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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR

Date of order: 13.09.2000

OA No.401/95

Mahesh Chand Sharma S/o Om Prakash Sharma, posted as TCM,
Western Railway, Gangapur City, Kota Division.

.. Applicant

V e r s u s

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Rail Manager, Western Railway, Kota Division, Kota.
3. DSTE, Western Railway, Kota Division, Kota.
4. CTCI (M), Western Railway, Gangapur City.
5. O.P.Sharma, TCM Gr.I under CTCI (M), Sawaimadhopur at NMD at present C/o CTCI, Gangapur City.

.. Respondents

Mr. S.C.Sethi, counsel for the applicant

Mr. Hemant Gupta, Proxy counsel to Mr. M.Rafiq, counsel for respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

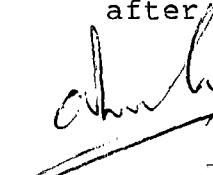
Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

Per Hon'ble Mr. N.P.Nawani, Administrative Member

In this Original Application, the applicant prays for setting aside the orders dated 21/22.9.1994 (Ann.A1) and 8.8.1995 (Ann.A2) by which his earlier fixation of pay in Grade I of TCM was cancelled through Ann.A2 on the basis of Ann.A1.

2. Brief facts, as stated by the applicant, are that after passing his ITI fitter course and B.Com, he was selected



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and appointed as apprentice on 4.1.1986 and after completion of apprenticeship was declared successful, he was appointed as Tele Communication Maintenance (for short TCM) Grade-III on 13.1.1987. He was later promoted to Grade II on 20.12.1990. Trade test was held between 21.3.1994 and 29.4.1994 for filling up existing vacancies in Grade-I in the scale of Rs. 1320-2040 and results were declared vide office order dated 12.5.1994 by the DSTE (E), Kota and he was declared passed and was also promoted by the same order copy annexed at Ann.A3 and simultaneously posted to Nimoda under CTCI, Sawai Madhopur (for short, SWM) on his promotion/transfer. One Shri O.P.Sharma, who had requested for his transfer to Gangapur City was so transferred but was to be relieved on ^{his} resumption of duties at Nimoda. The applicant due to his personal difficulties protested and represented against his transfer to Nimoda (Ann.A4 dated 18.5.1994). The respondent No.3 (DSTE, Kota Division) considered his representation favourably and issued order dated 3.6.1994 (Ann.A5) cancelling his transfer and allowed him to be retained at Gangapur City as TCM Gr.I. The applicant is continuously working at Gangapur City as TCM Gr.I in the scale of Rs. 1320-2040 and his pay was fixed on promotion as per rules with next grade increment in June, 1995. Thereafter, respondent No.5, O.P.Sharma, exercised pressure through Union and others and the DSTE (E) vide his order dated 21/22.9.94 (Ann.A1) cancelled his order dated 3.6.1994 (Ann.A5) for no rhyme or reason. The applicant submitted his protest against this order vide Ann.A6 but of no avail. The DSTE (E) has now objected (Ann.A2) to the fixation of the pay of the applicant in the scale of Rs. 1320-2040/and has asked respondent No.4 to reduce the pay scale of the applicant for having not carried out his transfer to Nimoda.

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3. It has been contended by the applicant that the order dated 21/22.9.94 (Ann.A1) is neither in the interest of administration nor in the exigencies of service and is thus mala fide and unjust and DSTE(E) has issued the same under pressure without using his discretion especially when there are excess posts available under CTCI, Sawai Madhopur. It has also been contended that the order dated 8.8.1995 (Ann.A2) for reduction of pay scale of applicant for not having carried out his transfer to Nimoda is illegal, mala fide and without jurisdiction and deserves to be declared non-est. He was duly promoted and his pay in the promotion post was fixed in accordance with rules after the transfer of the applicant was cancelled by the order of the DSTE(E) vide Ann.A5 and he was retained at Gangapur City and where he is working continuously without giving any cause of complaint. It has also been contended that reduction of pay scale is a punishment and cannot be imposed without following the procedure laid down in Railway Servants (Discipline and Appeal) Rules and Ann.A2 is, therefore, violative of Article 311 of the Constitution of India and also against principles of natural justice.

4. In their reply, the respondents have stated that initially the applicant was posted at Gangapur City by mistake but subsequently when Union submitted representation raising a dispute against this, the dispute was initially kept in abeyance, ^{and later the} respondent No.5, O.P.sharma, whose name was registered earlier than the applicant was transferred to Gangapur City and the applicant was relieved for joining at Nimoda. It has been contended by the respondents that the respondent No.4 who is a subordinate authority to DSTE(E) has done fixation of pay of the applicant on promotion in his own office which was not correct because as per rules when an

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employee is promoted, his pay shall be fixed in the Divisional Office. They have denied any mala fide intention or pressure from any outside agency and defended Anns. A1 and A2 on the ground that the promotion becomes effective from the date on which charge of that post is resumed at the station where one is posted and pay cannot be fixed on the basis of an irregular order Ann.A5. It has also been stated by the respondents that there is a cadre of 3 TCM Gr.I at Nimoda whereas only two are working and thus there is a clear vacancy. Finally, it has been denied that there was any violation of the principles of natural justice or Article 311 of the Constitution of India.

5. We have heard the learned counsel for the parties and have perused all the material on record.

6. After carefully considering the rival contentions, we feel that there are two issues on which we are required to adjudicate in this OA. First, whether the transfer orders require any interference from us. Secondly, whether withdrawal of pay fixation done in the office of respondent No.4, the CTCL, is justifiable.

7. As regards the first issue regarding transfer, the law as it has developed permits our intervention only when a transfer order is against the statutory provision or is based on malafide. There are catena of judgments from the Apex Court in this regard and it may be enough to obtain support for this view from the ~~case~~ of State of M.P. v. S.S.Kourav and ors, JT 1995 (2) SC 498, in which Hon'ble the Supreme Court has held that "the Courts and Tribunals are not appellate forums to decide on transfer of officers on administrative grounds..... and such decision shall stand unless they are vitiated either

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by malafides or by extraneous considerations without any factual background and foundation". The applicant has not been able to establish that the order dated 21/22.9.1994 (Ann.A1) reviving the original proportion/transfer order dated 12.5.1994 (Ann.A3) suffers from proven mala fide or it is against any statutory provisions. It has also been noted that the request of the private respondent No.5 is of earlier vintage than that of the applicant and in fitness of things, the request of respondent No.5 for a transfer to Gangapur City should be getting priority, especially when the request of the applicant is of later date and he had been transferred on promotion. We, are therefore, of the considered view that the question of transfer lies in the realm of administrative decisions and we find no valid reason to interfere in the matter.

8. As far as the second issue is concerned, we are not convinced with the justification given by the respondents for reducing the pay fixation granted by the respondent No.4, an officer of the railway administration itself, even if he happens to be subordinate to the respondent No.3. The railway administration itself, vide Ann.A4, allowed the applicant to be retained at Gangapur City as TCM Gr.I and then allowed the applicant to join on the promotion post of TCM Gr.I at Gangapur City, fixed the pay of the applicant in the scale of the promotion post i.e. Rs. 1320-2040 and allowed him to work at the location for around three months. It is not the case of the respondents that respondent No.4 did the fixation of pay wrongly. Respondent No.4 did fixation of pay because the order dated 3.6.1994 of respondent No.3 allowed the applicant to join the promotion post at Gangapur City. By issuing order dated 8.8.1995 (Ann.A2), the respondent No.3 appears to have only questioned the authority of respondent No.4 to carry out

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fixation of pay but the fixation must have been done immediately on the applicant's taking over charge of TCM Gr.I following issuance of order dated 3.6.1994 (Ann.A5) by respondent No.3 whereas the order reviving the old promotion/transfer order was issued on 21/22.9.1994 (Ann.A1) i.e. after a gap of more than 3 months. Since respondents have not stated that the pay fixation done by respondent No.4 was wrong, the question of competency between respondent No.3 and 4 is an internal matter to be sorted out between the two authorities. There was absolutely no role played or no misrepresentation made by the applicant and he just enjoyed the pay as given to him by the railway administration in the promotion post of TCM Gr.I. Even if there had been some mistake in fixation of pay in the post of TCM Gr.I on joining on the said post by the applicant, it would have been prudent for the respondents to allow him to have his say before he was brought down to a lower scale of pay in the interest of following the principles of natural justice, unless it was a simple error. The fact remaining that the applicant had taken over the charge of the promotion post of TCM Gr.I after due process of selection had been gone through, his pay scale cannot be reduced without following the prescribed procedure. We, therefore, hold that the applicant should be treated as enjoying the pay scale of TCM Gr.I w.e.f. the date he took over the charge of the post of TCM Gr.I at Gangapur City. It appears that this Tribunal vide its interim order dated 10.11.1995 read with order dated 6.9.1995 had directed the respondents not to reduce the pay of the applicant till further orders and, therefore, the applicant must be enjoying the pay scale of TCM Gr.I as of now. Of course, if the applicant is not performing duties of the post of TCM Gr.I after his having been relieved from Gangapur City, his absence

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from duty from that date till he joins at Nimoda will have to be regularised with leave due etc. as per rules.

9. In the result, we partly allow this OA and direct the respondents to treat the applicant as in the pay scale of TCM Gr.I from the date he joined at Gangapur City and continue allowing him the pay fixation done by the respondent No.4 at Gangapur City, unless any error is found in such fixation. We make it clear that we are not interfering with the transfer orders. The period from the date of the relief of the applicant from Gangapur City and the date he assumes duty at Nimoda, when the applicant did not perform the duties of the post of TCM Grade-I, will be covered by leave due etc. as per the rules.

10. Parties to bear their own costs.



(N.P.NAWANI)

Adm. Member



(S.K.AGARWAL)

Judl.Member