

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2115/1998

New Delhi, this 20th day of January, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J)
Hon'ble Smt. Shanta Shastry, Member(A)Ved Prakash & 29 others
as mentioned in the Memo of Parties to OA
All working as Khalasi Helpers under
Section Engineer, B.R.I.Spl.,
Shakurbasti, New Delhi .. Applicants

(By Shri P.M. Ahlawat, Advocate)

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi
2. Chief Bridge Engineer
Northern Railway
Baroda House, New Delhi
3. Dy. Chief Engineer/BR/Line
Northern Railway
Lajpat Nagar, New Delhi .. Respondents

(By Shri B.S. Jain, Advocate)

ORDER
Hon'ble Smt. Shantha Shastry

The applicants, 30 in number working as Khalasi Helpers, are aggrieved that their basic pay has been reduced from May, 1998 without any formal notice or without giving them any opportunity of being heard. They have impugned the minutes of the meeting held on 5.10.98 between the Deputy CE/Bridges and Divisional Secretaries of NRMU and URMU representatives and have prayed to grant them proforma promotion from the date their juniors were promoted with all consequential benefits and arrears from 1.8.78 or 1.1.84 and not with effect from 1.1.95 as indicated in the impugned minutes dated 5.10.98. They also want arrears on account of revision of pay scale from 1.1.96 alongwith costs.

2. The applicants were appointed as Casual Labourers between 14.2.72 and 4.3.80 under Sectional Engineer/ Bridge/Special II, Shakurbasti, New Delhi and on completion of 120 days they were given scale rate pay.

3. Applicants have stated that the cadre of Khalasi Helper was restructured. As a result, 50% of the posts were upgraded as Khalasi Helpers from 1.8.78, 20% from 1.1.84 and 10% from 1.3.93. Thus, 80% of the posts have been ^{upgraded} ~~promoted~~ as Khalasi Helpers. However, upgradation as Khalasi Helper was not made according to seniority on the basis of longevity of service as casual labourers as per extant rules, with the result applicants' claim for promotion as Khalasi Helper was ignored. Later on it was decided vide order dated 4.3.96 to give proforma promotion/NBR to the applicants on the ground that their juniors S/Shri Anil Kumar and Nav Nath Tripathi were drawing pay of Rs.1070 and Rs.1010/- p.m. as on 1.1.96 respectively and senior persons working over them were getting less pay. Thereafter, applicants were given NBR promotion and they were drawing enhanced salary in the grade of Khalasi Helper from February, 1996 and continued to draw the same till April, 1998. Then all of a sudden, their basic pay was reduced in May, 1998 without any prior notice for reduction of their pay scale and they have now approached this Court for restoration of their pay scale as drawn by them in April, 1998.

4. The respondents have raised some preliminary objections. According to them, the impugned communication dated 5.10.98 is not an order addressed to the applicants. It is only the minutes of the meeting held between the Deputy Chief Engineer and representatives of the Union. Therefore, they cannot

treat this as impugned order. Applicants represented against reduction in pay in August, 1998 but they approached this Court without waiting for a period of six months after making the representation. Also, the application is hit by the principles of estoppel as the applicants had given an undertaking regarding recovery, if any, of excess payment on account of wrong fixation while arranging payment to ~~the~~ them. Therefore the applicants cannot now raise that issue before this Tribunal. According to the respondents, the application is not maintainable as the applicants seek promotion with effect from 1.8.78 or 1.1.84 and they have approached this Court now in 1998. Thus, it is time barred. Application is also for multiple reliefs.

5. The preliminary objections apart, respondents have submitted that upgradation as Khalasi Helper was applicable only for Group D regular permanent employees. Casual labours have to undergo proper screening before they could be regularised. Applicants were screened and regularised only in 1989 and therefore they cannot claim any upgradation from 1.8.78 or 1.1.84. In fact on 1.8.78, very few employees had been screened. Regularisation is done not only on the basis of seniority or longevity of service but also on other factors like reduction on account of D&AR, absenteeism etc. The NBR benefit is given after taking into consideration all these factors. In the case of the applicants stepping up of pay on NBR basis was done with effect from February-March, 1996 vide letter dated 4.3.96 (R-1 in the paper book) and not from January, 1995 as claimed by the applicants. Whenever any stepping up/NBR is given, it is required to be vetted by the Associate Finance. When the fixation of NBR to the

applicants was submitted to Associate Finance for vetting the fixations, it was noticed that NBR was wrongly given to the applicant. Seniority of Khalasis was wrongly prepared following various criteria from time to time some of which were contrary to the rules. Since upgradation was done wrongly, it was decided to refer the matter to the CPO/Northern Railway for a decision. On hearing from the CPO, instructions for fixation of pay will be prepared and sent to Accounts Branch for verification. No final decision has yet been taken as such on this point and the matter is under consideration. Respondents have however admitted that the basic pay of the applicants was reduced in May, 1998 but it was not reduced arbitrarily. Undertakings had been obtained from the applicants that if as a result of incorrect fixation of pay any excess is detected in the light of the discrepancies noticed subsequently, the excess will be refunded by each railway employee to the government either by adjustment against future payment due to him or otherwise. Respondents further aver that so far they have not made any recoveries but they reserve their right to recover the same.

6. The learned counsel for the applicants maintains that the applicants are entitled to the NBR promotion according to para 228 of the Indian Railway Establishment Manual Vol.I as their juniors have been promoted much earlier. Reduction in basic pay without giving notice is not proper.

7. The learned counsel for the applicants has cited the judgement given on 8.8.94 in OA No.2554/93 in the case of Shri Shiv Dayal & Ors. wherein the Tribunal held that show cause notice should be issued and orders should be passed on representation against such show

cause notice. In this case the applicants were of the same cadre as the applicants in the present OA. He further relies on the case of Anand Kumar Vs. Haryana Urban Development Authority & Anr. (1998 (i) SLJ (P&H.HC) 195). The counsel is also drawing support from the case of Narayan Yeshwant Gore Vs. UOI & ORs. (1995 (3) SLJ SC 188) which lays down that those similarly placed should be given similar treatment.

8. The learned counsel for the respondents contends that the applicants were given NBR benefit wrongly and the pay fixation was not done correctly. Since that is to be vetted by the Associate Finance, the matter is still in fluid stage. A decision is yet to be taken. The learned counsel has further denied that the judgements cited by the applicants are applicable in this case as the applicants in the present OA had given a clear undertaking for recovery of excess payments unlike in OA No.2554/93.

9. We have heard the learned counsel for both the applicants and the respondents and the submissions made by them. As pointed out by the respondents, we do find that there were ^{no} ~~any~~ orders but only the minutes of the meeting held between the Deputy Chief Engineer and the representatives of the Union on 5.10.98. All the same, applicants' main grievance is that their basic pay has been reduced. This has not been denied by the respondents. Therefore, we are inclined to overlook the impugning of the minutes dated 5.10.98. Applicants have no doubt rushed to the Tribunal immediately within two months of making representation to the respondents but we note that the respondents did give a reply to the applicants through their letter dated 30.7.98.

Therefore, the objection regarding applicants' approaching this Tribunal before expiry of six months of making the representation does not stand.

10. We have also seen that the applicants had given an undertaking about recovery of excess payments. We also find that in the representation addressed by the applicants to the respondents, the applicants have themselves stated that they had been intimated through a notice on the Notice Board that every railway employee had given an undertaking to the railway administration that if there were any discrepancies in the pay fixation, such employee would refund the excess payment or the Railway administration would recover the same from his salary. This goes to show that there was some notice about the recovery of excess payment. Therefore, non-issue of further notice cannot be made a ground. There is no arbitrariness on the part of the respondents. It is also very clear from the submissions made by the respondents that the applicants were regularised only in 1989. Therefore they would not have been eligible for upgradation prior to that date. They would have been eligible in 1993 subject to there being enough vacancies and their juniors being considered. The respondents gave them the NBR benefit from the date their juniors were promoted in 1996. This being the position, we do not find any merit in this application. We, therefore, dismiss the OA. We do not order any costs.

Shanta

(Smt. Shanta Shastry) (Smt. Lakshmi Swaminathan)
Member(A) Member(J)

Lakshmi Swaminathan

/gtv/