

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

OA No. 66/97

DATE OF ORDER : 02-7-2002

Rajiv S. Chandorikar son of Shri S.N. Chandorikar aged about 36 years resident of 313 Kaswa Nagar, Vaishali Nagar, Ajmer. Presently posted as Sr. Lecturer, Supervisor training Centre, Western Railway, Ajmer.

....Applicant.

VERSUS

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. Chief works Manager, Loco Workshop, Western Railway, Ajmer.
3. Principal, Supervisor Training Centre, Ajmer.

....Respondents.

Mr. R.N. Mathur, Counsel for the applicant.

Mr. R.G. Gupta, Counsel for the respondents.

CORAM

Hon'ble Mr. M.P. Singh, Member (Administrative)

Hon'ble Mr. J.K. Kaushik, Member (Judicial)

ORDER

PER HON'BLE MR. J.K. KAUSHIK, MEMBER (JUDICIAL)

Applicant, Shri Rajiv S. Chandorikar, has filed this OA u/s 19 of the Administrative Tribunal's Act, wherein he has prayed for the following reliefs:-

- (a) That the transfer order dated 1.2.97 (Annexure A/1) may be set aside and quashed and the respondents may be directed to issue necessary orders for posting of the applicant in the STC till he complete five years tenure, to be completed w.e.f. 15.4.94; other training allowance may be paid from the date i.e. 1.2.92
- (b) That the respondents may be directed to give



benefit of the increment to the applicant counting his period of training on duty for this purpose.


- (c) That the respondents may be directed to fix pay of the applicant at higher stage on the ground that applicant was discharging higher duties and higher responsibilities during his posting as Jr. Lecturer in STC and the respondents may also be directed to make fixation in accordance with circulars of the Railway Board dated 4.2.91 and 23.12.93.
- (d) Any other appropriate order or direction which the Hon'ble court thinks just and proper in the facts and circumstances of the case even the same has not be specifically prayed for but which is necessary to secure ends of justice may kindly also be passed in favour of the applicant.

2. The facts of the case are that applicant was posted Jr. Lecturer, scale Rs. 1660-2660, in Supervisor Training Centre on ad-hoc basis on 27.1.92 in Loco Shop STS, Ajmer. Subsequently he was subjected to a selection for posting on deputation on the post of Jr. Lecturer at STS Ajmer. He qualified the selection and thereafter given posting on the said post of Jr. Lecturer vide order dated 30.3.94 (Annexure A/2). It has been averred that the period of five years has been prescribed for posting the individuals on instructors duties in the training schools of the Western Railway. It is further the case of the applicant that in the training centres, one posted on Jr. Lecturer is entitled to get teaching allowance which was 30% in the beginning, subsequently reduced to 15% from 1992. He was not paid deputation allowance when he was occupying the post of Jr. Lecturer on ad hoc basis as he was given fixed deputation allowance of Special pay of Rs. 200/ only. It is further the case of the applicant that he has been given posting on regular basis to the said post w.e.f. 15.4.94 and his ad hoc work on the same prior to the regular selection cannot be



reckoned towards the admissible tenure period of five years. The further grievance of the applicant is that he has not been given the benefit of higher fixation in accordance with the Rule 1313 (FR 22) and connected rules on the post of Jr. Lecturer in as much as he was holding the higher post carrying duties and responsibilities of greater importance than those attached to the post held by him earlier to his deputation. The applicant has also averred that he spent the period w.ef. 2.5.85 to 1.5.87 in initial Training and the same should have been taken into account for the purpose of increments in accordance with Circular dated 4.2.91 & 23.9.93 of the Railway Board. The training is required to be counted for increments but the said training period was not so counted by the respondents and he has not been granted his due increments. The applicant submitted the representation in the matter but with no fruitful results. Hence this application.

3. The respondents have filed counter reply to the OA and have controverted the facts and grounds mentioned in the OA. The respondents have stated that OA is hopelessly time barred. It has been averred that he holds lien in the Diesel Workshop and was extended the due benefits on completion of the deputation period, taking into consideration the period spent on ex cadre post (Deputation post). The applicant was also paid teaching allowance which was fixed at Rs. 200/- per month at the relevant time as applicable in his case as per the rules in force. After passing the selection, he was paid teaching allowance @ 15% as per his entitlement. It has been said that the applicant was entitled for five years tenure from the date of his original posting in the Training Centre and he has been repatriated to his Parent department as per the rules. As regards the pay fixation, the Rule 1313 cannot be made applicable to the applicant. The applicant earned all the increments as due to him. The complete claim made by the applicant is erroneous as well as time barred. The similar is the position regarding the increments for the training period which has taken place in the year 1985 and 1986. The claim of the applicant is hopelessly time barred. The OA deserves to



be dismissed on the ground of limitation itself.

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


5. Following three issues/points arise in this case for our consideration:-

(i) Whether five years tenure of deputation shall be counted from the date of regular selection or from the date one is posted (may be on ad hoc basis) in the training centres and one has any legal right to continue on deputation for the fixed/prescribed tenure.

(ii) Whether one is entitled to the pay fixation on the post of Jr. Lecturer on deputation on posting from a post having the same scale of pay.


(iii) Whether the applicant is entitled to draw the increments for the period of training from 2.5.85 to 1.5.87 and whether the claim of grant of increments is time barred.

6. On the first issue, the learned counsel for the applicant has submitted that applicant was posted on deputation as Jr. Lecturer in Training centres on ad hoc basis on 27.1.92 and he was selected for the same post of Jr. Lecturer and placed on panel vide letter dated 15.4.1994 and he has been posted on regular basis on the same vide letter dated 15.4.92 (Annexure A/2). His tenure for five years should have been counted from 15.4.1994 to 14.4.1999 whereas he has been repatriated vide order dated 1.2.97 by counting his period from the date of ad hoc posting in January, 1992. The action of the respondents is ex-facie wrong and his ad hoc working on the post of Jr. Instructor cannot be counted towards his deputation period of five years. We have not been shown any specific rule in the matter. We are of the considered opinion that once five years tenure has been provided and the conducting of selection is dependent on the respondents, the deputation period should counted from the




actual posting in the training centre being on ad hoc basis or otherwise. As regards the legal right to continue on deputation for a particular period is concerned, there is no such right and this issue has been settled by the Apex Court in catena of judgements.

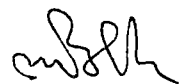
7. As regards the second issue, the applicant has averred that the applicant was entitled for teaching allowance @ 30% , reduced to 15% vide letter dated 30.9.92 but he was not paid any allowance during his ad hoc working. On the other hand, respondents have drawn our attention towards their reply that applicant was allowance @ Rs. 200/- as per letter dated 20.2.90 (Annexure R/1) and it has been said thereafter he was allowed allowance @ 30% reduced to 15% vide letter dated 30.9.92. He has already been paid due allowance and in this view of the matter, there was no question of grant of benefit of any pay fixation in the present case. He has been allowed all his due increment of his old post and no claim of fixation of pay can be sustained. As regards the pay fixation of the applicant is concerned, since the applicant was drawing teaching allowance, there was no question of giving him the benefit of pay fixation under Para 1313 of Railway Establishment Code Vol. II and this point is also decided against the applicant. Here we would like to observe that the respondents are not clear, rather confused about the payment of special/teaching allowance. The actual position is that the applicant posted on deputation, special pay known as teaching allowance was payable to the Jr. Lecturer in the School in which he was posted. Subsequently in the year 1992, the same was changed to 15% of the Basic pay. For some period, the fixed amount of Rs. 200/- was paid as teaching allowance in some Training Centres. Subsequently, a uniform rate of 15% of basic pay is prescribed as Teaching Allowance in all the Training Centres in Railways. It is not the case that while working on ad hoc basis, the allowance was different than the one which was payable after one is given posting after passing the selection.



8. As regards the third issue i.e. grant of the benefit of increments of the training period which applicant is said to have completed during the period from 2.5.85 to 1.5.87. On this learned counsel for the respondents has averred that it is a time barred claim, the same is not sustainable as such. However, we are of the view that it is a different matter and a separate cause of action. The same ought not to have been clubbed in this case. Therefore, it is also case of misjoinder of cause of action and thus we are not inclined to adjudicate upon this matter in this OA.

9. In view of the foregoing discussion and findings on the issue framed in this case, the OA deserves dismissal and the same is hereby dismissed. No costs.

  
(J.K. KAUSHIK)  
MEMBER (J)

  
(M.P. SINGH)  
MEMBER (A)

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