

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 27 day of 1 2008.

Original Application No. 889 of 2002

Hon'ble Mr. A.K. Gaur, Member (J)

Hon'ble Mr. Shailendra Pandey, Member (A)

Kausen Ahmad, S/o Sri Usman Ali, R/o 84/D/2, Nai Abadi
Chakia, Allahabad.

... Applicant

By Adv: Sri S. Ram

V E R S U S

1. Union of India through General Manager, Northern Railway,
Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Allahabad.
3. Divisional Superintending Engineer (C), Northern Railway,
Allahabad.

... Respondents

By Adv: Sri A. Tripathi

ORDER

By Hon'ble Mr. A.K. Gaur, Member (J)

Through this OA the applicant has claimed the following
main reliefs:

- i. *To direct the respondents to fix the pay of the applicant in Revised Pay-Scale of Rs. 2650-4000 from 1.1.96 to 4.9.98 in the following manner and pay all arrears of salary and allowances in consequence thereof.*

Rs. 2950-00	From 1.1.96
Rs. 3040-00	From 1.1.97
Rs. 3105-00	From 1.1.98
Rs. 3105-00	From 4.9.98

- ii. *to direct the respondents to fix the pay of the applicant with effect from 4.9.1998 protecting his higher pay and giving the benefits of financial up-grading under ACP scheme due to the applicant as per extant rules.*

- iii. *to direct the respondents to pay entire salary and allowances from 4.9.98 to 24.8.2000 during which applicant was not allowed duty as held in Part I of Judgment and order dated 4.8.2000 including PL Bonus for*

the period from 95-96 to 2000 as admissible under the rules and also fix his correct seniority taking length of his past service in Allahabad Division or keep his lien and seniority in CSP/Subedarganj itself as done in similarly placed persons by creating as supernumerary post till finally absorbed in CSP/Subedarganj as the applicant is presently working in CS/Subedarganj."

2. The brief facts of the case are that the applicant was earlier working as Gangman under the control of Senior Section Engineer, Track Depot, Subedarganj Allahabad. In the year 1996 the employees working in Concrete Sleeper Plant (CSP), Subedarganj were rendered surplus. Applicant was also declared surplus alongwith other persons vide order No. 270 of 1996. The grievance of the applicant is that all the employees were subsequently posted in Northern Railway in the same pay and grade but the applicant was posted in lower grade of Gangman in the Grade of Rs. 2610 – 3540 vide order dated 4.9.1998. The applicant was earlier working as Helper Khalasi in the scale of Rs. 2640 – 4000 (RPS). It is alleged by the applicant that he was granted 7 annual increments in the Grade of Khalasi Helper from time to time. He joined Concrete Sleeper Plant on 10.03.1992 and was granted further 03 increments as Helper Khalsi in CSP, Subedarganj, Allahabad. After having been declared surplus by CSP, Subedarganj, Allahabad the applicant was transferred to TT Line, New Delhi. The applicant could not proceed to Delhi on transfer due to protracted illness of his mother. The applicant also prayed that he may be posted at Allahabad but his prayer was not acceded to by the respondents. The applicant ultimately filed OA No. 273/99 in this Tribunal for giving direction to the respondents to permit the applicant to join the duty. The applicant was accordingly permitted to join the duty from 26.08.2000 in the lower grade of Rs. 2610 – 3540. It is further alleged by the applicant that the grade of the applicant in

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which he was earlier working as Helper Khalasi was Rs. 2650 – 4000 from 01.01.1996 as per 4th Pay Commissions but he was forced to join in lower grade of Rs. 2610 – 3540. According to the applicant his pay should have been fixed at Rs. 3150 in lower pay scale of Rs. 2610 – 3540. The pay of the applicant should have been protected, but the respondents have arbitrarily fixed the pay of the applicant. The case of the applicant is that he has never give his consent for posting in the lower scale of Gangman in bottom seniority. The respondents did not credit the leave of the applicant in his leave account during the period of January 1996 to August 2000 and did not pay him the Productive Linked Bonus during this period. The applicant has already represented to the Competent Authority on 12.1.2001 for redressal of his grievance but the department paid no heed.

3. By filing short counter reply and counter reply the respondents have denied the claim of the applicant and submitted that after having been rendered surplus from CSP Subedarganj, Allahabad the applicant was transferred to TT Line, New Delhi, but he did not join the duty there. He moved an application before the competent authority that due to death of his wife he was mentally upset and prayed that on his own willingness he may be allowed duty by accommodating him in the office of DRM, Allahabad. A photocopy of the application of the applicant has been filed as Annexure CA-1. The competent authority carefully considered the grievance of the applicant and passed order on PP that the application of the applicant can be accepted in lower grade of Gangman on bottom seniority. The competent authority

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accordingly accorded his approval and the applicant was posted as Gangman under Section Engineer Mirzapur in the lower scale of Gangman in the grade of Rs. 2610-3540 (RPS) in bottom seniority vide order dated 04.09.1998 (Annexure CA-2). After receiving the posting order of the applicant the Senior Section Engineer Mirzapur directed the applicant to come with spare letter containing his service particulars, but the applicant did not turn up with the required spare letter for duty. On 11.01.1999 the Divisional Superintending Engineer (Coordination) Allahabad directed the applicant for obtaining the spare memo from the office of CSP Subedarganj Allahabad and for reporting for duty to the Senior Section Engineer Mirzapur, but the applicant did not report for duty with the spare memo. The respondents have also clearly submitted that the record of the payment of Production Link Bonus was not available in their office for the period in question as the employee was not on duty of the respondents during the period in question. The applicant on his own request joined in bottom seniority in the Grade of Rs. 2610-3540 and the annual increments of pay accrued and admissible to the applicant was also drawn and disbursed to him. As the applicant assumed his duty on 26.08.2000 the question of granting any annual increment w.e.f. 01.01.1996 does not arise at all. As the applicant was not on duty during the period in question, he could not earn leave and as such the same was not credited in his leave account for the period in question.

4. The applicant has filed rejoinder reply, but nothing new has been indicated therein.

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5. We have heard Sri S. Ram learned counsel for the applicant and Sri A. Tripathi learned counsel for the respondents. We have also carefully perused the record.

6. From the perusal of the judgment rendered in OA 273/99 it is noticed that there is a clear and specific finding of the concerned Bench that there is no "denial of the fact that the applicant had surrendered his seniority and accepted reduction in scale in the grade of Gangman from Khalasi and on consequent consideration of the same fact, he was posted to Mirzapur as Gangman on 04.09.1998". In pursuance of the order passed by this Tribunal in OA 273/99 the applicant joined as Gangman on his own request after accepting bottom seniority in the Grade of Rs. 2610-3540 under the control of Section Engineer Mirzapur. A perusal of the order dated 04.09.1998 clearly indicates that on being declared surplus from CSP Subedarganj the applicant was posted as Gangman in lowest grade of Rs. 2610-3640 on bottom seniority. At the time of joining in lowest grade of Gangman in bottom seniority the applicant did not raise any demur or protest. In pursuance of the order and judgment passed in OA 273/99, the applicant was posted as Gangman under control of Section Engineer Mirzapur vide order dated 25.08.2000. The applicant was again transferred by Divisional Superintending Engineer (Coordination) Allahabad on 5.6.2002 from Mirzapur to the office of Traction Depot, Subedarganj Allahabad and presently the applicant is working under the Control of Senior Section Engineer. We have also noticed that during the period from April 1996 to August 2000 the applicant did not work under the Control of Assistant Divisional

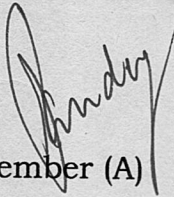
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Engineer Allahabad and as such the respondents have rightly not paid him Productivity Link Bonus. The respondents have clearly taken stand in their reply that as per entry in the service record of the applicant it transpires that in the year 1996 the applicant was rendered surplus from CSP Subedarganj Allahabad. He was transferred to TT Line New Delhi, but he did not report for duty there and submitted an application before the competent authority that due to death of his wife he was mentally upset and requested that on his own willingness he should be allowed posting in the office of DRM, Allahabad. The said application of the applicant was forwarded to S.E. (C) for necessary order, who passed the order on the application of the applicant "**can be accepted in lowest grade of Gangman in bottom seniority**" this was again put-up before DRM, Allahabad who being competent authority accorded his approval for his absorption and posting in Allahabad Division on the post of Gangman on bottom seniority. This plea of the Railway Administration specifically taken in paragraph 7 of the counter reply has not at all been controverted by the applicant in his rejoinder reply.

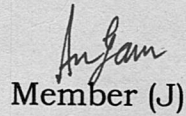
7. In view of our aforesaid observations we find that the applicant has failed to make out any case warranting interference by directing the respondents to protect his higher pay and fix his pay by giving the benefits of financial up gradation under ACP Scheme and also for fixing the pay of the applicant in the revised pay scale of Rs. 2650-4000 from 01.01.1996 to 04.09.1998. We have also found from the record that the fixation of pay of the applicant in the revised pay scale in Grade 2650-4000 w.e.f.

01.01.1996 to 04.9.1998 cannot be given to the applicant solely on the ground that he was not in Railway Service during the period in question. The applicant was appointed as Gangman on the ground of 'mercy' in the grade of Rs. 2610-3540 after undergoing medical test. The applicant has also failed to make out any case for grant of financial up gradation under ACP Scheme as per extant rules.

8. In view of our aforesaid observations and discussion, the OA is dismissed. Parties to bear their own costs.



Member (A)



Member (J)

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