

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH: ALLAHABAD.**

THIS THE 13th DAY OF Feb., 2007 {

QUORUM : HON. MR. JUSTICE KHEMKARAN, V.C.

HON. MR. M. JAYARAMAN, A.M.

ORIGINAL APPLICATION NO.1081 OF 2004

Moti Chand, Son of, Late Ramdhari, aged about 61 years, resident of Village, Taranpur, Post Office, Jangipur, District Ghazipur.

..... Applicant.

Counsel for applicant : Shri S.S.Sharma.

Versus

1. Union of India through the General Manager, North Central Railway, Headquarters Office, Allahabad.
2. The Divisional Railway Manager, North Central Railway, DRM Office, Nawab Yusuf Road, Allahabad.
3. The Deputy Chief Engineer/Construction, North Central Railway, D.R.M. Office Complex, Nawab Yusuf Road, Allahabad.

..... Respondents.

Counsel for Respondents : Sri A. Sthalekar.

ORDER

HON. MR. M.JAYARAMAN, A.M.

The issue that arises for decision in this O.A. lies in a narrow compass, namely, what should be the pay at the time of retirement of an individual, who was working in an ex-cadre post till retirement retaining his lien in the parent department.

2. The brief facts of the case are as follows: The applicant joined the Railway service on daily wage with effect from 30.1.1962 in the office of the Executive Engineer (Construction), Singrauli, Obra Rail Link, Central Railway, Chopan, District Mirzapur. His services were utilized in different capacities. However, with effect from 12.4.1991, the applicant was

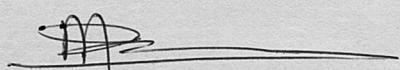


promoted as Clerk in the grade of Rs.950-1500(RPS) on ad-hoc basis vide order dated 12.4.1991 (Annexure A-5) from where he retired from service on 30.6.2003. The basic pay of the applicant in the ex-cadre organization as on 30.6.2003, was Rs.4110/- in the clerical grade

3. According to the applicant, his pay was reduced from Rs.4110/- to Rs.3800/- vide service certificate dated 30.6.2003 (Annexure A-6). In addition, the Respondents have also recovered Rs.54,305/- from the amount of gratuity of Rs.76,750/- The applicant has come before the Tribunal against the above action. The applicant has cited the decision of this Tribunal dated 11.8.2005 passed in O.A.No.1005/04, which, according to him, squarely applies to the facts of the present case. In addition, he has also cited two Supreme Court cases namely, Bhagwan Shukla Vs. Union of India, reported in 1994 SCC (L&S) 1320 as also Shyam Babu Verma and others Vs. Union of India, reported in 1994 SCC (L&S) 683. It has also been pleaded on behalf of the applicant that the emoluments for the purposes of pension is defined in the Railway Service (Pension) Rules, 1993, which is squarely applicable in his case.

4. One more contention of the applicant is that the qualifying service has been wrongly calculated w.e.f. 19.7.1977 whereas he was in continuous service from 30.6.1962 and so his qualifying service for gratuity should be 33 years 5 months and one day and not 25 years 11 months and 11 days as wrongly calculated by the Respondents.

5. The respondents have opposed the O.A. According to them, the applicant never worked as Daftary but worked only as daily wage casual labour from 30.1.1962 to 18.7.1977. He was regularized as Khalasi in group 'D' cadre in the scale of Rs.196-232



on 19.7.1977 and was given ad-hoc promotion as Clerk on 12.4.1991 in the scale of Rs.950-1500/3050-4590 from where he retired. The main contention of the respondents is that the construction organization, where the applicant worked, was an ex-cadre organization and no person is appointed on a permanent post. The lien of any person engaged in the construction division, is immediately fixed in the open line and the regularization and promotion earned by him in the construction organization is purely on ad-hoc basis and will not confer any right to claim salary or similar post in the same scale in the open line. It is further stated by the respondents that the pay of Rs.4110/- of the applicant was erroneously fixed, which was detected in audit inspection and, therefore, it was sought to be refixed correctly at Rs.3800/- with reference to open line cadre (Annexure CA-1). Respondents have denied that any of the juniors of the applicant has been regularized in violation of the applicable rules.

6. With regard to the second contention of the applicant that the qualifying service should be counted from 30.6.1962 up to 18.7.1977, the respondents have stated that during this period, he was working purely as daily wage casual labour and was regularized as Khalasi in group 'D' on 19.7.1977 and, therefore, his qualifying service will be counted from 19.7.1977 only, up to 30.6.2003 i.e. 25 years 11 months and 11 days.

7. We have given our careful consideration to the facts of the case as also the pleadings made by the counsel for the applicant as also for the Respondents.

8. Admittedly, the applicant was working as a clerk, though on ad-hoc basis, in the ex-cadre organization. Accordingly, in terms of Rule 49 of the

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Railway Service (Pension) Rules, 1993, referred to by the counsel for the applicant, the emoluments for the purpose of calculating various retirement and death benefits means the basic pay as defined in clause (1) of Rule 1303 of the Code which Railway servant was receiving immediately before his retirement or on the date of his death. Admittedly, the applicant was in receipt of the basic pay of Rs.4110/- on 30.6.2003 at the time of his retirement. While considering the aforesaid facts, the Respondents have only stated that the pay was fixed erroneously and it should be only Rs.3800/- as per cadre position of open line. In none of the rules of Railway Service (Pension) Rules, there is any reference of pay drawn in the cadre. As per Rule 1303 (FR-9) (a) "pay" means the amount drawn monthly by a Government servant as pay other than special pay or pay granted in view of the personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity or to which he is entitled by reasons of his position in a cadre. Accordingly, we find force in the pleadings of the applicant and we allow the O.A. with regard to the first plea namely, that his pay should be Rs.4110/- for the purpose of calculating the pension.

9. The above view is covered by the decision of this Tribunal dated 11.8.2005 in O.A. No.1005/04 wherein it has been held that reduction from higher pay to the lower pay and the consequential recovery or downward revision in pension are illegal and unjust and cannot be sustained. The case of the applicant succeeds also on the ground, since no prior opportunity was given to the applicant before passing the order of reduction as held in the case of Bhagwan Shukla Vs. Union of India and others reported in 1994 SCC (L&S) 1320.

10. Further, we find that the decision of the Hon'ble Apex Court in the case of Bhadei Rai reported

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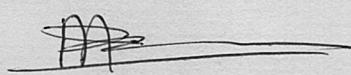
in (2005) 11 SCC 298 also supports the view that the pay, which was last drawn on the date of repatriation from ex-cadre to the cadre post, from a higher level to a lower level, shall be protected.

11. With regard to the second plea of the applicant also, we find force. The qualifying service of a Government servants commences from the date he takes charge of the post to which he is first appointed in a permanent capacity. Temporary service followed by confirmation without interruption will also qualify. It has specifically been provided-Rule 31 of the Railway Service (Pension) Rules, 1993- that half the period will count as qualifying services if the employees who are paid from contingency are subsequently brought on to regular employment. The 'Note' under this Rule specifically covers casual labour.

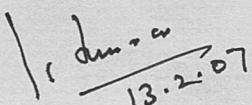
12. In case of the applicant, it is not in dispute that he was holding the temporary status/casual labour w.e.f. 1.8.1962 to 18.7.1977, so half of his service i.e. 7 years 5 months and 21 days has to be counted towards qualifying service. Accordingly, we allow this plea of the applicant as well.

13. The O.A., therefore, succeeds. The respondents are directed to keep the pay of the applicant to Rs.4110/- intact and work out the pension and other terminal benefits due to the applicant accordingly. There is, therefore, no question of recovery of any excess payment. The excess recovery, which has been made from the applicant, shall be refunded to him as also fixation of the pension and other terminal benefits shall be made within a period of three months from the date of communication of this order.

No order as to costs.



A.M.



13.2.07

V.C.

Asthana/