for adhoc promotion and to go to Waltair Division and in case he refused the offer, then he will have no case to claim higher fixation on his promotion as regular IOW Grade-I on par with his juniors. But such contention has not been made. Hence, it has to be held that the applicant is entitled for higher fixation on par with his juniors from the date of his juniors were drawing more pay than the applicant in the grade of IOW Grade-I on their regular promotion provided the seniority unit of the applicant and his juniors as IOW Grade-II are one and the same. Hence, a direction has to be given to the respondents to step up the pay of the applicant on par with his juniors from the date his junirs were drawing more pay than him on their regular promotion as IOW Grade-I subject to the condition that the applicant and his juniors are borne in the same seniority unit list as IOW Grade-II.

8. There is no doubt that he has filed this OA very belatedly. He should have approached this Tribunal immediately after he came to know that his pay has been fixed lower than his juniors when his juniors were regularly promoted as IOW Grade-I. But for some reasons or other he was reported to be sending representation in this connection. But such repeated representations will not extend the period of limitation. He

D

-5-

should have atleast filed this OA before his retirement in 1993. But he did not file the same even before his retirement in the later part of 1993 and filed this OA about two years after his retirement. Hence, he cannot get any arrears with retrospective effect ~~from~~ ^{from} ~~for~~ the date his juniors were drawing more pay than him in the grade of IOW Grade-I except notional fixation of his pay in the grade of IOW Grade-I from the date his juniors were drawing more pay than him. As the applicant failed to take action even earlier to his retirement and has filed this OA only about two years after his retirement, he cannot get any pensionary arrears due to notional fixation as above such as DCRG, Commutation, ^{as they are one time payment.} Leave Encashment etc., except higher notional pension fixation on the date of his retirement. The arrears of pension on that basis is to be paid to him only from the date he filed this OA i.e., from 31-10-1995.

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

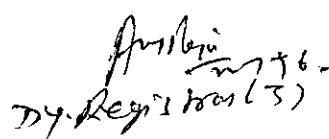
The applicant is entitled for notional fixation of pay on par with his juniors from the date his juniors were drawing more pay than him in the regular cadre of IOW Grade-I provided the seniority unit of applicant and his juniors are one and same in the category of IOW Grade-II. The applicant is not entitled for any arrears due to the notional pay fixation. He is also not entitled for any arrears of final settlement benefits such as DCRG, Commutation of pension and Leave encashment etc., except notional higher fixation of pension at the time of his retirement. He is eligible for getting pension as per the higher fixation from the date he has filed this OA i.e., from 31-10-95.

10. The OA is ordered accordingly. No costs.


R. Rangarajan

(R. RANGARAJAN)
MEMBER (ADMN.)

Dated : The 15th July 1996.
(Dictated in the Open Court)


D. Ranganathan