

(2019) 01 DEL CK 0492

In the Delhi High Court

Case No : Civil Writ Petition No. 2307 Of 2003

Harbansh Dayal Mathur

APPELLANT

Vs

Uoi & Ors

RESPONDENT

Date of Decision : 24-01-2019

Acts Referred:

Citation : (2019) 01 DEL CK 0492

Hon'ble Judges : S. Ravindra Bhat, J;Prateek Jalan, J

Bench : Division Bench

Advocate : Meenu Mainee, Ashok Singh

Final Decision : Allowed

Judgement

Prateek Jalan, J

1. The petitioner is aggrieved by an order of the Central Administrative Tribunal [hereinafter, "the Tribunal"] dated 04.09.2002 by which his application [O.A. 250/2002] has been dismissed, as also by the Tribunal's order dated 15.11.2002 by which his application for review [R.A. 273/2002] has been rejected.

2. The petitioner joined the services of the railways as a Clerk on 27.07.1963 in the Mechanical Cadre. He was promoted as an Assistant Superintendent with effect from 01.01.1984 by an order dated 08.02.1985. He claims to have been "transferred" to a field organization of the Railways, namely the Central Organization for Modernization of Workshops ["COFMOW"] as Assistant Superintendent with effect from 21.08.1985 and to have been promoted as a Superintendent in COFMOW on an ad-hoc basis on 18.10.1985. Although he was promoted substantively to the post of Superintendent in his parent cadre with effect from 17.02.1992, he continued in COFMOW until 27.12.2002 and thereafter joined the office of the Divisional Regional Manager ["DRM"], Northern Railway. He returned to his parent cadre on 25.01.2002 and was thereafter promoted as Chief Office Superintendent. His grievance is that, by an order dated 17.07.2002, his pay in the promoted post was reduced from Rs. 9700 to

Rs. 9025, treating his service in COFMOW and the office of the DRM as ex-cadre deputation.

3. Ms. Meenu Mainee, learned counsel for the petitioner submits that the petitioner's service in COFMOW was wrongly disregarded by the railways and he was entitled to the benefit of protection of the pay which he had drawn. Although he has since retired from service on 30.06.2003, she contends that his pension has also been fixed on the basis of the reduced pay. Mr. Ashok Singh, learned counsel for the respondent, on the other hand, submits that the petitioner's entire service from 1985 to 2002 was in ex-cadre posts and he is not entitled to protection of pay in such circumstances.

4. We have considered the submissions of the parties in the light of the admitted documents placed before us, including the orders by which the petitioner's services were deployed in COFMOW, the copy of the petitioner's service book and charts placed on record by both parties regarding the pay drawn by the petitioner at various times.

5. It emerges from these documents that the petitioner's services were placed in COFMOW by the Railways on 12.08.1985. It was stated therein that he was "transferred in the same capacity to COFMOW", and that his lien was retained in his parent cadre. He was thereafter promoted in COFMOW to the post of Superintendent by an order dated 18.10.1985.

This was purely on an ad-hoc basis and the order expressly stated that it would not confer any right for promotion in the parent cadre. The Railways have placed on record [Annexure RA 3 to an affidavit dated 11.08.2017] a chart showing the complete details of the petitioner's salary in various posts. It appears therefrom that the petitioner's substantive promotion in his parent cadre with effect from 17.01.1992 was on an application of the "next below rule" i.e. in view of the fact that his immediate junior in the parent cadre had been promoted. However, he is stated to have been in an "ex- cadre" post until 21.05.2002 when he joined the parent cadre, and was promoted to the post of Chief Office Superintendent. It is at this stage that his pay was reduced from Rs. 9900 to Rs. 9025.

6. Although the respondents contended in their counter affidavit before the Tribunal as well as in this Court that the petitioner's services in COFMOW and thereafter with DRM were on deputation, we find that this position is not borne out by the documents on record. The petitioner has relied upon a circular dated 18.07.1984, issued by COFMOW, which clearly states inter alia as follows:-

"The transfer of staff from other Zonal Railways/Production Units to COFMOW is not on deputation. COFMOW is one of the field organizations of Indian Railways. The question of deputation therefore, does not arise. No deputation allowance/special pay is entitled to staff transferred to COFMOW. Moreover, unlike on deputation (where the period of deputation or tenure is specified), no time limit is prescribed for staff transferred to COFMOW. Accordingly transfer of staff to COFMOW cannot be viewed as transfer of Central Govt. employees on deputation

to other Govt. Deptt., Company or Corporation which are regulated in terms of Railway Board's letter No.F(E) II-70/FS/T dated 17.1.76."

It is also on record that the staff drawn from Zonal Railways in COFMOW enjoy privileges available to Railway employees like retention of railway quarters, railway passes etc. during their period of service in COFMOW. In response to an application under the Right to Information Act, 2005, made by the petitioner during the course of these proceedings, COFMOW has by its communication dated 05.05.2009 expressly stated that the petitioner's posting with it on 12.08.1985 was "not on deputation". It is also the admitted position that the petitioner did not draw any deputation allowance or other benefits which would support the respondents' contentions. Reliance of the respondents upon the judgment of the Supreme Court in *State of Punjab vs. Inder Singh & Ors.* (1997) 8 SCC 372 and *Union of India vs. Bhanwar Lal Mundan* (2013) 12 SCC 433 are therefore of little assistance as those cases concerned the fixation of pay of a deputationist on repatriation to the parent cadre. The orders of the respondent themselves described the case of the present petitioner as one of "transfer" and indeed it has been so considered in the impugned judgment of the Tribunal, against which the respondents are not in appeal.

7. The Tribunal has specifically found that the petitioner was promoted as Superintendent in his parent cadre substantively on 17.02.1992 as per his seniority position in his cadre. There is nothing to suggest that his service in COFMOW or the DRM's office thereafter was either at his request or of his own volition. Even if the petitioner continued to serve in ex-cadre posts thereafter, that fact cannot be held against him in these circumstances.

8. For the above reasons, the Court is of the opinion that the writ petition partly succeeds. Accordingly, the respondents are hereby directed to treat the petitioner as having been in regular service w.e.f. 01.07.1992 [the date on which he was granted substantive promotion on the basis of the "next below rule"]. All the consequential benefits including pay revision, fitment in the regular pay scale at the relevant stages from time to time, re-fixation of pay scale with effect from 2002, on the basis of continuous service in the higher substantive grade from 1992 and consequently, pension fixation and revision, subsequent to Pay Commission's recommendations shall be granted to him. The pay and pension fixation orders and the arrears of pay/pension, shall also be disbursed to him within three months, failing which the respondents shall pay interest thereon @12% per annum.

9. The writ petition is allowed in the above terms. Dasti.