

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD.

1/ day of
Allahabad, this the 4th September, 2002.

Original Application No. 1004 of 1996.

Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. A.K. Bhatnagar. J.M.

Sri. D.N. Rai, Radiographer (Retired),
North Eastern Railway, Varanasi,
Resident of House No.C-33/211-B Hari
Nagar, Colony, Chandua Chhappur,
Varanasi.

.....Applicant.

Counsel for the applicant: Sri S.K. Om, Adv.

Versus.

1. Union of India through General Manager,
North Eastern Railway, Gorakhpur.
2. Financial Advisor and Chief Accounts Officer,
North Eastern Railway, Gorakhpur.
3. Chief Personnel Officer, North Eastern Railway,
Gorakhpur.
4. Senior Divisional Personnel Officer, North
Eastern Railway, Varanasi.
5. Chief Medical Superintendent, North Eastern
Railway, Varanasi.

.....Respondents.

Counsel for the respondents: Sri P. Mathur. Adv.
Sri D.C. Saxena, Adv.

O R D E R

(By Hon'ble Mr. S.Dayal, A.M.)

This application has been filed for setting aside the order dated 10.05.1996 and directing the respondents to pay the revised salary to the applicant for the post of Radiographer w.e.f 22.06.1976 with interest at the rate of 18% per annum, and all other terminal benefits. A prayer has also been made for payment of pension, D.C.R.G, Leave Encashment on the basis of last pay of Rs.1480/- drawn by the applicant at the time of his voluntary retirement.

2. The applicant, who was non-matric, joined North Eastern Railway and was promoted as X-ray Attendant w.e.f 23.05.1970. On 22.06.1976, the post of X-ray Attendant was upgraded in restructuring and was designated as Radiographer in the pay scale of Rs.260-430/-.. The eligible qualification for the post of Radiographer was High School, but it is claimed that the applicant was directed to work as Radiographer. It is stated that the respondent No.5 sent a proposal to the respondent No.4 and respondent No.1 respectively to relax the qualification with the respect to the applicant. The respondents by order dated 26.08.1993 relaxed the said qualification and the applicant was directed to appear in the suitability test again which he passed ~~the same~~ on 01.12.1993 and was posted on a regular basis in the pay scale of Rs.975-1540/- (Revised). The applicant made a claim on 30.01.1994 for grant of pay in the said pay scale w.e.f 22.01.1976 with arrears of salary. Since he was working on the post of Radiographer, this prayer was allowed by the respondent No.4 vide his order dated 08.03.1994 which shows that the applicant was drawing the salary of Rs.1420/- per month on 01.06.1993. The payment of salary with arrears w.e.f. 22.06.1976 was objected by the Finance Department. The proposal made by the respondent No.4 was not accepted by the Divisional Account Officer. Thereafter, the applicant made an application for voluntary retirement w.e.f 30.04.1996 on account of personal reasons. He was drawing his salary of Rs.1480/- per month at that time. The applicant received a letter dated 10.05.1996 from the respondent No. 4 reducing his salary from Rs.1480/- to Rs.1150/- retrospectively w.e.f 02.12.1993. It is claimed that the said order was passed without affording any opportunity of hearing. The excess amount paid to the applicant w.e.f 02.12.1993 has been recovered from the payment made to the applicant at the time of his voluntary retirement. The applicant

made an appeal on 06.06.1996 which was not decided by the respondents.

3. We have heard Sri S.K. Om, counsel for the applicant and Sri D.C. Saxena, counsel for the respondents.

4. Learned counsel for the respondents contended at the out-set that the applicant had filed an appeal on 18.05.96 which was pending with the respondents. The respondents should be allowed time to decide the said appeal.

We find with regard to this contention of the learned counsel for the respondents that the order dated 24.09.1996 permitted the respondents to consider and dispose of the representation/appeal dated 18.05.1996, but the same has not been done sofar. The applicant having retired in the year 1996 will be subjected to further delay in case this prayer of the learned counsel for the respondents is allowed.

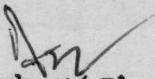
5. The learned counsel for the respondents has also submitted before us that the applicant was granted relaxation in the year 1993 and was subjected to pass trade test and, therefore, he was not entitled to payment for working on the post of Radiographer before the grant relaxation and Trade test held subsequently.

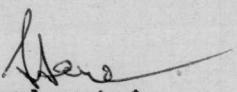
6. We have considered the last argument of the learned counsel for the respondents. We find that the order dated 08.03.1994 (Annexure 3 to the O.A.) fixes the pay of the applicant from 22.06.1976 till 01.06.1993, the pay fixed on 01.06.1993 in the scale of Rs.975-1540/- was Rs.1420/-. The applicant was paid the salary at the rate of Rs.1420/- from 08.03.1994 on-words, but has not been paid any arrears.

7. The impugned order dated 10.05.1996 gives the revised pay of the applicant from 02.12.1993 and fixed the pay of the applicant in the pay scale of Rs.975-1540/- at Rs.1150/- per month on 02.12.1993, Rs.1180/- as on 01.05.1994 and Rs.1210/- per month as on 01.05.1995.

8. We find that the applicant had been made to work as Radiographer w.e.f 22.06.1976 when his post of X-ray Attendant was converted to the post of Radiographer. Although, the applicant cannot be said to ~~be~~ fulfilled the Recruitment Rules for the post of Junior Radiographer, but since the post of X-ray Attendant was upgraded to the post of Radiographer and the respondents ~~were~~ continued to take work from the applicant for the said post, the applicant shall be entitled to get payment for the work done.

9. In view of the above, we set aside the order dated 10.05.1996 and direct the respondents to pay arrears of pay as per the order of fixation of pay dated 08.03.1994 and also pay to the applicant the retiral benefits on the basis of last pay drawn with interest at the rate of 8% per annum from the date of filing of this O.A. The recovery, if any, has been made from the applicant, the same shall be refunded to him. The above directions shall be carried out within a period of 4 months from the date of receipt of a copy of this order. No order as to costs.


Member (J)


Member (A)

/Manish/