

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW DELHI~~

DELHI ~~AMERDAAD~~ BENCH

O.A. No. 992 of 1987

~~PERSON~~

DATE OF DECISION 10.7.91

Shri Jagmohan Lal Petitioner

Shri S.K. Sawhney Advocate for the Petitioner(s)

Versus

Union of India Respondent

Shri S.N. Sikka Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. Trivedi : Vice Chairman

The Hon'ble Mr. T.S. Oberoi : Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*

Seen
M(J)
(T.S. OBEROI)

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Shri Jagmohan Lal,
81/3, Railway Quarter,
Sabji Mandi,
DELHI.

: APPLICANT

VS.

Union of India, through
General Manager,
Northern Railway,
Baroda House,
NEW DELHI

: RESPONDENT

J U D G E M E N T

O.A. No. 992 of 1987

Date : 10.7.91

Per : Hon'ble Mr. P.H. Trivedi

: Vice Chairman

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has impugned the order dated 16.10.1986 by which his pay was revised and reduced to Rs.1040/- and recovery was ordered from 31.1.1984 without following the Railway Servants (Discipline & Appeal) Rules. His case is that he was promoted from the scale of Rs.700-900/- to that of Rs.840-1040/- on adhoc basis by letter dated 19.6.1981 at Annexure I, and his pay was fixed at Rs.960/- per month w.e.f. 19.6.1981. On the restructuring of the cadre the applicant was regularised in the pay scale of Rs.840-1040/- w.e.f. 1.1.1984 by letter dated 15.1.1985 at annexure III. His adhoc promotion was followed by regular promotion in this scale and, on that, the applicant claims that he was entitled

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to seniority and other benefits in the scale of Rs.840-1040/- w.e.f. 19.6.1981. He was granted annual increment in the scale Rs.840-1040/- after his promotion on 19.6.1981 and on 19.6.1983 he reached the maximum of this scale i.e. Rs.1040/- per month. The applicant was thereafter appointed to officiate as Asstt. Engineer in Class II w.e.f. 31.1.1984 by letter dated 31.1.1984 of the General Manager, and his pay in Class II scale of Rs.650-1200 was fixed at Rs.1120/- per month under Rule 2018 B of Railway Establishment Code by letter dated 13.1.1985 at Annexure IV. At that stage the respondents issued the impugned order dated 16.10.1986 at Annexure V whereby the applicant's pay was revised to Rs.960/- per month in the scale of Rs.840-1040/- from 1.1.1984 and his pay in the class II scale was reduced to Rs.1040/- per month instead of Rs.1120/- per month earlier allowed. No reason was given in this letter for revision and reduction of pay. The applicant's representation dated 22.10.1986 at Annexure VI requesting reasons for such reduction was made, but it was rejected arbitrarily without assigning any reason by letter dated 2.1.1987 at Annexure VIII. The respondents also issued Audit Note dated 20.6.1987 annexed at annexure IX whereby recovery for the alleged over-payment has been ordered from 31.1.1984. No recovery was ordered according to the applicant prior to 31.1.1984, and that he was drawing Rs.1040/- per month in the scale of Rs.840-1040/- at the maximum of that stage. The applicant's contention is that his pay in class II scale of Rs.625-1200/- is to be fixed, with

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reference to the pay in the scale of Rs.840-1040/-. He has therefore sought relief for declaration of the order dated 16.10.1986 at Annexure VIII and the fixation of the pay already made by letter dated 7.11.1985 to be declared to be illegal and the letter regarding the alleged over-payment by Audit Note dated 20.6.1987 at Annexure IX be declared illegal.

2. In the reply the respondents state that there is no question of penalty and therefore Railway Servants (Discipline and Appeal) Rules are not attracted, and no order explaining the reason for recovery or for calculating over-payment is called for. According to the respondents adhoc promotion of the applicant in the grade Rs.840-1040/- was purely on local and fortuitous basis and his regular promotion was made on account of the order of restructuring of the cadre, received from Railway Board by letter dated 15.1.1985. Further, adhoc promotion in the construction organisation is treated as ex-cadre post for the purpose of fixation of pay, and benefit drawn in such post is not admissible in terms of Railway Board Instruction by letter dated 7.8.1986, annexed at R-1 and 2. Promotion of class II service is based on Seniority for 75% and Inter Departmental Cadre Examination (IDCE) for 25% of the posts. The applicant was promoted on the basis of 75% selection w.e.f. 31.1.1984, but before promotion to class II service, he was working as ICW/Construction grade Rs.840-1040/- on adhoc basis and was

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drawing Rs.1040/- under that scale. Accordingly, his pay was fixed at Rs.1120/- in class II in scale Rs.650-1200/-. Increment, which he earned in the adhoc promotion post of Rs.840- 1040/- and which took him to maximum of Rs.1040/- under that scale would not be allowed to him when his pay is to be fixed on regular post in the scale Rs.650-1200/-. The revision of the pay was accordingly carried out and his pay was fixed at Rs.1040/- and over-payment was found to have been made of Rs.3190/- The sum was ordered to be recovered from him.

3. In his rejoinder the applicant has urged that the respondents have misinterpreted the Rules and instructions. He continues to work in the Construction Division and the regularisation of his promotion has not caused any repatriation of the applicant to the open line. Annexure R-1 and 2 apply only to fixation of the pay on repatriation of the open line. The increments and promotion allowed in the Construction Division on temporary basis, were not granted to the applicant on repatriation in the pay scale on regular basis in the open line. In the case of the applicant the adhoc promotion earlier given to him was regularised on the re-structuring of the cadre and was therefore to be allowed in the fixation of his pay to the regular post.

pu 4. Both parties waived hearing and were allowed to file written submissions. In them the respondents have largely reiterated their earlier stand in their reply. In his reply to the submission of the respondents the applicant has

also mostly reiterated his pleas in his application and rejoinder.

5. On perusal of the pleadings and of the written submission, we note that the applicant's case gathers much force from two grounds before the merits of the case of both the sides are given more detailed consideration. There is no doubt that the order of re-fixation of the pay and of recovery for alleged over-payment causes adverse effects pecuniary loss, and evil consequence to the applicant. The applicant was admittedly allowed to draw increment in the pay scale of Rs.840-1040/- and in class II scale of Rs.650-1200/- in which he reached Rs.1120/- and the impugned orders have caused pay to be fixed at Rs.1040/- reducing it from Rs.1120/- and over-payment is computed to be Rs.3190/- which is sought to be recovered. In several Judgements of various benches of this Tribunal, it has been laid down that such a recovery caused adverse effect or evil consequence ^{due} without first giving notice to the affected government servant, ^{without} after considering his representation, if he makes any in that regard. In this case the representation has admittedly been made, even though no notice was given, and this representation is replied to by the orders which on the face of it give no reason and therefore raise doubt whether it was considered. A reply to the representation annexed at XVIII dated 2.1.1987 merely states that the applicant's case does not merit consideration. Not giving notice is bad enough, Replying to the representation in these terms is unsatisfactory when we consi-

der the way the pleas the applicant has made in his case, and which he must have presumably made also in his representation. This point is hardly answered by the fact that the Audit Note gives the calculation by which the alleged over-payment is computed and shows the basis on which the revision of the pay is made. This is because the pleas for principles of re-fixation applicable to the applicant's case as alleged by the applicant have not been brought out or ⁱⁿ ~~annexed~~ ^{concluded} by it.

6. The second major ground is that ~~if~~ the applicant was allowed promotion in the grade of Rs.840-1040/- on purely adhoc basis on fortuitous circumstances. Susequently, his pay scale in Class II of Rs.650-1200/- by promotion was duly made. The respondents have admitted that the applicant was promoted by selection in 75% quota on the basis of seniority. The restructuring which was ordered by the Railway Board and the benefit of which was given to the applicant does not cause him to be repatriated to the open line. We do not find anything in instruction annexed at R-1 and 2 to show the applicant to be necessarily dis-entitled to the pay he enjoyed before it was refixed, and the alleged over-payment was said to be needed to be recovered. We are not persuaded fully that these instructions are restricted as pleaded by the applicant, only to persons who are repatriated to open line. To that extent the applicant might have over-stretched his plea. On the other hand, these instructions do not also show that when the applicant was regularised in the construction division on re-structuring and

on his being promoted by seniority on selection basis against 75% quota, he would lose altogether the benefits enjoyed in the pay scale, on adhoc basis. Government instruction do not allow adhoc promotion on purely legal and fortuitous basis to continue beyond a period of four months, but that instead posts so filled up beyond that period must be filled up on regular basis. We do not know whether any attempt was made to fill up the post on regular basis earlier, or whether the applicant was qualified on the basis of seniority to be regularised earlier. Even if adhoc promotion continues for long, benefits of seniority, ^{on} ~~at~~ being regularised have been allowed. The applicant therefore has a strong case, on regularisation, to count his increment etc. in the pay scale of adhoc promotion post unless there are circumstances to the contrary.

7. In the circumstance of this case therefore, we consider it adequate and proper to give relief in following terms :-

The impugned orders are directed to be quashed and set aside. No recovery of alleged over-payment be allowed until the applicant is furnished with the speaking order by the respondents Chief Engineer, (Construction) Northern Railway, replying to the representation dated 22.10.1986 to which the pleadings in this case be considered as addendum. We must observe that the respondents will be at liberty to pass proper and legal orders regarding deciding whether there has been over-payment and if so, for effecting recovery on further notice and issue of speaking orders as aforesaid. We direct that the speaking order be passed within 3 months from the date of this order and one month's time is allowed

to him to seek remedy, regarding any grievance, arising therefrom, and until a period of four months from this order, no recovery be effected.

8. We find merit in the application to the extent stated. In the circumstances of this case, there shall be no orders as to costs.

T.S. Oberoi
(T.S. OBEROI)
Member (J)

P.H. Trivedi
(P.H. TRIVEDI)
Vice Chairman