

(59)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

C.A. 295/96.

Dt. of Decision : 20-09-96.

G. Sreenamulu

.. Applicant.

vs

1. The Union of India, Rep. by its Secretary, Railway Board, New Delhi.
2. The General Manager, SC Rly, Sec'bad.
3. The Sr.Divl. Personnel Officer, SC Rly, Sec'bad.
4. The Divl.Rly.Manager(Personnel), SC Rly, Vijayawada. .. Respondents.

Counsel for the Applicant : Mr. N.Rama Mohan Rao

Counsel for the Respondents : Mr. K.Siva Reddy, SC For Rlys.

CORAM:

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

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ORDER

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

Heard Mr. Raghu for Mr.N.Rama Mohan Rao, learned counsel for the applicant and Mr.K.Siva Reddy, learned counsel for the respondents.

2. The applicant in this OA while working ~~in~~ Corporal in the Trade of Air Crafts-Man Instrument Repairer from 5-3-59 retired from Air Force on 30-11-1974 on completion of his term of appointment. He joined Railways on 13-10-1978 as Ticket Collector and on completion of training for the post of Ticket Collector in the Grade of Rs.260-400/- ~~he~~ was posted as a Ticket Collector with a starting pay of Rs.260/- per month at Warangal Station of Secunderabad Division of SC Railway. He took independent charge of Ticket Collector on and from 28-01-1979. The applicant made representation on 15-10-1980 to R-4 herein for re-fixation of his pay taking into consideration his past services rendered in Air Force. The applicant was informed by the letter No. EC/2296/WL dated 21-11-1980 (Annexure-I to the reply) that he is not entitled for higher fixation as he was not a combatant clerk in Air Force and also he has not joined as Clerk/Junior Clerk in the Central Government viz., Railways. Thereafter also he made representation to re-fix his pay at a higher stage by his representation at annexure-V at page 15 of the OA stating that he is not praying for higher fixation on the basis ~~that~~ ^{he in} worked ~~in~~ Air Force ~~and joined as Clerk in~~ Railways; but ~~submitted that~~ he is entitled for re-fixation in terms of Railway Board's letter No.E(G)68 EMI-20 dated 31-3-59 (~~at page 18~~ of the OA). He relies on the para-3 (I)(b) of the above referred letter to state that he is undergoing hardship due to lower fixation and hence he is entitled to get higher



fixation. The respondent authorities has the discretion to give him the higher fixation in view of the instructions quoted above. He was informed by the letter No.B/P.524/I/TC dated 7-5-94(Annexure-XVII at page-39 of the OA) that his case has been referred to the Chief Personnel Officer for examination and advice. It is stated in the reply that the above reference is still pending with the Chief Personnel Officer for necessary clarification. It is stated that so far no reply has been received by the ~~decision~~ ^{division} in this case.

3. In view of the circumstances stated above, he has filed this OA praying for a direction to the respondents to re-fix his pay duly protecting his last pay drawn at the time of discharge from the Air Force i.e., Rs.365-15/- or in the alternative re-fix his pay by granting additional hardship increments on the basis of his length of service rendered in the Air Force and for further consequential benefits.

4. The applicant fairly submits in this OA that he is not entitled to higher fixation in terms of Railway Board's letter No.F(RG)63671/23 dated 25-7-63 as he was not a combatant clerk in the Army and also he has not joined as Clerk in the Railways. But he contends that ^{he} is eligible to get higher fixation in terms of Railway Board's letter dated 31-03-1959 referred to above.

5. The learned counsel for the applicant further submitted that he is fully aware that he is not entitled for relief in terms of Railway Board's letter dated 25-7-63. But he submits that his pay fixation may have to be considered sympathetically in view of the para-3 (I)(b) of the Railway Board's letter dated 31-3-59, wherein a discretion has been given to the authorities to re-fix the ^{pay} of re-employed pensioners at a higher stage than the minimum if any hardship is involved. Though this is a discretion left to the authorities, this discretion should be used in favour of the applicant in view of the observations made by the Apex Court

reported in AIR (1963) SC 1618 (para-8) (State of U.P. Vs. Johinder Singh). The applicant also submits that similarly placed persons have been given the higher fixation using the discretion. Some of the references have been indicated in the rejoinder and the applicant submitted that the case of Mr.G.S.Kumar appointed as T.T.E. in Scuthern Railway is a parallel case who was given the benefit of higher fixation.

6. It is clear from the above contentions that the higher fixation of pay is not asked for on any other count except praying to exercise the discretionary powers of the respondents for giving him the higher fixation. The relevant para-3(I)(b) of the Railway Board's letter No.E(G)68 EMI-29 dated 31-3-59 is reproduced below:-

(b) The initial pay on re-employment

fixed at the minimum stage of the scale of pay prescribed for the post in which an individual is re-employed.

The cases where it is felt that the fixation of initial pay of ~~there~~-employed person at the minimum of the prescribed pay scale will cause undue hardship, the pay may be fixed at a higher stage by allowing one increment for each year of service which he had rendered before retirement in a post not lower than that in which he is re-employed". (Emphasis added)

From the above extract, it is evident that that the initial pay on re-employment of a retired Govt servant re-employed in railways should be fixed at the minimum stage of the scale of pay prescribed to the post in which an individual is re-employed. As per this clause, the applicant who is re-employed in railways

from ~~Defence~~ service, his pay had been fixed in accordance with that proviso. In the same para, a discretion has been given to the authorities if the initial pay fixed on re-employment at the minimum of the prescribed pay scale will cause undue hardship, to fix the pay at a higher stage by allowing one increment for each year of service which he had rendered before retirement in a post not lower than that in which he is re-employed. The respondents have not produced any instructions to show that it should be read in conjunction with the instructions for pay fixation of the re-employed candidate who worked as combatant clerk in the Army for which a set of rule exists which were referred in the previous paragraphs. Hence, it has to be held that the instruction dated 31-3-59 has to be read only in the context of fixation of pay of the re-employed person whether he was combatant clerk or not in Defence service. A discretion is given to the authorities for higher fixation as is evident from the proviso. It is also seen that the reference made to the Chief Personnel Officer in connection with the higher fixation of pay in the case of the applicant herein by letter dated 7-5-94 is still pending with him. It is not clear whether the discretion has been exercised as per rule and if so the result thereof in exercising such discretion.

7. The applicant relies on the observations made by the Apex Court in Johinder Singh's case to state that the word used in the sub-para extracted above should be used in positive term meaning that the word may will mean here "shall" or "must". If that is so, the respondents cannot reject his claim for higher fixation. The discretion should be used only in his favour but not against him.

8. In the case of combatant clerks of defence services, the higher fixation is given when they joined as clerk/Sr.Clerk in the Railways because of the fact that they had gained experience in the ~~Army~~ ^{defence services} in a similar capacity. Because of the experience gained

by them in defence service in clerical posts ~~they were~~ ^{treated} to have better equipped to discharge their duties as Clerk when they joined in Railways. In that context the higher fixation was given. In all other cases of reemployment the previous experience in the other organisations may not be useful to the railways as submitted by the learned counsel for the respondents and in that context it has to be seen whether the discretion to be used is a compulsory one or not.

9. In the present case the applicant worked as a Instrument Repairer in the Indian Air Force. When he joined as Ticket Collector the experience gained by him as a Instrument Repairer will be no use to Railways. The duties of Ticket Collector is in no way connected with the duties performed by him as a Instrument Repairer. Hence, the discretion is to be exercised by the respondents taking into account only the hardship that will be caused to the applicant in denying him higher pay fixation. As the duties of Ticket Collector is entirely different from that of the Instrument Repairer and if the respondents consider that it is not a fit case for exercising the discretion in view of the above, it cannot be said that such a decision is in-correct.

10. The extracted instruction consists of two parts. In the first part it is made clear that the pay of the re-employed should be fixed at the minimum of the scale of pay. In the sub-part the power to use discretion for higher fixation has been given to authorities in case of hardship. A plain reading of the above extracted instruction will reveal that the rule is emphatic so as to fix the pay of the re-employed at the minimum of the scale of pay. But a discretion for higher fixation is given in case of undue hardship. If the rule to use discretion is to be interpreted as a rule to exercise discretion in favour of the re-employed applicant i.e., at any ~~maximum~~ cost higher fixation has to be given as contended by the counsel for the applicant relying on Johinder Singh's case then it can not held to be

a discretionary one. In that case the rule may simply state that in case of ~~re-employed~~ officials higher fixation has to be done at all circumstances ~~irrespective~~ of hardship. There is no need to specify the fixation in ordinary ~~case~~ ^{case and} taking into account the hardship factor. This is not envisaged in the rule. A positive use of discretion by the competent authority is involved. Hence the word "may", may not ^{can not} "should" or "must" as contended by the applicant. However, I do not want to go in depth in this connection as the reference dt. 7-5-94 is still pending with the Chief Personnel Officer of the SC Railway.

11. The applicant also relies on a similar case of Mr.G.S.Kumar. It is stated that Mr.G.S.Kumar is from the Southern Railway and his case was decided by the authorities of Southern Railway on the facts of that case. The learned standing counsel submitted that a similar decision in the present case also cannot be expected by another respondent of SC Railway, who has to take a decision on the basis of the facts of the case. Such comparison is not warranted and each case has to be decided on merits. There appears to be some force in the contention of the respondents. As the applicant's representation is yet to be disposed of by the Chief Personnel Officer, I am leaving it to the discretion of the Chief Personnel Officer to decide the issue in accordance with rule, taking note of the precedence if any in this connection and on the facts of this case.

12. In the result, the following direction is given:-
The Chief Personnel Officer of SC Railway shculd dispose of the reference made by R-4 vide letter No.B/P.524/I/TC dt. 7-5-94 (Annexure-XVII at page-39 of the OA) in terms of the instructions 3(I)(b) of the Railway Board's letter dt.31-3-59 taking into consideration the precedances quoted in the OA in accordance with law. Time for ~~compliance~~ is four months from the date of receipt of a copy of this order.

13. The OA is ordered accordingly. No costs.

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Copy to:-

1. The Secretary, Railway Board, Union of India, New Delhi.
2. The General Manager, S.C.Railway, Sec'bad.
3. The Sr. Divisional Personnel Officer, S.C.Railway, Secunderabad.
4. The Divl. Railway Manager(Personnel), S.C.Railway, Vijayawada.
5. One copy to Sri. N.Ram Mohan Rao, advocate, CAT, Hyd.
6. One copy to Sri. K.Siva Reddy, SC for Rlys, CAT, Hyd.
7. One copy to Library, CAT, Hyd.
8. One spare copy.

Rsm/-

Original

DA 29/96

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THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

DATED:

29/9/96

ORDER/JUDGEMENT
R.A/C.P./M.A.NO.

D.A.NO.

29/9/96

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS.

YLKR

II COURT

No Spare Copy

