

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 845 of 2002.

Date of Decision 25/7/02

Smt. Gulabi Devi & Ors Applicant(s)

Sri S. Ram Counsel for the
Applicant(s)

V E R S U S

Union of India & Others Respondents(s)

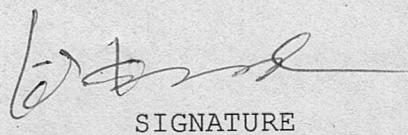
Sri A.K. Roy Counsel for the
Respondents(s)

CORAM :

Hon'ble Mr. K.B.S. Rajan Member (J)

Hon'ble Mr. A.K. Singh Member (A)

1. Whether Reporters of local News Papers may be allowed to seen the Judgment?
2. To be referred to the Reporters or not?
3. Whether their Lordship wish to see the fair copy of the judgment.
4. Whether to be circulated to all the Benches.


SIGNATURE

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 25/11 day of Nov 2005.

Original Application No. 845 of 2002.

Hon'ble Mr. K.B.S. Rajan, Member (J)
Hon'ble Mr. A.K. Singh, Member (A)

1. Smt. Gulabi Devi, W/o Late D.H. Prasad
2. Sri Kamla Shanker, S/o Late D.H. Prasad
3. Sri Shashi Kumar, S/o Late D.H. Prasad
4. Sanjeev Kumar, S/o Late D.H. Prasad

(All are resident of Village- Manpur PostBhampur,
Distt: Allahabad.)

.....Applicants

By Adv: Sri S. Ram

V E R S U S

1. Union of India through General Manager,
Northern Railway, Headquarters Office, Baroda
House, NEW DELHI.
2. Dy. Chief Personnel Officer,
Northern Railway, Headquarters Office, Baroda
House, NEW DELHI.
3. Dy. Chief Electrical Engineer/Const.
Northern Railway,
ALLAHABAD.

.....Respondents

By Adv: Sri A.K. Roy

O R D E R

By K.B.S. Rajan, JM

This application was originally filed by Shri D.H. Prasad who had expired during the pendency of this OA. As such, his legal heirs were brought on records. However, in this order it is the original



applicant, i.e. late Shri D.H. Prasad who is termed as 'the applicant'.

2. According to the applicant his case is as under: -

- (a) The applicant, a scheduled caste candidate, joined the Stores Department of Northern Railway HQrs but was issued an order for joining duty in the Construction Wing at Aligarh, vide order dated 07-09-1979. His lien was, however, retained in the Stores Department. Later on the applicant was promoted to the higher posts of Sr. Clerk and Head clerk, respectively in 1980 and 1983 in the Stores Department.
- (b) Seniority list of Head clerks which was expected to be circulated through the Controlling Officer was never circulated to the applicant.
- (c) His next post in the Stores Department was Office Superintendent Gr. II in the grade of 550 - 900 (1600 - 2660 = Rs 5,000 - 8000). The applicant was called for selection to the said post which he attended but the respondents did not communicate the result of the same and thus he represented to know the exact situation. Meanwhile, the applicant was given promotion on ad hoc basis as Office Superintendent II w.e.f. 20-01-1984 and later on as Office Superintendent Grade I (Pay scale 6,500 - 10,500) on ad hoc basis in 1987. The applicant had requested for regularization in the afore said posts, as provision exists for such regularization if an S.C. candidate completes six month's service in the ad hoc post as per the brochure relating the service conditions of the S.C/S.T.
- (d) During 1988 and later in 1994, the respondents had carried out selection to the post of O.S. Grade II while no intimation was given to the applicant asking him to participate in the selection test.
- (e) It was as late as in 1999, i.e. after 12 years of his representation for promotion to the post of OS Grade II that the respondents, without disclosing any reason, replied to that representation stating that the applicant was not found suitable for promotion to the post of OS Gr. II.

(f) It was after 2 years of the above said letter, i.e. in 2001 the respondents advised the applicant to appear for selection to the post of O.S. Grade II on 11-01-2002, while his juniors in the Stores were long back promoted to the said post. However, the applicant was at that time sick in the Railway Hospital.

(g) The applicant continued to work in the grade of 6,500 - 10,500 on ad hoc basis till he superannuated on 31-01-2002. At that time his basic pay was Rs 8,900/-

(h) Vide order dated 19-02-2002, the authorities had informed the applicant that his substantive post in the cadre being of Head clerk (Rs 5000 - 8000) he cannot be given the scale of pay of Rs 6,500 - 10,500 which was the scale he was placed in the ex cadre post. Again, By order dated 11-04-2002, the applicant was issued with a show cause notice to the effect that his salary in the cadre post was wrongly fixed at Rs 8,900/- which the pay drawn by him in the ex cadre post while the same should be as admissible to him in the post of Head Clerk, being the substantive post he held in the Stores Department. The applicant replied to the same stating that after his retirement, no reduction in pay, which would have a telescopic effect of reduction in pension could take place save with the approval of the President of India.

(i) The applicant has therefore prayed for the relief as under:-

(a) Quashing of the orders dated 19-02-2002 and 11-04-2002 (referred to in para (h) above.

(b) Directing the respondents not to reduce any of the pensionary benefits on the basis of the above said letters.

3. The OA was filed in July, 2002 and on 26-10-2002 by an interim order, the respondents were directed to decide the representation filed by the applicant in reply to the show cause dated 11-04-2002 and in pursuance thereof the respondents had decided the representation, rejecting the same and communicating the decision to reduce the pensionary benefits vide order dated 22-11-2002 communicated through another letter dated 16-12-2002. The said

order has also been assailed by the applicant through this OA.

4. The respondents have contested the O.A. Their version is as under: -

- (c) The applicant initially joined the N.E. Railway Gorakhpur and got himself transferred to the Stores Department of the N.R. and his lien and seniority were maintained in the Stores Branch of the Northern Railway. Later he was transferred and posted in the Construction Organization in the year 1979 which is a temporary and ex cadre organization of the Northern Railways having man power only against the work charged post and not against regular posts.
- (d) The applicant was working in the post of Office Superintendent Gr. I in the scale of pay of Rs 6,500 - 10,500 on purely ad hoc basis and was holding his lien in the Stores Branch on the post of Head Clerk in the grade of Rs 5,000 - 8,000/-.
- (e) In April, 1986, the applicant was called for selection to the post of Office Superintendent Grade II in the scale of pay of Rs 1,600 - 2,660 (Rs 5500 - 9000) but he did not qualify in the selection. Thereafter, he was called for selection on 27-11-1988 but he did not appear in the selection.
- (f) The applicant had applied for his regularization on his double ad hoc promotions as Office Superintendent Gr. II and Grade I but the same was not permissible as per para 216 sub Para ii© Chapter 2 of the IREM Vol. I, as ad hoc promotion cannot be resorted to for a period of more than 3 to 4 months.
- (g) It is true that one junior staff to the applicant was promoted as Office Superintendent Gr. II in the grade of Rs 1,600 - 2,660 (5,500 - 9,000) on 24-02-1989 by superseding the applicant. However, an opportunity was given to the applicant to appear in the selection to the post of Office Superintendent Gr. II vide letter dated 19-12-2001 and 17-01-2002 by compensating those years in which he could not be called for appearing in the selection, with all consequential benefit of pay and seniority at par with his junior subject to the condition that he qualified the selection in the first attempt.



- (h) Instead of appearing for the test, the applicant had sent a representation that since he had been holding the post carrying a scale of Rs 6,500 - 10,500/- the question of appearing for selection to a lower post did not arise.
- (i) Though the applicant was holding the grade of Rs 6,500 - 10,500 in the ex cadre post in the Construction Wing, his substantive post was only Head clerk in the scale of Rs 5,000 - 8,000/-.
- (j) As the applicant's higher pay was in the ex cadre post the same cannot be taken into account while working out the pension and other terminal benefits and hence, their action in reducing the pay of the applicant with consequent reduction in the terminal benefits as contained in their letter dated 22-11-2002 is in order.

3. The applicant had filed his rejoinder, reiterating his stand as taken in the original application.

4. Arguments were heard and the documents perused. The applicant has relied upon the following judgments:-

- (a) Order dated 31-10-2000 in OA No. 2817/1997 of the Principal Bench, which in turn was based on the order dated 16-08-2000 in OA 612/97 of the said Bench. In the said case, the applicant was in the Construction wing at the time of retirement, while his lien was maintained in the Bikaner Division. He was holding the post of Head clerk in the said Division. Again, while others were called for test for promotion to the post of Office Superintendent Gr. II in the scale of Rs 550 - 750, the applicant in that case did not receive the same. The Tribunal held that the applicant was not considered for higher post in the Bikaner Division. The case of the applicant in that OA being identical to the case of another applicant in OA 612/97 decided on 16-08-2000, the Tribunal held that the applicant was entitled to promotion in the Bikaner Division at par with his juniors in the scale of Office Superintendent Gr. II and I and pension and other benefits were to be fixed accordingly.



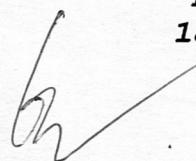
5. It is to be stated at the very earliest that the contentions of the applicant included that the seniority list in the Stores Branch were not made available to him and that he was not given an opportunity to appear for the selection in 1988 and thereafter. These two have been candidly admitted by the respondents in the counter. It is also admitted that the applicant was drawing his pay in the scale of Rs 6,500 - 10,500/- at the time of his superannuation, and his pay was Rs 8,900/-. The question is what should be the pay for the purpose of pensionary benefits admissible to the applicant.

6. ^{also} Certain basic questions arise at this juncture:

- (a) what is meant by ex cadre post?
- (b) Is there any difference between a cadre post and ex cadre post vis a vis the conditions of service?
- (c) What should be the entitlement of pay to an officer holding the ex cadre post?
- (d) Whether the pay drawn while holding the ex cadre post would be taken into account for working out the pensionary benefits?

7. Normally, an ex-cadre post means a post outside the cadre of posts comprised in a Service. (O.P. *Singla v. Union of India*, (1984) 4 SCC 450, at page 463) Usually if the employer decides to create any ex-cadre post which may be necessary for any specialised scheme in keeping with the qualification of the personnel required to man that post, it is so indicated in the order of creation of the post.

Ran Singh Malik v. State of Haryana, (2002) 3 SCC 182, at page 187 :



8. There is no distinction between cadre post and ex cadre post in respect of various service conditions. This is evident from the following decisions of the Apex Court:-

- (i)" 304. An appointment is necessarily to a post, but every appointment need not necessarily be to a post in a service. An appointment to an ex-cadre post is as much an appointment to a post as it is in the case of a cadre post. *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217, at page 457 : (This observation has been made while considering whether reservation is admissible for ex cadre posts also)
- (ii) "Even officers holding permanent posts are often deputed to hold an ex-cadre post. *.K. Dudani v. S.D. Sharma*, 1986 Supp SCC 239, at page 252 .
- (iii) For calculating the qualifying service in respect of pension in the case of a judge, the previous service in any department is taken into account. In case a person was "holding a post on deputation (as distinct from 'foreign service'), the pay in such an ex-cadre post will also be taken into account on the same lines as mentioned above." *M.L. Jain v. Union of India*, (1985) 2 SCC 355, at page 356 : (This is in the case of pension of the appellant who held a post in judiciary and the case relates to pension of the appellant. Though this is not directly applicable to the case herein, the ratio can be adopted)
- (iv) For working out seniority, there is no distinction between cadre and ex cadre post. "2. The question for our consideration is whether the expression "posts" used by this Court in the above-quoted directions means 'cadre posts' or it includes the ex-cadre posts held by the promotees in the Indian Statistical Service. This Court did not make any distinction between a cadre post and an ex-cadre post. The Court's judicious conscience was touched by the fact that the promotees were performing the duties of the jobs (posts) in Grade IV Service and were drawing salary of the posts in the said Service for over fifteen years and still they were treated ad hoc and their appointments considered contrary to the rules. This Court found it to be wholly arbitrary and directed that they be treated as regular members of the service

from the day of their continuous appointment. *Union of India v. Pratap Narain*, (1992) 3 SCC 268, at page 271 :

9. The entitlement of pay while holding an ex cadre post is the one attached to the said post. In this regard the Apex Court has held in the case of *State of H.P. v. Vijay Pal Singh*, (1997) 10 SCC 260, "2. *Though the respondent has been served he is not appearing either in person or through counsel. The admitted position is that the respondent is a State cadre officer discharging the duties of an ex-cadre post meant for IPS Officer. Admittedly, he has not been empanelled for the promotion as an IPS Officer but since the post was existing due to exigency of service he has been posted and he performed the duties of the post. Under the Fundamental Rules an officer who performs the duties of the post, is entitled to payment of the salary of the scale of pay attached to the post.* Since the respondent, admittedly, performed the duties of the post he is eligible to the payment of the scale of pay attached to the post."

10. Thus, the above would go to prove that there is not much difference a post and a cadre post in respect of various service conditions. The service rendered in an ex cadre post is counted for pension purposes and not only the service rendered but also the pay drawn, in case one has been holding an ex cadre post at the time of superannuation. For, as

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held by the Apex Court in the case of *D.S. Nakara v. Union of India*, (1983) 1 SCC 305, at page 328:

"Unquestionably pension is linked to length of service and the last pay drawn but the last pay does not imply the pay on the last day of retirement but average emoluments as defined in the scheme."

11. The pension is admissible based on the average pay of last ten months pay. Thus, if an officer has been posted to an ex cadre post, he would be entitled to the higher rates of pension etc., This is evident from the judgment of the Apex Court in the case of *Vinod Krishna Kaul v. Union of India*, 1991 Supp (1) SCC 19, wherein the case of the petitioner is that there were 336 posts of Joint Secretaries under the Government of India as on June 1, 1980. These posts were in the pay scale of Rs 2500-125/2-2750. The posts of Joint Secretaries are ex-cadre posts and appointments to the posts of Joint Secretaries are made from different sources, out of a panel of officers belonging to the Indian Administrative Service, Indian Police Service and other central services. Two posts of Joint Secretaries were to be filled in by the Police Commission in 1980. The petitioner was empanelled in 1978 for appointment to the posts of Joint Secretaries. Respondent 4, a member of IPS and respondent 5 member of Indian Postal Service were also put in the above panel. According to the petitioner both these officers were junior to the petitioner. It had been alleged that the above two posts of Joint Secretaries in the Police Commission

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were given to respondents 4 and 5 totally ignoring the claim of the petitioner. It had been contended by the petitioner that he was put to financial loss as well as in rank and status in comparison to respondents 4 and 5 who were junior to him. the two respondents were drawing Rs 2750 per month as their basic salary, whereas the petitioner was drawing a mere Rs 2500 per month. The respondents have also been drawing enhanced dearness allowance, travelling allowance etc. on the basis of their higher salaries, apart from enjoying various other perquisites of office. **Respondents 4 and 5 were also entitled to higher death-cum-retirement benefits** they are also eligible to be appointed as Additional Secretary to the Government. (The Court had negatived the contention of the petitioner that he had been discriminated)

12. The applicant has relied upon the case of Shri Ram Prasad decided by the Principal Bench as stated earlier. The similarity in both the cases is as under:-

Sl No.	Ram Prasad Case	Applicant's case
1.	Originally in the Bikanir Division in his cadre	Originally in New Delhi Division in his cadre
2.	Sent to Construction Wing	Sent to Construction Wing
3.	Promoted upto the post of Head Clerk in the Bikanir Division	Promoted upto the post of Head Clerk in the Stores Branch
4.	Was not considered for selection to the post of O.S. Grade II	Was not considered for selection to the post of O.S. Grade II (in

1988 and in 1994)

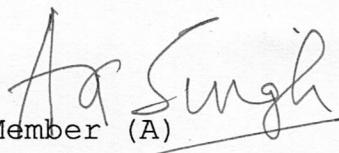
- 5. Retired from the Retired from Construction Wing Construction Wing
- 6. At the time of At the time of retirement holding a retirement holding a post higher than the post two steps higher post of Head Clerk than the post of Head Clerk
- 7. Respondents denied the Respondents denied the pensionary benefits pensionary benefits being based on the being based on the average of the last ten average of the last months pay drawn months pay drawn
- 8. Had moved the CAT (P.B) Had moved the Allahabad Bench of CAT
- 9. The P.B. allowed the O.A.

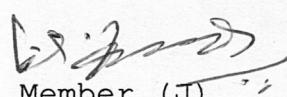
13. Taking into account the clear dictum of the Apex Court in respect of the cadre post and its relationship to the service conditions as extracted above, and also considering the congruent nature of the case of Ram Prasad and that of the Applicant, it can be safely held that the applicant, having a lien in the Stores Branch, when posted to Construction Wing wherein he had served right from the beginning till superannuation, and where he had been afforded a number of promotion cannot be denied pension and other terminal benefits on the basis of the last pay drawn by him in the said construction wing. As the applicant was in the pay scale of Rs 6,500 - 10,500 for a number of years, albeit on ad hoc basis, his pay cannot be reduced for the purpose of calculation of pension on the ground that had he been serving in the Stores Branch, he would have drawn a pay less than that he was drawing in the Construction Wing.

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14. **The OA, therefore, succeeds.** The impugned orders dated 19-02-2002, 11-04-2002 and 22-11-2002, are all quashed and set aside. The respondents are directed to calculate the pension and other terminal benefit of the applicant on the basis of the last pay drawn/last 10 months' average pay drawn by the applicant before his superannuation from the construction Wing. This drill has to be performed within a period of four months from the date of communication of this order.

No cost.


Member (A)


Member (J)

/Pc/