

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Date of Order : 22.05.2001.

O.A.NO. 268 of 1995.

Munna Lal S/o Shri Mangal Sen, aged about 48 years, R/c Ramganj, Govind Nagar, Behind Kali Mata Mandir, Ajmer, at present employed on the post of Grade I Fitter under Divisional Electrical Engineer (C), Ajmer.

.....Applicant..

VERSUS

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. Divisional Railway Manager (Establishment), Western Railway, Ajmer Division, Ajmer.
3. Divisional Personnel Officer, Western Railway, Ajmer Division, Ajmer.
4. Divisional Electrical Engineer (C), Western Railway, Ajmer Division, Ajmer.

.....Respondents.

Present :

Mr. N.K.Gautam, Counsel for the applicant.

Mr. Hemant Gupta, advocate, proxy for
Mr. M.Rafiq, Counsel for the respondents.

C O R A M :

Hon'ble Mr.Justice B.S.Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

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ORDER

Per Mr. Gopal Singh :

In this Application under section 19 of the Administrative Tribunals Act, 1985, Munna Lal, has prayed that the Para 228 of the Indian Railway Establishment Manual (for short 'IREM'), so far it deprives the benefit of arrears on account of retrospective promotion, be declared illegal and be struck-down as unconstitutional and further, for a direction to the respondents to make correct pay fixation in respect of the applicant and pay the arrears of difference of Pay along with a reasonable rate of interest and quash the impugned order dated 18.1.1995 (Annex.A/1).

2. Applicant's case is that he was initially appointed on the post of Khalasi on 21.11.1967. The applicant has been working on the post of Driller continuously since 22.9.1973. He had filed an O.A. No. 745/1992 praying for regularisation on the post of Driller w.e.f. 22.9.1973. This O.A. was allowed by this Tribunal vide order dated 12.11.1993. The respondents have vide their order dated 18.1.1995 fixed the pay of the applicant on the post of Driller. It is alleged by the applicant that his pay has been fixed w.e.f. 1.1.1984 instead of giving him the benefit of pay fixation in the scale of Rs. 260-400 w.e.f. 22.9.1973. It has further been pointed out by the applicant that he has been denied the arrears of re-fixation of pay from 1.1.1984 to 25.12.1994 and has been allowed arrears from the actual date of taking over of the charge of the post concerned. It has also been alleged by the applicant that some of his juniors have been drawing higher pay than him and he ought to have been brought at par in this respect with his juniors. Hence, this application.

3. In the Counter, it has been pointed-out by the respondents that in pursuance of the orders passed by this Tribunal on

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12.11.1993, the applicant was promoted as Electric Fitter Grade - II and Electric Fitter Grade - I after he had passed the trade test and accordingly, his pay was fixed at Rs. 1,530/- w.e.f. 1.10.1994 and subsequently, the pay of the applicant has correctly been fixed at Rs. 1,640/- w.e.f. 1.1.1995 by the order dated 24.8.1995. It has also been pointed out by the respondents that in terms of Para 228 of the IREM, the pay of the applicant in the higher grade on promotion, has been fixed on proforma basis vide order dated 24.8.1995 and the applicant has been allowed arrears only from the actual date of shouldering the higher responsibilities. He is not entitled to arrears of proforma fixation in terms of Para 228 of the IREM. It has also been pointed out by the respondents that the applicant has further been promoted as MCF scale Rs. 1400-2360 vide respondents order dated 31.8.1995 (Annex.R/2). It has, therefore, been averred by the respondents that the relief as prayed for by the applicant, has already been granted to him and this application is liable to be dismissed.

4. We have heard the learned counsel for the parties and perused the records of the case carefully.

5. The applicant had earlier approached this Tribunal in O.A. No. 745 of 1992 with the following prayer :-

"Relief Prayed for -

In view of the facts and the grounds stated in the foregoing paragraphs, the applicant prays that the order dated 16/6/87 (Annexure A/5) passed by respondent No. 3 may be quashed and all consequential orders and actions of the respondents changing the group and seniority of the applicant from Driller to that of Cell-Man may be quashed. Further, the orders (Annexure A/7) and Annexure A/8 may also be quashed and the respondent No. 2 to 4 may be directed to regularise the applicant as Driller w.e.f. 22/9/73, or any appropriate order or direction may kindly be issued so that the applicant may be regularised as Driller w.e.f. 22/9/73."

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This O.A. was allowed by this Tribunal vide its order dated 12.11.1993 passed in O.A. No. 745 of 1992 with the following observations :-

"6. In such circumstances, we allow the application and set aside the order dated 22.9.73, Annexure A-1. The respondents are directed to regularise him as Driller from the date he is working as Driller, viz. 22.9.73 and the Annexures A-7 and A-8 are quashed. The seniority as given in Annexure A-3 dated 6.12.85 shall not be disturbed in a way which will be prejudicial to the applicant."

6. It would be seen from the prayer as also the Tribunal's order in O.A.No. 745/92 that the applicant though had prayed for regularisation of his services as Driller w.e.f. 22.9.1973 he had not specifically prayed for any pay and allowances or arrears of pay and allowances consequent upon his regularisation as Driller. Once, he has been regularised as Driller and accorded further promotions as Electric Fitter Grade II and Electric Fitter Grade I, the applicant woke up to demand the arrears of pay right from the date of his regularisation viz. 22.9.1973. But, in our considered opinion, the applicant would not be entitled to the relief regarding arrears of pay in this O.A. If the applicant was entitled to arrears of pay, he would have specifically prayed in his earlier O.A. 745 of 1992 that he has not done. Therefore, his relief is barred under Order 2 Rule 2 of Civil Procedure Code. However, the learned counsel appearing for the applicant contended that the applicant prayed for this relief in O.A.No. 745/92, since in that O.A. he prayed for "any appropriate order or direction" and that includes even the arrears of pay also. Even if, we accept this argument of the learned counsel for the applicant that he prayed for the arrears in the earlier case then only inference would be that this Court refused the same vide its order dated 12.11.1993 and in that event the present application will be barred by principles of res judicata under Rule 11 of the Civil Procedure Code. Moreover, it is also seen from respondents letter

legal brief

dated 24.8.1995 (Annex.R/1), that on a representation from the applicant for parity in pay with reference to his junior Shri Tika Ram, accepting the request of the applicant, the pay of the applicant was revised at par with Shri Tika Ram and he was allowed pay of Rs. 1,640/- in the pay scale of Rs. 1320-2040 w.e.f. 1.1.1995. It is also seen that the applicant has been further promoted as MCF scale Rs. 1400-2300 vide respondents letter dated 31.8.1995 (Annex.R/2). Thus, the grievance of the applicant that he has been fixed at a lower stage of pay than his juniors, does not subsists. The applicant has further been promoted to a higher post. It is also seen from the order Annex.R/1 that applicant's pay has been fixed at Rs. 320/- w.e.f. 1.10.1983 in the pay scale of Rs. 260-400. The applicant has not come out very clearly as to why he thinks that his pay has not been fixed in the scale of Rs. 260-400 w.e.f. 22.9.1973. Moreover, as we have pointed out above, the applicant cannot raise this issue at the present juncture, he should have raised this issue in his earlier O.A. wherein he had prayed for regularisation on the post of Driller. In the circumstances, we are of the view that the Original Application is devoid of any merit and deserves to be dismissed.

7. The Original Application is accordingly dismissed with no orders as to cost.

Gopal Singh
(GOPAL SINGH)
Administrative Member

BL
(JUSTICE B.S.RAIKOTE)
Vice Chairman

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