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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/01492/2015

Date of order: 11.03.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Shri Murari Chandra Sharma,
Son of Late Promode Chandra Sharma,
Aged about 58 years,
Residing at 8/1/D, Kalitala 1st Late, Rishra,
Dist. - Hooghly, Pin - 712 248.

..... Applicant.

-Versus-

1. Union of India,
Service through
The General Manager,
Eastern Railway,
17, Netaji Subhas Road,
Kolkata - 700 001.
2. The Chief Personnel Officer,
Eastern Railway,
17, Netaji Subhas Road,
Kolkata - 700 001.
3. The F.A. & C.A.O.,
Eastern Railway,
17, Netaji Subhas Road,
Kolkata - 700 001.
4. The Divisional Railway Manager,
Eastern Railway,
Sealdah Division,
P.O. - Sealdah,
Kolkata - 700 014.
5. The Divisional Personnel Officer,
Eastern Railway,
Sealdah Division,
P.O. - Sealdah,
Kolkata - 700 014.
6. The Senior Divisional Personnel Officer,
Eastern Railway,
Sealdah Division,
P.O. - Sealdah,
Kolkata - 700 014.

 Respondents.

For the Applicant : In person
For the Respondents : Ms. S.D. Chandra, Counsel

ORDER (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

"(a) Direction upon the respondents to set aside and/or quash the impugned order dated 20.7.2015 as set out in Annexure A-9 to this application.

(b) Direction upon the respondents to grant the applicant pay protection of Rs. 1410.00 on 15.7.1997 and pay fixed at Rs. 1410.00 or fixation in the scale of Rs. 950-1500/- and grant incremental benefit time to time.

(c) Direct the respondents to pay the applicant arrears payment with effect from 15.7.1997 along with interest @ 12% per annum from the date of accrual till the date of actual payment.

(d) "Any order and/or further order or orders as the Hon'ble Tribunal may deem fit and proper."

2. Heard the applicant in person and Ed. Counsel for the respondents.
Examined pleadings and documents on record.

3. The case of the applicant, as submitted in person, is that he had joined as a Peon with the respondent authorities on 15.9.1977 and, that, he was released on 11.8.1997 to report to Principal Zonal Training School, Bhuli, Dhanbad. His release order categorically mentioned that his basic pay was Rs. 1410/- in the scale of Rs. 1320-2040/- (RP) and the LPC issued by the respondent authorities also noted that his basic pay stood at Rs. 1410/-.

The Railway authorities, however, while appointing him as Ticket Collector in the scale of Rs. 950-1500/- (RP), fixed his pay at Rs. 950/- instead of Rs. 1410/- and, although he represented from 1997 onwards praying for pay protection, no actions were taken towards the same. The applicant further goes on to highlight in his rejoinder that his pay should have been fixed at Rs. 1410/- in place of Rs. 950/- in terms of FR 22(3) and fixed accordingly in the subsequent Pay Commissions.

4. The case of the respondents are primarily that the applicant was promoted in a different grade in the cadre of Ticket Collector and, as he had opted for the post of Ticket Collector Gr. I in the scale of Rs. 950-1500/-, the last pay in earlier cadre of Fitter Gr. I, namely, Rs. 1410/- cannot be acceded to because the scale of the post of Ticket Collector Gr. I was lower than the scale and pay that he was holding as Fitter Gr. I. In justification of their averments, the respondents have cited CPO Eastern Railway Serial Circular No. 232/98 dated 8.12.1998 in their support.

5. The primary issue before us is to adjudicate as to whether the applicant was entitled to pay protection when he had moved from his earlier scale of Rs. 1320-2040/- (RP) (as Fitter Gr. I) to Rs. 950-1500/- (RP) (as Ticket Collector Gr. I).

6. At the outset, we refer to the communication dated 20.7.2015 (Annexure A-9 to the O.A.) in the background of General Manager's Open Adalat which had taken up the matter of the applicant. The said communication of the Divisional Railway Manager, Howrah to CPO, Eastern Railway, Kolkata is quoted verbatim as below:-

No. EAC(I)/Sr. TE/Misc.

HWH, dt. 20th July '15

Chief Personnel Officer,
Eastern Railway
Kolkata

(Attn. to SPO (W&R)/HQ/E.Rly)

Sub:- General Manager's Open Adalat.

Ref:- Your letter No. E.804/W/Griev/GM's Open Adalat dt. 09.7.15

In response to your letter under reference it is intimated that Sri Murari Ch. Sharma, Sr. TE/HWH had represented more than once previously on the issue of wrongful fixation of his pay and he had been replied by this end also more than once.

In this context, it is mentioned that the matter had been also referred to CPO/E.Rly on 14.11.2000 and in response under letter No. E.740/2/S/T&C-L(R) dt. 30.3.01 CPO/E.Rly had opined the following:

"Option was invited from the staff working in sc. Rs. 950-1500/- (RP) and below to fill up the vacancies of TC through a process of GDCE, but for the convenience of the administration, the selection was conducted by RRB/Calcutta. Sri M.C. Sharma was selected on the said condition.

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Although during the process of selection and processing for appointment to post of TC in sc. Rs. 950-1500/- (RP), he was promoted to higher grade, the benefit for the fixation of his pay of his higher grade cannot be considered as there is no provision for protection of pay in such cases."

However, his pay was fixed as per provisions laid down in CPO/E.R's sl. Circular No. 232/98.

Hence, no wrongful fixation of his pay has been made by this end.

Sd/-

(S. Chakraborty/DPO)
For Divl. Railway Manager, Howrah"

As the said communication refers to CPO/ER/Srl. Circular No. 232/98, the said circular, which was furnished subsequently by the respondents, is examined in detail:-

"Serial No. 232/98

No. E/PC-V/policy/97/Pt.II

Dt. 08.12.1998

Sub: Pay scales of Artisan Staff in Railways.

A copy of Railway Board's letter No. PC-V/97/9/R-17 dated 24.11.1998 (RBE No. 269/98, S.No. PC-V/141) is forwarded for information, guidance and necessary action. Railway Board's earlier letter dated 16.10.1997 as mentioned therein was circulated vide CPO's Sl'No. 111/97.

Copy of Railway Board's letter No. PC-V/97/8/R-17 dated 24.11.1998 (RBE No. 269/98, S.No. PC-V/141) addressed to GMs, All Indian Railway and others.

Sub: Pay scales of Artisan Staff in Railways.

In pursuance of the recommendations of the Vth Central Pay Commission, the Artisan Staff in the Railways were granted normal replacement scales in terms of Railway Board's letter No. PC-V/97/II/RSRP/I dated 16.10.1997.

2. The matter of improvement in the pay scales of Artisan Staff was taken up by the Staff Side during their discussions with Group of Ministers in September, 1997, in the wake of the Strike Notice given by the Federations. Railways will be taken up by the Ministry of Railways with the Cabinet in accordance with the Transaction of Business Rules, 1961. Accordingly, the matter has been examined in consultation with the concerned Ministries and it has been decided with the approval of the president to allot the following pay scales to the Artisan Staff working in the Railways:-

Category	Existing Pay Scales (Rs.)	Revised Pay Scales (Rs.)
Skilled Artisan Grade-III	3050-4590	3050-4590
Skilled Artisan Grade - II	4000-6000	4000-6000
Skilled Artisan Grade - I	4000-6000	4500-7500
Mistries	4500-7000	4500-7000* plus Rs. 100/- p.m.
Master Craftsmen	4500-7000	5000-8000

3. The above pay scales will take effect from 1.1.1996.

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4. Amendment in the procedure laid down for recruitment/promotion in these categories will be communicated separately as necessary."

The following is inferred from the decision of the respondent authorities:-

- (a) That, the applicant was promoted to a higher grade.
- (b) That, the benefit of his pay fixation in higher grade could not be considered as there was no provision for pay protection in such case.
- (c) His pay was fixed as per provisions as per CPO/ER/Srl. Circular No. 232/98.

The above inferences are contradictory to each other. While in their pleadings the respondents admit that the scale of Rs. 950-1500/- (RP) as Ticket Collector (Gr. I) is actually lower than his earlier scale of Rs. 1320-2040/- (RP), in their communication of 20.7.2015, they have referred to his promotion to a higher grade.

The CPO/ER/Srl Circular No. 232/98 refers to normal replacement scales consequent to Fifth CPC, and it is not understood how it is applicable to the applicant's case, who was actually selected for a higher post of Ticket Collector in a different scale.

Accordingly, the decision of the respondent authorities does not convince us of the legality or due application of mind while concluding on the prayer of the applicant.

Referring to judicial decisions and pronouncements in this regard, we draw guidance from **State Bank of India v. K.P. Subbaiah (2003) 11 SCC 646** and **Vattekktee Madhavan Nair v. Shipping Corporation of India Ltd., Bombay, 2005 (4) SLR 66** which states that the basic and fundamental principle which permeates all fitments or fixations of pay in a revised scale is pay protection, i.e. the fitment must be such that the total emoluments are not reduced because that would be unfair and unreasonable violating Article 14 of the Constitution. In **State Bank of India v. Presiding Officer, (1972) 3 SCC 595** it was clarified that point to point fitment or adjustment means and involves the placing of each employee

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at the stage in the new scale to which he would have risen by reason of the length of service had he entered service in the new scale.

Further, in *Bhanwar Lal v. State of Rajasthan, 1980 (2) SLR 297 (Raj)* the Hon'ble Apex Court laid down that if the fixation is not in accordance with rules and administrative instructions or it is on a misconceived or irrational basis, it would be a illegal fixation and is liable to be quashed.

In our considered view, the decision of the respondent authorities dated 20.7.2015 (Annexure A-9 to the O.A.) is based on misconceived and irrational reasoning and, hence we quash the same.

The respondents are directed to accordingly ensure pay fixation of the applicant, as prayed for, in accordance with law, and grant him consequent benefits thereafter. Interest, as prayed for, would be payable to the applicant, if permissible under the rules, and if the applicant is entitled to the same.

The entire exercise should be completed within a period of 12 weeks from the date of receipt of a copy of this order.

With these directions, the O.A. is disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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