

Open Court.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

....

Original Application No. 571 of 1995
this the 21st day of May'2002.

HON'BLE MR. S. DAYAL, MEMBER (A)
HON'BLE MR. RAFIQ UDDIN, MEMBER (J)

Kanhiya Lal Shukla, aged about 40 years, s/o Sri Aditaya Narayan Shukla, R/o Jagua Shuklan Nandia, Allahabad, presently posted as Inspector of Works, South North Eastern Railway, Varanasi.

Applicant.

By Advocate : Sri V.K. Srivastava.

Versus.

1. Union of India through its General Manager, N.E.R., Gorakhpur.
2. Divisional Rail Manager, N.E.R., Varanasi.
3. Chief personnel Officer (Admn) N.E.R., Gorakhpur.
4. Senior Divisional Personnel Officer, N.E.R.

Respondents.

By Advocate : Sri P. Mathur.

ORDER (ORAL)

BY HON'BLE MR. S. DAYAL, MEMBER (A)

This application has been filed for setting aside the orders dated 19.10.94 and 22.12.94 passed by the respondent no.2. A further direction is sought to the respondents not to reduce the rank of the applicant from Inspector of Works Gr.II to the post of Inspector of works Gr.III due to transfer on request in violation of Rule 312 of the Indian Railway Establishment Manual. A direction is also sought to the respondents not to make any recovery from the salary of the applicant and to refund the amount already recovered from his salary.



2. The case of the applicant is that he was working as Inspector of Works Gr.II (IOW-II in short) on ad hoc basis in the construction organisation, North East Frontier Railway (N.E.F.R. in short), Maligaon, when he sought his transfer from N.E.F.R. to N.E.R., He was allowed the transfer and permitted to join on the post of IOW-III in the pay-scale of Rs.425-700 on 19.1.1985 in pursuance of the transfer order dated 4.1.1985. The applicant has now claimed that he should be allowed to be continued in the grade of IOW-II and no recovery shall be effected from him and the recovery already effected, shall be refunded.

3. We have heard the arguments of Sri V.K. Srivastava for the applicant and Sri P. Mathur for the respondents.

4. The impugned order dated 19.10.94 shows that the applicant was transferred pursuant to the order dated 4.1.1985 and took over charge as IOW-III. He was continued to be paid the pay-scale of IOW Gr.II on the basis of the certificate of Last Pay drawn in N.E.F.R. The respondents, therefore, gave a notice through this letter for (i) fixation of pay of the applicant on the post of IOW-III ; and (ii) for recovery of excess payment by the impugned order dated 22.12.94. The pay of the applicant from 19.1.1985 to 1.8.90 has been re-fixed. The order also enclosed the re-fixation of his pay from 21.8.90 to 1.8.94 in IOW-II.

5. The applicant has claimed that the orders dated 19.10.94 and 22.12.94 were passed without giving any reasonable opportunity to the applicant. We find that the communication dated 19.10.94 is a show-cause notice and thereafter the pay of the applicant has been fixed by order dated 22.12.94. Thus, the contention of the applicant that he was not given a reasonable opportunity, is not correct.

6. The learned counsel for the applicant has claimed that

the applicant is entitled for being posted as IOW Gr-II because he was paid in the scale of IOW Gr.II in NEFR and was transferred from there to NER, where he was paid the scale of IOW-II. The claim of the applicant that he continued as IOW-II is not substantiated by the Annexures to the O.A. and averments made in the O.A. Annexure-2 shows that the applicant had given his willingness to go on transfer in the initial grade of IOW-III in the scale of Rs.425-700. The order dated 4.1.1985 (Annexure-3) shows that the applicant was relieved on the Afternoon of 4.1.1985 from the Construction Organisation of N.E.F.R. for his absorption as IOW-III in the scale of Rs.425-700/-. Thus, it is quite clear that the applicant was not meant to retain his IOW-II status after his transfer to N.E.R. The order dated 22.1.85 shows that the applicant had been posted as Asstt. Engineer Varanasi on his transfer from NEFR to NER on his own request and he was given the bottom seniority in the grade of IOW-III in the pay-scale of Rs. 425-700/-. Therefore, the applicant's claim that he should have been allowed to continue in IOW-II is not tenable.

7. AS far as the recovery is concerned, the averments made by the respondents did not cast any blame on the applicant for fixation of his pay at Rs.570/- from 19.1.85 onwards. There is no averments made by the respondents that the applicant had himself/mis-representation for fixation of his pay at that level. They attributed the wrong fixation of pay to a clerical error. Therefore, as per law laid down by the apex court in the case of Sahib Ram Vs. State of Haryana(1995 SCC (L&S) 248) the respondents are not entitled to recover any amount from the applicant on account of wrong fixation of pay. The order dated 22.12.94 shall only be applicable prospectively and if any amount has been recovered from the applicant on account of the alleged wrong fixation of pay, the same shall be

refunded to the applicant within a period of three months from the date of receipt of copy of this order.

8. With the above observations, the O.A. stands disposed of without any order as to costs.

Rajgurun
MEMBER (J)

Han
MEMBER (A)

GIRISH/-