

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A No.114 of 2012

Present : Hon'ble Mr. Gokul Chandra Pati, Member(A)
Hon'ble Mr. Gokul Chandra Pati, Member(A)

V.S.N. Murty aged about 62 years, retired as Area Manager, E.Co. Railway at present residing at Padamavati Nagar, Road No.6, Plot No.220, Dharmapuri Road, Vizianagaram, PIN 535002..

.....Applicant.

VERSUS

1. Union of India represented through General Manager, E.Co. Railway, Rail Vihar, Mancheswar, Bhubaneswar, Dist. Khurda, PIN. 751 017.
2. Financial Advisor & Chief Accounts Officer, E.Co. Railway, Rail Vihar, Mancheswar, Bhubaneswar, Dist. Khurda, PIN. 751 017.
3. Chief Personnel Officer, E.Co. Railway, Rail Vihar, Mancheswar, Bhubaneswar, Dist. Khurda, PIN. 751 017.
4. Divisional Railway Manager, E.Co. Railway, Khurda Road, P.O. Jatni, Dist. Khurda, PIN 752 050.
5. Sr. Divisional Personnel Officer, E.Co. Railway, Waltair Division, Dondaparthy, Visakhapatnam, PIN 7530 004.

.....Respondents.

For the applicant : Mr. D.K. Mohanty, counsel

For the respondents : Mr. S.K. Ojha, counsel

Heard & reserved on: 04.02.2019 Order on : 19.2.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicant in the O.A. has prayed for the following relief) under Section 19 of the Administrative Tribunal's Act, 1985:-

- "(i) The Hon'ble Tribunal may kindly consider directing the respondents to re-fix his basic pay as on 26.11.1986 and carry forward the same during subsequent stages till retirement and pay the arrears of salary, difference of DCRG, Commuted value of Pension, Leave salary and other dues as due and permissible within a time frame.
- (ii) The Hon'ble Tribunal may kindly consider directing the respondents to pay interest @ 12% against the arrears from the date the amount became due and till the date of actual payment.
- (iii) To grant any other relief including cost as deemed fit by the Hon'ble Tribunal."

2. The facts in brief as per the O.A. are that the applicant, while working as Assistant Station Master was promoted and posted as Junior Divisional Traffic Inspector (in short Jr. DTI) in the higher scale on ad-hoc basis against the vacancy vide order dated 26.11.1986 (Annexure-A/1). Subsequently the

applicant was empanelled for regular promotion to the post of Jr. DTI and he was posted on regular basis as Jr. DTI on 26.09.88 vide order dated 27.09.88. (Annexure-A/3).

3. The case of the applicant is that since his regular promotion was preceded by ad-hoc appointment without any break, and he had exercised the option for fixation of pay within the specified time, he is entitled for the benefit of the pay scale and fixation for the post of Jr. DTI w.e.f. the date he was holding the post on ad-hoc basis i.e. w.e.f. 26.11.1986 instead of 26.9.1988, in accordance with the Master Circular No.56 of the Railway Board.

4. The counter has been filed by the Respondents opposing the O.A. mainly on the following grounds:-

(i) The post of Asst. Station Master (in short ASM) and Jr. Divisional Traffic Inspector (Jr. DTI.) had been merged to one pay scale i.e., Rs.1,400-2,300/- after implementation of 4th Pay Commission recommendation w.e.f. 01.01.1986, as per the details furnished at Annexure-R/1 to the counter. The applicant was drawing pay of Rs.515/- as on 31.12.85 and his pay was fixed as Rs.1560/- w.e.f. 1.1.1986. Since the scale of A.S.M and Jr. DTI in 4th Pay Commission are identical at Rs.1400-2300, no fixation was required on 26.11.1986 when the applicant was promoted from ASM to Jr. DTI on ad-hoc basis.

(ii) The Railway Board Circular R.B.E. No.119/99 dated 24.05.99 has been referred to (Annexure-A/2) in which the cases where the promotion was made to the same pay scale, the fixation of pay was allowed for 11 categories of posts as stated at Annexure-R/2 and except those 11 categories, no other category of posts will have the benefit of pay fixation while getting promotion on the same pay scale.

5. It is further states in the Counter that based on the implementation of the 6th Central Pay Commission the pay of the applicant as on 01.01.86 was modified from Rs.1,560/- to Rs.1,600/- as per the direction of the Tribunal in O.A. No.35/88 and the applicant was also allowed monetary benefit of Rs.1,680 when he was promoted as Station Master w.e.f. 16.12.87 in terms of order dated 04.07.92. The applicant retired from railway service w.e.f. 30.11.2009 and all the retiral dues of the applicant have been settled after which there is no other dues payable to the applicant. It is also stated that the present O.A. has been filed belatedly and it is grossly barred by limitation since the applicant has raised the claim from 1986 after a gap of 26 years.

6. The O.A. was heard on 04.02.2019. In addition to reiterating the contentions in the O.A., the applicant's counsel also submitted the copy of the following judgments in support of the applicant's case :-

i. S.K. Dutta Vrs. Chief Secretary, GNCTD and another, 9/2008, Swamys NewS 74. O.A. No.853 of 2007, CAT, (Principal Bench)

- ii. The State of Punjab &Anr. Vrs. Dharam Pal, 2017 (II) ILR-CUT-728 (S.C.)
- iii. B.L Gupta and Another Vrs. M.C.D. , (1998) 9 Supreme Court Cases 223
- iv Union of India &Ors. Vrs. Tarsem Singh, (2008) 2 SCC (L & S) 765.

7. Learned counsel for the respondents submitted that as per the Railway Board circular R.B.E. No. 119/99 dated 24.5.1999 (Annexure-R/2 of the Counter), the applicant was not entitled for any pay fixation w.e.f. 26.11.1986 and he has been allowed the benefits as per the rules applicable. He also raised the issue of delay in filing this O.A.

8. In this O.A., the questions to be answered are: (i) whether the O.A. is barred by limitation as averred by the respondents; and (ii) Does the claim of the applicant has any merit as per the Master Circular No. 56 of the Railway Board.

9. Regarding delay, learned counsel for the applicant has cited the judgment of Hon'ble Apex Court in the case of Tarsem Singh (supra), in which it was decided on the issue of limitation, as under:-

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring-successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

10. In the case of M.R. Gupta vs. Union of India, reported in (1995) 5 SCC 628, Hon'ble Apex Court, while deciding that the disputes regarding pay fixation is a continuing wrong, for which the limitation will not apply, except for the recovery of arrear. It was held as under:-

"5. Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed

pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action."

11. Applying the ratio of the above judgments to the present case, it is clear that the dispute raised by the applicant related to his pay fixation w.e.f. 26.11.1986 in pursuance to the order dated 26.11.1986 ((A/1), which will have impact on his subsequent pay, for which, it will be treated as a continuing cause of action. Further, his demand, if accepted, will not affect any third party rights. Hence, the relief sought for is a continuing wrong, for which no limitation will apply and the O.A. will not be barred by limitation, except for the claim of arrear differential pay, if his claim is allowed. The question at para 8(i) is answered accordingly in favour of the applicant.

12. Coming the next question at para 8(ii), the applicant relies upon the Master Circular No. 56 to justify his claim for pay fixation at the higher pay scale w.e.f. 26.11.1986. The paragraph 11.2 of the Master Circular No. 56 of the Railway Board states as under:-

"11.2 (i) The Govt. servant promoted to a higher post, on regular basis, gets an option to be exercised for fixation of pay in the higher post as under

- a. Either his initial pay may be fixed in the higher post on the basis of clause (a) (I) of FR 22 (I) straightaway from the date of promotion without any further review on accrual of increment in the pay scale of the lower post ; or
- b. his pay on promotion may be fixed at the stage of time scale of the new post above the pay in the lower post from which he is promoted, which may be fixed in accordance with clause (a) (I)of FR 22 (I) on the date of accrual of next increment in the timescale of the pay of the lower post.

11.2 (2) The option should be exercised by the Govt. Servant within one month from the date of promotion. This option is not available in the case of appointment on deputation to an ex-cadre post or to a post held on ad-hoc basis, However, In cases where an ad-hoc promotion is followed by regular appointment without break, the option is admissible as from the date of initial promotion, which should be exercised within one month from the date of such regular appointment....."

From above provisions, an employee on regular promotion is allowed to exercise an option for pay fixation under FR 22(I) and not for ad-hoc promotion. But when the ad-hoc promotion is followed by the regular promotion without any break, he gets an option for pay fixation from the date of initial date of appointment on ad-hoc promotion.

13. The respondents have opposed the claim on the ground that with effect from 1.1.1986 after 4th Pay Commission report, the pay scale of the ASM and Jr. DTI merged to a single pay scale i.e. Es. 1400-2300/- and the applicant's pay was fixed at Rs. 1560/- w.e.f. 1.1.1986. Hence, it was argued that as on 26.11.1986, the pay scale of both the posts i.e. ASM and Jr. DTI were the same, for which. No fixation of pay will be required. In other word, the posting of the applicant as Jr. DTI on movement from the post of ASM will not be considered as a promotion after 1.1.1986 after implementation of the 4th Pay Commission report. It would be considered as a lateral transfer. It is seen that this contention of the respondents is corroborated by the order dated 27.9.1988 (Annexure-A/3) of the respondents. This order is termed as promotion/ regularization order and it is not strictly a promotion order. It is further stated in the Counter in para 2(I) that for movement from one post to another post with same pay scale, 11 categories of posts have been specified in the Railway Board circular R.B.E. No. 119/99 dated 24.5.1999 (Annexure-R/2 to the Counter) and since the movement from ASM to Jr. DTI is not specified in the circular dated 24.5.1999, the applicant will not be entitled for fixation of pay on being posted as Jr. DTI.

14. It is further stated in the Counter in para 2(L) that after 6th Pay Commission report w.e.f. 1.1.2006, the applicant's pay has been fixed at Rs. 1600/- w.e.f. 1.1.1986 in place of Rs. 1560/- fixed earlier in pursuance to the order of the Tribunal in another case by which, the applicant got promotion as Station Master w.e.f. 1.8.1983 to the pay scale of Rs. 455-700/- due to restructuring of the cadre vide order dated 4.3.1992, which has not been disputed by the applicant. Hence, as on 26.11.1986, when the applicant was posted on ad-hoc promotion to the post of Jr. DTI in pay scale of Rs. 455-700/- it cannot be treated as an additional promotion, since the applicant has already been promoted to that pay scale w.e.f. 1.8.1983 earlier.

15. There is nothing on record furnished by the applicant or any rule/circular of the Railway Board cited by the applicant to prove that the contentions of the respondents as stated in the Counter and as discussed in para 13 and 14 above, are incorrect. Hence, we are not convinced by the reasons furnished by the applicant in support of his claim in the OA.

16. Learned counsel for the applicant has cited the judgment of Hon'ble Apex Court in the case of Dharam Pal (supra). In that case, there was no doubt on the fact that the employee in that case, who was holding the post of Senior Assistant, had been promoted on officiating basis to a post (Superintendent) which was carrying a higher pay scale and it was held that the employee would be entitled for the benefit of the pay scale of the higher post even in case of an

officiating promotion. In the present OA, as discussed earlier, the applicant was promoted on ad-hoc basis to a post carrying the same pay scale, for which the benefit of pay fixation will not be available as per the circular of the Railway Board dated 24.5.1999 (Annexure-R/2), which has not been challenged by the applicant. Hence, the case of Dharam Pal (supra) is factually distinguishable.

17. In the case of B.L. Gupta (supra), cited by the applicant's counsel, the dispute was whether the amended rule will be applicable for filling up a post for which the vacancy had arisen prior to the date of amendment. Regular filling up of any promotional post is not the dispute in the present OA. Hence, the judgment in the case of B.L. Gupta will be inapplicable for the present OA.

18. For the reasons mentioned in the preceding paragraphs, the OA being devoid of merit, is dismissed with no order as to cost.

(Swarup Kumar Mishra)
Member(Judl.)

(Gokul Chandra Pati)
Member(Admn.)

I.Nath

