

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 3rd day of Sept 2010

Original Application No. 1308 of 2003

Hon'ble Mr. S.N. Shukla, Member (A)

Prahlad Dhar ~~Dubey~~^{Dubey}, S/o T.D. Dubey, R/o Shivaji Nigar, Post Shivpuri Colony, Rustumpur, Gorakhpur.

..... Applicant.

By Advocate: Sri S.K. Shukla

V E R S U S

1. Union of India through General Manager, N.E. Railway, Gorakhpur.
2. Chief Workshop Manager, N.E. Railway, Gorakhpur.
3. Chief Workshop Manager (P), N.E. Railway, Gorakhpur.
4. Senior Personnel Officer (Workshop), N.E. Railway, Gorakhpur.
5. Chief Works Manager, Eastern Railway, Liliwa.

..... Respondents.

By Advocate: Shri Anil Dwivedi

ORDER

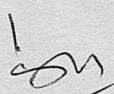
This OA has been filed seeking the following reliefs:-

- "i. issue order or direction in the nature of certiorari quashing orders dt. 30.1.2003 as well as 21.5.2003 passed by respondent No.4 & 3 respectively.
- ii. issue order or direction in the nature of certiorari quashing order dt. 30.10.1993 passed by respondent No.4.
- iii. issue an order or direction in the nature of certiorari quashing the order dt. 6.9.2002 passed by Senior Personnel Manager (Workshop) Mechanical N.E. Railway Gorakhpur.
- iv. issue order or direction in the nature of certiorari quashing office order No. 149 dt. 1.8.2002 issued by Chief Workshop Manager (P) Mechanical Workshop N.E. Railway Gorakhpur to the extent the petitioner has been granted promotion on the post of Fitter Grade II with prospective effect only, and direct the respondents to treat the applicant to have been promoted as Fitter Grade II at Mechanical Workshop N.E. Railway Gorakhpur w.e.f. July 1998.

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- v. *Issue order or direction in the nature of mandamus directing the respondents to fix the salary of the applicant at Rs. 4190 as on 1.1.1996 in the grade of Fitter-III and then fix his salary in the grade of Fitter grade II grade 4000-6000 w.e.f. 1.7.1998 on that basis and pay the applicant the entire arrears in alternative issue order or direction directing the respondents to fix the salary of the applicant in fitter grade II at 4270 as on 1.8.96, 4350 as on 1.8.97, 4430 as on 1.8.1998, 4510 as on 1.8.1998, 4510 as on 1.8.1999 and 4590 on 1.8.2000.*
- vi. *issue order or direction directing the respondents to pay salary to the applicant w.e.f. 1.8.2002 at least in the grade of fitter grade II together with arrears.*
- vii. *issue order or direction directing the respondents not to downgrade the salary of the applicant or reduce the basic pay or recover any amount from the salary of the applicant on the basis of refixation as made by order dt. 6.9.2002.*
- viii. *issue any other or further order or direction as this Hon'ble Tribunal may deem fit and just in the facts and circumstances of the case.*
- ix. *to award cost to the applicant"*

2. The facts as pleaded in the OA are that the applicant was appointed at Eastern Railway in the year 1972 and in due course became Skilled Technician Grade III (Rs. 950-1500) on 01.09.1980. In the year 1983 he claims to have been promoted as Technician Grade II in the grade of Rs. 1200-1800. The applicant requested for his transfer from Eastern Railway, Kolkata to North Eastern Railway, Gorakhpur. The applicant was offered transfer to North Eastern Railway, Gorakhpur as Technician Grade III with bottom seniority in the skilled grade of Rs. 950-1500. Thereafter, on submission of declaration by the applicant he was transferred from Carriage and Wagon (C&W) workshop Liluah Eastern Railway Kolkata to Mechanical Workshop North Eastern Railway, Gorakhpur on the post of Skilled Grade III i.e. Technician Grade III in the grade of Rs. 950-1500 on 24.08.1993. It is submitted that the question of demotion on the post of skilled Grade III would have arisen only on joining at Gorakhpur and there was no order to the effect that he was reverted from Grade II to Grade III at Liluah. Further, the applicant was receiving basic pay of Rs. 1320/- as on 31.07.1993 and Rs.



1350/- as on 01.08.1993 as the date of increment fell on 01st August each year.

3. On transfer to Gorakhpur the applicant was granted pay protection and he was posted as Technician Grade III in the pay scale of Rs. 950-1500 and his basic salary was fixed at Rs. 1350/. He was also granted increments on each subsequent years and started getting salary as per the scale revised by V Pay Commission i.e. w.e.f. 01.01.1996. The scale of Rs. 950-1500 was revised to Rs. 3050-4590 and, according to the applicant, it is alleged that the he reached at Rs. 4590/- as per copy of the pay slip for the month of June 1998 (Annexure A-4 to the OA).

4. In June 1998 a notification was issued for holding a Trade Test for granting promotion to the post of Fitter Grade II (Technician Grade II). The applicant claims that he was already granted promotion as Technician Grade II in Eastern Railway, Kolkata after qualifying the Trade Test way back in the year 1998. Further he was working at lower level of Fitter Grade III (same as Technician Grade III) on transfer on another Zonal Railway. After obtaining declaration from the examination he has passed Trade Test of Technician Grade II and he was promoted as Fitter Grade II in July 1998 and the salary of the applicant was fixed in the Fitter Grade II (Rs. 4000-6000) in July 1998 (Annexure A-5 to the OA). Annexure A-6 and Annexure A-7 have also been filed in support of the claim that he was holding the rank and pay of Technician Grade II.

5. Once again a notification was issued for granting promotion to the post of Fitter Grade II in July 2002. Once again the applicant asked to appear

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in the Trade Test. However, under compulsion he once again appeared in the Trade Test. An order dated 01.08.2002 (Annexure A-8 to the OA) was issued which included the name of the applicant having been granted promotion to the post of Fitter Grade II with immediate effect. Thereafter, an office order dated 06.09.2002 (Annexure A-9 to the OA) was issued re-fixing the salary of the applicant w.e.f. 01.01.1996 to 01.08.2002 in the Grade of Fitter Grade III. The applicant filed a representation dated 09.10.2002 which remained undecided and, therefore, yet another representation was filed on 03.10.2002 (Annexure A-10 and A-11 to the OA).

6. In para 4.18 of the OA it has been averred that the applicant was transferred to North Eastern Railway, Gorakhpur on 24.08.1993 without granting benefit of increment which became due on 01.08.1994 showing the basic pay of the applicant being drawn as Rs. 1320/- . Thereby, resulting into wrong calculation and fixation of pay for the subsequent period as also fixation on account of the enhanced grade as a consequence of Pay Commission recommendation.

7. In para 4.22 to the OA it has been averred that even if it was accepted that the applicant was promoted as Fitter Grade II w.e.f. 01.08.2002 the salary for the month of September, 2002 downgrading him to the post of Technician Grade III i.e. Fitter Grade III in the grade of Rs. 3050-4590 with basic pay of Rs. 4190/- has been incorrectly done.

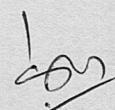
8. Thereafter, OA No. 1269 of 2000 was filed challenging action of the respondents which was disposed of vide order and direction dated 30.10.2002 with direction to the respondents to decide his representation



through a speaking order (Annexure A-15 to the OA). A copy of order dated 30.01.2003 (Annexure A-16 to the OA) is the order on the representation of the applicant. A similar order on another representation of the applicant challenging order at Annexure A-17 to the OA issued by Chief Works Manager, Eastern Railway, Liluah was disposed of vide order dated 31.05.2003 at Annexure A-19 to the OA.

9. In the counter affidavit submission on behalf of the respondents are that some submission stated in the OA are factually incorrect. In fact the applicant was appointed as Labour in the pay scale of Rs. 196-232 on 01.09.1980. He was promoted as Khalasi Helper on 02.02.1981 (Rs. 210-290), promoted as Fitter Grade III w.e.f. 01.07.1985 (Rs. 260-400) and Fitter Grade II on 27.09.1988 (Rs. 1200-1800) respectively. The applicant joined as Fitter Grade III in the grade of Rs. 950-1500 on bottom seniority on 24.08.1993 as per terms of transfer. At that time his pay was Rs. 1120/- per month in the scale of Rs. 950-1500 instead of Rs. 1320/- in the scale of Rs. 1200-1800 as per order dated 13.10.1993 (Annexure A-17 to the OA) [the applicant has challenged that he was never communicated about this order]. It has been averred that it was only on accepting bottom seniority in the scale of Rs. 950-1500 as Fitter Grade III. The request of the applicant for transfer was accepted. Further, because he was promoted as Skilled Grade II on 27.09.1988. His incremental date was changed from July to September and as such his salary on 01.09.1994 was Rs. 1350/- (Annexure CA-2 to the CA).

10. In para 10 of the Counter Affidavit calculation for fixation of the applicant's salary at Rs. 1130/- on 24.08.1993 is indicated before taking over at Gorakhpur. Since he was drawing salary of Rs. 1320/- in the scale of Rs.

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1200-1800. The salary fixation was done erroneously due to non availability of service book and on the self declaration of the applicant. In para 11 of the Counter Affidavit his revised fixation of salary is indicated. In para 13 of the Counter Affidavit it has also been submitted that the basic salary of the applicant was earlier wrongly fixed at Rs. 4590/- instead of Rs. 4270/- because the applicant was Trade Tested in Mechanical Workshop, Gorakhpur and order to this effect was issued on 01.08.2002 (Annexure CA-3 to the CA).

11. There is nothing new brought out in the rejoinder affidavit.

12. The root to the disputed position can be traced out from Annexure A-17, order dated 13.10.1993 of the Chief Works Manager, Eastern Railway, Liluah which reads as under:-

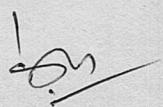
"In partial modification of this office order of even No. dt. 22.8.93 it is ordered that the transfer on own request of Sri Prohladdhar Dubey, Sk. III fitter, Ex.T.No.A.No.A. 102, PF.A/c. No. 605399 who has already been released for this Administration on 24.8.93(AN) is made on revision as SK-II fitter on pay Rs. 1130/- P.M. in scale Rs. 950/- - 1500/- (RP) instead of pay Rs. 1320/- P.M. in scale Rs. 1200 – 1800 (RP)."

13. Significantly, Railway Board's own clarification placed at Annexure CA-4 to the Counter Affidavit, seems to have been ignored, reads as under:-

"Copy of Railway Board's letter No. F(E)II/01/Misc./2(Pt.) dated 2.12.96 addressed to The General Manager, All Indian Railways and others from R.P. Singh, Dy. Dir., Finance (Estt.) I, Rly. Board, New Delhi.

Sub:- Pay protection to the staff who joined a lower post at his own request.

One of the Federations have requested to the Board that on Zonal Railways protection of pay is not granted and provisions under 2nd sub-para 604 (a) (iii) of IREM have erroneously been applied and per of such staff has been depressed. The Federation have cited an example that 'A' was in grade of Rs. 1200-1800 as a result of his promotion against one of the upgraded posts under cadre Restructuring and his substantive post in the revised scale is Rs. 1290/. He was transferred to another seniority on his request in the scale of Rs. 950-1500. After his transfer to lower post, his basic pay of Rs. 1290/- is not being protected.



Board have considered the matter and it is clarified that in all such cases, pay drawn by a substantive holder of a higher post on voluntary transfer to a lower post when the pay drawn in the higher post is less than or equal to maximum of the scale of the pay of the lower post, his substantive pay is to be protected.

Sub-para (2) of para (a) (iii) of the Correction Slip No. 19 is to be invoked only when he seeks transfer back to the lower post

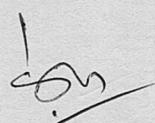
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Hindi version will follow."

14. Now the next dispute to be resolved is whether the applicant was holding a substantive post as Skilled Fitter Grade II at the time of transfer from Liluah vide order dated 13.10.1993 (Annexure A-17), it would seem so. This inference is drawn by this Tribunal on the basis of the fact of the applicant having been put through the Trade Test before he has accepted to have been promoted in Technician Grade II at Gorakhpur. Therefore, by the same logic because the applicant was holding Grade II post in his previous zone he must have cleared the trade test. If that is the case it would seem grossly unfair to subject him to another Trade Test at Gorakhpur as has been contended in para 6 of the speaking order dated 31.05.2003 (Annexure A-19). In the same para 6 it has also been alleged that the applicant has not exercised his option regarding the pay fixation as has also not submitted his charge report in pursuance of the order dated 29.10.2002 promoting him to Grade II. Para 6 of Annexure A-19 reads as under:-

“पैरा-6 मान्य नहीं है। चूंकि आप लिलुआ से फर्टर-/// के पद पर निजी अनुसंधान स्थानान्तरित होकर आए थे, अतः पुनः ग्रेड-// में दधता परीक्षा उत्तीर्ण करना आवश्यक है। आपसे पत्र सं० का/14/चार// 29.10.02 द्वारा ग्रेड-// के पद पर कार्य भार ग्रहण करने सम्बन्धित पत्र तथा वेतन निर्धारण हेतु विकल्प मांगा गया था परन्तु आपने अभी तक नहीं दिया।”

15. This Tribunal has not been able to fathom as to what is intended by this observation of the competent authority.

16. Heard learned counsel for the parties and examined the material on record in depth. The order dated 13.10.1993 (Annexure A-17) seems to be



manifestly erroneous in as much as while it specifies the pay of the applicant on his joining at Gorakhpur, but at the same time makes no mention of protecting his pay following the Railway Board's notification at Annexure CA-4. Even if it was to be accepted that the Railway Board's notification came w.e.f. latter date, nothing prevented the authorities from extending the benefit of this notification to the applicant while dealing with his repeated representations.

17. Similarly no where in the Counter Affidavit the claim of the applicant for having passed the Trade Test for Technician Grade II has been denied. No ruling has also been relied upon by the respondents under which presumably after having passed the Trade Test for promotion to Grade II in his home zone is required to undergo the same test at receiving zone. Therefore, though it is not clear as to whether or not the applicant's position would be any better in his new zone if he was not compelled to appear in the same Trade Test again before having been treated as qualified for promotion to Technician Grade II and, therefore, the Tribunal is firmly of the view that since the applicant is always deemed to have passed the Trade Test before coming to North Eastern Railway, Gorakhpur he will be treated as qualified for promotion as Technician Grade II from the very next date he joined at Gorakhpur subject to his bottom seniority in North Eastern Railway.

18. As regards fixation of his pay at Gorakhpur which was corrected to his disadvantage, the Tribunal is of the view that his last pay drawn at Liluah should be protected when he joined at North Eastern Railway, Gorakhpur and the date of subsequent increments as and when due have to be granted as per extant rules in this regard.

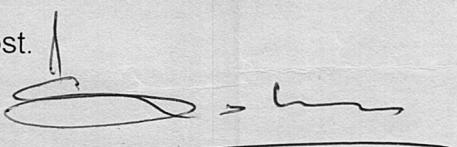
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19. With the above observation the impugned order dated 30.01.2003 at Annexure A-16 to the OA is quashed and set aside being arbitrary, illogical and without proper application of mind. Order dated 13.10.1993 (Annexure A-17 to the OA) will have to be modified by the authorities. In view of the clarification of the Railway Board's letter (supra) last pay drawn by the applicant before transfer to North Eastern Railway, Gorakhpur will be protected. The fixation orders dated 06.09.2002 (Annexure A-9 to the OA) is quashed and will be suitably modified by the authorities. Order dated 01.08.2002 (Annexure A-8 to the OA) will be suitably modified in so far as it relates to the applicant without adversely affecting the position of other beneficiaries of the order. The applicant, subject to verification from records, would be treated as having passed his Trade Test before joining at North Eastern Railway, Gorakhpur and if any benefit arises to him such as enhanced salary, if any, will be granted to the applicant w.e.f. the relevant back date notionally and he will be granted consequential monetary benefits. It is to be reiterated that fact of this OA having been decided in favour of the applicant will have no adverse impact on the seniority of any other person placed above the applicant as on the date of passing of this order.

20. Subject to above directions and after completion of procedural requirement all the benefits given to the applicant will be paid to him within three months from the date of receipt of copy of this order.

21. With the above direction the OA is allowed. No cost.

/pc/


Member (A)