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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION No. 323 of 1996.
DATE OF DECISION : 03-07-96.

Smt. Uma Devi

.. Applicant.

Vs.

1. The Sr.Divl. Personnel Manager,
Hyderabad Division (MG Division),
SCRly, Secunderabad.(A.P)
2. The Chief Personnel Officer,
Rail Nilayam, SC Rly,
Secunderabad.
3. The General Manager,
Rail Nilayam,
SC Rly, Secunderabad.

.. Respondents

Counsel for the Applicant : Mr. P.P.Vittal

Counsel for the Respondents : Mr. V.Bhimanna, Addl.CGSC.

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. V.Bhimanna, learned counsel for the respondents.

2. The applicant in this OA while working as Chief Law Assistant in the grade of Rs.2000-3200/- in the Central Railway asked for inter railway transfer to SC Railway. That request for inter railway transfer was accepted vide letter No. P(C)/676/TRT/CRHQ/UDP/15 dated 11-11-94 (Annexure-A-I). In pursuance of the order dated 11-11-94 she was relieved from Central Railway on 10-02-95 and she joined immediately thereafter on 16-02-95 in South Central Railway. At the time of her release from Central Railway she was drawing a pay of Rs.2060/- in the post of Chief Law Assistant. She came and joined in South Central Railway as Law Assistant in the grade of Rs.1600-2660/- following the rules of request transfer as per para 226 of IREM. On her joining South Central Railway her pay was fixed at Rs.1,750/- in the scale of pay of Rs.1600-2660/- without protecting her pay at the stage of Rs.2,060/- which she was drawing in Central Railway.

3. She represented her case for protecting her pay at the stage of Rs.2060/- in the grade of Rs.1600-2660/- which she was drawing in Central Railway by her representation dated 09-08-95 (Annexure A-5). No reply has been given to that representation so far.

4. This OA was filed on 01-03-96 praying for a direction to the respondents to accord her pay protection under para 1313 (a)(iii) of IREC Vol.II and fix her pay as Rs.2060/- PM from 16-02-95, the date on which the applicant joined SC Railway and consequently grant the increment as and when eligible.

5. Notice before admission was issued on 12-03-96. Later adjournment was given on 16-04-96 and 17-04-96 at the request for

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the respondents counsel. This case came up for hearing on 28-05-96 when the standing counsel wanted further time of 4 weeks. It was reluctantly granted as a last chance to file reply till 28-06-96. It was further ordered on that date that "If reply is not filed, the OA may be disposed of finally although technically it is not yet admitted".

6. When the case was posted today for hearing, the learned standing counsel prayed for some more time to file reply. When the order dated 28-05-96 was brought to his notice and he was informed that no further time can be given if he has not filed the reply so far, the learned standing counsel submitted that the dealing clerk is not available and hence the reply could not be filed today. I am aghast on hearing this reply as a big organisation like railways depends on a single low paid clerk for filing a reply in this connection. Such excuses are unheard of in a Government Department especially in a organisation like railways which boasts of efficiency. This excuse for not filing the reply is only to delay the process of finalising this case. When an order was issued to file reply it is for the department to take note of that direction and comply with the same without fail. If the department fails to comply with that direction they loose their chance for filing the reply. In view of what is stated above, I see no reason to give any further time to the department and as directed in the order dt.28-05-96, this OA is disposed of by the following order.

7. The main contention of the applicant is that para-1313 (a) (iii) of the Indian Railway Establishment Code, clearly provides for protection of the pay when an employee is transferred on request transfer accepting the lower post for which an element of direct recruitment exists in that lower category. The pay protection as per the para quoted above has

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been given in number of cases where request transfer was effected. The learned counsel for the applicant relied on the judgement of this Tribunal in cases where an Assistant Station Master was transferred from one division to another on request transfer and when his pay in the transferred division was not protected it was held to be irregular by this Tribunal and a direction was given to protect pay of the applicant ⁱⁿ these OAs in terms of Manual para referred to above. One of the cases relied upon by him was OA.No.1207/95 decided on 22-11-1995. In view of the above, the applicant's counsel prays that relief as asked for in this OA may be granted.

8. The learned standing counsel submitted that para (a) (iii) in 604 of IREM (1989 Edition) prohibits the protection of the pay as per the second proviso and hence he submits that the prayer of the applicant cannot be granted.

9. The above contention of the respondents has been dealt with in OA.1207/95 on the file of this Bench decided on 22-11-95. It is preferable to quote that para and indicate the decision of this Tribunal in that context in OA.No.1207/95.

10. The amended para of (a) (iii) in 604 of IREM (1989 Edition) rules as follows:-

"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.

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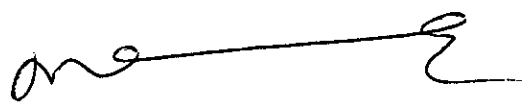
When appointment on transfer from a higher post to a lower post is made on his own request under Rule 227 (a) (2)-RI (FR-15-A(2)) and the maximum pay in the time scale of that post is lower than his pay in respect of the old post held regularly, he shall draw that maximum as his initial pay in accordance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

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

11. A careful reading of this para 2 would indicate that it applies only such Government servant who seeks to transfer a post from which he was promoted (emphasis added). It is an admitted fact that the applicant came to South Central Railway in the lower grade from Central Railway accepting the bottom seniority and following the para 226 of IREC for request transfer. Hence what applies in this case is para-1 of (a)(iii) under which the last pay drawn by the employee has to be protected. In any case the amendment having come into effect from 24-02-95 it cannot have any significance in deciding the merits of this case as the applicant joined South Central Railway on 16-02-95 earlier to 24-02-95.

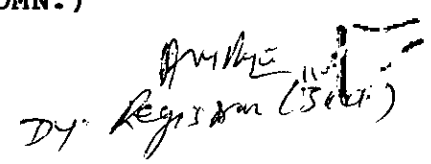
12. In view of what is stated above, this OA is allowed at the admission stage itself with a direction to the respondents to fix the pay of the applicant by protecting her pay in accordance with para 1313 (a)(iii) of IREC Volume-II. Consequential monetary benefits accruing to the applicant in pursuance of the above direction will be calculated from 16-02-95 i.e., the date on which she joined South Central Railway.

13. The OA is ordered accordingly at the admission stage itself. No costs.


(R. RANGARAJAN)
MEMBER (ADMN.)

Dated : The 3rd July 1996.
(Dictated in Open Court)

SPR


Dy. Registrar (Secy)

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Copy to:-

1. The Sr. Divisional ~~Railway~~ Personnel Manager, Hyderabad Division (MG Division), S.C.Railway, Secunderabad.
2. The Chief Personnel Officer, Rail Nilayam, S.C.Rly, Secunderabad.
3. The General Manager, Rail Nilayam, S.C.Railway, Sec'bad.
4. One copy to Sri. P.P.Vittal, advocate, CAT, Hyd.
5. One copy to Sri. V.Bhimanna, Addl. CGSC, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare copy.

Rsm/-

24/7/96

OA-323/96

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APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

DATED: 3/7/96

ORDER/JUDGEMENT

D.A. NO./R.A./C.P. NO.

D.A. NO.

323/96

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

