

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



No. OA 747/2012

Present: Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

BHABATOSH CHOUDHURI
S/o Late Suresh Chandra Chaudhuri,
Aged about 62 years,
Worked as Dy. CEE/EMU/ERLY/HQ
R/o 16 Rammohan Road,
PO - Nabagram, Dist. - Hooghly,
Pin - 712246.

...APPLICANT

VERSUS

1. Union of India,
Through the General Manager,
Eastern Railway,
Fairlie Place,
Kolkata - 700001.
2. The Chief Personnel Officer,
Eastern Railway.,
Fairlie Place,
Kolkata - 700001.

... RESPONDENTS.

For the applicant : Mr. A. Chakraborty, counsel

For the respondents: Mr. B. L. Gangopadhyay, counsel

Heard on : 20.9.2018

Order on : 14th November, 2018

O R D E R

Per Ms. Manjula Das, Judicial Member

Being aggrieved by the order dated 21.11.2011, the applicant has filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief :

- a) An order do issue directing the respondents to fix the pay of the applicant as per by applying FR 22 C on the date of accrual of increment in the lower scale of pay i.e. on 1.4.2005 and to grant all the consequential benefits;
- b) Office order dated 21.11.2011 issued by the Chief Personnel Officer (Admn.) & Public Information Officer, Eastern Railway, cannot be tenable in the eye of law and as such the same may be quashed.

2. The brief facts of the case as narrated by the applicant is that the applicant joined the Railway service on 29.1.1966. He was promoted to the

Senior Scale (ad-hoc) w.e.f. 14.1.2005 and appointed to officiate in ad hoc senior scale and his pay was regularised as per extant rules. The applicant exercised his option for fixation of pay on promotion from the date of increment in the lower post. In the representation the applicant has stated that on being appointed to Junior Scale w.e.f. 8.4.2008, he is entitled to get fixation from 8.4.2008 in the Junior Scale and fixation of pay to the new post in Senior Scale w.e.f. date of increment in the lower post i.e. from April 2005 instead of January 2005.

3. Heard Mr.A.Chakraborty, Id. Counsel appearing for the applicant and Mr.B.L.Gangopadhyay, Id. Counsel appearing for the respondents.

4. The applicant in the instant case filed a Miscellaneous Application No. MA 95/2013 for condonation of delay where this Tribunal vide order dated 23.2.2016 disposed of the MA by condoning the delay. Thereafter the OA was registered and proceeded for adjudication. Reply was also filed by the respondents. When the matter was heard, liberty was however, granted to the parties to file their written notes of arguments within 10 days. However, after waiting, no such written notes of arguments have been filed. Accordingly the matter was proceeded as per the arguments advanced while hearing of the matter and the materials placed before us in the pleadings.

5. Mr.Chakraborty, Id. Counsel appearing for the applicant submitted that the applicant exercised his option for fixation of pay on promotion from the date of increment in the lower post. IN the representation the applicant stated that on being appointed to Junior Scale of Indian Railway Service of Electrical Engineer w.e.f. 8.4.2008 he is entitled to get fixation from 8.4.2008 in the Junior Scale and fixation of pay in the new post in Senior Scale w.e.f. the date of increment in the lower post i.e.. from April 2005 instead of January 2005. He further submitted that saving clause of Rule 1313 [FR 22(1)(a)(i)]- R1i (6th Edition 1987/2nd re-printed edition, 2005) laid down that Save in cases of appointment on deputation to an ex-cadre post, or to a post on ad-hoc basis, the railway servant shall have the option, to be exercised within one month



from the date of promotion or appointment as the case may be, to have the pay fixed under this rule from the date of such promotion or appointment or to have the pay fixed initially at the stage of the time scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be re-fixed in accordance with this rule on the date of accrual of next increment in the scale of the pay of the lower grade or post. In cases where an ad-hoc promotion is followed by regular appointment without break, the option is admissible as from the date of initial appointment/promotion, to be exercised within one month from the date of such regular appointment.

According to the Id. Counsel despite having such clear instruction, the appeal filed by the applicant was rejected by the respondent authorities citing example which are not at all relevant in the instant case.

It was submitted by Mr.Chakraborty that the applicant was promoted to ad hoc Senior scale on 14.1.2005. The comparison of pay as on dated 1.1.2006 given in par 4.7 of the OA reads as hereunder :

Existing Status	Desired status
14.1.05 - 11625	1.4.05 - 11950
1.1.06 - 11950/ date of increment	1.1.06 - 11950/ Date of increment
January	April

Mr.Chakraborty further submitted that para 12 of Master Circular NO. 56 provides that fixation of pay of Group 'B' officer promoted directly to Senior Scale of Group 'A' on ad hoc basis may be fixed under FR 22(c). Accordingly Id. Counsel prays to refix the pay of the applicant as per FR 22(c) on the date of accrual of increment in the lower scale of pay i.e. 14.1.2005.

6. On the other hand Mr.B.L.Gangopadhyay, Id. Counsel appearing on behalf of the respondents by filing the written statement submitted that the applicant was initially appointed in a Group 'C' post in Indian Railway Service.



He was subsequently promoted to Group 'B' post. Thereafter he was promoted to Senior Scale

Accordingly in the instant case also the applicant in his turn was admitted to Group 'A' service w.e.f. 8.4.2008 i.e. much after his promotion to Senior Scale on ad hoc basis w.e.f. 14.1.2005. The applicant in the instant OA has sought his fixation of pay in Senior Scale from the date of increment in the lower post from April 2005 instead of January 2005. This is not possible as the applicant was not in the lower time scale of post on 1.4.2005 or on 8.4.2008.

It was further submitted by ld. Counsel that the applicant was promoted to Group 'B' to officiate in Senior Scale post on ad hoc basis w.e.f. 14.1.2005 and was drawing Senior Scale of pay as was admissible to him as per extant rules. On ad hoc promotion there is no rule for exercising option for fixation of pay from the date of next increment in the lower post. The applicant was inducted in Group 'A' service in Junior Scale w.e.f. 8.4.2008 after he was promoted to Senior Scale on ad hoc basis. Induction to Group 'A' service in Junior Scale is not a promotion since the applicant was already holding a higher post with higher responsibility long before his admission in Group 'A' service. As such question of his exercising option for fixation of his pay in the lower grade from the date of accrual of next increment from the back date when he was holding a higher grade does not arise and no such rule exists in the Railways.

It is further submitted by the ld. Counsel that the appeal of the applicant was rejected in a justified manner based on relevant rules and as such the present application deserves to be dismissed.

6. Having heard the ld. Counsel for the parties and perusal of the pleadings and materials placed before us and the rules and regulations, we have noted that the applicant who was initially appointed as Group 'C' post in Indian Railway Service was promoted subsequently to Group 'B' post and thereafter promoted to Senior Scale purely on ad hoc basis vide order dated 14.1.2005 and the ad hoc period continued till the officer concerned is inducted to Group 'A' service. The admission to Group 'A' service for the promote officers are done



on All India Zonal Railway Seniority basis in consultation with the UPSC. Accordingly the applicant in his turn was inducted to Group 'A' service w.e.f. 8.4.2008. The grievances accordingly made by the applicant before the authority vide his appeal, was rejected by the respondent authorities and the same is under challenge before this Tribunal.

7. The basic grievance of the applicant exists for fixation of pay from 8.4.2008 in the Junior Scale and fixation of pay to the new post (Senior Scale) w.e.f. the date of increment in the lower post i.e. April 2005 instead of January 2005.

8. For coming to a logical conclusion for a decision for fixation of pay in the case of the applicant we are in hand with Rule 1313 [FR 22(1)(a)(i)] of Indian Railway Establishment Code Volume II, 2005 which reads as hereunder :

"The initial pay of a railway servant who is appointed to a post on a time scale of pay is regulated as follows :

(a)(1) Where a railway servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty five only, whichever is more.

Save in cases of appointment on deputation to an ex cadre post, or to a post on ad hoc basis, the railway servant shall have the option, to be exercised within one month from the date of promotion or appointment as the case may be, to have the pay fixed under this rule from the date of such promotion or appointment or to have the pay fixed initially at the stage of the time scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be re-fixed in accordance with this rule on the date of accrual of next increment in the scale of the pay of the lower grade or post. In cases where an ad hoc promotion is followed by regular appointment without break, the option is admissible as from the date of initial appointment/promotion, to be exercised within one month from the date of such regular appointment.

(b) Secondly we are in hand with the clarification of the Railway Board's letter No. PC IV/86/lmp/36 dated 21.12.1999 (RBE 313/1999) addressed to General Managers, All Indian Railways and others, which reads as hereunder :

"Queries are being received from a few railway administration regarding admissibility of options for fixation of pay from the date next increment when a Group 'B' officer is promoted directly to Group 'A' Sr.



Scale on ad hoc basis and at the time of re-fixation on induction in Group 'A' (JTS).

2. In this connection attention is drawn to the clarification given against point No.4 of Board's letter No. E(P&A)II-81/PP_4 dated 19.3.1985 wherein it was clarified that option under FR-22C is not permissible in respect of ad hoc promotions further, in the revised rule 1313(FR-22(1)(a)(i) R.II (erstwhile FR-22C) also, it is specifically laid down that above option is not permissible in ad hoc promotions.

3. The above option is also not envisaged in the specific method of pay re-fixation allowed to Group B Officers on induction in Group 'A' JTS w.e.f. 1.1.86, vide Board's letter of even NO. Dated 10.9.92 and 22.6.93. The above position was already clarified to CPOs and FA&CAOs of All Indian Railways and Production Units vide this office endorsement of even number dated 15.2.96.

The pay of the concerned officers may please be regulated/re-fixed accordingly, if already not done.

Index NO. 1057 :- Option for fixation of pay under FR 22C is not permissible in respect of ad hoc promotion of Group 'B' officers."

(c) Thirdly, we again come to the clarification dated 29.1.2003 issued by Members Staff of the Railway Board on the subject of fixation of pay which reads as hereunder :

"MEMBER STAFF, RAILWAY BOARD
&
EX OFFICIO SECRETARY,
GOVERNMENT OF INDIA,
MINISTRY OF RAILWAYS
NEW DELHI - 110001.
29th January, 2003.

DO No. PC-IV/86/lmp/36

My dear Sen Gupta,

Sub : Fixation of pay of group 'B' officers on promotion to Senior Scale on ad hoc basis and on induction in Junior Scale Gr.'A'

As you are aware there is a practice on the Railways to promote Group 'B' officers on ad hoc basis to Gr. 'A' (Senior Scale), even before they are substantively appointed in Group 'A' (Junior Scale). On such promotion, their pay is fixed under Rule 1313 FR-22(1)(a)(i) R-II (erstwhile FR 22-C). When such Gr. 'B' officers are inducted into Gr. 'A' (Junior Scale), while officiating in Senior Scale on ad hoc basis, their pay is re-fixed from the date of appointment to Group 'A' Junior Scale and again from Junior Scale to Senior Scale under FR 22C. It was also clarified vide Board's letter of even number dated 21.12.1999, that benefit of fixation from the date of next increment is not admissible in ad hoc promotion to Group A (Senior Scale) as well as on re-fixation on induction in Group A (Junior Scale). The Railways were also advised to regulate/re-fix the pay of the concerned officers accordingly, if not already done.

It had come to the notice of the Board that on some of the Railways, refixation carried out pursuant to issue of the above letter dated 21.12.99 had resulted in the recoveries of the over payments from working as well as retired officers. Board had desired vide letter of even number dated 21.11.2001 (copy enclosed) that the action of refixation of both pay as well as pension, wherever applicable, should be completed and quantum of overpayments involved worked out in a tight time frame. The Railways were requested to complete the exercise as above positively within a period of one month and furnish complete details about the amount of overpayments/recoveries involved (for the period 1.1.86 to 21.12.99) without putting on hold the ongoing recoveries. It is observed



that position in respect of our Railway has not been received in this office, till now.

I request you to please look into the matter personally and ensure that exercise as above is completed and results advised to the Board positively by 28.2.2003.

With best wishes.

Yours sincerely,
Sd/-
(B.S.Sudhir Chandra)."

The applicant failed to contradict the rule provisions as narrated above either by way of rejoinder or by making any argument.

9. In the above circumstances, by taking the entire conspectus of the case, more particularly the rules and provisions and clarifications ad discussed in the foregoing paragraphs, we do not find any reason to interfere with the decision taken by the respondent authorities, particularly the respondent No.2, the Chief Personnel Officer. Hence we do not find any merit in the present case and the same is dismissed.

10. No order as to costs.

(DR. NANDITA CHATTERJEE)
ADMINISTRATIVE MEMBER

(MANJULA DAS)
JUDICIAL MEMBER

I.Nath