

(RESERVED)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 8th the day of November, 2007

ORIGINAL APPLICATION NO. 644 OF 2006

HON'BLE MR. A.K. GAUR, MEMBER-**J.**
HON'BLE MR. SHAILENDRA PANDEY, MEMBER-**A**.

Vijay Kumar Mishra, S/o Sri Paras Nath Mishra,
R/o Vill. Haripur Bandhwa, Post- Lohra Mau,
Distt. Sultanpur. At present working as
Jeep Driver under Chief Electrical Engineer,
North Central Railway, Headquarter Officer,
Allahabad

.....APPLICANT

VERSUS

1. Union of India through
the General Manager (Railway Electrification)
North Central Railway, Allahabad.
2. Divisional Railway Manager (Personnel),
North Central Railway, Allahabad.
3. Assistant Personnel Officer, in the office of
General Manager, North Central Railway,
Allahabad.
4. Chief Electrical Engineer,
North Central Railway, Allahabad.

.....RESPONDENTS

Present for the applicant : Sri Sudama Ram
Present for the respondents: Sri P.N. Rai

O R D E R

BY HON'BLE MR. A.K. GAUR, J.M.

Through this O.A the applicant has sought for direction in the nature of certiorari quashing the impugned order dated 26.05.2006 passed by the respondent Assistant Personnel Officer, North Central Railway, Allahabad coupled with prayer for

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a direction in the nature of mandamus commanding the respondents not to give any effect to the order referred to above and permit the petitioner to work on the post of Jeep Driver on a Group 'C' post.

2. The brief facts of the case are that the applicant was initially appointed on the post of Jeep Driver on daily wage basis on 11.08.1985 under Dy. General Manager, Central Organization of Railway Electrification, Allahabad. On account of his continuous service, the applicant was given temporary status w.e.f. 08.08.1986 after passing requisite trade and medical test. Till 1993, the applicant continued to work on the said post at Allahabad and in 1993, he was transferred to Danapur in the project of Railway Electrification governed by the Indian Railways. The applicant worked in this project till 28.08.2003 and on 28.08.2003, the applicant was again transferred from Danapur to Allahabad Division and was posted in Electrical Branch of N.C.R., Allahabad with the designation of Helper Gr.-II in the grade of Rs. 2550-3200. In the letter dated 29.09.2003 (Annexure- 5 to the O.A) issued by the General Manager (P), it has clearly been mentioned that the lien and seniority of the applicant will continue to be maintained in his parent department till his final absorption in NCR, Allahabad. According to the applicant, he has been working on the post of

Driver w.e.f. 08.08.1986 and as such he deserves to be regularized.

3. For redressal of his grievance, the applicant made representation before the competent authority but when no heed was paid to the same, he filed O.A No. 907/2005 (Vijay Kumar Mishra Vs. UOI & Ors.) before this Tribunal, which is still pending. It has also been contended on behalf of the applicant that the respondents with ulterior motive to justify their action have passed the order reducing the pay scale of the applicant and also changed his designation. It is alleged by the applicant that since he is continuously working on a particular post for considerable period of time, he deserves to be regularized and his pay may be protected. In any view of the matter, the applicant has worked on the post and received salary for the same, it is not open to the respondents to recover the said amount and the order of recovery passed against the applicant is illegal.

4. By filing reply, the respondents have denied the allegations contended in the O.A. According to the respondents, the applicant was engaged as casual labour on 11.08.1985 and not as Jeep Driver. The applicant was given temporary status w.e.f. 01.01.1986 in Group 'D' and not in Group 'C' as Jeep Driver. He was promoted as Jeep Driver in

grade Rs. 950-1500/- purely on adhoc basis as ^{an} stop gap arrangement w.e.f. 30.03.1997 in ex cadre organization i.e. Railway Electrification, Allahabad. According to the respondents, the applicant was holding the substantive post as Helper Khalasi in Gr. Rs. 2550-3200 and promotion as adhoc Jeep Driver in grade Rs. 3050-4590, ~~which~~ ⁱⁿ ~~is~~ an ex cadre organization, does not confer upon him any right for regularization and continuance as driver Gr. Rs. 3050-4590/-. It is submitted by the respondents that the pay of the applicant has been fixed in accordance with rules governing fixation of pay and the recovery of the excess payment is for the period, he was working as Helper Gr. Rs. 2550-3200 in NCR Headquarter, ^{and} giving him the benefit of the post of Driver Gr. Rs. 3050-4590, was not in order and the order of recovery from his pay for excess payment is absolutely just and proper in the facts and circumstances of the case.

5. The applicant has filed Rejoinder refuting the facts enumerated in the Counter Reply. It is submitted by the applicant that at the time of his transfer, he was drawing his salary @ Rs. 3875/- per month in pay scale Rs. 3050-4590. According to the applicant, in view of the decision dated 06.05.2005 rendered by the Hon'ble Supreme Court in the case of Bhadei Rai Vs. U.O.I & Ors, the pay, which the applicant was last drawing on the date of

repatriation from group 'C' to group 'D', shall be protected. It has also been submitted by the applicant that in a recent decision, the Principal Bench of the Tribunal in identical situation in O.A No. 826/2005 (More Singh Vs. U.O.I & Ors) decided on 30.03.2006 has quashed and set aside the impugned order and directed the respondents to consider the applicant for regularization against Group 'C' post subject to availability of post and exemption from passing the trade test.

6. We have heard the learned counsel for both the parties and perused the pleading as well.

7. In our considered view, the promotion given in the ex cadre organization was ~~not~~ adhoc in nature and benefit of ^{the} same cannot be given to the applicant in regular cadre, where he holds his lien. The pay of the applicant has been fixed in accordance with the rules governed for fixation of pay. The applicant may enjoy the benefit of promotion in higher grade in ex cadre organization till such time he has worked in ex cadre organization and on return to his parent cadre, re-fixation of pay of the applicant has rightly been done in accordance with rules.

8. We have carefully gone through the decision dated 30.03.2006 passed by Principal Bench of this

Tribunal in O.A No. 826/2005, it is not at all applicable to the facts of the present case. In More Singh case (Supra), the respondents were directed to consider the case of the applicant for regularization against Group 'C' post whereas in the present case, the applicant has claimed for quashing the order dated 26.05.2006 with regard to the recovery of a certain amount from him and promoting him to a Group 'C' post. We have also carefully seen the decision rendered by the Hon'ble Supreme Court in Civil Appeal No. 3154/05 (Bhadei Rai Vs. UOI & Ors.). We are fully convinced that both the order of repatriation from promoted post of ex cadre organization to substantive post in regular cadre is sustainable, but, in any case, the applicant is not entitled to pay protection.

9. The learned counsel for the applicant has contended that he has not at all misrepresented before the respondents nor committed any concealment in getting monthly emoluments after his repatriation to the substantive post in open line. In view of catena of decisions, the respondents have no right to recover the amount in question. It has, therefore, been contended that as the employee had been in receipt of higher amount on account of erroneous fixation by the authority, should not be asked to repay the excess amount paid to him, and that recovery is uncalled for. In support of his

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contention, learned counsel for the applicant has placed reliance on the decision rendered by the Hon'ble Supreme Court in the following cases: -

- a.) Purushottam Lal Das Vs. State of Bihar, 2007
SCC (L&S) 508;
- b). Bihar Electricity Board Vs. Vijay Bahadur,
2000 SSC (L&S) 394;
- c). Sahib Ram Vs. State of Haryana, 1995 SCC (L&S)
248;
- d). Shyam Babu Verma Vs. UOI & Ors., 1994 SCC
(L&S) 683;
- e). State of Karnataka Vs. Manglore University,
2002 SCC(L&S) Vol.3 page 302,

Learned counsel for the respondents on the other hand urges that the applicant is not entitled to higher salary even he has worked on promoted post in project on adhoc basis.

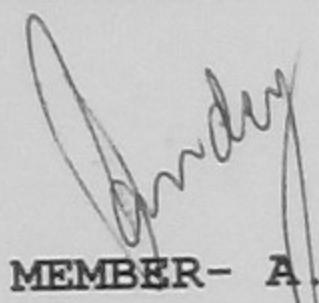
10. We have carefully gone through the record of the case and we are firmly of the view that there is no misrepresentation or concealment of fact on the part of the applicant and in any event, recovery from the applicant is uncalled for because he had been in receipt of higher amount on account of erroneous fixation of pay by the respondents, for which he is not to be blamed.

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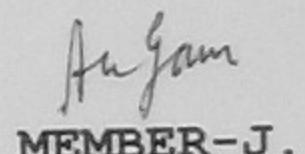
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11. In view of the discussions made above, the O.A succeeds and is partly allowed. The impugned order dated 26.05.2006 passed by the Assistant Personnel Officer, North Central Railway, Allahabad is hereby quashed (in so far as it relates to recovery of amount paid to the applicant). The respondents are directed not to recover the amount in question from the applicant and, if any amount has been recovered from the applicant earlier, the same may be returned to him, within a period of two months from the date of receipt of a copy of this order.

12. There will be no order as to costs.



MEMBER- A.



MEMBER-J.

/Anand/