

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.379 of 2002

New Delhi, this the 23rd day of October, 2002

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HON'BLE MR.V.K. MAJOTRA, MEMBER (A)
HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

Mahinder Parkash
S/o Late Shri Mangal Sain
Retired Office Superintendent (Type)
Northern Railway,
Construction Organisation,
Head Quarters Office,
Kashmere Gate,
Delhi-110 006.

-APPLICANT

R/o KM-103, Kavi Nagar, Ghaziabad.

(By Advocate: Shri M.L. Sharma)

Versus

1. General Manager,
Northern Railway,
Hd. Qrs. Office,
Baroda House,
New Delhi.
2. Chief Administrative Office (Const)
Northern Railway, Kashmere Gate,
Delhi-110 006.

-RESPONDENTS

(By Advocate: Shri R.L. Dhawan)

O R D E R

By Hon'ble Mr.Kuldip Singh, Member(Judl)

The applicant in this OA has challenged an order passed by the respondents vide which the pay of the applicant has been refixed. The order was passed on 25.7.2001 (Annexure A-1) and has been issued jointly by FA&CAO (Construction) and Assistant Personnel Officer (Construction), Northern Railway, Head Quarters Office, Kashmere Gate, Delhi.

2. The facts, as alleged by the applicant in brief are, that applicant was initially appointed as Typist grade Rs.110-180 on 4.8.64 and during his service he had risen to the level of Office Superintendent Type

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Grade-I Rs.2000-3200 (Rs.6500-10500) w.e.f. 22.11.1994.
It is further alleged that on his promotion to the grade of Rs.2000-3200 (Rs.6500-10500) w.e.f. 22.11.1994 his pay was fixed as under:-

"Rs.2240/- P.M. pay fixed as on 22.11.94.

Rs.2300/- P.M. raised w.e.f. 1.11.1995.

Rs.7100/- pay fixed in revised grade Rs.6500-10500
as on 1.1.1996.

Rs.7300/- raised w.e.f. 1.11.1996.

Rs.7500/- raised w.e.f. 1.11.1997.

Rs.7700/- raised w.e.f. 1.11.1998.

Rs.7900/- raised w.e.f. 1.11.1999."

3. He had been actually receiving Rs.7900/- w.e.f. 1.11.1999 and though the applicant was also entitled to get increment on 1.11.2000 as well as 1.11.2001 but his pay was not raised by the respondents though the applicant had been earlier granted annual increments on 1.11.1997, 1.11.1998 onwards.

4. It is further submitted that vide the impugned pay sheet dated 25.7.2001 (Annexure A-1) the applicant's pay has been further revised respectively from 22.11.1994 and reduced illegally and arbitrarily without giving any proper show cause notice and without considering his representations without due application of mind but rejecting arbitrarily vide impugned letters dated 22.10.2001 and 19.11.2001 respectively. Consequently the applicant has not been paid his pension, commutation, leave encashment and gratuity on the basis of his due

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basic pay Rs.8300/- but he has been paid his retiral benefits less on the basis of reduced pay Rs.7700/- which is totally wrong and illegal.

5. To challenge these orders reducing his pay the applicant has relied upon the case of Shri Bhagwan Shukla Vs. U.O.I. and Others, 1994 SCC (L&S) 1320 and submitted that his pay has been reduced without issuing any show cause notice and the order vide which his pay had been reduced is liable to be quashed.

6. It is further submitted that huge amount of Rs.47283/ has been recovered from his gratuity, already paid less on the basis of reduced basic pay of Rs.7700/- which is also stated to be illegal.

7. The applicant has also pleaded that since he had not misrepresented to the department for wrongful fixation of his pay at a higher rate so on that account also no deduction could have been made and the applicant should have been allowed to have the same pay scales.

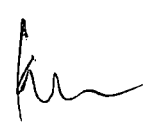
8. The respondents are contesting the OA. The respondents pleaded that the applicant while working in the Construction Organisation was promoted from one ex-cadre post to the higher ex-cadre post and on such promotion his pay has been fixed erroneously on account of administrative error on the basis of the pay drawn in the ex-cadre post whereas in terms of the Railway Board instructions circulated under NR Printed Serial No.9824 which is Annexure R-1, such re-fixation of pay has been done with reference to the pay drawn in the cadre post on

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which the employee had a lien. But in the case of the applicant his pay has been fixed erroneously as the applicant was already working on ex-cadre post in the Construction Division so applicant's pay has been refixed in consultation with the Accounts Division vide impugned order dated 27.5.2001. Thus the respondents tried to justify the issue of the impugned order. The respondents also relied on instructions contained in N.R. Printed S.No.8814 and 9824 should be strictly followed.

9. The respondents also pleaded that all worked charged promotions should also be treated as ex-cadre post and it is so held by the Tribunal in the case of Shri M. Prabhakaran Vs. U.O.I. The counsel for the respondents also submitted that in terms of R.B.E. No.177/1998 also fixation of pay on appointment from one ex-cadre post to another ex-cadre post wherein it has been clarified that the pay in the second or subsequent ex-cadre posts should be fixed under the normal rules with reference to the pay in the cadre post only.

10. As regards the show cause notice is concerned the counsel for the respondents pointed out that the show cause notice was also issued and the applicant against that show cause notice had made a representation and has been heard and thereafter case was decided so the formality of issue show cause notice at pre-decisional stage has become useless now since the representations made by the applicant against the impugned order has already been decided by giving a fair opportunity to the applicant.



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11. We have heard the learned counsel for the parties and gone through the records of the case.

12. The fact that the applicant was initially appointed as a Typist in Open Line is not in dispute. The applicant was working in an ex-cadre post in the Construction Organisation when he had been promoted. So now the question arises when while working on ex-cadre post promotion made to another ex-cadre post how the pay should have been fixed. According to the Railway instruction relied upon by the respondents when a person holding an ex-cadre post is promoted to next higher ex-cadre post then on the second promotion his pay has to be fixed in relation to the post being held by him in his parent cadre on which he has a substantive lien. He cannot claim the benefit of pay fixation on the basis of the salary being drawn by him in an ex-cadre post.

13. Since in this case while fixing the pay on the subsequent promotion of the applicant the pay had been fixed keeping in view the pay which was being drawn by the applicant in an ex-cadre post in the Construction Division which is basically an administrative error on the part of the respondents so the respondents were within their right to re-fix the pay of the applicant and issue the impugned order dated 25.7.2001, Annexure A-1 which has been challenged before the Tribunal. The perusal of Annexure A-1 would show that it was a rectification of error which was committed by the authority while fixing the pay of the applicant. But now the question arises whether the show cause notice has been issued before reducing the pay of the applicant.

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The learned counsel for the applicant referred to Annexure A-6 and submitted that his pay has been reduced. Even before the impugned order dated 25.7.2001, Annexure A-1 was issued the applicant has annexed Annexure A-6 which contains the pay slips for the months of March, 2000 and April, 2000 which shows that in March, 2000 the pay of the applicant was Rs.7900 and in April, 2000 his pay has been reduced to Rs.7300 meaning thereby that before the impugned order, Annexure A-1 was issued on 27.5.2001 as they had already been reduced and that too without giving him any show cause notice which is contrary to the law as laid down in the case of Bhagwan Shukla (Supra).

14. However, in reply to this Shri R.L. Dhawan has referred to a recent judgment given by this Tribunal in case of Shri Surjit Singh Vs. U.O.I and Others in OA 2258/2001. The facts of the case and the law laid down by the Tribunal in the said case fully apply to the present facts of the case. Incidentally the counsel for the parties were also the same. In that case also the basic pay of the applicant was reduced in a similar manner and the applicant had relied upon the same judgment in the case of Bhagwan Shukla (Supra). A show cause notice was also issued in that case as the same has been done in this case but in the said judgment it was also observed that the show cause notice was issued after reducing his pay so we find that the show cause notice has not been issued as per the law laid down in the case of Bhagwan Shukla (Supra). But while disposing of the OA, the court did not direct the respondents to return the amount recovered from the gratuity nor the court

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directed to revise the pay of the applicant to bring it at par with the status quo ante. The court simply directed the respondent to issue a fresh show cause notice to the applicant within 15 days from the date of receipt of a copy of the order and providing 15 days thereafter to the applicant to file his representation. Another 15 days will be provided for granting personal hearing to the applicant thereafter. Final orders will be passed by the respondents on the basis of the representation, if any, filed by the applicant and after granting him personal hearing within 15 days after the grant of personal hearing. Applicant, therefore, say that the recovery may be stayed in his case in respect of reduction of pay and then the respondents may arrive at a proper decision on the basis of the representation filed by the applicant. Since this judgment is fully applicable to the present case also so we also follow the same.

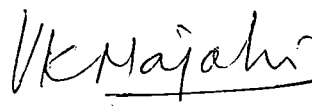
15. OA is disposed of with the directions as follows:-

(i) The impugned order of reduction of pay is quashed, but the respondents need not refund the money.

(ii) Respondents shall issue a fresh show cause notice to applicant within 30 days from the receipt of a copy of this order. The applicant then may make a representation within 15 days upon which department may provide even personal hearing and shall then decide the case within 30 days.

No costs.


(KULDEEP SINGH)
MEMBER (J)


(V.K. MAJOTRA)
MEMBER (A)