

WPCT No.147 of 2019
B. Manmadha Rao
v.
The Union of India & Ors.

15.09.2021
SL-02
Ct.16
(S.R.)

Mr. Saptarshi Roy
Ms. Kakali Das Chakraborty ... for the petitioner.
Mr. Sovon Mukherjee ... for the respondents.

The present writ petition has been preferred challenging an order dated 5th September, 2019 passed by the Central Administrative Tribunal, Kolkata Bench in OA/350/807/2018.

Records reveal that the petitioner was promoted to the post of Senior Commercial Clerk with effect from 25th December, 2005 and thereafter in the post of Goods Guard (a Running Category) *vide* order dated 12th September, 2019. The scale of pay of Senior Commercial Clerk was revised to Pay Band-1 (Rs.5,200-20,200/-) with grade pay Rs.2,800/-. However, according to the petitioner, his pay scale fixation was not effected in consonance with the Railway Services (Revised Pay) Rules, 2008 (in short, the said rules). Aggrieved thereby, the petitioner submitted representations but in vain and as such, he was constrained to prefer an application before the learned Tribunal being OA No.350/86 of 2018. In the midst thereof, he retired from service on 31st January, 2016. The said original application was disposed of by an order dated 15th April, 2018 directing the respondents to consider the petitioner's representation dated

10th December, 2017. Complying with such directions, the respondent no.3 passed an order on 24th May, 2018. Challenging the same the petitioner has preferred the present writ petition.

Mr. Roy, learned advocate appearing for the petitioner submits that as per recommendation of the 6th Pay Commission (in short, 6th PC), the post of Senior Commercial Clerk in the scale of Rs.4,000-6,000/- corresponding Pay Band of Rs.5,200-20,200/- with grade pay of Rs.2,400/- was upgraded to Grade Pay of Rs.2,800/-, pay scale of Rs.4,500-7,000/- with corresponding Pay Band of Rs.5,200-20,200/-. However, pay fixation was not effected in terms of Rule 7 of the said Rules, particularly, in accordance with Clause (A) (i) and (ii) of Rule 7 by multiplying the existing basic pay as on 01-01-2006 by a factor of 1.86.

He further submits that the petitioner even denied the fixation of pay on promotion to the post of Goods Guard (a Running Category) in terms of Rule 13 of the said Rules.

He contends that the arguments as advanced on behalf of the petitioner were not considered by the learned Tribunal. On 01.01.2006 on the basis of the 6th PC recommendation, the petitioner scale of pay stood revised to Rs.4,500-7,000/- but the consequential revised benefits were upheld by the authorities without any reason whatsoever.

Per contra, Mr. Mukherjee, learned advocate appearing for the respondents submits that the petitioner's pay fixation has been effected in strict consonance with the said rules.

The petitioner was never accorded the pay scale of Rs.4,500-7,000/- prior to his placement in PB-1 with grade pay of Rs.2,800/- and his pay was fixed upon calculation in terms of Clause (A)(i) and (ii) of Rule 7 of the said Rules.

He further submits that the post of Senior Commercial Clerk and Goods Guard pertains to same grade and his placement in the post of Goods Guard was not a promotion from one grade to another in the revised pay structure.

Indisputably, the petitioner was never promoted to the pay scale of Rs.4,500-7,000/- in 5th PC. He never enjoyed the scale of Rs.4,500-7,000/- prior to his placement in PB-1 with grade pay of Rs.2,800/-. He was enjoying the scale of pay Rs.4,000- 6,000/- and his pay was fixed in strict consonance with the procedure prescribed under the said Rules by multiplying the existing basic pay as on 01.01.2006 by a factor of 1.86. Existing basic pay has been defined in Rule 3(1) of the said rules which means pay drawn in the prescribed existing scale of pay including stagnation increment(s) but does not include any other type of pay like special pay etc. Since the writ petitioner did not draw pay in the pay scale of Rs.4,500-7,000 as on 01.01.2006, the existing basic pay of the writ petitioner cannot be taken to be Rs.4,500, as argued by the learned advocate for the writ petitioner. Thus, Rs.4,500/- cannot be the basis for fixing the initial pay of the writ petitioner in the revised pay structure.

The petitioner's placement in the post of Goods Guard was not a promotion from one grade pay to a higher grade

pay on or after 01.01.2006 as per Rules 5 and 13 of the said Rules

In the above sequence of facts, the argument of Mr. Roy that the respondents have acted contrary to the said Rules is not acceptable to this Court. The finding of fact as arrived at by the learned Tribunal is not contrary to the materials on record.

It is well-settled that what can be corrected by a Writ has to be an error of law apparent on the face of the record. We do not find any patent error of law in the order impugned. The impugned order also does not suffer from any jurisdictional error.

For these reasons, we are not inclined to grant the relief, as prayed for, by the petitioner and the writ petition being, WPCT No.147 of 2019 is, accordingly, dismissed.

There shall be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Hiranmay Bhattacharyya, J.)

(Tapabrata Chakraborty, J.)