

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 9/7/2001

OA No.598/1995 with MA No.581/95

P.K.Upadhayay a/o Shri B.N.Upadhyaya, Guard, Western Railway, Kota Division, Kota.

..Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Rajkot.
3. Divisional Railway Manager, Western Railway, Kota.

.. Respondents

Mr. V.P.Mishra, counsel for the applicant

Mr. U.D.Sharma, counsel for the respondent No.2

None present for respondents Nos. 1 and 3

CORAM:

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

Hon'ble Mr. A.P.Nagrath, Administrative Member


ORDER

Per Hon'ble Mr. A.P.NAGRATH, Administrative Member

In this Original Application, the applicant has prayed that he be declared and treated as having been appointed substantively in the scale of Rs. 330-560 and the resultant benefit of seniority be given to him over the Guards appointed/promoted in Kota Division in the scale of Rs. 330-530 as on 11.4.1986 when the applicant joined on transfer in Kota Division. He further seeks declaration as having been appointed substantively to the scale of Rs. 330-560 from 18.10.1985, the date on which he joined at Zonal Training School, Udaipur for training, and that his pay may be refixed accordingly w.e.f. 1.1.1986 and arrears be paid on that basis.




2. Case of the applicant is that he had applied for the post of Guard scale Rs. 330-560 in response to the notification issued by the Railway Recruitment Board (for short RRB), Ahmedabad. After being selected, he was sent for training to the Zonal Training School, Udaipur. On successful completion of the training, the applicant submits that he was offered the appointment to the post of Guard scale Rs. 330-560. It is stated that subsequent to his appointment, the respondents have sought to assign a lower scale to the applicant resulting in loss of pay and seniority. Prior to restructuring, the Guard Grade 'C' were assigned the scale of Rs. 330-560 and 15% of the vacancies were filled up by direct recruitment. It appears, when the applicant was recruited by RRB-Ahmedabad, similar recruitment was undertaken by the RRB-Bombay and RRB-Ajmer. The candidates selected by RRB-Ajmer were allotted Jaipur Division whereas the applicant recruited by RRB-Ahmedabad was allotted Rajkot Division. In all these selections for recruitment, the RRBs recommended to the concerned divisions for appointment in scale Rs. 330-560 in terms of the notification. The applicant reported in Rajkot Division on 3.12.1985. On completion of his training, the applicant was posted at Hapa vide order dated 12.2.1986. In this order scale of the post indicated was Rs. 330-530. It has been mentioned by the applicant that he was told that the post of Guard carrying the pay scale of Rs. 330-560 is not available hence he is posted in the scale of Rs. 330-530 and both these scales have identical starting pay of Rs. 330. After joining Hapa, the applicant requested for transfer to Kota Division and acceding to his request he was transferred vide order dated 4.4.86. In this order the scale of pay was indicated as Rs. 330-530. The applicant admits that he carried out his transfer to his home division. Since his was a case of transfer on request he was assigned bottom seniority in the grade Rs. 330-530. The applicant contends that



his very appointment was in the grade Rs. 330-560 as per the notification for recruitment and he could not have been posted in the grade of Rs. 330-530, which is a lower scale and thus his stand is that on transfer to Kota Division he should have been assigned bottom seniority in the Scale of Rs. 330-560 and not Rs. 330-530 as had been done by the respondents. It appears that w.e.f. 1.1.1986 both the scales of Rs. 330-530 and Rs. 330-560 were merged and are allotted the revised scale of Rs. 1200-2040. The applicant claims that he made a number of representation dated 5.7.90, 5.9.94 and 17.10.94 requesting the respondents to place him in the grade of Rs. 330-560 from the date of his appointment. In his representation dated 17.10.94, the applicant also referred to the benefit of restoration to the scale of Rs. 330-560 to Guards recruited by the Jaipur Division at the same time when the applicant was recruited. Jaipur Division restored the scale during the pendency of the OA No. 295/92 which was filed before the Tribunal by one Ajai Kumar Mathur. This OA was disposed of by order dated 22.8.1994 with directions that respondents should further consider the case of the applicant in that OA with regard to restoration of salary, seniority and related matters as per law. The applicant is aggrieved by not being granted similar treatment to him by Kota and Rajkot Divisions and he has filed this application seeking declaration as having been appointed in the scale of Rs. 330-560 and also for having been posted to Kota Division on transfer in the same scale of Rs. 330-560. His plea is that not extending the benefit to him is discriminatory in nature as other similarly placed in Jaipur Division have been put in the scale of Rs. 330-560.

3. Separate replies have been filed i.e. one on behalf of respondents Nos. 1 and 3 and another on behalf of respondents No.2. Respondent No.2, D.R.M., Rajkot where the applicant was initially appointed has stated in the written reply to the OA that the applicant




was appointed only in the pay scale Rs. 330-530 and was posted at Hapa vide order dated 12.2.1986 and pursuant to this order the applicant joined at Hapa as Guard Grade 'C'. It is further stated that the applicant, at his own request, was transferred to Kota Division on his then pay of Rs. 330/- and pay scale of Rs. 330-530 with bottom seniority vide order dated 4.4.1986. The applicant had not submitted any representation regarding his grievance relating to grant of scale of Rs. 330-530. Respondent No.2 has explained that scale of Rs. 330-560 was for Guard Grade 'B' at the relevant point of time and the recruitment was made only to the grade of Guard Grade 'C' which was in the scale of Rs. 330-530 and that no initial recruitment was made to the Guard Grade 'B' i.e. Rs. 330-560. While admitting that the Railway Recruitment Board had invited applications for recruitment of Guards in the pay scale of Rs. 330-560, the respondents submit that ~~RRB~~ ^{RRB} scale in the notification, as ~~had not indicated the correct~~ the recruitment grade was only Rs. 330-530.

4. In the reply filed on behalf of respondents Nos. 1 and 3, it has been stated that the applicant was initially appointed in Rajkot Division and thereafter transferred to Kota Division on his own request. His pay and seniority in Kota Division has been fixed in accordance with the provisions of the IREM. It has been reiterated that the recruitment grade to the category of Guard is only Guard Grade 'C' i.e. Rs. 330-530 and not Rs. 330-560. It is stated that the applicant was appointed only in pay scale of Rs. 330-530 which was duly accepted by him. Subsequently, he was transferred to Kota Division from Rajkot Division in the pay scale of Rs. 330-530 only and has been correctly assigned bottom seniority in that scale. This transfer was effected only after acceptance of the condition of bottom seniority in the scale Rs.330-530 by the applicant and he cannot now make a grievance after having once accepted and carried out the

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orders. It has been further stated that w.e.f. 1.1.1986, these pay scales i.e. Rs. 330-530 and Rs. 330-560 were merged to a revised scale of Rs. 1200-2040 and the applicant having been given that pay scale has no cause of grievance and he has not been put to any loss. The respondents contend that the judgment in the case of Ajai Kumar Mathur was rendered by the Tribunal on 22.8.1994 and that order is of no assistance to the applicant. Even considering from that date, The respondents stand is that this application is barred by time having been filed only in December, 1995.

5. In the rejoinder filed by the applicant he has challenged the assertions of the respondents that no recruitment was made in the grade of Rs. 330-560. He referred to the notification not only by the RRB-Ahmedabad but also by the RRB-Bombay and Ajmer with identical pay scales. Further that in view of this fact the benefit of the scale Rs. 330-560 has already been considered by the Jaipur Division in the same railway by order dated 18.8.1994 in respect of similarly situated persons like the applicant. In view of this background, the applicant contends that the respondents are estopped from treating him differently. A reference has also been made to the Railway Board's letter dated 25.9.1986 in the context of merger of two grades to Rs. 1200-2040 w.e.f. 1.1.1986. The said letter provides, inter alia, that "promotions/postings made between 1.1.1986 and the crucial dates on regular basis in accordance with the classification then in force will stand protected". The applicant's plea is that his seniority in the grade Rs. 330-560, to which he was entitled prior to 1.1.1986, has to be protected by the respondents in terms of this order of the Railway Board. Another rejoinder has been filed by the applicant to the reply filed by respondent No.2 wherein same arguments have been reiterated as in the OA and ^{to} written reply from respondents Nos. 1 and 3.



6. Heard the learned counsel for the parties and perused the whole record.


7. The main thrust of the arguments of the learned counsel for the applicant was that the applicant was appointed in response to a notification which clearly stated that the scale of the post was Rs. 330-560, he could not have been appointed in the scale lower than that. In support of his view, the learned counsel argued that when the matter was challenged by a similarly placed person in Jaipur Division, the Department on its own restored the correct pay scale to all similarly placed persons during the pendency of that OA. On same basis, the learned counsel contended that similar benefits should have been extended to the applicant and it was not necessary for the applicant to take recourse to legal remedies separately and the Department should have corrected the anomaly on its own. The learned counsel for the applicant referred to the following cases to establish that once the benefit has been given in favour of a similarly situated person, it is not necessary for every similarly placed person to take recourse to litigation and it is for the Department to extend the same benefit to similarly placed persons. Those who failed to approach the Courts ~~and they~~ cannot be denied their claims. In such a situation the limitation should not also come in the way for extending the benefits to those similarly placed persons. The cases cited are:-

1. (1985) 2 SCC 643, Inderpal Yadav v. UOI
 2. 1997 SCC (L&S) 267, Ashwani Kumar v. State of Bihar
 3. (1992) 19 ATC 94, G.C. Ghosh v. UOI
 4. 1998 SCC (L&S) 226, K.C.Sharma v. UOI
 5. (1990) 4 SCC 13, Dharampal and ors. v. L.G. of Delhi
 6. (1990) 2 ATC 705 (SC), Diwakar Nath Sharma v. UOI
 7. (1992) 20 ATC 22, Mohd. Salim v. UOI
 8. (1988) 8 STC 249, A.N.Gambhir v. M/o Water Resources
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The learned counsel also referred to (1994) 24 ATC 322, Dherambir Singh v. Delhi Administration; 400 Swamy's CL Digest, 1994/2, P.A.Mohanan Nair and (1989) 9 ATC 584, B.D.Sharma v. Union of India on the principle of estoppel to contend that having selected the applicant on a post which was advertised to be in the scale Rs. 330-560, the respondents cannot now appoint him in a lower scale. The plea of the learned counsel was that even on transfer to Kota Division at his own request the applicant was entitled to be placed at the bottom seniority of the gradation list of the scale Rs. 330-560 and not Rs. 330-530.

8. The learned counsel for the respondents opposed this plea mainly on the ground that the applicant has accepted the offer of appointment given to him vide letter dated 12.2.1986 (Ann.A12) and he is estopped from claiming appointment in the grade Rs. 330-560 at such a belated stage. The learned counsel contended that the applicant has carried out his transfer on his own request as the transfer order clearly mentioned that it was in the scale Rs. 330-530, he has correctly been placed at the bottom in the scale of Rs. 330-530. Action of the respondents, as per the learned counsel, was legal and cannot be faulted.

9. We have given our anxious consideration to the rival contentions. Admittedly, the notification against which the applicant was recruited clearly mentions the pay scale of Rs. 330-560. Not only the notification from RRB-Ahemadabad but similar notifications issued by RRB-Bombay and Ajmer also indicated the same pay scale i.e. Rs. 330-560. It is also admitted that the letter of appointment issued to the applicant indicated the pay scale of Rs. 330-530. The whole matter revolves around the fact whether the applicant can claim to be placed above all those in the scale Rs. 330-530 in Kota Division as on the

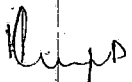


date he reported to Kota Division to carry out his transfer orders. It has to be borne in mind that this transfer order was on his own request and the order was accepted and duly carried out by the applicant. We cannot appreciate as to how the applicant can now claim to be fixed in the scale Rs. 330-560 specifically after his posting in Kota Division. It cannot be said today that if he had insisted to be placed in the scale of Rs. 330-560 when his request for transfer to Kota was considered, the transfer in grade Rs. 330-560 could have materialised. Any transfer on request under the rules, is dependent on the factum of availability of vacancy and also whether a particular scale in which the transfer is sought is a recruitment scale. Such issues are not open for verification and adjudication after the transfer has already been accepted and effected. The documents clearly reveal that the applicant was transferred only in the scale Rs. 330-530 and that transfer was accepted by the applicant. In such a situation the reliance placed by the learned counsel for the applicant on the number of cited cases, is not of any assistance. His case is totally on a different footing and it is a case of consequence of accepting the transfer on request. The decision taken by the Jaipur Division to restore the scale of Rs. 330-560 to the Guards recruited by RRB-Ajmer also is of no help to the applicant in view of the facts and circumstances of this case. As we have stated earlier the transfer was in the scale of Rs. 330-530 with unconditional acceptance of bottom seniority in that scale, the applicant cannot now expect to be placed at the top of all those who were then in the scale of Rs. 330-530 when the applicant joined in Kota Division. We do not find any merit in this application and the same is liable to be dismissed.

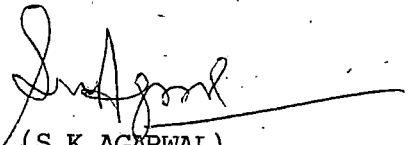
10. We, therefore, dismiss this OA as devoid of any merit. In the facts and circumstances of this case, no order as to costs.

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11. In view of the order in the OA, the MA No. 581/95 is also dismissed.


(A.P.NAGRATH)

Adm. Member ✓


(S.K.AGARWAL)

Judl. Member