

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 16th day of July, 2001.

CORAM :- Hon'ble Mr. Justice R.R.K. Trivedi, V.C.
Hon'ble Mr. S. Dayal, Member- A.

Orginal Application No. 1601 of 1993.

Manjoor Ali, S/o Sri Barkat-Ullah
R/o Manduadih, Distt. Varanasi, at present posted
as Pointsman in Rajghat, N.E.Rly..

.....Applicant.

Counsel for the applicant :- Sri K.K. Mishra

V E R S U S

1. Union of India through the General Manager,
N.E. Rly. Gorakhpur.
2. Divisional Railway Manager, N.E. Rly, Varanasi.

..... Respondents.

Counsel for the respondents :- Sri V.K. Goel

O R D E R (Oral)

(By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.)

By this O.A under section 19 of the Administrative
Tribunal's Act, 1985, applicant has prayed for direction
to respondents to restore the applicant in orginal grade
of Rs. 950-1500/- as Pointsman. It is also prayed that
respondents may be directed to work-out the arrears of pay
resulting from the re-fixation of the pay at Rs. 950-1500/-
w.e.f 17.05.1987 and to pay the same to the applicant.



2. The facts giving rise to this application are that applicant joined the Railway in 1972 as Safaiwala in the grade of Rs. 196-232. He was promoted to the post of Pointsman in the grade of Rs. 200-250 in the year 1979. On restructuring of the post in the year 1983, applicant was promoted in the pay scale of Rs. 260-400 with effect from 30.08.1983.

3. Applicant was served with memo of charge. Departmental proceedings were concluded and applicant by order dated 17.05.1985 was punished by reducing him to lower post of Safaiwala in pay scale of Rs. 196-232 for a period of five years from the date of this order without postponing future increments. Applicant filed appeal against the above order which was allowed in part by order dated 11.02.1986 and period of punishment was reduced from five years to two years. This period of punishment expired on 17.05.1987. The grievance of the applicant is that after expiry of period of punishment, applicant should have been given pay scale of Rs. 260-400 (revised in the pay scale of Rs. 950-1500/- after recommendation of IVth Pay Commission Report) w.e.f 17.05.1987 which has not been given to the applicant and thus he has suffered monetary loss.

4. Counter reply has been filed resisting the claim of the applicant and it has been stated that applicant was though granted promotion to the higher post and pay scale of Rs. 260-400/- but this promotion was wrongly given to the applicant as memo of charge was already served on him. By order dated 16.03.1985/19.04.1985, applicant was reverted to the pay scale of Rs. 200-250/- and the applicant was not entitled for the pay scale of Rs. 950-1500/- on 17.05.1987 when the period of punishment came to an end. It is also submitted that the order reverting to the

applicant from scale of Rs. 260-400/- to 200-250/- has become final as it was never challenged by the applicant.

5. On behalf of the applicant it has been submitted that the order dated 16.03.1985/19.04.1985, reverting the applicant in lower pay scale of Rs. 200-250/- was never communicated to the applicant. It is also submitted that the applicant had already worked on promoted post for 18 months and before reverting the applicant to the lower post and pay scale, he should have been given opportunity of hearing which in the present case has not been done and order, if any, passed against the applicant in violation of principle of natural justice is void ab initio and can not affect the interest of the applicant. It is also submitted that the ^{legality} ~~authoritat~~ of the such order can be questioned at any stage. On behalf of the applicant, it is also submitted that in the seniority list dt. 01.04.1987, applicant was shown in the list of Pontsman in pay scale of Rs. 950-1500/- and his name was at Sl. No. 302. It is submitted that if the mistake committed by the respondents is not corrected, applicant may suffer in ^{respect} ~~question~~ of seniority also.

6. We have heard Sri K.K. Mishra, learned counsel for the applicant and Sri V.K. Goel, learned counsel for the respondents. We have also perused the documents produced by Sri V.K. Goel at the time of hearing.

7. As already stated on factual aspects of this case, there is not much controversy. The only question for determination is whether the order passed on 16.03.1985/19.04.1985 reverting the applicant to the pay scale of Rs. 200-250 from 260-400 is a valid and legal order and is binding on the applicant. It is not disputed that order was passed against the applicant without giving any

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opportunity of hearing. Learned counsel for respondents has placed before us actual order passed and also service record in which the entries were made on the basis of same. He has also invited our attention to punishment order dt. 17.05.1985 and has submitted that the pay scale and designation of the applicant and further the post to which he was reduced have been mentioned in the order. It is submitted that the applicant had full knowledge of the order passed against him in 1985 but it was never challenged. It is submitted that it is not open to the applicant to challenge the order now.

8. We have considered the submission of counsel for the parties. However, in the facts and circumstances of the case, it is difficult to accept the contention of learned counsel for the respondents that the order reverting the applicant to lower pay scale after 18 months of promotion is legal and valid order. If the respondents had full knowledge that applicant is facing disciplinary enquiry, promoting him on higher pay scale and allowing him to work for 18 months, before passing the order of reversion, he ought to have been given show cause notice and opportunity of hearing before passing the order, which in the present case has not been done. The legal position is well settled that an order passed in violation of principle of natural justice is void ab initio. In these facts and circumstances, the applicant should have been deemed to be continuing in pay scale of Rs. 260-400/- on the date of punishment i.e. 17.05.1985 and on expiry of period of two years i.e. 17.05.1987, applicant should have been restored back to the pay scale at the prior stage from which he was sent to lower post and pay scale.

9. Now the another question for consideration is what relief may be granted to the applicant in the present

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facts and circumstances of the case. It is true that order reverting him to the lower pay scale was passed against him without giving reasonable opportunity of hearing but such orders are ^{also} ~~required~~ to be challenged to avoid monetary loss. From the documents placed before us it can not be said with certainty that applicant had no knowledge about the impugned order. In any case, while filing the present case, applicant had ^{full} ~~some~~ knowledge of the order, but the order has not been challenged. No relief has been claimed in respect of order dated 16.03.1985/19.04.1985. In such circumstances, in our opinion, ends of justice will be served if the applicant's interest ~~will be~~ ^{is} protected to the extent that he will not be placed below his immediate junior on account of pay scale. It is admitted fact that applicant was promoted subsequently to the same pay scale though in 1993.

10. O.A is accordingly disposed of finally with the direction to respondents not to disturb the seniority of the applicant which may occasion on account of order dated 19.04.1985 and his pay ~~scale~~ ^{will} shall be fixed notionally from 17.05.1987 ~~at~~ the pay scale of Rs. 260-400/- (950-1500-RPS) at the appropriate stage. Order shall be implemented within three months from the date of communication of this order.

11. There will be no order as to costs.


Member-A.


Vice-Chairman.

/Anand/