

CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH :
AT HYDERABAD.

O.A.NO.1210/96.

Date of Order: 21-5-1998.

Between :

1. K. Rama Rao
 2. M.M.Muthai
 3. V.Krishna Murthy
 4. R.S.Chakravarthy
 5. M.S.Sanjeeva Rao
 6. B.N.Srinivasan
 7. S. Madhava Rao
 8. P.V.S.Sastry
 9. G.L.Anthony
- ... APPLICANTS

A n d

1. Union of India, represented by
Executive Director, Pay Commission,
Ministry of Railways, Rail Mantralaya,
Railway Board, New Delhi..
 2. Deputy Secretary,
Ministry of Personnel,
Department of Pensions &
Pensioners' Welfare,
3rd Floor, Lok Nayak Bhavan,
Khan Market, New Delhi-110003.
 3. General Manager,
Rail Nilayam,
S.C.Railway,
Secunderabad-371.
 4. F.A. & C.A.O.,
Rail Nilayam,
S.C.Railway,
Secunderabad-371.
- ... RESPONDENTS

Counsel for Applicants : Mr. S.Surya Prakasa Rao

Counsel for Respondents : Mr. V.C.Malla Reddy, CGSC.

CORAM :

Honourable Mr.H. Rajendra Prasad, Member(Admn.)

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O R D E R.

(Per Hon. Mr. H.Rajendra Prasad, Member(A))

1. Heard Mr. S. Surya Prakasa Rao, learned counsel for the applicants and Mr. C.V.Malla Reddy, learned Standing Counsel for the respondents.

2. On 1.1.1986 when the Government of India accepted and implemented the recommendations of the Fourth Pay Commission, the applicants herein were working as Travelling Inspectors of Accounts (Selection Grade) (Scale of Rs.775-1000) in the South Central Railway. All applicants except applicants 3 and 7 had retired from service prior to 1.4.1987. Applicants 3 and 7 retired from service from 31.3.1988 and 30.4.1987, respectively.

2.a. The applicants are aggrieved by the fixation of their pay from 1.1.1986, and rely on a decision (dated 26.4.1991) of the Principal Bench of this Tribunal in O.A.No.13/88 (Indian Railway SAS Staff Association & others v. Union of India & others).

2.b. This O.A. has been filed praying for a direction to the respondents to extend the benefits of the revised pay scale of Rs.2000-3200 to them with effect from 1.1.1986 in terms of Column No.3 of the Memorandum of Respondent No.4 vide No.AAD/Bills/Misc. dt.1.6.1989, with all consequential benefits.

3. The Respondents in their counter affidavit state that non-functional grades were created in Group C & D categories in terms of the Railway Board's letter No.PC III/74/MS/16 dated 12.4.1977, and that, therefore, there existed non-functional selection grade in the category of Travelling Inspectors of Accounts in the



scale of Rs.775-1000 in addition to the normal grade of Travelling Inspectors of Accounts in the scale of Rs.500-900.

According to the Respondents, the Fourth Pay Commission had recommended that there should be broad parity in the pay scales of the staff of IA & AD and other Accounts organisations. It also recommended that the proposed scale of Rs.1400-2000 and Rs.2000-3200 may be treated as functional grades in future and there would be no selection grade for any of these posts. The Ministry of Finance had accordingly issued instructions on 12.6.1987 upgrading 80% of the posts of Section Officers and Auditors in the scale of Rs.2000-3200 and Rs.1400-2600, and these scales were made functional; these orders were made effective from 1.4.1987. Based on the orders of the Ministry of Finance, Railway Board issued letter dated 18.6.1987 which is annexed at R-I restructuring the cadre of Accounts Department with effect from 1.4.1987. They submit that the ratio of number of posts in higher and lower scales of SO(A)/ISA/TIA was fixed as follows :

Senior Section Officer (A)	Rs.2000-3200
Senior Travelling Inspectors of Accounts/Senior Inspector of Stores Accounts.	80%

Section Officer (A) /Travelling Inspector of Accounts/ Inspector of Stores Accounts.	Rs.1640-2900 20%
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The selection grade posts of SO(A), TIA, ISA were redesignated as Sr.SO(A), Sr.TIA, Sr.ISA and allotted the scales of Rs.2000-3200. The two erstwhile and corresponding revised grades of Travelling Inspectors of Accounts were notified by the Board under letter dated 18.9.1986. Further, under the instructions dated

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19.9.1986 the Railway Board clarified as under :

" Except as otherwise provided, in the case of an employee drawing pay in selection grade before the date of publication of these rules, his pay shall be fixed in the revised scale corresponding to such selection grade and the said pay shall be personal to such employees."

It is submitted that on introduction of the functional grade of Travelling Inspector of Accounts in the scale of Rs.2000-3200 with effect from 1.4.1987, the erstwhile non-selection grade Travelling Inspector of Accounts (who were already granted corresponding revised pay scale of Rs.2000-3200 w.e.f. 1.1.1986 on personal basis) were deemed to have been promoted with effect from 1.4.1987 and they become entitled for fixation of pay under Rule 22-C of the Fundamental Rules. The Respondents further submit that, pursuant to the instructions contained in the Railway Board's letter No.PC/IV/86/IMP/42 dated 20.9.1988 (Annexure R-II) and dated 10.7.1989, the pays of the applicants were fixed under Rule 22-C of the Fundamental Rules with effect from 1.4.1987 as against 1.1.1986 as effected earlier vide Office Order No.228/89 dated 9.8.1989. They add that in view of the decision of Hon'ble Supreme Court dated 15.7.1994 refixation of pay of such officials (like the present applicants) who retired prior to 1.4.1987, did simply not arise. Consequently no revisional pension and differential pay can be paid as claimed by the applicants in this O.A. A copy of the letter dated 24.9.1996 has been enclosed as Annexure R-IV. They further submit that in Civil Appeal No.1423/95 (E. Gopalakrishnan & Ors v. Union of India) the Hon'ble Supreme Court in its order dated 31.10.1995 had observed as follows :

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" The pension is required to be computed on calculation of average of 10 months pay actually drawn by the employee. Since the appellants admittedly were not in service as on September 1, 1985, the date on which the notional pay was given effect to, they had not actually drawn the pay including Rs.35/- per month. Accordingly, the scale of pay including Rs.35/- per month cannot be stepped up for computing the pension."

The Respondents submit that since the selection grade TIAs promoted to the functional grade of Sr.TIAs with effect from 1.4.1987 are entitled to fixation only under Rule 22-C of the Fundamental Rules with effect from 1.4.1987, the claim of the applicants for having their pay fixed under Rule 22-C with effect from 1.1.1986, and to reckon it as emoluments for computation of pension is not tenable under the extant rules. Moreover, the question of examining the issue of reckoning notional pay for computing pension does not arise, since none of the selection grade TIAs are entitled to have their pay fixed on notional basis with effect from 1.1.1986.

4. The learned counsel for the applicants submit mainly that the applicants are entitled to the revised scale of pay of Rs.2000-3200 with effect from 1.1.1986. However, the case of the respondents is that the applicants as on 1.1.1986 were working in the non-functional grade and that only on the recommendation of the Fourth Pay Commission, those non-functional posts were made functional with effect from 1.4.1987. Therefore, it is their contention that the question of fixation of pay would arise only from 1.4.1987 and not from 1.1.1986. It is stated that the applicants 1,2,4,5,6,8 and 9 retired from service earlier to 1.4.1987. Hence in their case the question of refixation of pay does not arise.

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5. The learned counsel for the respondents relied on the decision of this Tribunal in O.A.No.455/95 (A.V. Ramesh Babu and others v. The Chairman, Railway Board and others) decided on 25.11.1997. This Tribunal, while deciding the O.A., took into consideration the order of Hon'ble Supreme Court passed in I.A.No.4 in R.P.No.951/92 in Special Leave Petition(C) No.13492 of 1991. The respondents have produced the copy of the said judgment in Civil Appeal No.1423/95 along with their counter (Annexure-VI). The Hon'ble Supreme Court has observed as follows :

" The pension is required to be computed on calculation of average of 10 months pay actually drawn by the employee. Since the appellants admittedly were not in service as on September 1,1985, the date on which the notional pay was given effect to, they had not actually drawn the pay including Rs.35/- per month. Accordingly the scale of pay including Rs.35/- per month cannot be stepped up for computing the person."

6. The posts were made functional only with effect from 1.4.1987. Therefore, in my view applicants 1,2,4,5,6,8 and 9 cannot claim any benefit as they had retired prior to 1.4.1987. The applicants 3 and 7, if they feel aggrieved by the refixation of pay and pension, may submit a detailed representation to Respondent No.2 to refix their pay in accordance with the Board's letter No.E(P&A)II/87/PP/3 dated 31.12.1987 (Paras 3 & 4).

7. Fixation of pay is not really the function of this Tribunal. As the selection grade of TIAs were non-functional posts as on 1.1.1986 and since they were made functional only from 1.4.1987, the applicants 1,2,4,5,6,8 and 9 cannot claim the benefit because they had retired by then i.e. on 1.4.1987.

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8. Hence the following directions are issued :

(a) Applicants 1,2,4,5,6,8 and 9 are not entitled to fixation of pay with effect from 1.1.1986.


(b) Applicants 3 and 7, if they feel aggrieved by the present refixation of their pay, ^{they} may submit a detailed representation to Respondent No.2 for consideration. They must submit the representation within one month from the date of receipt of a copy of this order. If such a representation is received by Respondent No.2, then the said representation shall be disposed of by the said Respondent in accordance with the rules and the circulars of the Railway Board within two months from the date of its receipt.

9. With the above directions, the O.A. is disposed of leaving the parties to bear their own costs.


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

Dated the 21st day of May, 1998.

DJ/


Deputy Registrar

C.A 1210/96

To

1. The Executive Director, Union of India,
Pay Commission, Ministry of Railways,
Rail Mantralaya, Railway Board, New Delhi.
2. The Deputy Secretary, Ministry of Personnel,
Dept.of Pensions and Pensioners' Welfare,
3rd Floor, Lok Nayak Bhavan, Khan Market,
New Delhi-3.
3. The General Manager, Railnilayam,
SC Rly, Secunderabad-371.
4. The F.A. & C.A.O. Railnilayam,
SC Rly, Secunderabad-371.
5. One copy to Mr. S.Surya Prakasa Rao, Advocate, CAT.Hyd.
6. One copy to Mr.C.V.Malla Reddy, SC for Rlys, CAT Hyd.
7. One copy to HHRP.M.(A) CAT.Hyd.
8. One copy to DR(A) CAT.Hyd.
9. One spare copy.

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TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE

VICE-CHAIRMAN

AND

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

DATED: 21-5-1998.

ORDER/JUDGMENT

M.A./R.A./C.A.No.

in

O.A.No. 1210/96

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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