

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 11TH DAY OF August, 2011)

HON'BLE MR. A. K. BHARDWAJ, MEMBER (J)

Original Application No.1590 of 2004
(U/S 19, Administrative Tribunal Act, 1985)

Sushant Kumar Acharjee, Retired I.O.W. Grade-II, S/o Late Shiv Kinkar Acharjee, R/o House No. G-2/109 Rail Vihar Colony, Post Office Chargawan, Gorakhpur (U.P.)

..... **Applicant**

Present for Applicant : Shri K. K. Mani, Advocate

Vs.

1. Union of India through the General Manager, North Eastern Railway Gorakhpur.
2. Divisional Railway Manager (Karmik), North Eastern Railway, Sonpur.
3. Chief Engineer, North Eastern Railway, Gorakhpur.
4. Financial Advisor and Chief Account's Officer (F.A. and C.A.O.) Pension North Eastern Railway, Gorakhpur.

..... **Respondents**

Present for Respondents: Shri K. P. Singh, Advocate.

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O R D E R

Applicant has filed present Original Application assailing the order dated 18.04.1996 and 31.5.2001, making the following prayer:-

- (a) *quash and set aside the impugned order dated 18.4.1996 passed by respondent No. 2 Divisional Railway Manager (Karmik) North Eastern Railway, Sonpur and order dated 31.5.2001 passed by Chief Personnel Officer for respondent No. 1 General Manager NER Gorakhpur contained as Annexure No. A-1 and A-2 respectively to the compilation I of the Original Application.*
- (b) *issue order or direction commanding and directing the respondents (Respondent No. 1 in particular) to make final settlement of the retirement benefit of the applicant and accordingly issue final pension payment order in the favour of the applicant by treating his qualifying service for pensionary benefit w.e.f. 19.9.1966 at the place of 25.9.1971 and by granting adhoc promotion to the applicant on the post of I.O.W. Grade I in scale of Rs. 2000-3200/- accordingly consequential pay fixation, pensionary benefits.*
- (c) *issue a order or direction commanding and directing the respondents to pay interest at rate of 12% per annum on delayed payment.*
- (d) *issue any other and further order or direction which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.*

2. Applicant was engaged as Casual Labourer against work charged post w.e.f. 18.2.1963. He continued in such capacity in Sonpur Department N. E. Rly till 15.04.1967. He further worked as Casual labour from 09.06.1970 to 21.01.1971. He could be absorbed by respondents as Fitter in the pay scale of Rs. 110-180/- w.e.f.

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25.09.1971. He got promotion as Work Mistry in the pay scale of Rs. 150-240/380-560/- w.e.f. 30th June 1974. In terms of order dated 01.05.1979 applicant could be promoted as Janitor on adhoc basis in the pay scale of Rs. 425-640/-. He continued as adhoc Janitor till his promotion as IOW Gr.-III made on 03.04.1986. He got further, promotion as IOW Grade-II w.e.f. 02.11.1992. Applicant retired from service w.e.f. 31st Jan, 1998 as IOW Grade II. As is argued by learned counsel for the applicant, he has three grievances i.e. (i) the spell of broken period of his service as Casual Labour should be taken into account while determining his terminal benefits (ii) he should be given the benefit of service rendered as Janitor in higher grade and (iii) he should be paid interest @ 18 % on the amount of DCRG.

3. In terms of the order dated 31.5.2001 respondents rejected aforementioned claim of the applicant taking a view that the broken period of casual labour service could be treated as qualified service for calculation of pensionary benefit by Sonpur Division by wrongly interpreting a Railway Board's letter, the promotion of applicant as Janitor in the higher grade was against ex-cadre post and was also not in terms of the recruitment rules for said post. Regarding claim of the interest @ 18% on delayed payment of DCRG, respondents informed the applicant that they had already paid him interest on gratuity @ 12%. For convenient reference order dated 31.5.2001 is abstracted herein below:-

"In compliance with the direction Hon'ble CAT/Allahabad arising out of OA No. 319 of 1999, the General Manager, North Eastern Railway, Gorakhpur has carefully examined the points raised in your application dated 31.10.1998. He has considered your oral representation also

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in the course of personal hearing given to you in his chamber on 18.5.2001. After careful consideration of the case, the following orders have been passed by him which is reproduced below for your kind information.

"As per the direction of Hon'ble CAT/Allahabad Bench vide their judgement dated 19.01.2001 arising out of OA No. 319 of 1999, the application of Shri S.K.Acharjee, ex-IOW Grade-II, has been examined on the basis of relevant records and files available with the Railway Administration on the issues raised by him. Shri Acharjee was also given personal hearing on 18.05.2001. He raised the following issues.

(a) The spells of broken period which were regularized by Sonpur Division should be treated as such so that the advantage of post retirement benefits can be given to him.

(b) He was posted as Janitor in higher grade and he should get the advantage of the service period.

(c) Since there was delay in payment of DCRG and other post retirement benefits, interest @18% should be paid to him

2. It is seen that Shri Acharjee was initially engaged as a casual worker in 1963 against work charge post. He continued to work in the same capacity upto 24.09.1971 with intermittent breaks due to non availability of work.

It is also seen that the broken period was treated as qualifying service for calculation of pensionary benefits by Sonpur division by wrongly interpreting the Railway Board's letter which is not applicable in this case. It pertains to regularization of broken period when a Central Government employee is changing his service from one Central Government Department to other Central Government Department. This was detected at the time of vetting of pensionable service by HQrs. (FA&CAO) which has resulted in

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reduction of pensionable service and the amount of pension. The very purpose of the scrutiny of all the records by CA&CAO in Headquarters office is to check up for all such lapses that might have happened during the course of the service of the employee.

3. *Shri Acharjee was promoted as Janitor in a higher grade which was an ex-cadre post Shri Acharjee is a well qualified person and while working in the same office must have definitely read and known the memorandum issued by the office that the post was an ex-cadre post. The posting in an ex-cadre post does not confer any right of continuation and benefit of seniority or pay protection in the parent cadre. The error in regard to giving advantage by the division of his service in higher grade as Janitor was detected later on in the Headquarters office and, therefore, the overpayments made to him had to be deducted from his settlement dues.*

4. *Interest (a) 12% on delayed payment of DCRG has been paid to him interest at higher rate on other delayed payments, if any, is not admissible to him as per extant rules.*

5. *Under the circumstances, the claim of Shri Acharjee to enhance his qualifying service, re-fix his pay and pension at a higher rate and interest on delayed payment @ 18% is not justified."*

4. Learned counsel appearing for the applicant vehemently submits that if he was given promotion as Janitor in dis-regard of rules, he is not to be blamed for the same. He further, submits that, if any, benefit is extended to him due to administrative lapses, for none of his fault, same cannot be recovered from his terminal benefit after his retirement.

5. Learned counsel appearing for the respondents submits that when the applicant was working as Work Assistant in the pay scale of Rs. 380-

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560/-, he could be promoted as Janitor in the pay-scale of Rs. 425-640 w.e.f. 1979 on adhoc basis erroneously. He contends that on regular promotion of applicant as IOW-III, his pay was to be fixed on the basis of the last pay which he could have drawn as work Mistry i.e. the post he could have held in terms of the rules. It is admitted by the respondents that the error of fixation of pay of applicant as IOW-III on the basis of the pay drawn by him as Janitor could be detected just a few months before his retirement. Mr. K. P. Singh, learned counsel for the respondents submits that in terms of doctrine of unjust enrichment, the applicant could not be allowed to get away with the benefit which is not due to him.

6. I have heard learned counsel for the parties and perused the record. As far as denial of benefit of casual and broken service to applicant for calculating his terminal benefits is concerned, I do not find any provision of law in terms of which casual service rendered before regularization can be counted as qualifying service in determining the pensionary benefits. It is 50% of service of casual labourer rendered by him after conferment of temporary status upon him is taken into account for such purpose. It is not the case of the applicant that he was granted temporary status before his regularization on 09.09.1971. Thus, I find no infirmity in decision of respondents in not giving benefit of service rendered by applicant on casual basis for the purpose of determining his terminal. As far as the decision of the respondents to deduct the payment made to applicant for the service rendered by him as Janitor is concerned, it can be seen from orders dated 01.5.1979 and 14.9.1979 these are the respondents who had promoted the applicant as Janitor in

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Divisional Office and the applicant cannot be blamed for issuance of order of his promotion to said post and his further continuance on promotional post till his regular promotion as IOW-Gr.-III. It is admitted position that the respondents could detect the irregularity in adhoc promotion of the applicant as Janitor and fixation of his pay as IOW Gr-III on the basis of pay drawn by the applicant only in the year 1996, when he had already been promoted as IOW-Gr.-II.

7. The pay scale of Janitor was Rs.425-640/- and the same of IOW was Rs.425-700/- thus, the minimum of pay scale of two posts was identical. Having given promotion to applicant as Janitor on adhoc basis and allowed him pay scale applicable to said post and continuing benefit of same to him not only till his regular promotion as IOW,Gr.-III but till after his further promotion as IOW-Gr. II, respondents could not have turn around and say that fixation of pay of applicant as IOW and his promotion as Janitor were erroneous thus, he is liable to refund benefit of same. In the case of **Shyam Babu Verma and others Vs. Union of India and others (1994) 2 Supreme Court Cases 52**. Hon'ble Supreme Court ruled that the benefit extended to an employee due to no fault of his cannot be recovered after a long delay. Para 11 of the judgment reads as under :-

"Although we have held that the petitioners were entitled only to the pay scale of Rs. 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs. 330-560 but as they have received the scale of Rs. 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same.

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8. Further in terms of doctrine of quantum meruit, the applicant cannot be deprived of the benefit of his functioning on the post of Janitor, particularly when he was duly promoted on said post, may be on adhoc basis.

9. Regarding fixation of pay of applicant as IOW, Gr.-III, it was open for the respondents to rectify the administrative error within reasonable time at least when the applicant was working as IOW, Gr.-III. They ^{A u} cannot be allowed to surprise the applicant by fixing his pay to ^{his detriment} ~~determine~~ after more than 1½ decade. They can be also not allowed to make any recovery from the pay of applicant on such account. However, as noted above the mistake of taking into account casual service in determining pension is mistake of calculation of service only thus, can be rectified at any time.

10. In view of the aforementioned I dispose of present OA rejecting the claim of applicant for calculation of his terminal benefits after taking into account his casual service and also his claim for 18% interest. However, I direct the respondent not to deprive the applicant from the benefit of the pay drawn by him as Janitor in fixation of his pay as IOW Gr.-III and consequential benefits thereof.

11. OA disposed of. No costs.



(A.K. Bhardwaj)
Member (J)

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