

**THE HIGH COURT OF MADHYA PRADESH****Miscellaneous Petition No.5339/2019**

(Union of India and others vs. Suresh Kumar Khurana)

**Jabalpur, Dated 20.11.2019**

Shri N. S. Ruprah, learned counsel for the petitioners.

Shri Akash Choudhary, learned counsel for the respondent on caveat.

With the consent of learned counsel for the parties, the matter is finally heard.

This petition is directed against the order dated 28.08.2008 passed by the Central Administrative Tribunal in Original Application No.768/2011.

The Original Application was directed against the order dated 14.07.2010 passed by Railway Board whereby the claim of the applicant for grant of advance increment for participation in the international event as Volleyball Referee was turned down. The order passed on dated 15.06.2011 in furtherance to order dated 14.07.2010 was also challenged.

The relevant facts briefly are that the applicant was initially appointed in the Central Railway Bombay, against sports quota in the pay-scale of Rs.260-400 by order dated 14.10.1981, being an outstanding Volleyball Player as Ticket Collector, with starting pay of Rs.350 per month. As the policy at the relevant time was to appoint such sports person in the highest of the pay scale. Aggrieved by the

fixation of pay at a rate below the maximum, the applicant preferred Original Application which was decided on 23.04.1999 in the following terms:

“7 – Heard the learned counsel for party and peruse the pleadings according to Railway Board direction dated 21.02.86, unless the applicant had been categorised as ‘youngster’ their pay cannot be fixed below the maximum of the scale. From the recommendations of the President Central Railway Sports Association, it is evident that the applicants cannot be categorised as ‘youngster’ this Tribunal has taken a consistent view in number of cases that outstanding sportsman appointed against sport quota cannot be denied the maximum of the pay scale grade to which they are appointed. Two such cases are O.A.28/93 Gajendra and three others v. Union of India, decided on 19.08.83 and O.A. No.130/93 Stephen Davy v. Union of India decided on 25<sup>th</sup> November, 1993.

8- The contention of the respondents that the General Manager has direction to fix the pay at below the maximum is not tenable in view of the clear order of the Railway Board. The Tribunal also does not agree with the contention that the claim is barred by limitation as initial round pay fixation given right to a continuing cause of grievance.

9- In the conspectus and circumstances of the case, the application deserves to be allowed. Respondents, are, therefore, directed to reconsider the case of the applicant in the light of the above observation within a period of 60 days from the communication of this order and to grant all consequential benefits. The applicants will not, however, will entitle to any arrears of pay for the period 1.4.93, i.e., the date of filing this application.”

In furtherance to said order, the Applicant was fixed at the maximum in grade Rs.260-400, at Rs.400.

That the Railway Board vide RBE No.48/2007[No.E(sports)2007/Policy/3 dated 30.03.2007] revised the instructions for recruitment of sports persons in the Indian Railway

whereof paragraph 9.2 dwelt with incentives to sports persons for excellence at National Level. And 9.3 dwelt with incentives to coaches.

That paragraph 9.3.5 stipulates that-

“9.3.5- This increment shall be in addition to those, if any, granted for the sports achievements as a player.”

That new paragraph 9.3A was inserted vide Railway Board's Instruction No.E(Sports)2007/Policy/4(Classifications) dated 09.07.2008 stipulating-

“9.3A : Incentives to Referees/Umpires: Two advance increments may be granted for each event, subject to total five increments in the entire career, to Referees/Umpires who excel at the International level in the sports events recognised by the National Sports Federations. The Increments so granted would be continued to be drawn at the same rate till retirement. The term ‘excellence’ would mean that the Umpire/Referee has been accepted as a Referee/Umpire by the International Federation governing the particular sports discipline and has performed the duties in International Competitions recognised by the such International Federation. However, no such Incentive will be allowed to those Referees/Umpries, who perform such duties at the National Level.”

Pertinent it is to note that, though 9.3.5 provides that the incentives to coaches (as per 9.3) shall be in addition to those, if any granted for the Sports achievements as player. However, no such stipulation was incorporated in respect of the Umpires/Referees.

The issue before the Tribunal was as to whether the applicant who was appointed on the maximum pay in grade Rs.260-400 was entitled for the benefit of the increments as per paragraph 9.3A.

Evidently, paragraph 9.3A itself does not create any bar for grant of increment stipulated therein subject to the condition stipulated therein, i.e., (i) subject to total five increments in the entire career; and (ii) Referees/Umpires shall excel at the International Level in sports events recognized by the National Sports Federation. In respect of condition No.(i) which stipulates that the incumbent would be entitled for increment under paragraph 9.3A only to the extent of five increments. In other words, if the increment received by him as player or coach has already touched the deadline of five increments, then, he/she will not get increment under paragraph 9.3A.

In the case at hand, as perceived from the material on record, the Railway Administration has construed that by fixing the pay of the applicant at the highest in grade Rs.260-400 at the time of initial appointment, he was given more than five increment in advance. However, we are not commended to the policy prior to that of 2007 as to that fixing in maximum of pay scale as starting salary in a grade tantamounted to grant of advance increments. In absence whereof, the Railway Administration is not justified in construing the initial fixation to be carrying the advance increments.

The Tribunal in paragraph 10 & 11 of the impugned order has held:

“10- However, on perusal of applicant’s letter dated 25.08.2009 (Annexure A/6) we notice that the applicant has officiated as International Referee in some events which took place after 9<sup>th</sup>

July, 2008 (Annexure A/5) but before 9<sup>th</sup> July, 2009 (Annexure A/3) i.e., during the period said incentive scheme was in vogue. In terms of paragraph 9.3.5 of Railway Board's Letter dated 30.08.2007 (Annexure A/4) these incentives shall be in addition to those, if any, granted for the sports achievements as a player. Therefore, denial of said incentive to applicant for these events is not sustainable.

11- In this view of the matter, this Original Application is partly allowed with a direction to the respondents to grant two advance increments for each event (before 09.07.2009) subject to total five increments to the applicant for his performance as Referee/Umpire in terms of Railway Board's letter dated 9<sup>th</sup> July 2008 (Annexure A/5). However, the applicant shall not be entitled to benefit of two increments for any event in which he participated after issuance of Railway Board's letter dated 9<sup>th</sup> July, 2009 (Annexure A/3). No costs."

Though we do not agree with reasons assigned in paragraph 10 which are drawn by involving paragraph 9.3.5 of the Policy, which in fact is applicable only in respect of coaches and not referees or umpires. However, we agree with the conclusion as to entitlement of the applicant for grant of increments as per paragraph 9.3A.

In view whereof, no indulgence is caused.

Consequently, petition fails and is dismissed.

**(SANJAY YADAV)**  
**JUDGE**

**(ATUL SREEDHARAN)**  
**JUDGE**

**Loretta**

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