

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.938/2014

Order Reserved on: 04.12.2015
Order pronounced on 15.01.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri P. K. Basu, Member (A)

Smt. Sugan Yadav
W/o Sh. Mahinder Singh
R/o H.No.1575, Sector-4
Model Town, Rewari (Haryana). ... Applicant

(By Advocate: Sh. Yogesh Sharma)

Versus

1. Union of India through
The General Manager
Northern Railway, Baroda House
New Delhi.
2. Divisional Railway Manager
Northern Railway, Delhi Division
State Entry Road
New Delhi.
3. Divisional Personnel Officer
Northern Railway, Delhi Division
DRM's Office, State Entry Road
New Delhi. ...

Respondents

(By Advocate: Sh. S.M.Arif)

ORDER

By V. Ajay Kumar, Member (J):

The applicant, a National Athletics Sports Woman, was appointed by the Respondent-Railways vide Annexure A5, dated 05.06.1997 against the sports quota directly to the post of Senior Clerk in the pay scale of Rs.1200-30-1560-40-2040 (pre-revised) by fixing her pay at Rs.1680/-. Later the applicant was promoted to the post of Head Clerk and again as Office Superintendent.

2. The applicant filed the OA aggrieved by the order dated 19.12.2013 (Annexure A1) in rejecting her claim for fixing her pay at the stage of Rs.6375/- in the pay scale of Rs.4500-125-7000 w.e.f. her date of appointment, i.e., 05.06.1997 with all consequential benefits.

3. It is the case of the applicant that since the applicant was a meritorious sports woman, the respondents appointed her directly as Senior Clerk by granting 16 advance increments as per the Railway Board's Policy of giving incentives to sports persons and accordingly her pay was fixed at Rs.1680 in the pre-revised scale of Rs.1200-30-1560-40-2040 at the time of her initial appointment itself vide order dated 05.06.1997. It is further submitted that in the year 1998, the recommendations of the 5th Pay Commission were accepted by the Govt. of India w.e.f. 01.01.1996, i.e., prior to the date of appointment of the applicant and, hence, she is entitled for fixing her pay at Rs. 6375/- in the revised pay scale of Rs.4500-125-7000 w.e.f.

05.06.1997. However, the respondents fixed her pay at the stage of Rs.5125/- only w.e.f. 05.06.1997 in the pay scale of Rs.4500-125-7000 while implementing the 5th CPC recommendations vide order dated 04.12.2000.

4. When the representations of the applicant went in vein, she filed OA No.2673/2012 along with MA No.2206/2012 for condonation of delay. This Tribunal by its Order dated 29.10.2013, disposed of the said OA as under:

“5. We have considered the submissions of both sides. In our opinion, this case is not ripe for judicial review because the respondents have yet to take a decision on the representation dated 19.07.2011 made by the applicant. This representation is available at page-9 of the paper-book. In this representation the applicant has quoted the case of one Smt. Seema Yadav, who the applicant claims is similarly placed and who like the applicant was also appointed in Sports quota. The applicant has claimed that Smt. Seema Yadav was allowed 11 increments in the revised scale after VIth CPC report was accepted and her pay was fixed at Rs.10760/-.

5.1 In view of the above facts and circumstances of the case, we dispose of this O.A. by directing the respondents to decide the representation of the applicant. Even if a copy of the same is not available in the office of the respondents, the applicant will make another copy of the same available to them. The representation will be decided by the respondents within a period of six weeks from the date of receipt of a certified copy of this order by means of a reasoned and speaking order. In case the applicant is still aggrieved, she will be at liberty, if she so desires, to approach this Tribunal by means of appropriate judicial proceedings. No costs.”

5. In pursuance of the aforesaid orders of this Tribunal, the respondents considered the representation of the applicant, however, rejected the same vide impugned Annexure A1 dated 19.12.2013. Aggrieved with the same the present OA has been filed.

6. Heard Shri Yogesh Sharma, the learned counsel for the applicant and Shri S.M.Arif, the learned counsel for the respondents, and perused the pleadings on record.

7. The specific contention of the applicant is that when the respondents admittedly granted 16 advance increments in the pre-revised scale of Rs.1200-30-1560-40-2040, vide Annexure A5 appointment letter dated 05.06.1997, and when the 5th CPC recommendations were made applicable w.e.f. 01.01.1996, i.e., prior to the date of her appointment, she is entitled for fixation of her pay by granting 16 advance increments in the revised pay scale of Rs.4500-125-7000 at Rs.6375/- w.e.f. 05.06.1997.

8. The further contention of the applicant is that when the respondents revised the pay of Smt. Seema Yadav, who was also a sports woman and was appointed in its sports quota like the applicant, by granting 11 increments even in the revised pay scale after 6th CPC report, the applicant also entitled for the similar treatment.

9. Per contra, the respondents submitted as under:

- i) The pay of the applicant in pursuance of the implementation of 5th CPC recommendations was revised vide order dated 04.12.2000 (Annexure A4) and hence, the present OA filed in the year 2014 is barred by limitation.
- ii) The appointment order Annexure A5 dated 05.06.1997 of the applicant does not indicate that she was granted 16

advance increments in the pre-revised scale of Rs.1200-30-1560-40-2040. Since her pay was fixed at Rs.1680/- in the said pre-revised scale, and as per fitment table received from 5th CPC, the pay of the applicant was rightly fixed at Rs.5125/- in the revised pay scale of Rs.4500-125-7000.

10. The claim of the applicant in the present OA is the wrong fixation of her pay w.e.f. 5.06.1997.

11. The Hon'ble Apex Court in **M. R. Gupta Vs Union of India & Others**, (1995) 5 SCC 628, held as under:

"2. The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished....."

12. Further, in **State of Madhya Pradesh and Others v. Yogendra Shrivastava**, (2010) 10 SCC 538, the Hon'ble Apex Court held:

"18. Where the issue relates to payment or fixation of salary or any allowance, the challenge is not barred by limitation or the doctrine of laches, as the denial of benefit occurs every month when the salary is paid, thereby giving rise to a fresh cause of action, based on continuing wrong. Though the lesser payment may be a consequence of the error that was committed at the time of appointment, the claim for a higher allowance in accordance with the Rules (prospectively from the date of application) cannot be rejected merely because it arises from a wrong fixation made several years prior to the claim for correct

payment. But in respect of grant of consequential relief of recovery of arrears for the past period, the principle relating to recurring and successive wrongs would apply. Therefore the consequential relief of payment of arrears will have to be restricted to a period of three years prior to the date of the original application. [See: **M.R. Gupta vs. Union of India** - 1995 (5) SCC 628, and **Union of India vs. Tarsem Singh** 2008 (8) SCC 648]"

Hence, in view of the aforesaid settled position of law and since the cause of action is continuous and recurring, the contention of the respondents, with regard to limitation, is unacceptable and untenable.

13. It is true that the Annexure A5 appointment order dated 05.06.1997 of the applicant does not mention that she was granted 16 advance increments in the pre revised pay scale of Rs.1200-30-1560-40-2040, as claimed by her. But it is obvious and clear that when the initial pay of the said scale was Rs.1200, why the respondents have fixed her pay at Rs.1680 as on 05.06.1997. The rate of increment in the said scale is Rs.30 and adding 16 advance increments to Rs.1200, comes to Rs.1680/-. Therefore, it is established that the applicant was granted 16 advance increments at the time of her appointment. Even the respondents have also failed to explain on what basis the pay of the applicant was fixed at Rs.1680 in the pre-revised scale of Rs.1200-30-1560-40-2040 as on 5.06.1997, if no advance increments are granted to her. Moreover, it is not their case that the applicant's pay was fixed wrongly at Rs.1680/- as on 05.06.1997.

14. Once it is established that the applicant was appointed directly to the post of Senior Clerk on 05.06.1997, i.e., subsequent to 01.01.1996, the date on which the 5th CPC has come into effect, by granting 16 advance increments, the respondents ought to have revised her pay by granting 16 advance increments in the revised pay scale of Rs.4500-125-7000, i.e., may be at Rs.6500/-, w.e.f. 05.06.1997 with all consequential benefits.

15. The contention of the respondents that the pay of the applicant was revised as per the fitment table received from 5th CPC, by considering her last pay drawn, i.e., at Rs.1680 in the pay scale of Rs.1200-30-1560-40-2040 (pre-revised), is untenable and unsustainable as the appointment of the applicant itself took place after 01.01.1996, i.e., after the 5th CPC was given effect to. The fitment tables are applicable only to those employees who were in service as on 01.01.1996 and are entitled for revision of their pay scales as per the 5th CPC recommendations.

16. In view of the lack of complete details with regard to Seema Yadav in the pleadings of both sides, it is not possible to give any specific finding whether her case is identical to the case of the applicant or not.

17. In the circumstances and for the reasons mentioned above, the OA is allowed and the impugned Annexure A1 dated 19.12.2013 is set aside and the respondents are directed to refix the pay of the applicant, after adding 16 advance increments as was originally

granted to her, in the revised pay scale of Rs.4500-125-7000 w.e.f. 05.06.1997 with consequential revisions and benefits. However, the applicant is entitled for arrears w.e.f. 19.07.2011, i.e., the date on which she preferred the first representation, as was mentioned in her earlier OA No.2673/2012. The aforesaid exercise shall be completed within three months from the date of receipt of a copy of this order. No costs.

(P. K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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