

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.2565/2001

This the 25th day of October, 2002.

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

Surinder Kishore Sharma S/O R.L.Sharma,
Retired Chief Inspector of Works
under CAO/C, Northern Railway,
Kashmiri Gate, Delhi.

... Applicant

(By Shri M.L.Sharma, Advocate)

-versus-

1. Union of India through
General Manager, Northern Railway,
Headquarters Office, Baroda House,
New Delhi.
2. Chief Administrative Officer (Const.),
Northern Railway, Kashmiri Gate,
Delhi.
3. Divisional Railway Manager,
Northern Railway,
New Delhi.

... Respondents

(By Shri R.P.Agarwal, Advocate)

O R D E R

Applicant's case is that he was appointed as Khalasi on 28.10.1958 in the Construction Division of the Railways and till date of his superannuation, i.e., 30.9.2000, he continued in the Construction Division when he retired as Chief Inspector of Works. At the time of his retirement he was drawing basic pay of Rs.9700/- per month. However, vide impugned order dated 28.9.2000 (Annexure A-1), without issuing any show cause notice respondents unilaterally refixed his pay after his retirement reducing it w.e.f. 31.10.1984. According to the learned counsel, respondents have recovered an amount of Rs.6,210/- from his leave encashment and another

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amount of Rs.44,898/- from his gratuity without issuing any show cause notice and assigning any reasons. Applicant has sought quashing and setting aside of Annexures A-1 to A-4 relating to refixation of pay and recoveries. He has sought refund of the recovered amounts with interest as also to fix his retiral benefits on the basis of his past basic pay of Rs.9,700/-.

2. The learned counsel of applicant drawing attention to Annexure R-I dated 17.2.1989 relating to transfer on deputation of Railway employees to ex-cadre posts under Government and their terms and conditions, stated that applicant was originally borne on the Construction Division of the Railways, did not have any lien in the main Railways, was never sent on deputation to the Construction Division and the conditions for such transfer on deputation as stated in R-I were never made applicable to applicant. The learned counsel also stated that it is admitted by respondents that he never held an ex-cadre post. He always held a work-charged post in the Construction Division which has to be treated as an extension of cadre post. Applicant was also never granted any deputation allowance. The learned counsel also referred to Annexure A-9 to the rejoinder which is respondents' counter reply in OA No.3188/2001 (Tara Chand v. Union of India & Ors.), to state that respondents had admitted that posts in Construction Division are work-charged posts and are operated as extension of cadre posts and that they are not ex-cadre posts. He also relied on Annexure A-8 to the rejoinder dated 18.3.1997 which is a Railway Board's letter regarding

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regularisation of casual labour and revised staffing pattern for Construction and other Projects, stating, "the workcharged posts in the Construction and other Projects are to be reckoned as an extension of the cadre of posts in the Railway/Division in the jurisdiction of which such Construction or other Projects are headquartered". According to the learned counsel, as per Annexure A-11 dated 13.3.1972, the Railway Board have decided that promotions to one grade higher than on the open line could be granted in the Survey and Construction Divisions in the exigencies of work and that applicant has been granted various promotions before his retirement in the Construction Division. He further relied on Annexure A-13 (P.S. No.10463) dated 1.8.1986, whereby the Railway Board while issuing a clarification in the matter of one Shri R.L.Arora, AEN/MTP (ad hoc basis), stated that the rules do not indicate any bar against reckoning of pay drawn against a work-charged post before retirement for pensionary benefits. The learned counsel relied on the following :

- (1) 1994 SCC (L&S) 1320 : Bhagwan Shukla v. Union of India & Ors.;
- (2) 1994 SCC (L&S) 683 : Shyam Babu Verma & Ors. v. Union of India & Ors.; and
- (3) 1995 SCC (L&S) 248 : Sahib Ram v. State of Haryana & Ors.

The learned counsel contended on the basis of the ratios of the above cases that not only that no recovery could be effected from applicant, his pension has also to be fixed reckoning the basic pay last drawn by him before superannuation.

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3. The learned counsel of respondents stated that applicant did not commence his career in the Construction Division. Whereas his lien was in the *parent Rly.* Division, he was sent on deputation to the Construction Division where he was promoted on ad hoc basis a couple of times and was *Working* as IOW (Rs.2000-3200) on ad hoc basis w.e.f. 23.9.1989 in the Construction Division. According to the learned counsel he had been holding ex cadre posts in the Construction Division and as per rules his pay has to be fixed with reference to his pay in his basic cadre and not with reference to the pay he was drawing on ad hoc basis. The learned counsel stated that applicant was regularised in almost all the grades in the parent cadre subsequent to enjoying ad hoc promotions in the Construction Organisation where he had been working on ex cadre post on deputation as per details below :

SN	Designation	Date when promoted on adhoc basis ex- cadre post	Date when regularized in gr. In parent cadre
1.	IOW Gr.II Rs.550-750	23.10.1984	15.8.1985
2.	IOW Gr.I Rs.2000-3200	23.5.1989	7.8.1992
3.	SSE/Works Gr. Rs.2375-2550	26.8.1993	27.10.1996

Thus, according to the learned counsel, applicant's pay fixation while granting ad hoc promotions as also pay of Rs.9700/- on the eve of his retirement were erroneous and had to be rectified by refixation, reduction of pay, pension etc. The learned counsel relied on Railway Board's letter dated 7.8.1986 to state that posts in the

Construction Division have to be treated as ex-cadre posts for purpose of fixation and benefit of pay drawn in such posts would not be admissible in cadre posts. The learned counsel stated that as applicant's pay had been refixed in terms of the rules and circulars, it was not necessary to put applicant on any notice and also that no prejudice had been caused to applicant. The learned counsel also relied on the case of **Shyam Babu Verma** (supra) as also order dated 26.11.2001 in OA No.1388/2001: **Roshan Lal Sagar v. Union of India & Anr.** The learned counsel stated that the case of Roshan Lal Sagar was an identical case which was dismissed.

4. In paragraph 4.1 of the OA, applicant has stated that he was originally appointed as Khalasi in the Engineering Branch of the Northern Railway on 28.10.1958. As such applicant's contention at the time of final arguments that he was borne on the Construction Division and was never sent on deputation to the Construction Division from the Railways is absolutely wrong. Applicant has also stated in paragraph 4.4 of the OA that he was also regularised in all grades on the basis of position in the cadre in all grades, i.e., Rs.550-750, Rs.2000-3200 and Rs.2375-3500/Rs.7450-11500.

5. Respondents in their reply to paragraph 4.4 of the OA have stated that applicant was regularised in almost all the grades in the parent cadre subsequent to enjoying ad hoc promotions in the Construction Organisation where he was working on ex-cadre post on deputation. Whereas he was promoted as IOW Grade-II

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(Rs.550-750) on ad hoc basis in ex-cadre post on 23.10.1984, he was regularised in the parent cadre on 15.8.1985 as such. Whereas he was promoted on ad hoc basis in ex-cadre post of IOW Gr.-I (Rs.2000-3200) on 23.5.1989, he was regularised as such in the parent cadre on 7.8.1992. Similarly, while he was promoted on ad hoc basis in ex cadre post of SSE (Works) (Rs.2375-2550) on 28.6.1993, he was regularised in the grade in parent cadre on 27.10.1996. In the rejoinder applicant has not rebutted that he was regularised in all the grades in the parent department. At the stage of final argument to state that applicant had all along been in the Construction Division and never regularised in the regular Railways, is a misconception which is totally unacceptable. Annexure A-9 to the rejoinder which is the counter reply in the matter of **Tara Chand (supra)** has been relied upon on behalf of applicant which states :

"4.3 Contentions as raised in this para are wrong and denied. It is humbly submitted that the Construction Organisation is a temporary organisation and all the posts which operated in this organisation are temporary and workcharged currency of which is extended from time to time subject to availability of work. The staff working in this organisation are drafted from various divisions as per requirement."

"4.9. (iv) In reply to this para, it is humbly submitted that the pay of the applicant has been fixed in each & every grades in Class-III in Construction Deptt. at the time of his adhoc promotion and later on followed by regularisation, as is evident from his comparative pay fixation statement (Annexure A-1 to the OA)."

It is stated in this reply that Construction Organisation is a temporary organisation where all posts are temporary

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and work-charged which are extended from time to time subject to availability of work. All persons working in Construction Organisation hold their lien in the parent cadre in the open line. The pay of such employees is fixed in each and every grade in Class-III in Construction Division at the time of ad hoc promotion and later on followed by regularisation. Although respondents have stated that the posts in Construction Organisation are "temporary and workcharged", it does not take away the essential nature of the posts in the Construction Division and the treatment to be given to employees coming on deputation maintaining their lien in the parent Railways while fixing their pay on promotion on ad hoc basis in the Construction Division followed by regularisation each time in the parent department.

6. Although it is laid down in the case of **Bhagwan Shukla** (supra) that show cause notice has to be issued while refixing the pay which had earlier been wrongly fixed, in the facts and circumstances of the present case, it has to be seen whether any prejudice has been caused to applicant. As per Annexure A-8 work-charged post in the Construction Division has to be reckoned as extension of the cadre post in the Railway/Division in the jurisdiction of which the Construction Projects are headquartered. In the facts of the present case when applicant had started his career in the main Railways and maintained his lien in the main Railways, the posts on which applicant had been working from time to time have to be treated as extension of cadre posts. As per

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Annexure A-11 the staff in the open line and that in the Construction have to be considered as a combined cadre and staff working in the Construction Division can be accorded promotions to one grade higher than on the open line in the exigencies of work but "this benefit of one grade higher shall not be taken into consideration for any purpose".

7. In the case of **Sahib Ram** (supra) the pay scale for Librarians possessing first or second class post graduation degrees was upgraded. Subsequent order allowed the upgraded pay scales to those appointed prior to the specified date (3.12.1972) without insisting on a first or second class post graduation degree, etc. It was held by the Hon'ble Apex Court that the order had the effect of relaxing only the requirement of the first or second class and not the educational qualification itself. Hence, a Librarian not possessing the requisite educational qualifications although appointed prior to the specified date was not entitled to the benefit of relaxation. Basically, this judgment is not applicable to applicant's case. However, it was ordered that excess payment due to wrong construction of relevant order by the authorities be not recovered.

8. In the case of **Shyam Babu Verma** (supra) it was held that since petitioners received the higher scale due to no fault of theirs, it would just be proper not to recover any excess amount already paid to them. The learned counsel of respondents fairly conceded that whereas refixation of pay with reference to lien in the

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parent department is in order, the recovery of the excess amount on refixation of pay may not be allowed to be effected.

9. From the above discussion, it is established that applicant had originally been appointed in the main Railways, despatched to work in the Construction Division, continued to work there earning promotions on ad hoc basis, his services were regularised from time to time in the parent department and his pay had to be fixed with reference to his pay in his basic cadre and not with reference to the pay he was drawing on ad hoc basis from time to time in the Construction Division. In an identical case, namely, **Roshan Lal Sagar (supra)** it was found that the applicant therein had no case for fixation of pay at Rs.9,700/- per month and the OA was dismissed. The same logic and finding has to be followed in the present case as well. However, keeping in view the judgments cited above and also the generous attitude evinced by respondents, it is directed that as applicant had received the higher scale due to no fault of his and as he has retired as well, it would not be just and proper to recover any excess amount from him. The excess amount recovered from applicant amounting to Rs.51,108/- be refunded to him within a period of one month from the date of communication of these orders. However, there is no infirmity in the impugned order regarding refixation of the pay as well as the retiral benefits of applicant through the impugned orders.

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10. In the above circumstances, this OA succeeds partly and is disposed of as such, however, without any order as to costs.

V. K. Majotra
(V. K. Majotra)
Member (A)

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