

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE ¹³ DAY OF MAY, 2004

Original Application No.704 of 2003

CORAM:

HON.MR.JUSTICE S.R.SINGH,V.C.

HON.MR.D.R.TIWARI, MEMBER(A)

Ganga Bishun Prasad,
Son of Late Sahdeo Ram,
Resident of Railway Qr.No.L7B
Hanuman Mandir Plant Depot,
Mughalsarai.

.. Applicant

(By Adv: Shri Sajnu Ram)

Versus

1. Union of India through
General Manager, East
Central Railway, Hajipur, Bihar.
2. Chief Works Manager(Plant Depot,
East Central Railway, Mughalsarai.
3. Assistant Personnel Officer
(Plant Depot) East Central
Railway, Mughalsarai.

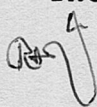
.. Respondents

(By Adv: Shri A.V.Srivastava)

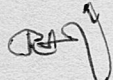
O R D E R(Reserved)

JUSTICE S.R.SINGH,V.C.

Impugned herein is the order dated
24.4.03(Annexure A-1) whereby the applicant has been
reverted to the post of Helper-1 in the scale of Rs
2650-4000. The impugned order purports to have been



passed on the basis of an order passed by the Central Administrative Tribunal as sif the promotion of the applicant to the posts of Machine Operator Grade-II and Machine Operator Grade-III was erroneous. The pay of the applicant has also been fixed in the scale of Rs 2650-4000 w.e.f. 19.8.1985 to 1.12.02 in the manner indicated in the order e.g., the pay of the applicant as on 19.8.1985 has been fixed at Rs 218/- and as on 1.2.02 at Rs 3580/-. Facts giving rise to this application stated briefly are these. Indisputably the applicant was appointed in the Eastern Railway on 6.5.1981 and in the year 1985 he was working as Khalasi-Helper in the Workshop of Plant Depot Unit of Eastern Railway(now reorganised as East Central Railway, Mughalsarai) in the pay scale of Rs 800-1150/-. By order dated 19.8.1985 the applicant was transferred and posted on 19.8.1985 against a work charged post in Flash Butt Welding Plant(in short FBWP) another unit of the said Depot. The transfer and posting of the applicant in FBWP was effected on the basis of option given by him for working in FBWP where the second shift was to be opened requiring additional man power. It may be pertinently stated that apart from applicant a large number of other employees some of whom belonged to the Workshop Unit were transferred and posted to FBWP unit on the basis of options given by them. It appears that while working in the FBWP, the applicant earned promotion against a work charged post of Machine Operator in the scale of Rs 950-1150(3050-4590 RPS) on 29.11.1991 and subsequently, he was



given further promotion against work charged post of Machine Operator Grade II i.e. highly skilled grade in the scale of Rs 4000-6000 vide order dated 3.8.1995. In his parent unit also, the applicant was promoted vide office order dated 7.8.1993 to the post of Fireman Grade III in the scale of Rs 950-1500 (3050-4590 RPS) w.e.f. 1.3.1993 under restructuring scheme. Thereafter by office order No.323/B dated 23.8.1993, the applicant repatriated to his parent cadres/units. Apart from the applicant, 26 other similarly circumstanced employees were also repatriated to their parent cadres/units by self same order dated 23.8.1993. The order dated 23.8.1993 came to be challenged by Somaru and 26 others including the applicant in OA No.1311/93 interalia on the ground that the work charged/temporary posts against which they were working in FBWP were still continuing and their repatriation to their parent units was arbitrary and tantamount to major punishment of reversion from a higher grade to a lower grade. The Tribunal held as under:-

"
We are of the view that in case these posts continue to be operated in FBWP, the applicants will have a right to continue against these posts in preference to a fresh set of personnel as long as their work is not found unsatisfactory, they cannot, however, claim any right of preference over the workers of FBWP who were working in the Plant against the Permanent post before induction of the applicants, in the matter of promotion. The applicants do have a right to be considered for promotion against the higher posts in their parent unit and the respondents




therefore, rightly considered them for promotion against the high post created by restructuring of cadre. If, however, the applicants do not want to be repatriated and are ready to forego their promotions in the parent cadre, and the work which they are doing in the FBWP continues, the respondents cannot repatriate them against their will after they have already worked for more than 8 years unless their preference is found unsatisfactory and they have been given an opportunity to show cause. In fact, from the averments made by them in the counter reply, it does not appear that the respondents are ever so to allow the applicants to continue against the work charged posts in FBWP but they have pointed out that in that event, the applicant will have to suffer certain consequences which have been spelt out in para 12 thereof "

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"In view of the foregoing discussions, we hold that in case the work which was being done by the applicants in FBWP is still continuing, the applicants will be allowed to work thereafter obtaining a clear undertaking from them that they are ready to suffer the consequences of such continuance in FBWP against the work charged posts. The consequences as per rules shall be clearly specified and communicated to the applicants before obtaining any undertaking from them in this regard."

The OA was accordingly disposed of in terms of the above direction.

In compliance with the above order passed by the Tribunal, the applicant and other similarly circumstanced employees were required, by means of letter dated 2.5.1994, to give their options if they wanted to continue in FBWP subject to the consequences and conditions specified in the letter which reads as under:-



पूर्व रेलवे

सं०-पी०डी०/ई०/३/एफ०बी०/१४, प्लान्ट डिपॉ/मुगलसराय दिनांक /5/94
श्री

विषय: ओ०ए०सं०-131।सन 93 सोमरा व अन्य प्रति भारत संघ व अन्य
केन्द्रीय प्रशासनिक न्यायाधिकरण, इलाहाबाद 23-2-94
का निर्णय ।

केन्द्रीय प्रशासनिक न्यायाधिकरण के उक्त निर्णय के संदर्भ में, जिसमें आप भी एक बादी (अपेलीकेन्ट) थे, आपको सूचित किया जाता है कि माननीय न्यायाधिकरण ने दिनांक 19-8-85 से फ्लैशबट वेल्ड प्लान्ट में प्रति नियुक्ति उन (डिप्टेड) कर्मचारियों के बारे में जो अपने मूल अनुभाग संवर्ग (पैरेन्ट शाफ कैडर) में पदोन्नति पर नहीं जाना चाहते हैं और फ्लैशबट के वर्क चार्ज पद पर रहना चाहते हैं उनके बारे में विचार करते हुए एवं रेल प्रशासन के प्रतिवाद पत्र के पैरा 12 से सहमति व्यक्त करते हुए रेल प्रशासन को यह निर्देश दिया है कि ऐसा करने वाले कर्मचारियों को उसके परिणामों (स्पष्ट रूपों से अवगत कराते हुए जो निम्न है, उनसे विकल्प मांगने और उनके विकल्प प्रस्तुत करने के पश्चात ही आगे की कार्यवाही करने को कहा है ।

1- उन्हें पदावनता/रिक्ट कर फ्लैशबट में उस पद पर कार्य करने दिया जाय जिस पद पर वे मूल संवर्ग व अनुभाग में पदोन्नति के पूर्व कार्यरत थे ।

2- उन्हें संवर्ग संरचना (कैडर रिस्ट्राबिरिंग के वेतन के लाभ से वंचित होना पड़ेगा और इस निमित्त उनके द्वारा प्राप्त किये धनराशि को कटौती की जायेगी ।

3- उनके मूल अनुभाग से उनकी बरीयता/धारणाधिकार/सिनीयरिटी व लियन को समाप्त किया जायेगा ।

4- उनके द्वारा उनके मूल अनुभाग में रिक्त हुए स्थान को वहां के कार्यरत कर्मचारियों की पदोन्नति देकर भरा जायेगा ।

5- फ्लैशबट के वर्कचार्ज पद पर उनकी बरीयता दिनांक 19-8-85 से वर्कचार्ज पद पर कार्यरत कर्मचारियों के इन्टर सी बरीयता के आधार पर निर्धारित की जायेगी और उनका दावा उनके पूर्व फ्लैशबट में नियुक्त कर्मचारियों के ऊपर बरीयता एवं पदोन्नति के मामले में नहीं रहेगा ।

6- फ्लैशबट के वर्कचार्ज पोस्ट की समाप्ति पर उन कर्मचारियों का रेल सेवा का निर्धारण प्रचलित रेल नियम के अनुसार किया जायेगा ।

अतः माननीय न्यायाधिकरण की निर्देशों का अनुपालन करते हुए उक्त आशय के विकल्प व प्रारूप को दो प्रति संलग्न किया जाता है जिसे आप इस पत्र के प्राप्ति के 15 दिन की अवधि में दोनों प्रति भर कर प्रस्तुत कर दें ।

निर्धारण अवधि में आपका विकल्प प्राप्त न होने पर यह मान लिया जायेगा कि आप फ्लैशबट के वर्कचार्ज पोस्ट पर ही कार्य करते रहने के इच्छुक हैं तथा स्वेच्छा से उल्लिखित परिणामों को भुगतान के लिए तैयार हैं ।
संलग्न: विकल्प की दो प्रति

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मुख्य कारखाना प्रबन्धक
प्लान्ट डिपॉ/मुगलसराय ।

Despite service of the aforesaid letter followed by another letter dated 27.5.1994 the applicant did not give any specific option instead filed objection against the conditions laid down in the letter dated 2.5.1994. The Department presumed as per stipulation contained in the letter that applicant was willing to be absorbed in FBWP and suffer the consequences indicated therein and ultimately, by office order dated 17.8.1994(Annexure A-9), the applicant and others were informed that they would be "deemed to be ready to face" the consequences indicated therein and were accordingly allowed to continue in FBWP against work charged post as per order of the Tribunal.

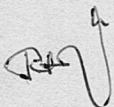
The first question that requires for consideration is whether reversion of the applicant to the post of Helper ^{Khalasi} Grade-1 in the scale of Rs 2650-4000 is legally sustainable?. A perusal of letter dated 2.5.1994 makes it abundantly clear that employees who were transferred on deputation to FBWP unit against work charged posts retained their lien in their parent cadre/units and if they wanted to continue in FBWP, they would be reverted and allowed to work on the post on which they were working before their promotions in their parent cadres/units and that they would not be entitled to reap the benefits of cadre restructuring and as a consequence thereof deductions would be made from their salaries. The applicant had an option to go back to his parent

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cadre and avail of the benefits of promotion he had earned in that cadre or, in the alternative to continue in FBWP against work charged posts and suffer the consequence enumerated in letter dated 2.5.1994. By order dated 17.8.1994(Annexure A-9) the applicant and 24 others were "deemed" to be ready to suffer the following consequences and as such allowed to continue in FBWP against work charged posts as per Central Administrative Tribunal's direction:

Consequences:

- i) That they are reverted from the promotional post of their parent cadre w.e.f. 01.3.1993.
- ii) Payment, if any, made to them on account of promotion under restructured posts, is ordered to be recovered.
- iii) Their seniority/lien in parent cadre is suspended.
- iv) The posts available in parent cadres due to their reversion on their absorption in FBWP, will be filled up from the existing staff next juniors to them.
- v) Their interse seniority in FBWP against work charged posts will be maintained from 19.8.1985 amongst the staff working against work charged posts in FBWP, and they will in no case, be entitled to claim seniority over others, posted in FBWP prior to 19.8.1985.
- vi) Their posting on expiry of work charged posts in FBWP will be decided as per extant Railway Rules subject to availability of posts.



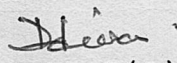
The order dated 17.8.1994 (Annexure-A9) also fixes the pay of the applicant and others on their reversion from parent cadre as indicated therein. The said order was challenged in OA No.1358/94 by Somaru and Others including the applicant. The Tribunal held that the order dated 17.8.1994 was as per conditions laid down in the earlier order of the Tribunal and hence it was not open to challenge and accordingly the OA was dismissed vide order dated 24.4.02. The applicant was admittedly working on the post of Khalasi-Helper Grade-1 before his promotion in his parent cadre. Accordingly, no exception can be taken to the impugned order by which the applicant has been reverted to the post of Khalasi-Helper Grade-1 in the scale of Rs 2650-4000. The order dated 17.8.1994 having been maintained by the Tribunal the applicant cannot assail the validity of the consequences he has suffered as arbitrary in this OA. A perusal of the order dated 17.8.1994(Annexure A-9) indicates that the promotional post of the applicant in his parent cadre as on 1.3.1993 was that of Fireman and his pay as on 1.3.1993 was Rs 990/- (pre-revised) and the work charged post he was promoted to FBWP was that of Machine Operator. The order dated 17.8.1994 further demonstrates that the substantive post of the applicant was that of Khalasi-Helper from which post he was promoted to the post of Fireman which post he held as on 1.3.1993.

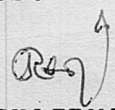
The next question that arises for consideration is whether the fixation of pay as per impugned order dated 24.4.03 and consequential recovery are sustainable?. The fixation of pay as indicated in the impugned order being consequential to the order

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of reversion cannot be faulted. So far as recovery of salary as a result of restructuring of pay is concerned, we are of the view that the applicant cannot be deprived of the benefit of the pay already earned as a result of cadre restructuring from any date anterior to the date of his reversion i.e. 24.4.03. The consequences as visualised in the letter dated 2.5.1994 would not follow automatically. The applicant could suffer the consequences w.e.f. the date an order of reversion is passed by the Competent Authority following the order dated 17.8.1994. As such an order of reversion having been passed in the instant case on 24.4.03, the emoluments paid prior to the said date cannot be recovered.

Accordingly, the OA succeeds and is allowed to the extent that recovery of the salary already received as a result of restructuring upto 23.4.03 shall not be recovered as a consequence of the impugned order of reversion, the validity of which is upheld. We make no order as to costs.


MEMBER(A)


VICE CHAIRMAN

Dated: May.12., 2004

Uv/