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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.210 of 1995

DATE OF JUDGEMENT: 21st August, 1996

BETWEEN:

M. LAKSHMINARAYANA

.. Applicant

and

1. The Divisional Railway Manager,
Hyderabad (MG) Division,
Secunderabad,
2. The Sr. Divisional Personnel Officer,
S.C. Railway, Hyderabad (MG) Divn,
Secunderabad,
3. The Sr. Divisional Accounts Officer,
S.C. railway, Hyderabad (MG) Divn,
Secunderabad,
4. The General Manager,
S.C. Railway, Secunderabad.

.. Respondents

COUNSEL FOR THE APPLICANT: SHRI G.V.SUBBA RAO

COUNSEL FOR THE RESPONDENTS: SHRI K.SIVA REDDY, Addl.CGSC

CORAM:

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

JUDGEMENT

(ORAL ORDER PER HON'BLE SHRI R.RANGARAJAN, MEMBER(ADMN.))

Heard Mr.G.V.Subba Rao, learned counsel for the applicant and Mr.K.Siva Reddy, learned standing counsel for the respondents.

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2. The applicant in this OA was promoted as a Trains Clerk in the scale of Rs.110-180 from 25.10.61 and further promoted on adhoc basis as Senior Trains Clerk w.e.f. 12.12.67 in the scale of pay of Rs.150-240. While he was working on adhoc basis as Senior Clerk he was selected as Guard-C in the scale of pay of Rs.130-225 against the departmental promotion quota from the category of Trains Clerk/Senior Trains Clerk. He was absorbed in the running cadre as Guard-C w.e.f. 3.11.69.

3. While fixing the pay of the applicant as Guard-C w.e.f. 3.11.69 it is stated that his pay was fixed at the stage of Rs.142/- on the basis of his pay as Trains Clerk. The applicant submits that his pay should be fixed at the stage of Rs.170/- in the cadre of Guard-C on the basis of his pay drawn by him as Senior Trains Clerk. The applicant filed a representation on 19.8.94 (P-8). Though the learned counsel for the applicant submits that he pursued his case only after certain clarification issued by the Board which also dates back to 1980, 1981, no satisfactory explanation for delay in filing the representation is given in this O.A. The learned counsel for the respondents submitted that it is a time barred case. Be that as it may, the question now arises in this OA is whether the pay of the applicant when he is promoted as Guard-C is to be fixed on the basis of his pay drawn as Sr.TNC.



4. All these contentions are considered. The contention whether it is a time barred OA is to be examined in the light whether the nature of payment is of a continuing one or not. This Tribunal is consistently holding the view that pay fixation and drawing the increment thereafter is a continuing process. But if there is a delay in filing the OA for the relief of the above nature, the applicant is entitled for arrears only from one year prior to filing of this OA. As the applicant filed this OA on 13.2.95 much later than his promotion as Guard-C he is entitled only for notional fixation and he is entitled for arrears only from one year prior to filing of this OA. In view of the above, the contention that this is a time barred OA can be overcome as above.

5. The next point to be examined is whether the Sr.TNC is one of the feeder categories for promotion to the post of Guard-C. If Sr.TNC is one of the feeder categories to the post of Guard-C then the respondents cannot deny the pay fixation on the basis of his pay drawn as Sr.TNC when promoted as Guard-C even if the scale of pay of Guard-C is lower than that of Sr.TNC and the applicant is holding the post of Sr.TNC on adhoc basis.

6. Para 124 of Indian Railway Establishment Manual is the recruitment rule for promotion to the post of Guard-C in the scale of pay of Rs.130-225/1200-2040. This para reads as below:-

123. (1) The vacancies in the category of Goods Guard in

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scale Rs.1200-2040 will be filled as under:-

(i) 15% by direct recruitment from the open market through the Railway Recruitment Boards; and

(ii) 85% by promotion as under:-

(a) 31% by selection from amongst Senior Train Clerks/Train clerks : (E (NG) I-86PM 2021 (PN-MNFIR) dt.24.2.87);

(b) 54% by selection from amongst Ticket Collectors, Commercial Clerks, Switchmen, Yard Staff, Brakesmen as per quota decided by each Zonal Railway Administration for each of these categories. (E(NG) I-78/PM 1-100 18.9.78).

7. As per Para-123 1(i)(ii) it is seen that the Sr.TNC is one of the feeder categories for promotion to the post of Goods Guard-C. Hence the respondents cannot deny him the fixation of pay when promoted as Guard-C on the basis of his pay drawn as Sr.Trains Clerk. The respondents cannot also deny his fixation of pay on the basis of the pay drawn by him as Sr.Trains Clerk because it was an adhoc promotion. Any employee promoted on adhoc basis to

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an higher grade is entitled for fixation of pay on the basis of scale drawn by him in the lower scale of pay. There are number of instructions when an adhoc employee when regularised, his pay has been fixed in the regular capacity on the basis of his pay drawn on adhoc capacity.

9. Further in terms of para 1316 of IREC Vol.II the fixation of pay in a post carrying duties and responsibilities of greater importance than those attached to the post held by him had to be fixed under FR 22(C) even if he held the post in a temporary or officiating capacity. The duties of the Guards are more onerous than that of Sr.TNC. Hence the respondents cannot deny him the fixation as requested by him on the basis of his pay drawn as Sr. TNC when promoted as Goods Guard-C.

10. From the above it is clear that the pay of the applicant when he was promoted as Guard-C on 3.11.69 had been erroneously fixed with respect to the pay drawn by him as Trains Clerk ^{instead} ~~inspite~~ of fixing his pay in Guard 'C' with respect to the pay drawn by him as Sr.Trains Clerk. This eror has to be corrected and he has to be paid arrears on that basis. If he has promoted to higher grades than that of Guard-C by now his pay in the higher grades also should be fixed on that basis. It is further stated that he has retired from service about an year back and his settlement dues have been paid. In view of the above his fixation of pension should be done on the basis of the last pay drawn by him as per the revised fixation

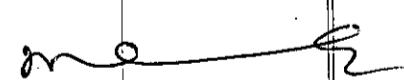
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to be done in pursuance of the order. He is entitled for pensionary arrears one year before the filing of this OA on the basis of the revised fixation. However other final settlement dues such as leave encashment, gratuity etc, cannot be given at higher rates as they are one time payment.

11. In the result the following direction is given:-

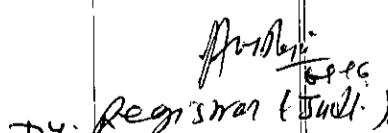
The pay of the applicant should be fixed in the post of Guard-C w.e.f. 3.11.69 on the basis of his last pay drawn by him as Sr.TNC. His pay fixation in the higher grades when promoted and fixation of his pension on retirement should be revised on that basis. He is entitled for arrears of pension one year before the filing of this OA i.e, w.e.f. 13.2.94 (this OA was filed on 13.2.95). He is not entitled for arrears on account of leave encashment and gratuity. Time for compliance is three months from the date of receipt of a copy of this order.

12. The OA is ordered accordingly. No costs.


(R. RANGARAJAN)
MEMBER (ADMN.)

DATED: 21st August, 1996
Open court dictation.

sd/vsn


Dy. Registrar (T.S.U.L.)



OA.210/95.

Copy to:-

1. The Divisional Railway Manager, South Central Railway, Hyderabad(MG) Division, Secunderabad.
2. The Sr. Divisional Personnel Officer, S.C.Rly, Hyderabad (MG) Division, Secunderabad.
3. The Sr. Divisional Accounts Officer, S.C.Rlys, Hyd (MG) Division, Secunderabad.
4. _____ the General Manager, S.C.Rlys, Secunderabad.
5. One copy to Sri. G.V.Subba Rao, advocate, CAT, Hyd.
6. One copy to Sri. K.Siva Reddy, Adel. CGSC, CAT, Hyd.
7. One copy to Library, CAT, Hyd.
8. One spare copy.

Rsm/-

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Typed By
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Approved by

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

DATED:

21/9/95

ORDER/JUDGEMENT
R.A./C.P./M.A./N.O.

D.A. NO.

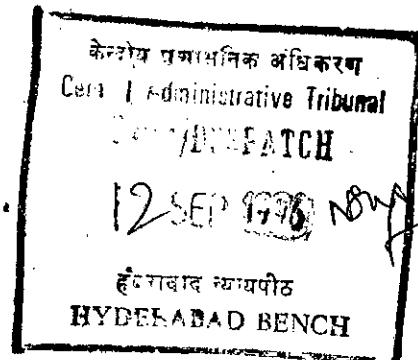
21/9/95

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED
DISPOSED OF WITH DIRECTIONS
DISMISSED
DISMISSED AS WITHDRAWN
DISMISSED/REJECTED
NO ORDER AS TO COSTS.

YLKR

II COURT

No false copy



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