

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

OA/20/774/2014

HYDERABAD, this the 22nd DAY OF JANUARY 2020

Hon'ble Mr. ASHISH KALIA, MEMBER (J)

Hon'ble Mr. B.V. SUDHAKAR, MEMBER (A)

G NAGAMANI,
W//o G.Ramakrishna Rao,
Aged about 53 years,
Occupation: Junior Clerk,
O/o Chief Crew Controller,
East Coast Railways, Waltair Divn.,
Rayagada, Orissa State.

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Applicant



(By advocate: Mr. K Siva Reddy)

Vs.

Union of India rep. by

1. General Manager, East Coast Railway,
B-2, Chandandroosekharpur,
Railway Complex, Bhubaneswar 751 016,
2. The Divisional Railway Manager,
East Coast Railways, Waltair,
3. The Chief Crew Controller,
East Coast Railways, Waltair Divn.,
Rayagada, Orissa State.

Respondents

(By advocate: Mr. S.M.Patnaik, SC for Railways)

ORAL ORDER

PER HON'BLE Mr. **ASHISH KALIA, MEMBER (J)**

This OA stands allowed in terms of paragraph 5 of the reply statement filed by the respondents

2. Following reliefs are sought by the applicant:

“To declare the action of the respondents in non protecting the pay of the applicant by taking into account of his pay in ad hoc service from 23.10.2002 as Senior Clerk as drawn the basic pay of Rs.5375/- as arbitrary, illegal, violative of principles of natural justice and Articles 14, 16 and 21 of the Constitution of India and consequently direct the respondents to protect the pay and allow all consequential benefits out of it with increments on such protection as per Rules.”

3. Applicant was initially appointed in open line in Group-D in the year 1985. Thereafter, she has been transferred to construction division, but her lien was maintained in the open line. While working in the construction division, applicant has got promotion as Record Sorter on 21.10.1987. Thereafter, she has been promoted as Junior Clerk on 17.09.1990. Further she was promoted as Senior Clerk on adhoc basis on 15.1.1991 in the construction wing itself. Thereafter, she has been transferred back as Office Clerk and she joined on 23.10.2002. While working as Senior Clerk on adhoc basis, applicant was drawing the salary in the basic pay of Rs.5375/-. On transfer to the open line, her pay was reduced to Rs.3875/-. Feeling aggrieved, she made representation to the respondents which was rejected.



4. We heard learned counsel on both sides.
5. Respondents, in their reply statement at para 3(e) stated as follows:



“Now her contention is that when her lien was transferred from CKP division to WAT division on 22.09.2002 though she was a lien holder of open line of CKP division she is officiating as Senior Clerk on adhoc basis in construction organization and drawing pay of Rs.5375/. When she was transferred to the 3rd respondent’s organization on 23.10.2002 as Junior Clerk her pay fixed at Rs.3,800/. She claims that though she was working in Construction at Rayagada, her lien was maintained in S.E.Rly hence she has legal right to be considered for promotion by the parent department as and when her turn comes. Further this Hon’ble Tribunal held in OA No.76/2007 vide order dated 10.07.2008 that employees promoted on deputation and reverted on repatriation to their parent department their pay to be protected and such order of Hon’ble Tribunal was upheld by High Court vide order dated 17.12.2008 in W.P.No.27259/2008 (copy is filed as Annexure R2).”

6. Learned counsel for the respondents has drawn our attention to para 3(h) of reply statement and relied upon the recent judgment of Hon’ble Supreme Court in ***Union of India Vs. Bhanwar Lal Mundan in C.A.No.7292 of 2013*** whereby Hon’ble Supreme Court has dealt with the issue of deputation as under:

“In State of Punjab and others v. Inder Singh and others (17), the learned Judges elaborately adverted to the concept of deputation and the right of a deputationist and in that context opined thus:-

‘The concept of “deputation” is well understood in service law and has a recognized meaning. “Deputation” has a different connotation in service law and the dictionary meaning of the word “deputation” is of no help. In simple words

“deputation” means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules.”

6. Learned counsel for the applicant has handed over 3 judgments in “**S.V.Ramana Vs. Chief Personnel Officer, East Coast Railway-OA 78 of 2007**” passed by this Tribunal; “**Union of India Vs. S.V.Ramana-W.P.No.27259 of 2008**” and “**Union of India Vs. R.Ramaswamy – W.P.No.38974 of 2012**” passed by Hon’ble High Court of Andhra Pradesh. The crux of those judgments is as under:



“14. The practice adopted by the railways of taking work from employees in Group-D post on a higher Group-C post for unduly long period legitimately raised hopes and claims for higher posts by those working in such higher posts. As the railways is utilizing for long period the services of employees in Group-D posts for higher post, in Group-C carrying higher responsibilities benefit of pay protection, age relaxation and counting of their service on the higher post towards requisite minimum prescribed period of service, if any, for promotion to the higher post must be granted to them as their legitimate claim.

15. As held by the High Court – the appellants cannot be granted relief of regularizing their services on the post of Store man/Clerk merely on the basis of their ad hoc promotion from open line to higher post in the project or construction side. The appellants are, however, entitled to claim age relaxation and advantage of experience for the long period spent by them on a higher Group-C post.

16. Without disturbing, therefore, orders of the Tribunal and the High Court the appellants are held entitled to the following additional relief. The pay last drawn by them in Group-C post shall be protected even after their repatriation to Group-D post in their parent department. They shall be

considered in their turn for promotion to Group-C post. The period of service spent by them on ad hoc basis in Group-C post shall be given due weightage and counted towards length of requisite service, if any, prescribed for higher post in Group-C, if there is any bar of age that shall be relaxed in the case of lithe appellants.”

7. Thus, the Apex Court has clearly laid down the principles that Group-D employees, whose services have been availed by Railways on higher posts on reversion to the Group-D post or lower post of Group-D etc., their pay should be protected in view of the first cited judgment (supra).

8. We find merit in the present OA. We allow the same and the relief prayed for, with all consequential benefits.

9. We direct the respondents to restore the last drawn pay of the applicant as Rs.5375/- with effect from the date of reversion and transfer back to open line.

10. Time for compliance is 90 days from the date of receipt of this order.

11. There shall be no order as to costs.

(B V SUDHAKAR)
MEMBER (A)

(ASHISH KALIA)
MEMBER (J)