

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 14th day of December, 2010

Original Application No. 249/2006

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Sunil Raj Money
s/o Shri P.Money,
r/o Railway Bungalow No.315/L,
Near IOC Depot, Loco Colony,
Kota Junction and present working as
Head Clerk, Mechanical Branch
Under Senior Divisional Mechanical
Engineer, West Central Railway,
Kota Division,
Kota.

.. Applicant

(BY Advocate: Shri C.B.Sharma)

Versus

1. Union of India
through General Manager,
West Central Zone,
West Central Railway,
Jabalpur.
2. Divisional Railway Manager,
West Central Railway,
Kota Division,
Kota.
3. Senior Divisional Personnel Officer,
West Central Railway,
Kota Division,
Kota.
4. Senior Divisional Mechanical Engineer,
West Central Railway,
Kota Division,
Kota.

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... Respondents

(By Advocate: Shri Mahesh Agarwal, proxy counsel for Shri Anupam Agarwal)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- i) That entire record relating to the case be called for and after perusing the same respondents may be directed to allow pay to the applicant at the stage of Rs. 5000/- on 27/02.1996 instead of 12/11/1996 with yearly increments in the month of February each year with all consequential benefits.
- ii) That the respondents may be further directed to refund Rs. 9797/- along with interest recovered from the applicant by quashing letter dated 29/4/2003 (Annexure A/1).
- iii) Any other order/directions of relief may be granted in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case.
- iv) That the costs of this application may be awarded.

2. Briefly stated, facts of the case are that the applicant while working as Senior Clerk was allowed special pay of Rs. 70/- per month vide order dated 18.3.1994 (Ann.A/2). The applicant was further promoted to the post of Head Clerk vide order dated 25/30-1-1995. However, the applicant submitted application dated 6.2.1995 for foregoing his promotion. Accordingly, the applicant was debarred for promotion for one year w.e.f. 6.2.1995 to 5.2.1996. After completion of debarred period, the applicant was again promoted as Head Clerk vide order dated 15.3.1996 and was

posted under Station Superintendent, Bharatpur. However, the applicant again requested vide letter dated 21.3.1996 to retain him at Gangapur City and in case the same is not accepted his unwillingness to join at the promoted post be accepted. The respondents have placed copy of letter dated 21.3.1986 as Ann.R/4. Since according to the respondents, there was no vacancy of Head Clerk available at Gangapur City, by office order dated 17.4.1996 (Ann.A/4), the applicant was again debarred for promotion for one year w.e.f. 21.3.96 to 20.3.97. There is also note appended below this order whereby it has been clarified that in view of second request of the applicant foregoing his promotion, his suitability would be again adjudged for promotion to the post of Senior Clerk. The applicant was, however, granted promotion w.e.f. 12.11.1997 i.e. the date when his debarred period was over and he has cleared the suitability test. The respondents have placed copy of the said order as Ann.R/5. However, thereafter the applicant was again promoted as Head Clerk w.e.f. 15.3.1996 vide order dated 22.12.1998 (Ann.A/6). It is pleaded that pursuant to promotion order Ann.A/6, the applicant represented to the department vide Ann.A/7 whereby bringing that he has been rightly granted upgraded scale of Rs. 5000-8000 of Head Clerk w.e.f. 15.3.1996 and as such, he may be granted benefit of the pay scale of Rs. 5000-8000 w.e.f. 15.3.1996. The grievance of the applicant is regarding order dated 29.4.2003 (Ann.A/1), whereby the applicant was informed regarding the excess payment of Rs. 9797/- and also effecting recovery. It is further pleaded that he filed representation

dated 23.7.2004 (Ann.A/9). As can be seen from representation Ann.A/9, the applicant has stated that he is entitled for the upgraded scale w.e.f. 1.1.1996 on the basis of seniority. It is further pleaded that on account of refusal of promotion to the post of Head Clerk pursuant to order dated 25/30-1-1995 he was debarred for promotion for one year w.e.f. 5.2.1995 to 4.2.1996 and as such after the debarred period is over, the applicant should have been granted upgraded scale in terms of order dated 22.12.1998 (Ann.A/6). It is on the basis of these facts, the applicant has filed this OA thereby praying for the aforesaid reliefs.

3. The applicant has also contended that his juniors have been granted upgraded scale since 1996 whereas he has not been allowed such upgradation till date. Further grievance made by the applicant is that pay fixation on regular promotion allowed w.e.f. 27.2.1996 has been changed to 12.11.1996, and by this action the applicant has received less pay and allowances for 9 months in each year and such action was taken without any notice. The applicant has further stated that he was constantly pursuing the matter with the respondents regarding recovery of Rs. 9797/- during the period May, 2003 to April, 2005 but nothing has been done by the respondents so far in spite of the fact that he was entitled for due fixation as allowed on promotion vide order dated 22.12.1998. It is on the basis of these grounds, the applicant has prayed for the aforesaid reliefs.

4. The respondents have filed reply. The facts as stated above have not been disputed. The respondents have also annexed order

dated 14.10.1993 on record as Ann.R/1 in order to show that Shri Brij Lal Meena was fixed at Sl.No.16A between Smt Sudha Tiwari and Sh. Bachhan Singh by making a correction in the seniority list dated 8.1.1992 vide order dated 14.10.1993 whereas name of the applicant is at Sl.No.37. Thus, according to the respondents, the submissions made by the applicant that special pay of Rs. 70/- was granted ignoring his seniority position is not correct. The respondents have further stated that pursuant to the objection raised by the Accounts Section, promotion granted to the applicant on the post of Head Clerk w.e.f. 15.3.1996 was again examined. According to the respondents, since the applicant was promoted w.e.f. 12.11.1997 i.e. the date when his debarred period was over and he cleared the suitability test, as such, the order dated 22.12.98 (Ann.A/6) whereby the applicant was granted promotion on the post of Head Clerk w.e.f. 15.3.1996 was again superseded vide order dated 19.7.2002 (Ann.R/6). Thus, according to the respondents, the applicant cannot take benefit of the order dated 22.12.1998 (Ann.A/6) whereby promotion on the post of Head Clerk was granted to the applicant w.e.f. 15.3.1996. The respondents have further stated that since the applicant was debarred for promotion till 20.3.1997 as such he was not entitled for promotion till that date and he was entitled for benefit of promotion to Head Clerk when he was adjudged ^{& suitable} against for the post on 20.11.97.

5. The applicant has not filed rejoinder.

6. The applicant has also filed Misc.Application No.220/06 for condonation of delay. In this Misc. Application, it has been stated

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that although the order dated 29.4.2003 (Ann.A/1) ought to have been challenged before the Tribunal within a period of one year but as the matter was under consideration before the respondents and when the respondents did not consider the matter, he has filed OA in July, 2006. It is further stated that recovery of Rs. 9797/- was effected upto April, 2005 against which representation dated 23.7.2004 was filed for allowing him due fixation and also pursued the matter through the service Union.

7. The respondents have filed reply to the Misc.Application No.220/2006. It is stated that recovery was effected from the applicant without any protest and the so called representation dated 23.7.2004 was never received by the department. Thus, according to the respondents, the applicant has not given any reasonable cause for delay.

8. We have heard the learned counsel for the parties and gone through the material placed on record.

9. As can be seen from two representations placed by the applicant on record as Ann.A/7 and A/9, the grievance of the applicant is that his pay should be fixed in terms of order dated 22.12.1998 whereby he has been granted upgraded scale of Rs. 5000-8000 on the post of Head Clerk w.e.f. 15.3.1996 (Ann.A/7). To the similar effect is the contention raised in the representation Ann.A/9 whereby the applicant has stated that the debarred period of his earlier promotion made vide order dated 25/30.1.1995 was over on 4.2.1996, as such, he should be extended the benefit of upgraded scale pursuant to recommendations of the 5th Pay

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Commission in terms of order dated 22.12.1998 (Ann.A/6). At the outset it may be stated that the applicant is not entitled to the relief of fixation of his pay w.e.f. 15.3.1996 pursuant to Ann.A/6 as the said order has been superseded vide order dated 19.7.2002 (Ann.R/6) whereby it has been specifically mentioned that the persons named therein including the applicant have been wrongly promoted as Head Clerk in the pay scale of Rs. 5000-8000 w.e.f. the date mentioned therein and benefit of upgraded pay scale of Rs. 5000-8000 on the post of Head Clerk is sanctioned w.e.f. 12.11.1997. The applicant has not challenged validity of the order dated 19.7.2002 (Ann.R/6) either by amending the present OA or by filing fresh OA after withdrawing the present OA. As such, in view of the order dated 19.7.2002 (Ann.R/6) validity of which has not been challenged, the applicant cannot be granted benefit of upgraded scale of Head Clerk of Rs. 5000-8000 w.e.f. 15.3.1996 on the basis of office order dated 22.12.1998 (Ann.A/6) which stands already superseded. The contention raised by the learned counsel for the applicant that order dated 19.7.2002 has not been served upon the applicant cannot revive the order dated 22.12.1998 which has already been superseded. In any case, the applicant was aware about the stand taken by the respondents when reply was filed on 27.2.2007 by annexing the order dated 19.7.2002 (Ann.R/6) which has superseded the earlier order dated 22.12.1998. As already stated above, even if such order was not received by the applicant, as contended, the applicant was aware about the order dated 19.7.2002 on 27.2.2007 when the same was annexed with the reply.

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Since the applicant has not challenged validity of the order dated 19.7.2002 the prayer of the applicant that his pay be fixed on the post of Head Clerk in the scale of Rs. 5000-8000 in terms of non-existent order dated 22.12.98 cannot be accepted. Since the applicant was granted upgraded scale of Head Clerk w.e.f. 12.11.1997, as such, we see no infirmity in the action of the respondents whereby recovery of sum of Rs. 9797/- was effected on the applicant as per order dated 29.4.2003.

10. The learned counsel for the applicant while drawing our attention to Ann.A/8 argued that as per the statement of increment Ann.A/8 the applicant was allowed higher pay scale w.e.f. 27.2.1996 whereas the respondents have changed the date of increment from February to November.

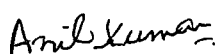
11. We have given due consideration to the submissions made by the learned counsel for the applicant. As already stated above, the applicant could not be granted the pay scale of Rs. 5000-8000 w.e.f. 27.2.1996 as the applicant was granted promotion w.e.f. 12.11.1997, as such, the applicant cannot draw any assistance from Ann.A/8. The case projected by the applicant in his representations Ann.A/7 and A/9 is that his pay should be fixed in terms of order dated 22.2.1998 (Ann.A/6) whereby he has been promoted in the pay scale of Rs. 5000-8000 w.e.f. 15.3.1996 whereas the respondents have categorically stated that the promotion granted w.e.f. 15.3.1996 vide office order dated 22.12.1998 (Ann.A/6) was wrongly granted and the said order stood already superseded vide order dated 19.7.2002 (Ann.R/6) whereby higher pay scale of Rs. 5000-

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8000 to Head Clerk has been sanctioned w.e.f. 12.11.1997. The order dated 19.7.2002 whereby higher pay scale of Rs. 5000-8000 has been granted to the applicant w.e.f. 12.11.1997 has not been challenged. Thus, we see no infirmity in the action of the respondents if the respondents have recovered the aforesaid excess amount in terms of promotion wrongly granted to the applicant w.e.f. 15.3.1996.

12. For the foregoing reasons, the OA is bereft of merit, which is accordingly dismissed with no order as to costs.

13. In view of dismissal of the OA, the question whether the present OA was filed beyond the period prescribed under Section 21 of the Administrative Tribunals Act, 1985 has not been gone into and the MA No.220/06 for condonation of delay shall stand disposed of accordingly.



(ANIL KUMAR)
Admv. Member



(M.L. CHAUHAN)
Judl. Member

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