

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

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Allahabad this the 23<sup>rd</sup> day of December 1996.

Original application No. 1270 of 1993.

Hon'ble Dr. R.K. Saxena, JM  
Hon'ble Mr. D.S. Baweja, AM

A.K. Kanojia, a/a 57 years,  
S/o late Mehi Lal Kanojia,  
R/o 201-B Tularam Bhat, Allahabad-  
presently working as Sr. Personnel  
Officer, Railway Electrification,  
Nawab Yusuf Road, Allahabad.

..... Applicant.

C/A Sri A.K. Sinha

Versus

1. Union of India through Chairman,  
Railway Board, Ministry of Railways,  
Rail Bhawan, New Delhi.

2. General Manager, Central Organisation  
of Railway Electrification, Nawab Yusuf  
Road, Allahabad.

..... Respondents.

C/R Sri Lalji Sinha

O R D E R

Hon'ble Mr. D.S. Baweja, AM

Through this application, the applicant has  
prayed for the following reliefs:-

(a) To direct respondents to restore his pay  
of Rs. 1100/- in the scale of Rs. 1100-1600 (Revised Rs. 3000-  
4500) on the post of Senior Personnel Officer since 22.7.82  
which was fixed vide order dated 22.7.82.

(b) To direct for payment of arrears of pay  
and allowances for the period from 22.7.82 onwards with pay  
of Rs. 1100/- with interest of 14 per cent per annum till the  
date of payment.

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2. The application was disposed<sup>d</sup> by a judgement dated 1.10.93 at the admission stage without any notices to the respondents. A Review application No. 2133/1993 was filed against the same for recalling of the ex-parte order, and the application was also rejected vide order dated 19.1.94. A S.L.P. No. 11927/94 was filed by the respondents and vide order dated 20.1.94, the Hon'ble Supreme Court stayed the operation of the order<sup>s</sup> of the Tribunal in the Original as well as Review application. The Civil Appeal No. 11149/95 arising out of S.L.P No. 11927/94 has been finally allowed vide order dated 20.11.95 setting aside the order in<sup>the</sup> O.A. as well as in<sup>the</sup> Review application with a direction to hear the O.A. afresh by a Bench of two Members of the Tribunal. Accordingly the matter has been heard on merits after completion of the pleadings.

3. The applicant while working in Group 'C' on Lucknow Division of Northern Railway was promoted <sup>to</sup> ~~in~~ Group B as Assistant personnel Officer and joined the post on 11.1.79 on Lucknow Division. The applicant was transferred to Railway Electrification Organisation, Allahabad and joined on 1.8.80. He was promoted on adhoc basis to the next grade (Rs. 1100-1600) as Senior Personnel Officer vide order dated 22.7.82 by Railway Electrification Organisation. He assumed the charge on 22.7.82 and his pay was fixed at Rs. 1100/-. However after working for 9 months, the respondent No. 2 General Manager, Railway Electrification Organisation vide order dated 15.4.83 withdrew the pay fixation of Rs. 1100/- alongwith three other similar placed officers and instead grant<sup>ed</sup>~~ing~~ Rs. 150/- as charge allowance per month. This was done without show cause notice and opportunity of hearing. The applicant made a representation dated 6.5.1983 against the same but

did not get any relief. There<sup>after</sup>~~fore~~ one Sri Viney Malhorta similarly placed filed an application No. 1972/89 in this Bench praying for benefit of the relief as granted in judgement in O.A. 139/85 of Jodhpur Bench. The O.A. 1072/89 was decided in the favour of the applicant directing the respondents to allow him senior scale pay from the date he shouldered responsibility. After this judgement applicant made a representation dated 28.5.93 to extend the benefit<sup>same</sup> to him in terms of the above referred judgements. However no action was taken by the respondents. This application has been thereafter filed on 23.8.93.

4. The applicant has claimed the reliefs based on the grounds:-

(a) The judgement, referred to above have allowed the relief on the principle of "equal pay for equal work". The applicant is similarly placed and thus entitled for the same reliefs.

(b) Railway Board circulars dated 20.6.80 and 19.5.89 provide that the officer who had completed three years of service is entitled for regular pay scale on promotion.

(c) In not allowing the benefits of the judgement of the Tribunals, the respondents have acted in violation of the provisions of Articles 39 (d), 14 & 16 of the Constitution of India.

5. The respondents have opposed the application by filing counter reply. It is submitted that Railway Electrification is a temporary organisation. The staff are posted in the Organisation from different Zonal Railways and such staff maintain their lien on the respective parent Zonal Railway. Such staff are liable to <sup>be</sup>reverted back to concerned Railway at any time. The applicant was transferred as

Assistant Personnel Officer from Northern Railway to Railway Electrification Organisation. He was promoted to senior scale on adhoc basis as a purely stop gap arrangement on Railway Electrification vide order dated 22.7.82 ~~in the Railway Electrification~~. He was erroneously allowed regular pay in senior scale, quoting Railway Board's letter dated 20.6.80 <sup>although</sup> as the seniors were still waiting above him. When this error was detected in terms of Railway Board letters dated 21.4.82 and 12.4.83, regular pay allowed was withdrawn and the applicant was allowed Group B pay plus charge allowance of Rs. 150/- per month as admissible as per the rules. The respondents have further submitted that the suitability of group B officer for regular promotion to senior scale as per seniority is considered by a committee of Head of Departments, and recommendations ~~are~~ accepted by the General Manager. In order to meet with the shortterm requirement of temporary Organisations/Projects like Railway Electrification, a group B officer who has put in three years of non fortuitous service and not yet empanelled can be given adhoc promotion to senior scale and to detailed to look after the duties of senior scale with a charge allowance of Rs. 150/-. In this case the seniors of the applicant in the parent cadre were still <sup>waiting</sup> working for senior scale promotion and panel had not <sup>yet</sup> been made. In case the regular pay of senior scale was allowed to the applicant it would have seriously affected the rights of the other persons who were senior to the applicant. The applicant is therefore entitled for regular pay in the senior scale only from the date of empanellment and his turn for promotion to senior scale as per seniority in the parent Railway. The respondents also submit that in a

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similar case, S.L.P. was filed before the Hon'ble Supreme Court and vide order dated 20.11.95, the appeal was allowed quashing the order of the Tribunal. In view of these facts, the respondents pray that the grounds raised by the applicant are devoid of merit and the application deserves to be dismissed. The respondents have also opposed the application as being time barred as the applicant is claiming reliefs after more than ten years.

6. The applicant has filed the rejoinder reply controverting the contentions of the respondents. It is also submitted that the judgement in S.L.P. referred to by the respondents is not applicable in the applicant's case. The applicant has only demanded pay scale of the post on shouldering the responsibility of the higher post on the principle of "equal pay for equal work" and not the benefits of regular promotion and seniority and therefore the facts of the case in the judgement in S.L.P. are different.

7. We have heard the learned counsel for the parties. We have also given careful consideration to the material placed on record.

8. The respondents have ~~also~~ raised the plea of the application being barred by limitation as the cause of action arose in 1983. The applicant has contested this ground stating that the matter agitated is one of civil consequences and violation of Articles 14 & 16 of the Constitution, the point of limitation is not attracted. The matter involved concerns the pay fixation on promotion and is therefore recurring cause as there will be loss in pay every month. In view of this, we are not inclined to

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accept the plea of the respondents. The application accordingly has been considered on <sup>the</sup> merits.

9. The main thrust of the pleadings of the applicant is that the applicant is entitled for scale pay on promotion to senior scale on the principle of "equal pay for equal work" as he had shouldered the full responsibility of the higher post. The applicant has filed this application seeking support of the two judgements in which the applicants were similarly placed as the applicant in the present application. These judgements are (a) Jodhpur Bench dated 23.5.88 in O.A. 139/87 K. Gopala Krishna pilai Vs. U.O.I. and (b) This Bench dated 19.11.92 in O.A. 1072/89 Vinay Malhorta Vs. U.O.I. On going through these judgements <sup>of Jodhpur Bench</sup> we find that the relief of full scale pay on promotion to Senior Scale instead of charge allowance of Rs. 150/- had been allowed holding the doctrine of "equal pay for equal work" as the responsibility of the <sup>higher</sup> post was shouldered. In the judgement of this Bench the same view has been held referring to the judgement of Jodhpur Bench.

10. The respondents on the other hand have brought on record the judgement dated 20.11.95 of Hon'ble Supreme Court in Civil appeal arising out of S.L.P.(C) of 6068-69 to 1995 (CA-5 of the counter reply). On careful perusal of this judgement, we find that the similar matter as in the present application has been decided in the Civil appeal. In this case the respondent (in appeal) was promoted to Senior scale on adhoc basis with special pay of Rs. 150/- per month and he claimed after five years that he be given the scale of class I post since he performed the duties of the post. While allowing the appeal of Union of India, the

Hon'ble Supreme Court quashed the order of the Tribunal granting the relief of full scale pay of Senior Scale. The significant portion of the judgement is reproduced below:-

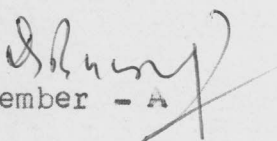
"It is, therefore, clear that even though there were seniors waiting in the queue, he was assigned the task of performing the duties of the SAO on the understanding that he would be paid a special pay of Rs. 150/- per month. If it was a case of granting of substantive promotion the claim of the seniors could not have been over-looked. Therefore, the expression 'promotion' used in paragraph 4 of the order dated 13.11.84 has to be construed in the context of the fact-situation. Very often it happens that the person, who is in the lower scale is asked to perform certain duties of the officer of the higher scale during his absence because it is not thought advisable to shift the next senior man entitled to promotion for short duration as that would entail avoidable cost to the administration. That is the reason why very often a person, who is junior and not ripe for promotion is asked to do a stop gap function till regular promotion takes place or the incumbent holding the post returns to man it. In the circumstances, we think that the Tribunal was wrong in holding that the respondent was entitled to Class-I salary as if he was regularly promoted to Class-I position. We are, therefore, of the opinion that the impugned order of the Tribunal cannot be allowed to stand.

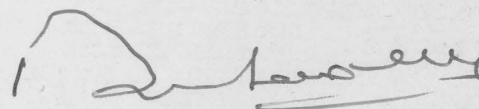
In the present case also, the applicant was promoted on adhoc basis purely as a stop gap arrangement as per the order dated 22.7.82(A-I) in Railway Electrification Organisation while his seniors were waiting on parent Railway and the panel for promotion to Senior scale had not yet been finalised. In view of this, what is held above in the judgement of Hon'ble Supreme Court will apply in the applicant's case. <sup>also and in the judgement of the Tribunal.</sup> The applicant has also pleaded that the benefit of the judgements of the Tribunal referred to above have not been extended to him being similarly placed and thereby the respondent have acted contrary to the provisions of Articles 39(d) read with 14 & 16 of the

Constitution of India. This aspect has been also covered in the same judgement by their Lordships of Supreme Court and have observed as under:-

"Counsel for the respondent stated that in similar cases the Department had granted the benefit under Court orders and had not questioned it. May be the department did not question the order in one or two matters, but that does not give legality to the Tribunal's order. The Department may have thought it wise to ensure that a full stop is put to such orders being passed by the Tribunal and may have thought it appropriate to prefer proceedings in this Court. If others have been given the benefit under orders which are legally unsustainable that does not afford ground for invoking Article 14 of the Constitution."

11. In view of what is stated above, the applicant has no case and the application is accordingly dismissed. No order as to costs.

  
Member - A

  
Member - J

Arvind.