

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration No. 301 of 1986 (T)

Union of India & Others ...Defendant Appellants

Versus

Asha Plaintiff Respondent

Hon.S.Zaheer Hasan, V.C.

Hon. Ajay Johri, A.M.

(Hon.Ajay Johri, A.M.)

This is a Civil Appeal No.22 of 1983²² arising out of the judgement of the Additional Munsif I Sultanpur in Suit No. 398 of 1980 on 9.8.82, received on transfer from the Court of District Judge Sultanpur under Section 29 of the Central Administrative Tribunal Act XIII of 1985.

2. The plaintiff respondent was appointed as Mason in 1951 on the SS Light Railway at Kandhala. He served on the SS Light Railway for about 20 years when the Company went into liquidation. On the date of liquidation of the Company he was drawing Rs. 121/- plus Rs.99/- plus Rs. 15/- for pass PTO & gratuity per month. Since no post of mason was available he was appointed as Gangman on Northern Railway. According to the Plaintiff Respondent on appoint his salary was to be fixed on Rs.220/-p.m., but he was given lesser pay. The plaintiff respondent has^{also} claimed that he was entitled to be fixed in the grade Rs.260 - 400. He, therefore, prayed that in terms of Railway Board's letter No.E(G)-72 TRD dated 22.10.73 and E(G)-70/TRD²⁴/7 dated 21.1.71 and 25.1.72 he was entitled to draw salary in this grade of Rs.260-400. The learned Addl. Munsif Sultanpur decreed the suit in

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favour of the Plaintiff Respondent on 9.8.82 holding that he was entitled to be fixed in the grade Rs.260-400 on joining the Northern Railway in terms of the Railway Board's letters cited by the Plaintiff Respondent and consequently he was entitled to the arrears of pay as well.

3. The defendant appellants filed this appeal ~~for~~ ^{it against} ~~the~~ ^{decreting the suit for declaration of mandatory injunction,} ~~judgement~~ ³¹ of the learned Addl. Munsif Sultanpur dated 9.8.82 because of misappreciation of the factual & legal aspects of case and wrong interpretations and non-consideration of the papers filed by the defendant appellants. According to them the plaintiff respondent was not entitled to the pay scale of Rs.260-400 from the beginning of his service on Northern Railway and the findings of the trial court were against the merit of the case. According to the defendant appellants, the plaintiff respondent was screened for appointment as Mason Khalasi but there being no vacancy in that category he was offered the post of gangman which he declined and as such he was appointed as a Carriage Khalasi in the grade Rs.70 - 85 fixing his pay at the maximum of Rs.85/-. According to the Defendant Appellants the Plaintiff Respondent was drawing a pay of Rs.45/- on the S.S. Light Railway and he had been fixed at a higher pay on the Northern Railway.

4. We have heard the learned counsel for both parties. Railway Board's letter No.E(G)-72 TR4-8 of 22.10.73 in connection with the appointment of staff of Ex.SS Light Railway, HS & HA Light Railway reads as follows :-

letter No.E(G)70 TR4-7 dated the 21st Jan'71 and 25th January, 1972, wherein it has been provided that the pay of the Ex.Light Railways employees appointed on the Indian Railways should be fixed in the authorised scale of pay appropriate to the category for which they are found suitable at the minimum of the relevant authorised scale. If however after fixation of pay at the minimum of the grade, the loss in emoluments still persists, the pay was to be fixed at the nearest stage upto and including the maximum of the absorption grade as would protect the basis pay drawn by the staff on the Light Railways.

It has come to the Board's notice that even after fixation of pay in the manner prescribed above there is a loss in emoluments of some of the employees concerned. With a view to remove their grievances, Board have now decided, in partial modification of the instructions referred to above that the staff of the three Light Railways absorbed on the Indian Railways may be allowed an option either to retain the pay plus dearness allowance last drawn by them on their respective light railways company or to draw pay in the authorised scales of pay in terms of Board's letter No.E(G)70TR4-7 dated the 21st January, 1971 and 25th January, 1972, option being allowed either from the date of their absorption or any future date. On their promotion to the next higher grade they will have to come over to the authorised scale of pay and draw dearness allowance appropriate to the pay in these scales. In respect of those getting higher emoluments than what was admissible to them as fresh entrants, their status as such will not get altered.

The above has the sanction of the Board.

5. According to the offer made to the Plaintiff Respondent on 20.9.71²¹ ^{offer} he had been screened by the Committee he was offered a Gangman's job in the scale Rs.70 - 85(A) y and he had accepted the offer the same day.(36 GA). He was fixed on the maximum of the scale as per (39 GA). Later he got absorbed at Sultanpur. The total emoluments given to him were Rs. 197/- while on the SS Light Railway he was drawing Rs.220/-p.m. For this difference the APO (PC) Northern Railway Lucknow had made a reference to the SPO(Union) Northern Railway Baroda House Delhi saying that this difference could only be sanctioned by the Railway Board (40 GA). The further progress on this suggestion is not known. One thing is, however, clear that the Board's letter of 22.10.73 only authorised fixation upto the maximum of the scale applicable to the category in which an ex-employee of SS Light Railway was found suitable by the screening Committee³¹ or permit exercise of option to retain the pay plus Dearness Allowance drawn on S.S. Light Ry.³¹

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6. It is not the case of the Plaintiff Respondent that he was found fit for absorption as a Mason on the Northern Railway. He had accepted the offer made to him on 20.9.71, Whether there were vacancies of Masons or not is not material? Had he been found fit for absorption as a Mason, he had a claim for being absorbed so on occurrence of the next vacancy if one was not available at the material time. He cannot interpret his acceptance as conditional. At least the paper (36 GA) which has his acceptance does not show the same. In his statement (40 GA/I) he has said that he had not given his consent. This statement is in variance to the facts available. He has further said that " Isse Kam Vetan Mujhe Northern Railway mein nahin milna Chahiye tha. Karva Chaturth Shraam" etc.

class IV category i.e. as a Khalasi. What he objected to was the drop in emoluments as compared to what he drew on the SS Light Railway. His pay on SS Light Railway excluding the money in lieu of gratuity, passes etc. was Rs.220/- including DA. On absorption on the Northern Railway he was fixed on the maximum of scale i.e. Rs.85/- p.m. giving him a total of Rs.197/- p.m. The averment made by Defendant Appellants that he was drawing only Rs.45/-p.m. is evidently not correct. In their own fixation statement he has been shown as drawing Rs.197/-p.m. (39 GA).

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7. The second para of the Railway Board's letter (24 GA) allows an option to the staff ^{of} the three Light Railways either to retain the pay + D.A. last drawn by them on their respective railways or to draw pay in the authorised scales of pay. The Plaintiff respondent has in the copy of his representation dated 7.1.78 (27 GA) written about repeated representation to get protection under this clause for fixation of his pay. The Divisional Railway Manager Lucknow has been writing to Northern Railway HQrs. forwarding the Plaintiff Respondent's representations for redressal of the grievance. But there has been no progress or finalisation of the same. In the written statement also final position has not been indicated.

8. The Plaintiff respondent's pay was fixed at Rs.85/-p.m. w.e.f. 29.3.72 as per authorisation of the Railway Board's letter No.E(G)-TRA-7 of 25.1.72. With effect from 1.1.73 he was fixed in the revised scales on the basis of the fixation at Rs.85/-p.m. He had, however,

been representing for compensating the loss in emoluments from Rs.220/-p.m. to Rs. 197/-p.m. on absorption on Northern Railway. This could be possible if the option permitted by Railway Board's letter of 22.10.73 had been allowed. The Plaintiff Respondent had represented for being given this protection but the matter did not reach finality and he ultimately retired on 31.1.86.

31/ ✓
9. The learned Munsif had held that the plaintiff respondent was entitled to the grade Rs.260 - 400 on absorption on Northern Railway. The instructions on the subject of absorption of the staff from the railways that went into liquidation were very clear. The offer made was also accepted in clear terms. It was in the nature of a contract and once accepted and agreed to the fact of having worked as a Mason on SS Light Railway which went into liquidation and whose staff were thrown on the road had hardly any bearing on his new appointment. Had it been a case of take over, the type of the job being done would have had to be taken into consideration but here the case was different. The SS Light Railway went to liquidation and the Govt. decided to absorb the Ex.SS Light Railway staff in suitable categories after proper screening. There were number of other such staff. The plaintiff respondent's case was not a singular one. It was not a case of merger of the Light Railway with Northern Railway. It was also not a case of waiver of rights by the plaintiff respondent on his sweet will as argued by the learned counsel for the plaintiff respondent. 31/ ✓
Reliance has been placed on A.I.R. 1959 S.C. 149 Basheshar Nath Vs I.T. Commissioner. In para 53 the term waiver has been used. 31/ ✓

S.R.Das has observed:-

" The generally accepted connotation of 'waiver' is that to constitute 'waiver' there must be an intentional relinquishment of a known right of the voluntary legal right, or conduct such as warrants an inference of the relinquishment of a known right or privilege. Waiver differs from estoppel in the sense that it is contractual and is an agreement to release or not to assert a right; estoppel is a rule of evidence."

He has further said in para 53 on the Maxim - 'Ignorance of law is no excuse' :-

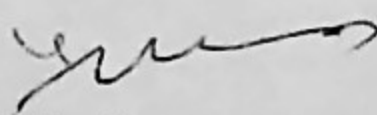
" The maxim 'ignorance of law is no excuse' cannot be carried to the extent of saying that every person must be presumed to know that a piece of legislation enacted by a legislature of competent jurisdiction must be held to be invalid, in case it prescribes a differential treatment, and he must, therefore, refuse to submit to it or incur the peril of the bar of waiver being raised against him."

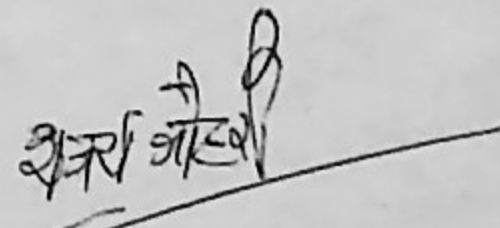
21 ✓
The plaintiff respondent's case is not on relinquishment of any legal right. He was in service on a Railway which went into liquidation and he accepted the terms and conditions of offer in the new appointment which was made by the Northern Railway in connection with the absorption of the Light Railway staff who were rendered jobless as a result of the liquidation. His being a Mason on Ex.55 Light Railway did not mean that he should be absorbed as a Mason on the Northern Railway in the grade Rs.260-400 p.m. ^{as well as} There was no such prescriptive or legal right.

10. Reliance has also been placed on 1973 (1) S.L.R. 910 Union of India Vs K.P.Joseph. In this case the first respondent was a combatant clerk in the Indian Army. He was discharged from that post and was reemployed as an ordinary clerk. On refixation of his pay he claimed that he was entitled to the benefit of the order but the claim was rejected by the Govt. and therefore he filed a writ petition. The plaintiff respondent's case does not draw a parallel to the case reported and therefore the findings in this case are not applicable to him. No extra benefits were in the instructions laid down.

³¹ However, the fact remains that the loss in emoluments which could be compensated by the acceptance of the option to be exercised in terms of Board's letter of 22.10.73 could not be compensated because of inaction on the representations of the Plaintiff Respondent. This should have been done and the fixation in Revised scales of pay w.e.f. 1.1.73 should have taken this into consideration.

11. - Under the circumstances the appeal is allowed. ^{31 in part}
The judgement of the learned Munsif is ^{31 modified to} ~~not correct~~ the ³¹ ~~entire~~ extent ³¹ ~~is dismissed with the observation~~ that the Defendant Appellants will refix the pay of the Plaintiff Respondent with effect from the date of his appointment on Northern Railway on the basis of the proviso of the option i.e. on the basis of pay plus Dearness Allowance drawn by him on Ex. 55 Light Railway i.e. Rs.220/- p.m. and thereafter in Revised scales of pay w.e.f. 1.1.73 and pay him the arrears of pay arrived at within a period of three months. The parties will bear their own costs throughout.


V.C.


A.M.

RKM

Dated the 5th Nov., 1986.