

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O. A. NO. 956/93

New Delhi this the 13<sup>th</sup> day of May, 1994

HON'BLE MR. S. R. ADIGE, MEMBER (A)

Onkar Nath Teri,  
Ex. Head Clerk (Personnel Branch),  
Northern Railway Head Quarter's  
Office, Kashmere Gate, Delhi.

Now working as Office Superintendent in  
Indian Railway Construction Company Ltd.,  
Palika Bhawan, Sector-XIII,  
R. K. Puram, New Delhi.  
R/O B-40, Sujan Singh Park,  
Sonipat - 131001.

... Applicant

By Advocate Shri V. P. Kohli

Versus

Union of India through  
General Manager,  
Northern Railway,  
Baroda House,  
New Delhi.

... Respondent

By Advocate Shri H. K. Gangwani

O R D E R

In this application, Shri On Nath Teri, Ex. Head Clerk (Personnel Branch) Northern Railway, New Delhi has prayed for a direction to the respondents to pay the difference in settlement dues to the applicant on the basis of his pay of Rs. 680/- per month that he would have last drawn in the Construction Organisation of Northern Railway for deputation with Indian Railway Construction Company Limited (IRCON). The applicant has also prayed for interest on the dues at the prevalent market rates.

2. According to the applicant, he was a permanent employee of the Personnel Branch Cadre of the Northern Railway <sup>as Hk. Officer</sup> and working continuously <sup>in Northern Railway Construction Organisation</sup> since February, 1961. He was promoted as Head Clerk in the grade Rs. 425-700 (RS) w.e.f. 6.7.71 in the Northern

*Construction Organisation*  
Railway and he continued to hold this post till 29.4.82 when he was sent to deputation to IRCON in the same capacity. He would have continued to officiate in the Construction Organisation of the Northern Railway but for his deputation to IRCON. On his deputation to IRCON, his pay was fixed in accordance with the last pay drawn by him in the Construction Organisation of the Northern Railway. Meanwhile, he was regularised as Head Clerk from 16.7.82 in his parent Organisation i.e. the Personnel Branch of the Northern Railway. After completion of three years' deputation with IRCON, he was absorbed in that Organisation on 3.4.85 on his deemed retirement from Northern Railway w.e.f. 29.4.85. The applicant contends that his salary in the Northern Railway *Cons. Org.* on his deemed retirement on 29.4.85 was Rs. 680/- per month and his settlement dues had to be worked out accordingly but the same has not been arranged on the basis of last pay drawn by him in the Northern Railway *Cons. Organisation* and in spite of representations to the authorities, his prayer was not allowed, compelling him to file this O.A. In this connection, the applicant has cited certain cases where the prayer similar to his case, was allowed by the Tribunal including the case of 'Shri G.H. Swami Vs. Union of India' (O.A. No. 1522/91, decided by this Tribunal on 29.4.92).

3. The respondents have challenged the contents of the O.A. in their counter affidavit, and stated that the applicant held his lien in his parent cadre which was Personnel Branch, Headquarters Office, Northern Railway. He was working in the Construction *Organisation of Northern Railway* ~~Wing~~ which is out of cadre and temporary. On his



deputation to IRCON, he was deemed to have been repatriated to his parent cadre and his fixation of pay had been done accordingly with reference to his pay in the parent department. He was entitled to promotion in NBR on the post of Head Clerk Grade Rs.425-700/-(RS) w.e.f. 16.7.82 in his parent cadre i.e. Personnel Branch <sup>He. Office</sup> and his pay was fixed as per his cadre position. His settlement, on his permanent absorption was made correctly according to his pay which was refixed with reference to his pay in his parent cadre. It is claimed that Shri G.H. Sawmi's case (Supra) is not applicable to him as he was not a party in that case.

4. I have heard Shri V.P.Kohli, learned counsel the applicant and Shri H.K.Gangwali, learned counsel for the respondents. Shri Kohli has drawn my attention to the judgment in 'Santosh Kumar Vs. Union of India' (O.A.No.1012/89, decided on 11.11.91 & reproduced in 1992 CSJ(CAT) 25(PB). In that judgment, it had been held that

" The concept of retention of lien in the parent cadre cannot be used to curtail the benefit of the actual pay drawn with reference to the pay drawn by the next junior in the parent cadre. The retirement dues of the applicant will thus require to be calculated in accordance with the pay drawn by him in the post which he held prior to his retirement. Further the fixation of pay of the applicant in the parent cadre by applying the principle of NBR with reference to his next junior is not relevant. The principle underlying the NBR is to protect the senior employee outside when his next junior is promoted in his own cadre on adhoc regular basis. The intent is not to bring down or reduce the senior employee outside his line to the stage of his next junior in regular line."

In Swami's case (Supra) also, the respondents were directed to consider refixation of the pay of that applicant's pay in accordance with the salary drawn

by him while on deputation to Construction Wing, and eventually on his absorption to IRCON, and thereafter to calculate the settlement dues of that applicant and pay the balance, if any, along with 10% interest till the date of payment. It was further directed in that case that the applicant be given opportunity to represent his case for refixation of pay while on deputation to Construction Wing and also to IRCON deserving the liberty to the applicant to seek remedy in the proper forum, if so advised, in the event any grievance survives thereafter.

5. To my mind, the ratio in Swami's case (Supra) is fully applicable to the facts of this case and under the circumstances, following the ratio of that judgment, the respondents in the instant case are directed to consider refixation of the applicant's pay <sup>on</sup> from 16.7.82 <sup>to</sup> 29.4.82, and 29.4.85 in the light of the judgment in Swami's case (Supra). <sup>in the light of extant rules</sup> The settlement dues should be recalculated and the applicant be paid the balance amount due along with 10% interest till the date of payment. The respondents should calculate the <sup>the</sup> settlement dues and pay the same, if any is found due, within a period of six months from the date of receipt of a copy of this order. No costs.

*Adige*  
(S.R.ADIGE)  
MEMBER(A)

/ug/