

Kerala High Court

Union Of India vs Ezra Stalin on 20 March, 2009

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 17018 of 2006(S)

1. UNION OF INDIA, REPRESENTED
... Petitioner
2. THE CHIEF PERSONNEL OFFICER,
3. THE DIVISIONAL PERSONNEL OFFICER,

Vs

1. EZRA STALIN, KHALASI HELPER,
... Respondent

For Petitioner :SMT.M.R.SREELETHA, SC, RAILWAYS

For Respondent :SRI.T.A.RAJAN

The Hon'ble MR. Justice K.BALAKRISHNAN NAIR

The Hon'ble MR. Justice M.L.JOSEPH FRANCIS

Dated :20/03/2009

O R D E R

K. BALAKRISHNAN NAIR & M.L.JOSEPH FRANCIS, JJ.

W.P.(C) No. 17018 OF 2006

Dated this the 20th day of March, 2009

J U D G M E N T

~~~~~ Balakrishnan Nair, J.

The respondents in the O.A.No.335/2003 before the Central Administrative Tribunal, Ernakulam Bench, are the writ petitioners. The applicant is the respondent.

2. The brief facts of the case are the following: The applicant joined the Railway Protection Force as a Constable on 2.1.1996. He was an apprentice under the Apprentices Act 1963, who completed his

training in an establishment under the Railways. As per the scheme of the Railways to absorb such persons in the establishments, where they underwent training, about one hundred of such apprentices were appointed as Substitute Khalasi in Group D cadre. The applicant was one among them. The appointment as Substitute Khalasi was made as per Ext.P1 dated 26.3.1999. He was granted temporary status as per Ext.P3 proceedings dated 17.7.2000 with retrospective effect from 27.11.1999. Later, he was absorbed as temporary Khalasi in the scale of pay of Rs.2550-3200 with effect from 26.7.2000. It was also ordered that he will be on probation for a period of two years. On a representation filed by the applicant, the Chief Personnel Officer as per Ext.P7 clarified that the service rendered by the applicant as Constable will be counted for all purposes except for seniority. Relying on Ext.P7, the applicant's salary was fixed as per Ext.P8. On objection being taken against it by the competent authority, the salary was refixed as per Ext.P12 order dated 6.3.2003 and his initial pay was fixed in the minimum of the time scale of pay applicable to Khalasi. The scale of pay of the Constable was Rs.3050-4590. The scale of Khalasi at the relevant time was 2500-3200/-. When he was appointed as a Khalasi he was drawing the basic pay of Rs.3125 in the scale of pay of Rs.3050-4590/-. Aggrieved by Ext.P12, the Original Application was filed challenging the same and also the proposed recovery from him of the alleged excess salary paid to him.

3. The applicant contended that he was relieved from the Security Branch of the Railways and allowed to join another branch as Khalasi. There was no gap between the relieving and joining duty. So, as per the relevant rules, the pay drawn by him should be protected. The stand of the writ petitioners that he should start in the minimum of the scale of pay of Khalasi, as if, he is a new recruit is unjustified. The respondents in the Original Application, who are the writ petitioners herein, filed Ext.P14 reply statement supporting their stand. The Tribunal, after hearing both sides, held that the order revising his pay is unsustainable and the applicant is entitled to get protection of his pay of Rs.3125/-.

4. Aggrieved by the above direction, the respondents in the Original Application preferred this writ petition. We heard the learned counsel on both sides. Rule 1515 of the Indian Railway Establishment Manual (IREM) reads as follows:

"1515- Rights and privileges admissible to the Substitute - Substitutes should be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time on completion of four months continuous service. Substitute school teachers may, however, be afforded temporary status after they have put in continuous service of three months and their services should be treated as continuous for all purposes except seniority on their eventual absorption against regular posts after selection. ...."

5. As per the above Rule, on appointment as a substitute, the applicant is entitled to get all benefits admissible to temporary railway servants on completion of 4 months service. Once he becomes a temporary servant, the fixation of his substantive pay shall be as provided under Fundamental Rule 22, which is Rule 1313 of the Indian Railway Establishment Manual. The relevant portion of that Rule reads as follows:

"1313(FR 22)- Fixation of initial substantive Pay- The initial substantive pay of a railway servant who is appointed substantively to a post on timescale pay is regulated as follows:

(a) if he holds lien on a permanent post, other than a tenure post, or would hold a lien on such a post had his lien not been suspended:-

(i) when appointment to the new post involves the assumption of duties or responsibilities of greater importance (as interpreted for the purpose of Rule 1325 i.e. FR30) than those attaching to such permanent post, he will draw as initial pay, a stage of the time scale next above the substantive pay in respect of the old post."

6. Going by the above Rule, the applicant is entitled to get his pay protected in the new post. But, the learned counsel for the writ petitioners pointed out that the applicant can get the benefit of Rule 22 only after completing four months service as Substitute. We find force in the said submission. Going by the order of the C.A.T., the applicant is entitled to get the pay of Rs.3125/- from 30.7.1999. But, the applicant will get temporary status only after rendering four months service. We, therefore, order that he is entitled to get the pay of Rs.3125/- only from 27.11.1999. The judgment of the Tribunal, Ext.P15, is modified to the above extent.

The Writ Petition is disposed of as above.

(K.BALAKRISHNAN NAIR, JUDGE) (M.L.JOSEPH FRANCIS, JUDGE) ps