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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No. 894/96

Date of Order: 7.5.97

BETWEEN :

M.Venkatapathy

.. Applicant.

AND

1. Union of India, rep. by its
General Manager, S.E.Railway,
Garden Reach, Calcutta.

2. Divl. Rly. Manager (Personnel)
S.E.Rly., Waltair Divn., Waltair.

3. Sr. Divl. Engineer (Coordination),
S.E.Rly., Waltair.

.. Respondents.

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Counsel for the Applicant .. Mr. S.Ramakrishna Rao

Counsel for the Respondents .. Mr. V.Bhimanna.

— — —

CORAM:

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

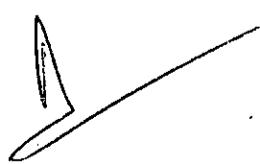
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J U D G E M E N T

X Oral order as per Hon'ble Shri R.Rangarajan, Member (Admn.) X

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Heard Mr.S.Ramakrishna Rao, learned counsel for the applicant and Mr.V.Bhimanna, learned standing counsel for the respondents.

2. The applicant was initially engaged as casual labour in DBK Railway Project at Jagadalpur w.e.f. 17.2.60. He was later promoted as Store Issuer on passing the requisite test and medical fitness in the scale of Rs.105-136 w.e.f. 21.4.61 (A-2). He was further promoted as Time Keeper in the scale of Rs.110-180 w.e.f. 1.9.64 (A-3). He was also allowed to officiate as Clerk Gr.II in the scale of Rs.130-300 (A-4).



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3. The DBK Project was closed down w.e.f. 31.3.69 and the applicant was brought on open line and was posted as junior clerk in the scale Rs.110-180 under IOW, Jagadalpur against the existing vacancy w.e.f. 1.4.69 (A-5). Subsequently selection for the post of junior clerk was held and the applicant was also called for the selection in terms of office order dt. 10.11.70 (A-6). By the office order dt. 5.12.70 (A-7) he was empanelled for the post of junior clerk. By the office order dt. 23.12.70 (A-8) the applicant who was officiating as junior clerk in the scale of Rs.110-180 under IOW, Jagadalpur was transferred and posted as Assistant Stores Clerk in the scale of pay of Rs.110-180 under PWI/SUP reverting the incumbent Sri Ch. Chandra Sekhar. It is stated by the order that dt. 1.1.72 (A-11) the applicant was reverted as Khalasi in the scale of Rs.70-85 under AEN, Jagadalpur. The applicant submits that he had not received that reversion order but he went on leave from 1.1.72 to 26.9.73. He joined back as Khalasi but on his representation his case was considered and he was re-promoted to the grade of Clerk (Store Issuer) in the scale of Rs.110-180 w.e.f. 1.10.70. The applicant thereafter was promoted further as Senior Clerk and retired from service w.e.f. 3.10.94. At the time of his retirement it was sought to recover an amount of Rs.3577 from his DCRG as it was alleged that the applicant was neither selected for the post of Store Issuer in the scale of Rs.103-135 (AS) in April 1969 nor officiated as Clerk. He was informed about the recovery by the impugned order No. BS-VII/Engg/106, dt. 14.11.95 (A-1).

4. This OA is filed to set aside the impugned order No. BS-VII/Engg/106, dt. 14.11.95 and to direct R-2 to release the DCRG and other retiral benefits ~~with interest~~ ^{with interest} ~~18%~~ p.a. from the



date it is due for payment till the date of actual payment, as per the eligibility with all consequential benefits.

5. The main point for consideration in this OA is whether he was posted as Junior Clerk in the grade of Rs.110-180 and his pay as Store Issuer was correctly fixed at the time of his promotion in April 1969. As can be seen from the various annexures quoted above there is no doubt in coming to the conclusion the applicant was promoted as Clerk while he was working in the DBK Project. Even after joining the open line on being rendered surplus from DBK Project he was taken as Junior Clerk at Jagadalpur. He was also empanelled by the office order dt. 5.12.70 for the post of Junior Clerk. He officiated on the basis of the panel from 23.12.70 till he was reverted by order dt. 1.1.72. Hence it cannot be said that the applicant was not empanelled and selected for the post of Junior Clerk by the open line organisation. These facts are not denied in the reply. It is admitted by the respondents in Para-3 of the reply. Hence the statement in the impugned order dt. 14.11.95 that "as per the entries recorded in S.R. you have neither been selected nor empanelled for the post of clerk" cannot be replied upon. Further it is seen that the office order dt. 1.1.72 (A-11) that the applicant is an approved candidate for the post of Office Clerk in the scale of Rs.110-180 as per office order dt. 19.7.71. In the face of the above records that the applicant was regularly selected and posted as Office Clerk in the scale of pay of Rs.110-180 this position cannot be set to be incorrect. If the entries are not made in the S.R. it is not the fault of the applicant for not having those enter in the S.R. It is also stated that the entries in the S.R. was shown to the applicant at the appropriate time and he accepted



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the same. If some entries are written in the S.R. at the back of the applicant the applicant cannot be responsible for not making the correct entries in the S.R. Hence the contention that the S.R. entries does not reflect the selection to the post of clerk cannot be held against the applicant for making the recoveries as per the impugned orders. If he is not selected there is no reason to re-promote him w.e.f. 26.11.73 on the basis of his representation. His representation should have been rejected which was not done.

6. The pay of the applicant on his promotion dt. 26.7.73 after reversion was fixed taking into account the past fixation and the service rendered by him. Further his pay fixation also was done at a higher stage on that basis. Hence the respondents slept over the matter for about 2 decades after he was promoted on 26.11.73. The audit is checking the pay fixation every now and then. It is not understood why they have not taken action to point out the error immediately thereafter period the after his pay fixation or atleast/during the applicant was in service. The error was said to have been detected only after his retirement i.e. after a lapse of 20 years. In this connection I would like to quote the observation of the Principal Bench of this Tribunal reported in 1994 (26) ATC 179 (Smt. Narinder Marwah Vs. Union of India) wherein it is observed that revision of pay after retirement is invalid. It does not mean that the respondents cannot correct the erroneous fixation but the correction of erroneous fixation should be done on valid grounds on the basis of the records. As pointed out earlier in this case the records show otherwise. Even Rule 59 of CCS (CCA) Rules stipulates that "inorder to ensure that the emoluments during the last 10 months of the service have been correctly shown in the service book

S. T. A. B.



head of the office may verify the correctness of emoluments for the period of 24 months only preceding the date of retirement of a government servant and not for any period prior to that date".

7. In a similar case reported in ATR 1989 (1) C.A.T.)

397 (Smt. Pushpa Bhide vs. Union of India and others)

Jabalpur Bench of this Tribunal observed as follows:-

"After due consideration we are of the view that even if for arguments sake the contention of the respondents is accepted that certain errors took place owing to oversight in giving higher seniority to the applicant, the matter is irreversible notwithstanding the contention of the respondents. It is not the case of the respondents that the initial appointment of the applicant was fortuitous or her promotion as Selection Grade Teacher in the cadre of Assistant Teacher was ad-hoc or temporary. Therefore, we hold that the respondents are estopped after several years from correcting what they claim to be mistake committed by the respondents themselves and withdrawing the benefits given in the past to the applicant retrospectively at the expense of the applicant. We have also taken a similar view in the case of Y.K.Verma v. Union of India and others (TA.318 of 1986 decided on 20-1-87 reported in (1987) 4 ATC.157.

In the decision of the Central Administrative Tribunal Principal Bench reported in ATR 1988 (2) CAT 510 in the case of C.S.Bedi v. Union of India and others it was also held that certain payments which were received by the applicant in that case on basis of fixation of pay in 1981 on promotion to a higher post and the applicant had continued to draw salary on that post until 1986 when the mistake was detected after several years were irreversible and any recovery of excess payments after a long lapse of time would be unjust, illegal and inequitable. The respondents were directed not to make any recovery. A similar view has also been taken by the Principal Bench in the case of Chander Bhan v. Union of India (1987) 3 ATC 432".

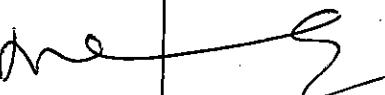
8. In view of what is stated above I find that the impugned order by which the pay has been reduced and order issued to recover Rs.3577 is not sustainable. Hence the order has to be set aside.

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9. The impugned order was issued as it was stated ^{that} the alleged erroneous fixation was detected at the time of fixation of his pension. No motive has been imputed to the impugned letter. The reduction in pay was done probably on the perception of the case by the audit and accounts party. Hence though the order has to be set aside it will not give the applicant the benefit of interest on the delayed payment as it was done on bonafide presumption and ^{belief} ~~benefit~~ by the respondents. Hence I reject the prayer for payment of interest on the amount kept back.

10. In the result the impugned order dt. 14.11.95 is set aside. The pension and other pensionary benefits is to be fixed without reducing the pay. No recovery from the DCRG should be effected.

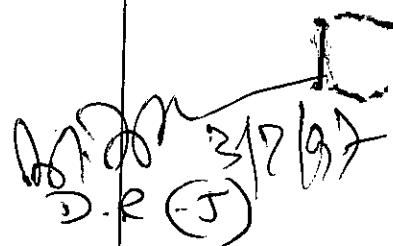
11. The OA is ordered accordingly. No costs.


(R. RANGARAJAN)
Member (Admn.)

Dated : 7th May, 1997

(Dictated in Open Court)

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D.R. (5)

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Copy to:

1. The General Manager, South Eastern Railway, Garden Reach, Calcutta.
2. Divisional Railway Manager (Personnel), South Eastern Railway, Waltair Division, Waltair.
3. Senior Divisional Engineer (Coordination), South Eastern Railway, Waltair.
4. One copy to Mr. S. Ramakrishna Rao, Advocate, CAT, Hyderabad.
5. One copy to Mr. V. Bhimanna, Addl. CGSC, CAT, Hyderabad.
6. One copy to D.R(A), CAT, Hyderabad.
7. One duplicate copy.

YLKR

7/5/97

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TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

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

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR M
(J)

DATED:

7/5/97

ORDER/JUDGEMENT

M.A./R.A./C.A. NO.

in

D.A. NO. 894/96

Admitted and Interim directions
Issued.

Allowed

Disposed of with directions,

Dismissed

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected.

No order as to costs.

YLKR

II Court.

केन्द्रीय प्रशासनिक विविकरण
Central Administrative Tribunal
शेषांक/DESPATCH

8 JUL 1997

दिल्ली न्यायालय
HYDERABAD BENCH