

9

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A.NO.1590/2002

New Delhi, this the 25th day of February, 2003

Hon'ble Shri Shanker Raju, Member(J)

Shri Ashok Kumar Sethi
s/o Shri Ram Kishan Sethi
Wireman under Section
Engineer (Electrical) (P.S.) N.R.
Pahar Ganj, New Delhi
r/o House No.62-C
Pocket A3
Mayur Vihar, Phase-III
Delhi - 110 096. ... Applicant

(By Shri S.K.Sawhney, Advocate)

Versus

1. Union of India through
General Manager
Northern Railway
Baroda House
New Delhi.
2. Divisional Railway Manager
Northern Railway
D.R.M.Office
New Delhi. ... Respondents

(By Shri Rajinder Khattar, Advocate)

O R D E R (Oral)

By Sh. Shanker Raju, Member(J):

Respondents' order dated 28.8.2001 is impugned by applicant, seeking quashment of the same and to grant him benefit of increments in the post of Wireman with arrears.

2. Applicant is presently working as Wireman in the pay scale of Rs.3050-4590, on which he was promoted w.e.f. 1.1.96 at the initial scale of pay, i.e., Rs.3050/-.

3. Before promotion applicant has worked as a Fitter on daily wages from 1.6.82 to 31.5.83 and then Fitter on a scale rate from 1.6.83 to 20.7.83. He was accorded temporary status from 1.1.84 and worked in

10

the pay scale of Rs.260-400 which was subsequently revised to Rs.950-1400 upto 31.12.85 and as a Wireman in the pay scale of Rs.950-1400 from 1.1.856 to 11.4.88. Aforesaid period on which applicant had worked on a time scale of pay comes to around five years, five months and 18 days.

4. Applicant was fixed at the initial of the pay scale at Rs.3050/- w.e.f. 1.1.96 on promotion to the post of Wireman made representation for grant of benefit of increments, taking into consideration the service rendered in a time scale as per Rule 1320-A of Indian Railway Establishment Code, Volume-II (IREC-II), but the same was rejected, giving rise to the present OA.

5. Shri S.K. Sawhney, learned counsel for applicant contended that as per para 2005 of Indian Railway Establishment Manual, Volume-I (IREM-I) on attaining temporary status a casual labour is entitled to rights and benefits admissible to a temporary railway servant. As per para 1320 of IREC all duty whether officiating or otherwise in a post on a time scale counts for increments and service rendered even on an ex-cadre post is to be counted on a cadre post. As such, as per the audit instructions under Rule 1320 a concession is to be allowed irrespective of whether the higher post is within or outside the department. Accordingly service rendered by applicant on a time scale is to be reckoned for the increments and other

benefits as he was put to officiate in the pay scale of Rs.260-400/- during the aforesaid period, which is not disputed by the respondents.

6. On the other hand, respondents' counsel Sh. Rajinder Khatter referring to para 2005 ibid contended that casual labour is to be treated as temporary railway servant for the benefits and as applicant was posted as khallasi in the grade of Rs.750-940 w.e.f. 14.4.88 and promoted as khallasi on 16.5.96 after found fit in the trade test and selected as Wireman Grade III in the grade of Rs.950-1500 (RPS) posted as regular Wireman-III w.e.f. 7.12.96 the period from 1.6.82 to 11.4.88 in different post of skilled grade is not covered in divisional service as he has worked in Construction, the weightage of which cannot be given for increment but the same has been counted for other benefits from the date of attainment of temporary status w.e.f. 1.1.84 in the light of PS 6661.

7. It is further stated that as per para 2065-A service prior to absorption in regular cadre shall not count for the seniority and as benefit in the Division is to be accorded from 14.4.88 applicant who had not undergone training and is selected against group "D" post has been rightly fixed in the initial of the scale of Wireman.

8. Shri Khatter defended the order on representation contending that without passing requisite trade test the weightage of his service for the purpose of increment has been given from 1.1.84, i.e., from the date of temporary status.

9. I have carefully considered the rival contentions of the parties and perused the material on record. Rule 1320 of IREC-II provides as under:

"1320. (F.R.26) Reckoning Service for Increments.-- The following provisions prescribe the conditions on which service counts for increments in a time-scale--

(a) All duty in a post on a time-scale counts for increments in that time-scale:

Provided that, for the purpose of arriving at the date of the next increment in that time-scale, the total of all such periods as do not count for increment in that time-scale shall be added to the normal date of increment.

(b) (i) Service in another post other than a post carrying less pay referred to in clause (a) of Rule 227 (F.R. 15) whether in a substantive or officiating capacity, service on deputation out of India and leave except extraordinary leave taken otherwise than on medical certificate, shall count for increments in the time-scale applicable to the post on which the railway servant holds a lien, as well as in the time-scale applicable to the post or posts, if any on which he would hold a lien, as well as in the time-scale applicable to the post or posts, if any on which he would hold a lien and had his lien not been suspended:

Provided that the service rendered in an ex-cadre post shall not be reckoned for fixation of pay in another ex-cadre post and the pay in subsequent ex-cadre post shall be fixed under the normal rules with reference to pay in the cadre post."

10. Audit instructions attached to Rule 1320 provided as under:

(5)

"(1) Intention of F.R. 26 (c) (Rule 1320).--The intention of this rule is to allow the concession irrespective of whether the higher post is within or outside the Department to which the Government servant belongs."

11. If one has regard to the aforesaid the pre-requisite for counting service for increments is that duty is to be performed in a post on a time scale and this duty includes on officiating basis as well. The only impediment is that service rendered in ex-cadre post shall not be reckoned for fixation of pay in another ex-cadre post. As it is not disputed that applicant had worked in a time scale w.e.f. 1.6.83 although before regularisation as Group 'D' on promotion to Wireman-III as per para 1320 duty performed in a post on a time scale counts for increments and the aforesaid period from 1.6.83 till 1988 is to be reckoned and counted for increments in the time scale. Accordingly, fixing the pay scale of applicant on his promotion as Wireman-III at the initial stage cannot be countenanced.

12. In so far as para 2005 is concerned, the same would not apply in the facts and circumstances of the present case as well as PS 6661. Applicant who had rendered service even on officiating basis on a time scale is entitled as per Rule 1320, which is analogous to FR 26, the service rendered is to be

counted for increments. Accordingly order passed on representation is de hors the rules ibid and cannot be countenanced.

13. Accordingly, for the reasons recorded above, OA is allowed. Impugned order is quashed and set aside. Respondents are directed to reckon/count the period of five years, five months and 18 days, as stated above, for purposes of increments in the time scale and accordingly fix the pay of applicant and in that event he shall be entitled to arrears w.e.f. 1.1.96. The aforesaid directions shall be complied with, within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member(J)

"San"