

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 22nd day of January 1997.

Original application No. 789 of 1994.

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

Baldev Prasad, a/a 39 years,
S/o late Sri Har Prasad, R/o
B-176, Avas Vikas Colony,
Neelampura, Jhansi.

..... Applicant.

C/A Sri Rakesh Verma

Versus

1. Union of India through the
General Manager, Central Rly.
Bombay V.T.

2. The Divisional Railway Manager,
Central Rly. Jhansi.

..... Respondents.

C/R Sri G.P. Agarwal

O R D E R

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

Through this application, following reliefs have been
prayed for:-

- (a) To quash order dated 20.1.94 and communicated to the applicant vide letter dated 15.4.94 reverting the applicant from Grade I Fitter (Rs. 1320-2040) to Grade III Fitter (Rs. 950-1500) and fixing his pay at Rs. 1130/- from 12.11.90 and also directing the recovery of excess payment.
- (b) To direct respondents to post the applicant as Grade I Fitter.
- (c) To direct respondents to refund the recovery made if any.

2. The applicants states that while working as Grade I Fitter (Rs. 1320-2040) in Loco Workshop Parel, Central

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Railway, Bombay, he made an application for transfer to Jhansi. The applicant was asked to make a written declaration of acceptance of transfer as Grade I Fitter. The applicant submitted the declaration to Chief Workshop Manager, Parel which was forwarded to Head Quarter vide letter dated 28.9.90(A-II). His transfer was approved by Head Quarter. Vide letter dated 10.11.90, addressed to Senior Divisional Electrical Engineer (TRS) Jhansi, the applicant had been relieved. After reporting at Jhansi, he was posted as Grade I Fitter in Electric Loco Shed Jhansi, vide order dated 20.11.90. His pay was fixed at Rs. 1440/- in the scale of Rs. 1320-2040/-. The applicant continued in this grade thereafter. However vide order dated 20.1.94, he was reverted to Grade III Fitter (Rs. 950-1500) fixing pay at Rs. 1130/- with effect from 20.11.90, when he joined in Electric Loco Shed Jhansi. It was also ordered to recover the excess payment. Being aggrieved, this application has been filed on 13.5.94. The applicant has assailed the impugned order on the ground that no show cause notice was given, and reversion to lower post and reducing the pay is ^{an} arbitrary and illegal action.

3. The respondents have contested the application by filing counter reply. The respondents submit that the applicant was transferred to Jhansi on own request transfer in the lower grade of Rs. 950-1500 on bottom seniority on usual terms and conditions applicable to such transfers. This is clear from the letter dated 10.11.90(A-III) and applicant had accepted the conditions for 'own request transfer'. Due to clerical error, the pay of the applicant on Jhansi Division was charged as that of Grade I Fitter

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instead of Rs. 1130/- in the grade Rs. 950-1500/- in which he was transferred. The impugned order dated 20.1.94 was issued to rectify the error when detected and to recover the over payment. This is not a case of reversion as the applicant has made out. He was very clearly transferred in the Grade III and was wrongly payed in Grade I scale. It is also further submitted that the cadre of Electric Loco Shed Jhansi was closed on 15.9.90 and inter-Division transfer could only be made in the recruitment grade as per the extant rules. The transfer in ~~the~~ Grade I was therefore not permissible. In view of these facts, the respondents contend that the application has no merit and the same deservers to be rejected.

4. Vide order dated 21.7.94, it was directed that the any recovery being made on account of over payment shall remain stayed. This stay order was extended from time to time and last extended till the pronouncement of judgement.

5. The applicant has filed the rejoinder reply reiterating the contentions made in the application. The applicant has strongly contended that he never made any request for transfer on reversion in the lower grade of Rs. 950-1500/-.

6. We have heard the learned counsel of the parties. We have also given careful thought to the pleadings made during the hearing and the material placed on the record.

7. From the material brought on record, it is noted that the applicant made a request for transfer to Jhansi Workshop vide his application dated 8.1.86

(Annexure-I) to supplementary affidavit, as Instrument Mechanic. However it seems that this request for transfer did not materialise. He thereafter made request for transfer to Traction Rolling Stock (TRS) cadre of Jhansi Division. From the letter at A-II, it is noted that he had given written declaration for transfer on own request basis to Jhansi in the grade of Rs. 1320-2040 which was forwarded by this letter to Headquarter office. The transfer of the applicant appears to have been approved by Headquarter order dated 6.10.90. Based on this order, Chief Workshop Manager issued the letter dated 10.11.90 (A-III) relieving the applicant on transfer to Jhansi Division, under Senior Divisional Electrical Engineer (TRS). On perusal of this letter, it is noted that it clearly specified that the applicant is transferred as Instrument Mechanic in the grade Rs. 950-1500/- on bottom seniority on the usual terms and conditions governing 'own request transfer'. This letter relieving the applicant has been taken per bearer by the applicant as mentioned in the letter itself. The plea taken by the applicant that he had given his declaration for transfer in Grade I Rs. 1320-2040 and therefore presumed that he was transferred with bottom seniority in this grade does not appeal. Since the applicant carried the letter himself, it is obvious that he was aware of the contents of the letter. If the applicant was not interested in transfer in the lower permitted grade, he ^{should} ~~would~~ have ~~certainly~~ represented against the same and declined the transfer. Whatever conditions the applicant ^{might have} ~~may~~ advanced in his declaration for transfer, the conditions laid down in the transfer order as per the extant rules will finally prevail.

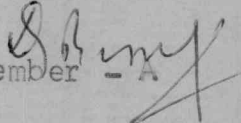
8. The respondents have submitted that Traction Rolling Stock cadre of Jhansi Division had been closed since 15.9.90. The transfer of the applicant was ordered on 10.11.90 i.e. after the closer of the cadre. Respondents have also stated that as per extant rules inter Division 'Down request Transfer' into another seniority group can be allowed only in the recruitment grade with bottom seniority. In this case we refer to provisions of para 312 of Indian Railways Establishment Manual Vol I, wherein these rules have been laid down. Therefore, the transfer of the applicant in the grade Rs. 1320-2040 for which the applicant claims to have given declaration ^{with} for bottom seniority would not have been admissible. The transfer order dated 11.10.90 therefore rightly stipulated transfer in the lower grade of Rs. 950-1500. If the applicant had been allowed pay 7 Grade I i.e. grade in which he was working at the time of transfer, ^{this} this was an administrative error. An administrative error allowing undue benefit could certainly be corrected when detected. Therefore the action taken ^{to} to ^{Correcting} reducing the grade and pay ^{of the applicant} cannot be termed as arbitrary and illegal.

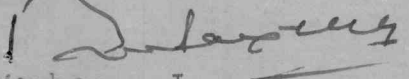
9. The applicant who carried himself the transfer order dated 10.11.90 for reporting on Jhansi Division cannot profess ignorance that he did not know that he had been transferred in the grade Rs. 950-1200. The applicant was aware of the grade in which he had been transferred and as contended by the respondents, he kept quiet and continued to avail the benefits of the administrative error without pointing out the same. Under such circumstances, we hold the view that ^{non} the issue of any show cause notice before passing the impugned order dated 15.4.94(A-I) does not amount to denial of principles of

natural justice.

10. As regards the relief for non recovery of over payment, it is noted that overpayment ^{has been} ~~is~~ due to the fault of the employee. It would be just and proper not to make any recovery for the same.

10. In the premise of the above discussion, we do not find any force and substance in the prayer with regard to quashing of the impugned order dated 20.1.94 conveyed through order dated 15.4.94. With regard to recovery of over payment we allow the relief with the direction that no recovery of the over payment shall be made. The application is disposed of accordingly with no order as to costs.


Member - A


Member - J

Arvind.