

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/1445/2014

HYDERABAD, this the 3rd day of February, 2021



Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

Smt A. Razia Begum,
W/o. Late Habeeb Khan,
Aged about 56 years,
House Wife,
R/o.H.No.6-2-368,
Srinagar Colony,
N.G. College Back side,
Hyderabad Road, Nalgonda – 508 001.

...Applicant

(By Advocate : Sri Y.V. Satyanarayana)

Vs.

1. The General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad – 500 003.
2. The Chief Personal Officer,
South Central Railway,
Railway Nilayam,
Secunderbad – 500 003.
3. The Union of India rep. by its under
Secretary, Railway Department,
Sansad Marg, New Delhi – 110 001.

...Respondents

(By Advocate: Smt. A.P. Lakshmi, SC for Rlys.)

ORAL ORDER
(Hon'ble Mr. B.V. Sudhakar, Admn. Member)

Through Video Conferencing:



2. The OA is filed by the wife of the deceased employee for restoration of pay of her late husband duly stepping up his pay and pension, by counting 50% of casual service before conferring temporary status on him and payment of arrears.

3. Brief facts of the case are that the late husband of the applicant worked for the respondents organisation as a Driver and retired on 15.02.2010 and thereafter, passed away on 16.4.2014. Claiming revision of pay and pension, wife of the deceased employee has filed the present OA.

The ex-employee joined the respondents' organization as casual Driver in 1979 and was granted temporary status on 1.1.1983 in the scale of Rs.300-500(RS)/1200-1800(RSRP)/4000-6000. His services were regularized as Staff Car Driver Gr. III in February 1998. Thereafter, the ex-employee was transferred to Vikarabad in 1991 and given the scale of pay of Rs.1200-1800/4000-6000 and was allowed to work in higher grade in the Construction Organization against the work charged post. Thereafter, he was posted as Staff Car Driver at HQ of GM, S.C. Railway on 29.1.1998 in the pay scale of Rs.950-1500/3050-4590. Even though the scale was shown as Rs.3050-4590, he was paid in the scale of Rs.4000-6000 from January 1998 till February 2000. Applicant's salary was refixed in the pay scale of Rs.3050-4590 w.e.f. 21.02.1998 vide memo dated 28.7.2000. Respondents fixed the pay in the pay scale of Rs.3050-4590 in the minimum of the scale without adding increments and a recovery of Rs.234 was ordered in May



2001 salary without notice. Aggrieved over the pay revision, OA 1379/2001 was filed wherein, the order dated 28.7.2000 was set aside and respondents were directed to restore pay to that drawn prior to 28.7.2000 with consequential benefits and granting liberty to take fresh action after issue of fresh notice. Salary was revised and reduced on 2/5.6.2004 but failed to refund the deducted amount for the period from Feb. 2002 till May 2004 and grant of consequential benefits. Besides, the reduction was implemented in May 2006 after a lapse of 1½ years of the order of rejection. Later, ex-employee was promoted as Staff Car Driver Gr. II after due selection to the scale of pay of Rs.4000-6000 on 9.7.2004 w.e.f. 1.11.2003. Though the applicant was promoted to the scale of pay of Rs.4000-6000 w.e.f. 1.11.2003, reduction of pay from 19.10.2004, which was implemented from May 2006, is irregular. Wife of a colleague of the husband of the applicant by name Sri Abu Baker, who also worked as Staff Car Driver, filed OA 37/2006 and his pension was fixed by taking 50% of the casual labour service and 100% of Temporary status service, whereas the same was not considered for the husband of the applicant. The ex-employee represented on 17.8.2007 to release the salary recovered from February 2000 to May 2004 as per the order the Tribunal and restore his pay to Rs.5500. Followed it up by issue of a legal notice on 3.8.2012. The ex-employee retired on 15.2.2010 and was granted pension of Rs.5571. As the benefits were not granted as sought for by the ex-employee before his death on 16.4.2014, the OA is filed by the applicant.

4. Respondents in their reply statement confirm that the ex-employee joined the respondents organization on 23.6.1979 as Casual Driver in the pay scale of Rs.330-480 and was granted the temporary status on 1.1.1983 in the pay scale of Rs.260-400. The ex-employee was promoted as Driver Grade-I without being screened and absorbed against a regular vacancy (Annex.-E). Services of the ex-employee were regularised as Staff Car Driver (SCD) in Grade III in the scale of pay of Rs.3050-4590 on 4.2.1998 as per PCPO's Serial Circular No.103/1997. Applicant was allowed to draw the higher pay drawn earlier to regularisation (Annexure F) and therefore, the pay was revised on 28.7.2000 to the scale of pay Rs.3050-4590 w.e.f. date of regularisation as per Master Circular No.56 keeping in view FR 22(1)(a)(2). Aggrieved, applicant filed OA 1379/2001 wherein it was directed to restore the pay to the one drawn prior to 28.7.2000 granting liberty to the respondents to issue fresh notice and take necessary action. Pay accordingly was re-fixed w.e.f. 02.06.2004 after issue of notice on 20.7.2004, as Rs.4030 in the pay scale of Rs.3050 -4590 w.e.f.21.02.1998. The pay of Rs.4030 drawn in the pay scale of Rs 4000- 6000 is less than the maximum of the lower scale of pay Rs.3050-4590 in which he was regularly absorbed.



The respondents further submit that the ex-employee was on unauthorised absence from 5.12.2008 till 5.8.2009 and hence was proceeded on disciplinary grounds, resulting in the imposition of the penalty of compulsory retirement on 10.2.2010. The ex-employee was granted temporary status on 1.1.1983 and regularised on 21.2.1998 which

works out to 15 years and 50% of the Temporary status service i.e. 7 ½ years was considered for working out the pension.

Respondents have also submitted additional material as directed by the Tribunal and we have gone through the same.



6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is about revision of pay and re-fixation of pension.

The relevant facts to the dispute are that the applicant was regularised as Staff Car Driver in the scale of Pay Rs.3050-4590 on February 1998. However, respondents allowed the applicant to draw pay in the higher pay scale of Rs.4000-6000 till July 2000. On 28.7.2000 the pay was revised to Rs.3050-4590 based on Master Circular No.56 and relevant FR provision. Aggrieved, applicant and two others filed OA 1379/2001 wherein it was directed to restore the pay drawn prior to 28.7.2000 and grant consequential benefits. Liberty was granted to the respondents to refix the pay after issue of notice. The order of the Tribunal dated 04.02.2004 is as follows.

“11. In the result, this OA is allowed. The orders issued by the 2nd respondent vide Annexure-I dated 28.7.2000 refixing the salary of the applicants as shown therein and their absorption as Staff Car Driver Gr. III are hereby set aside on the ground of non-compliance with the principles of natural justice. As a consequence, the respondents are directed to restore the pay of the applicants which they were drawing prior to 28.7.2020, the date of issue of the order Annexure I and grant all consequential benefits including refund of amount already deducted. However, liberty is reserved to the respondents to initiate fresh action, if considered necessary, after issuing show cause notice to the applicants calling upon their representations and thereafter by passing appropriate orders. In the circumstances, we direct the parties to bear their respective costs.”

II. The grievance of the applicant is that the amount recovered has not been refunded as ordered by the Tribunal. There is no response from the

respondents except to state that the pay was re-fixed w.e.f. 2.6.2004 after issue of show cause notice on 20.7.2004. The additional argument presented by the respondents was that the pay of Rs.4030 drawn in the pay scale of Rs.4000-6000 is less than the maximum of the pay scale of Rs.3050-4590 granted on regularisation. The ex- employee in response to the show cause notice has replied stating that the pay in pay scale of Rs 4000-6000 was paid for 15 years from 1986 till 2000 and it is not his fault for being granted a higher pay. Revising the pay retrospectively is not permitted. However, the reply given was rejected on 19.10.2004 and pay re-fixed as per the directions of the Tribunal.



In this regard, we observe that, it is an admitted fact that the ex-employee was paid higher pay in the pay scale of Rs.4000-6000 prior to 28.7.2000. Tribunal directed to refix the pay after issue of notice which was done w.e.f 2.6.2004. The pay can be refixed as per eligibility, but there cannot be any recovery from the ex-employee on grounds of alleged excess payment done. The case of the ex-employee is covered by the directions of the Hon'ble Apex Court in Rafiq Masih case as under:

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."



Thus respondents have to necessarily refund the amount recovered from the applicant, as the case is covered by clauses (i) & (ii) cited supra.

III. Another issue related to the recovery is that the ex-employee was regularly selected to the post of Staff Car Driver in the scale of pay of Rs.4000-6000 on 20.8.2004 w.e.f. 1.11.2003. When the ex-employee has been brought on to the higher scale on promotion with effect from 1.11.2003, we declare that the applicant cannot be reduced to the lower pay scale of Rs.3050-4590 from 19.10.2004 and neither there can be any recovery on the ground that that ex employee was granted the higher pay scale from 1.11.2003. Incidentally the order of reduction of pay was effected in May 2006 with a delay of 1 ½ years.

IV. Further, respondents admitted in the reply statement that they have added 7 ½ years of Temporary status while calculating the pension. There is no mention about inclusion of 50% of casual labour service for fixing the pension. Hon'ble Supreme Court in **Union Of India & Ors vs Rakesh Kumar & Ors** on 24 March, 2017 in CIVIL APPEAL NO. 3938 OF 2017 (ARISING OUT OF SLP (C) NO. 23723 OF 2015, in regard to fixation of pension with respect to services rendered as casual labour, has directed as under:

55. In view of foregoing discussion, we hold:

i) the casual worker after obtaining temporary status is entitled to reckon 50% of his services till he is regularised on a regular/temporary post for the purposes of calculation of pension.

ii) the casual worker before obtaining the temporary status is also entitled to reckon 50% of casual service for purposes of pension.

iii) Those casual workers who are appointed to any post either substantively or in officiating or in temporary capacity are entitled to reckon the entire period from date of taking charge to such post as per Rule 20 of Rules, 1993.



Therefore, the pension has to be revised in terms of the above judgment.

V. Hence, keeping the above observations in view, respondents are directed to consider, based on settled law, as under:

- i. To refund the amounts deducted if any, if not refunded till date, in terms of the order of the Tribunal in OA 1379/2001 and keeping in view that the ex-employee has been promoted to the scale of pay of Rs.4000-6000 w.e.f. 1.11.2003.
- ii. The pay of the ex-employee has to be properly fixed as Rs.4000-6000 w.e.f. 1.11.2003 as per order of the respondents dated 20.08.2004.
- iii. The pension of the ex-employee has to be re-fixed by taking into consideration 50% of the causal labour service rendered and also keeping in view clause ii above.
- iv. Arrears of pay and pension, to be paid consequent to the above directions shall be restricted to 3 years prior to the date of filing of the OA as per Hon'ble Supreme court order in **Union of India & Anr vs Tarsem Singh in CA No.5151-5152 of 2008.**

- v. Time period allowed to implement the order is 3 months from the date of receipt of this order.

With the above directions, the OA is disposed of with no order as to costs.



(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/evr/