

(14)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

21.09.2011

CA No. 504/2009

None present for applicant.
Mr. Anupam Agarwal, counsel for respondents.

At the request of learned counsel for the respondents, put up the matter for hearing on 17.10.2011.

Anil Kumar
(ANIL KUMAR)

MEMBER (A)

K. S. Rattan
(JUSTICE K. S. RATHORE)

MEMBER (J)

K. S. Rattan

50000/-

17/10/2011

O.A 504/2009

Mr. C. B. Sharma, counsel for applicant.
Mr. Anupam Agarwal, counsel for respondent

Heard.

The O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

K. S. Rattan
(Justice K. S. Rathore)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 17th day of October, 2011

ORIGINAL APPLICATION No. 504/2009

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Lala Ram Meena son of Shri Ramu Ji Meena aged about 45 years, resident of 63, Income Tax Colony-II, Model Town, Jagatpura, Jaipur and presently working as Junior Accounts Assistant, Office of Financial Advisor and Chief Accounts Officer, North Western Railway, Jaipur.

... Applicant
(By Advocate : Mr. C.B. Sharma)

Versus

1. Union of India through General Manager, North Western Zone, North Western Railway, Jaipur.
2. Financial Advisor and Chief Accounts Officer, North Western Railway, Jaipur.

... Respondents
(By Advocate: Mr. Anupam Agarwal)

ORDER (ORAL)

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

- "(i) That the pay of Respondent no. 2 be directed to fix the pay of the applicant in the scale of Rs.5200-20200 and there after 9300-34800 w.e.f. 01.01.2006/ 01.09.2007 on the recommendation of Sixth Pay Commission and prior to 01.01.2006 applicant be allowed protection of pay as allowed vide Annexure A/5 by quashing letter dated 14.11.2008 with the corrigendum dated 16.07.2007 (Annexure A/1 & A/2) with all consequential benefits.
- (ii) That the respondent no. 2 be further directed to allow stepping up of pay with Shri Laxmi Narayan Meena by quashing letter dated 22.12.2008 (Annexure A/14) with all consequential benefits.
- (iii) Any other order, direction or relief may be passed in favour of the applicant which may be

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deemed fit, just and proper under the facts and circumstances of the case."

2. Brief facts of the case are that the applicant while working in Mumbai as Senior Section Officer (Accounts) in the scale of Rs.7450-11500, sought a request transfer to North Western Railway. The competent authority vide letter dated 11.08.2005 approved on request transfer as Junior Accounts Assistant in the scale of Rs.4500-7000/- on bottom seniority. In pursuance of this order, the applicant reported before respondent no. 2 and respondent no. 2 allowed joining vide letter dated 17.08.2005 and since then, the applicant is continuously working in North Western Railway at Jaipur. Copies of letter dated 11.08.2005 and 17.08.2005 are annexed and marked as Annexure A/3 and A/4 respectively.

3. That while working as Senior Section officer (Accounts), scale Rs.7450-11500, in Western Railway at Mumbai, the applicant was drawing pay at the stage of Rs.8575/- and on joining in North Western Railway at Jaipur, respondent no. 2 fixed the pay of the applicant by allowing maximum of scale Rs.4500-7000 i.e. Rs.7000 plus 1575/- as personal pay vide order dated 12.01.2006 (Annexure A/5) and the same were as per the provisions of Railway Board order dated 17.04.2007(Annexure A/6). The applicant continued to draw pay & allowances as per Annexure A/5 but suddenly respondent no. 2 issued corrigendum dated 16.07.2007 by which benefit of personal pay of Rs.1575/- so allowed vide Annexure A/5 was withdrawn and the pay of the applicant was ordered to be fixed

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at the maximum of scale Rs.4500-7000/- i.e. at Rs.7000/- and also ordered for recovery of excess payment. The applicant represented before respondent no. 2 vide request dated 09.08.2007 and respondent no. 2 informed the applicant vide letter dated 24.01.2008 to the effect that the pay of the applicant had been fixed vide corrigendum dated 16.07.2007 as per Railway Board order dated 20.08.2009 and provisions of Para -5 of Railway Board order dated 17.04.2007 at Annexure A/6 has been cancelled vide Railway Board order dated 01.11.2007. Copies of request dated 09.08.2007, letter dated 24.01.2008 and order dated 01.11.2007 are annexed and marked as Annexure A/7, A/8 and A/9 respectively and copy of corrigendum dated 16.07.2007 has been annexed and marked as Annexure A/2.

4. The applicant further submitted that One Shri Laxmi Narayan Meena also joined North Western Railway at Jaipur on the post of Junior Accounts Assistant in the scale of Rs.4500-7000/- while working as Senior Section Officer (Accounts) in Ratlam and his pay was fixed as Rs.23090/- taking into consideration of revised scale. Copy of letter dated 09.04.2008 is annexed and marked as Annexure A/11. That the applicant also made a request on 01.10.2008 before respondent no. 2 stating therein that scale of Rs.4500-7000/- revised to scale Rs.5200-20200, so his pay be allowed at the maximum of Rs.20200 w.e.f. 01.01.2006 but respondent no. 2 rejected his claim vide letter dated 14.11.2008 (Annexure A/1) without taking into consideration of pay of Rs.8575/- drawn by the

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applicant prior to joining in NWR, Jaipur. That the applicant at one stage also made a request on 05.12.2008 (Annexure A/13) before respondent no. 2 for allowing stepping up of pay with Shri Laxmi Narayan Meena but respondent no. 2 rejected the claim vide letter dated 22.12.2008 (Annexure A/14).

5. That the actions of the respondent in not allowing personal pay of Rs.1575/- and also not stepping up of the pay of the applicant with Shri Laxmi Narayan Meena, who is junior to the applicant, are against the Railway Board's order and, therefore, Annexure A/1 and Annexure A/2 may be quashed. The applicant should be allowed stepping up of pay with Shri Laxmi Narayan Meena by quashing letter dated 22.12.2008 (Annexure A/14).

6. The respondents have filed their reply. The respondents have stated that the present OA has been filed by the applicant without verifying the rule position. In fact as per RBE No. 188/99 in case of an employee holding a higher post on regular basis and completed a minimum period of 24 months in that higher post and seeks transfer on his own request to a lower post, fixation of his pay in the lower grade would be done at the stage equal to the pay drawn by him in the higher post subject to the maximum of the lower post not being exceeded. The applicant was transferred to the scale Rs.4500-7000/- and, therefore, as per rules, he was entitled to be fixed in the scale subject to the maximum of that scale. Thus no fault can be found in the action of the answering respondents. So far as the

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contention regarding stepping up of his pay again being not commensurate with the rules cannot be considered in the manner requested. The copy of the Circular No. RBE 188/99 dated 20.08.1999 has been annexed and marked as Annexure R/1. The RBE No. 60/07 relied by the applicant cannot be applied in his case because it was issued on 17.4.2007 while as per his own admission, his pay was fixed by order dated 12.01.2006. Earlier fixation done vide order dated 12.01.2006 was erroneous in view of the rule position as demonstrated vide Annexure R/1. The same was rectified vide by corrigendum dated 16.07.2007. The Circulars, RBE No. 60/2007 and 143/2007 being subsequent in time cannot be asked to be applied in case of the applicant. Moreover, the above letters clearly mentions that the personal pay is admissible in the cases were pay of staff in higher scale remains below the maximum of the lower scale. In the case of applicant, his pay in higher grade was more than the maximum pay of lower pay in which he was transferred. Therefore, no personal pay was admissible to the applicant and he was entitled to the maximum of lower scale only. The applicant is trying to misinterpret the RBE dated 20.08.1999 to derive undue benefits. With regard to the request of the applicant to stepping up of his pay with Shri Laxmi Narayan Meena, it has been stated by the respondents that Shri Laxmi Narayan Meena, Sr. S.O. of Western Railway, joined North Western Railway on 31.03.2008 as Junior Accounts Officer, scale Rs.4500-7000/- and his pay was fixed at Rs.7000/- i.e. the maximum of the scale of Jr. Accounts Officer. The VIth Pay Commission recommendations as applied by the

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Railway Board's notification RBE No. 103/08 dated 04.09.2008, the pay was to be revised w.e.f. 01.01.2006. Accordingly, the pay of Shri L.N. Meena on being revised w.e.f. 01.01.2006 is fixed at Rs.17,670/- + Grade pay Rs.4800/- in the pay band No. 2 (9300-34800) on 30.03.2008. As per VIth CPC, revised scale of Junior Accounts Officer is Rs.5200-20200 in Pay band I + Grade pay Rs.2800/-. On transfer to the lower post of Jr. Accounts Officer, the pay of Shri Laxmi Narayan Meena was fixed at Rs.17,670/- + Grade Pay Rs.2800/- w.e.f. 31.03.2008. Thus the pay of Shri Laxmi Narayan Meena was fixed as per rules. The pay of Laxmi Narayan Meena was Rs.17,670/- in pay band II (9300-34800/-) which was at a stage equal to the pay in Pay Band I (Rs.5200-20200) drawn by him prior to his appointment against the lower post. Not only it but the fact that applicant joined this Railway prior to implementation of VI CPC. His fixation can only be made as per the rules of Vth CPC. Thus the applicant being entitled to the maximum to the scale of Rs.4500-7000/-, as on 01.01.2006 has rightly been fixed so at Rs.13020 + Grade Pay Rs.2800/-.

7. As regards stepping up^{of pay} of the applicant is concerned, he has to satisfy the conditions laid down in the Railway Board's letter dated 07.12.1994 to seek stepping up. The applicant has failed to disclose any pay anomaly as a result of application of FR 22C. Therefore, his claim has been rightly rejected for stepping up his pay with Shri Laxmi Narayan Meena. Thus the applicant is drawing the pay as per rules. Therefore, the OA has no merit and should be dismissed.

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8. Heard learned counsel for the parties and perused the documents on record. Learned counsel for the applicant reiterated the facts which he has taken in the OA and argued that the pay of the applicant was rightly fixed vide order dated 12.01.2006 (Annexure A/5) w.e.f. 16.08.2005 at the maximum stage by allowing personal pay and he referred to the Railway Board's circular no. F(E)II/91/Misc/2, dated 20.08.1999 (Annexure A/10). The relevant extract of the said circular is quoted below:-

"In terms of the extant rules (including ACS No. 19 issued under Board's letter of even number dated 24.2.95) (Bahri's RBO 1995, P. 14) in the case of an employee holding a higher post on regular basis and has completed a minimum period of 24 months in that higher post and seeks transfer on his own request to a lower post, fixation of his pay in the lower grade would be done at the stage equal to the pay drawn by him in the higher post subject to the maximum of the lower post not being exceeded. In case there is no stage in the lower grade equal to the pay being drawn by the employee in the higher post, his pay in the lower grade will be fixed at the stage next below the pay being drawn in the higher post and the difference will be paid as personal pay to be absorbed in future increments.

Accordingly, in an example cited by the staff side of an employee holding on regular basis a post of Chargeman 'A' in scale Rs.1600-2600 and drawing pay of Rs.1,750 seeks transfer to a lower post of Chargeman 'B' in scale Rs.1,400-2,300, his pay will be fixed at the stage of Rs.1,720 and the difference of Rs.30 will be paid as personal pay absorbable in future increments. No DA is admissible on the personal pay under the extant rules.

This disposal of NCIR's letter No. 51/97 (PNM) dated 6.7.99 and Western Railway's letter No. E(P&A)773/2(L) dated 25.3.99."

Learned counsel for the applicant also referred to Circular No. RBE 60/2007, relevant portion of para 2 and 5 of which is quoted below:-

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"2. The demand of the Staff Side has been examined in consultation with the Ministry of Finance and it is clarified that on transfer to the lower post/scale under FR 15(a), the pay of a Government servant holding a post on regular basis will be fixed at a stage equal to the pay drawn by him in the higher grade. If no such stage is available, the pay will be fixed at the state next below the pay drawn by him in the higher post and the difference may be granted as personal pay to be absorbed in future increments. If the maximum of the pay scale of the lower post is less than the pay drawn by him in the higher post, his pay may be restricted to the maximum under FR 22(1)(a)(3).

5. These orders take effect from the date this OM is issued. Past cases already decided need not be re-opened."

Therefore, based on the directions of the Railway Board, he prayed that the applicant's personal pay of Rs.1575/- be protected.

9. On the contrary, learned counsel for the respondents argued that in both the above circulars, which is quoted by the learned counsel for the respondents, here is the clear provisions that fixation of pay of an employee in the lower grade would be done at the stage equal to the pay drawn by him in the higher post subject to the maximum of the lower post and not being exceeded (Annexure R-1/Annexure A/10). Even in Annexure A/6, which has been mentioned that if the maximum of pay the scale of the lower post is less than the pay drawn by him in the higher post, his pay may be restricted to the maximum under FR22(1)(a)(3). He argued that the applicant was transferred in the scale of Rs.4500-7000/- At the time of his transfer, he was drawing the pay of Rs.8575/- and, therefore, his pay was fixed at Rs.7000/- which is the maximum of the scale Rs.4500-7000, which is according to the rules & circulars issued by the Railway

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Board from time to time. There is no provision of giving personal pay beyond the maximum of the scale and, therefore, the order issued by the respondents at Annexure A/2 is absolutely according to the rules. Based on fixation of his pay in the grade of Rs.4500-7000/-, his pay has been fixed correctly after VI pay commission's recommendations. Therefore Annexure A/1 is also as per rules and his pay has been correctly fixed under VI pay commission's recommendations.

10. Having heard the rival submissions of the parties and perusal of the documents, we are of the opinion that the action of the respondents in fixing the pay of the applicant at Rs.7000/-, which is the maximum of the pay scale of Rs.4500-7000/- is according to the rules and circulars issued by the Railway Board from time to time and there is no need to interfere with the orders issued at Annexure A/2 and Annexure A/1. The pay of the applicant has been rightly fixed by the Railway authorities and the applicant has not been able to prove his case as far as fixation of his pay is concerned. Therefore, there is no ground for our interference so far as fixation of pay of the applicant is concerned.

11. Now we come to the second request regarding stepping up of pay of the applicant viz-a-viz Shri Laxmi Narayan Meena. Learned counsel for the applicant argued that applicant is senior to Shri Laxmi Narayan Meena but Shri Laxmi Narayan Meena is drawing more pay than the applicant and, therefore, stepping

ArulKumar

up of pay with Shri Laxmi Narayan Meena may be allowed. Learned counsel for the respondents argued that applicant has to satisfy the condition laid down by the Railway Board letter dated 07.12.1994 to seek stepping up. The applicant has failed to disclose any pay anomaly as a result of application of FR 22(c) and, therefore, his claim has rightly been rejected vide Annexure A/14. The perusal of Annexure A/14 shows that it is the cryptic order. It is not disputed between the parties that Shri Laxmi Narayan Meena is junior to the applicant but he is drawing more pay than the applicant. The respondents have not placed the copy of the Railway Board circular No. F(E)II/94/PAI/2 dated 07.12.1994 mention in Annexure A/14 on record. Therefore, we are of the opinion that in the interest of justice, the applicant may make a detailed representation before the respondents for stepping up of his pay with Shri Laxmi Narayan Meena within a period of one month ^{from} ~~from~~ today and the respondents shall dispose of ~~it~~ ^{it} according to the provisions of law expeditiously but not latter than three months from the date of receipt of the representation by the applicant by passing a reasoned and speaking order.

12. With these observations, the OA is disposed of with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

K.S.Rathore
(Justice K.S.Rathore)
Member (J)

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