
(2011) 07 GUJ CK 0083

In the Gujarat High Court

Case No : Special Civil Application No. 16296 of 2010

Y.J. Bhatt

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-07-2011

Acts Referred:

Citation : (2011) 07 GUJ CK 0083

Hon'ble Judges : V.M. Sahai, J;G.B. Shah, J

Bench : Division Bench

Advocate : Mitul K. Shelat, for the Appellant; Vasavdatta Bhatt, for the Respondent

Final Decision : Allowed

Judgement

V.M. Sahai, J.—We have heard learned Counsel Mr. M.K. Shelat for the Petitioner and Mrs. Vasavdatta Bhatt for the Respondents.

2. The Petitioner was appointed as Assistant Goods Clerk on 1.4.1975. He was promoted to the post of Senior Assistant Goods Clerk in the pay scale of Rs. 1210-2040. Thereafter, by order dated 28.8.1994, the Petitioner was promoted as Head Goods Clerk in the pay scale of Rs. 1400-2300. The pay scale of the Petitioner was revised on account of 5th Pay Commission and in August 2004, the basic pay scale of the Petitioner was Rs. 6500.

3. The Petitioner was promoted from the post of Head Goods Clerk to Chief Goods Clerk in the pay scale of Rs. 5500-9000 by order dated 18.8.2004 and the Petitioner's pay was fixed at Rs. 6375/- with effect from 1.11.2003.

4. The Petitioner challenged his pay fixation by filing Original Application No. 263 of 2007 before the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad claiming that his pay in the promotional post of Chief Goods Clerk could not be fixed lower than Rs. 6500/- and he was entitled for the next higher grade of pay scale, which is normally granted on promotion. The Central Administrative Tribunal by its judgment and order dated 15.5.2009 dismissed the

claim of the Petitioner. The Tribunal went back in the year 1994, though no material was filed before the Tribunal, it came to the conclusion that the pay scale of the Petitioner has rightly been fixed, which was not the subject matter of dispute before the Tribunal. The only question before the Tribunal was whether the Petitioner was working as Head Goods Clerk on the date of promotion in the pay scale of Rs. 6500/- and he was entitled to higher grade pay scale when he was promoted as Chief Goods Clerk on 18.8.2004.

5. Having heard the learned Counsel for the parties, we are of the considered opinion that the Tribunal committed an error in going back to the year 1994 though no evidence was available before the Tribunal with regard to any discrepancy in the promotion or grant of pay scale. It was not disputed by the Respondents before the Tribunal that the Petitioner was getting pay scale of Rs. 6500/- on the date of promotion as Chief Goods Clerk. The pay scale of Chief Goods Clerk was Rs. 5500-9000 and, therefore, the Petitioner was entitled to be placed in the pay scale which was higher than Rs. 6500/-. It is relevant to extract the relevant para of the Railway Board's letter dated 12.3.1980, as under:

(Rly. Board's letter No. F(E)II/79/FR-1/3 Dated 12/3/1980)

1316 (F.R.22C)-(1) Notwithstanding anything contained in these rules where a railway servant holding a post in substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity 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 pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has occurred.

6. In view of the aforesaid letter of the Railway Board dated 12.3.1980, the petition deserves to be allowed. Order of the Respondents dated 18.8.2004 insofar fixing the pay scale of the Petitioner and judgment and order of the Central Administrative Tribunal dated 15.5.2009 deserves to be set aside and pay scale of the Petitioner is liable to be fixed in higher pay scale than Rs. 6500/- with effect from 18.8.2004.

7. This petition succeeds and is allowed. Order of the Respondents dated 18.8.2004 so far as it relates to the fixing of pay scale of the Petitioner and judgment and order of the Central Administrative Tribunal dated 15.5.2009 passed in Original Application No. 263 of 2007, are set aside. Writ of mandamus is issued directing the Respondents to fix the pay scale of the Petitioner above Rs. 6500/- in the next higher pay scale with effect from 18.8.2004 with all consequential benefits of service. Rule is made absolute accordingly. Parties shall bear their own costs.