

5
3
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NOS. 742, 743, 744, 745, 746, 792, 793/95 & 195/96

12th August, 1996

Nalinikanta Sahoo & others Applicants

-versus-

Union of India & others Respondents

FOR INSTRUCTIONS

1) Whether it be referred to the Reporters or not? Yes

2) Whether it be circulated to all the Benches of the ~~N~~ Central Administrative Tribunal or not?

Answered

(N.SAHU) 12/8/96
MEMBER (ADMINISTRATIVE)

6

6

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NOS. 742, 743, 744, 745, 746, 792, 793/95 & 195/96

Cuttack, this the 12th day of August, 1996

CORAM:

HONOURABLE SHRI N.SAHU, MEMBER (ADMINISTRATIVE)

In OA 742/95

1. Nalini Kanta Sahoo, aged about 37 years, s/o Nabakishore Sahoo, resident of Madhial Bazar, P.S.Kendrapara, District-Kendrapara, at present serving as Assistant Station Master, Rahama Railway Station, P.S.Tirtol, District-Jagatsinghpur.
2. Prasan Kumar Mohapatra, aged about 36 years, son of Lingaraj Mohapatra, resident of Bachhera Patra, P.S.Banpur, District-Khurda, at present serving as Assistant Station Master, Kandarpur Railway Station P.S.Sadar, District-Cuttack.
3. Surenarayan Patnaik, aged about 37 years, s/o Basudev Patnaik, resident of Suramoni, P.O.Suramoni, District-Ganjam, at present serving as Assistant Station Master, Badabandha Railway Station, P.S-Kujanga, District-Cuttack

In OA 743/95

1. Amal Kumar Mitra, aged about 34 years, s/o P.K.Mitra, resident of Mahatab Road, Dolomundai, New Colony, Cuttack, at present working as Assistant Station Master, Joranda Road Railway Station, Joranda Road, District-Dhenkanal
2. Biswanath Prusty, aged about 34 years, s/o Kanhu Ch.Prusty, resident of Ekagharia, P.O-Balaramprasad, District-Dhenkanal, at present working as Assistant Station Master, Sadashibpur, Railway Station, under Khurda Division
3. Nityananda Dash, aged about 34 years, s/o Golak Behari Dash, resident of Rajnagar, P.O-Chakada, District-Cuttack, at present working as Assistant Station Master, Sadashivapur Railway Station, under Khurda Division

4. Birakishore Mohanty, aged about 36 years, son of Braja Kishore Mohanty, resident of Charishree, P.O. Charishree, District-Puri, at present working as Assistant Station Master, Retanga Railway Station, Retanga, Khurda
5. Purna Chandra Senapati, aged about 35 years, son of Niranjan Senapati, resident of Dumuka, P.O-Derabis, District-Kendrapara, at present working as Assistant Station Master, Meramandoli Railway Station, under Khurda Division
6. Sarat Kumar Patra, aged about 34 years, son of Iswar Chandra Patra, resident of Kusukanta, Post-Kumura Jogpur, District-Cuttack, at present working as Assistant Station Master, Meramandoli, under Khurda Division

In OA 744/95

1. Bijaya Kumar Dwivedy @ Diwedi, aged about 37 years, son of Nilamani Dwivedy, resident of Talakusuma, P.S-Patkura, District-Kendrapara, at present serving as Assistant Station Master, Paradeep Railway Station, P.S-Paradeep, District-Jagatsinghpur
2. Rabinarayan Bhol, aged about 40 years, son of Somanath Bhol, resident of Bimburia, P.S-Remuna District-Balasore, at present working as Assistant Station Master, Jenapur Railway Station, P.S.Jaraka, District-Jajpur
3. Bijayananda Pattanaik, aged about 34 years, son of Narasingh Charan Pattanaik, resident of Ramachandi, P.S-Khurda, District-Khurda, at present serving as Assistant Station Master, Jakhapura Railway Station, P.S-Sukinda, District-Jajpur
4. Sarat Kumar Sahu, aged about 36 years, son of late Bidyadhar Sahu, resident of Damakata, P.O-Nimasahi, P.S-Narasinghpur, District-Cuttack, at present working as Asst. Station Master, Salagan Railway Station, P.S-Chaudwar, District-Cuttack

In OA 745/95

1. Ajit Kumar Mishra, aged about 34 years, s/o Susanta Sekhar Misra, resident of Karilopatna, P.O-Karilopatna, District-Kendrapara, at present working as Station Master, Raghunathpur Railway Station, P.O-Raghunathpur, District-Jagatsinghpur

2. Chittaranjan Misra, aged about 35 years, son of Dandapani Mishra, resident of Pathuria, P.O.Dasapalla, District-Nayagarh, at present working as Station Master, Bhusandapur Railway Station, P.O-Singpur, District-Puri
3. Chittaranjan Nayak, aged about 34 years, son of Krushna Chandra Nayak, resident of Chitanatu, P.O-Badabaita, District-Jajpur, at present working as Station Master, Baitarani Road Railway Station, P.O-Baitarani Road, District-Jajpur
4. Gaur Prasad Dash, aged about 35 years, son of Brajabandhu Dash, resident of Balidokan, P.S-Konark, District-Puri, at present Station Master, Raghunathpur Railway Station, P.O-Raghunathpur District-Jagatsinghpur
5. Prakash Chandra Mohanty, aged about 34 years, son of Sarat Chandra Mohanty, resident of Khairda, P.O.Khairda, District-Balasore, at present Station Master, BYREE Railway Station, P.O-Byree, District-Jajpur
6. Subodh Kumar Rout, aged about 34 years, son of Pranakrushna Rout, resident of Kulabhansar, P.O-Narijang, District-Jagatsinghpur, at present working as Station Master, Manjuri Road Railway Station, P.O-Manjuri Road, District-Bhadrak
7. Chandi Tridev Prasan Kumar Das, aged about 36 years, son of Gopinath Das, resident of Berhampur, P.O-Berhampur, District-Ganjam, at present working as Station Master, Rambha Railway Station, At/P.O-Rambha, District-Ganjam
8. Pratap Chandra Samal, aged about 34 years, son of Dhruba Charan Samal, resident of Plot No.1196/1984 Nilakantha Nagar, Nayapalli, Bhubaneswar, District-Khurda at present Assistant Station Master, Raghunathpur Railway Station, P.O-Raghunathpur, District-Jagatsinghpur
9. Padmalochan Sahoo, aged about 38 years, s/o Prahallad Sahoo, resident of Biswanath Colony, P.O-Jatni, District-Khurda, at present Assistant Station Master, Delanga, P.O-Delanga, District-Puri
10. Ajaya Kumar Nayak, aged about 37 years, son of Madhu Sudan Nayak, resident of Budang, P.O-Dolsahi, District-Bhadrak, at present working as Assistant Station Master, Badakhandaita Railway Station, P.O-Somapur, District-Jagatsinghpur

11. Kartik Nayak, aged about 34 years, son of late Bauribandhu Nayak, resident of Bhimpur, P.O-Bhimpur, District-Khurda, at present working as Asst. Station Master, Gangadharpur Railway Station, P.O-Gangadharpur, District-Khurda

In OA 746/95

1. Chittaranjan Pattanayak, aged about 36 years, son of late Paramananda Pattanayak, resident of Rajendra Nagar, P.S-Madhupatna, District-Cuttack, at present Assistant Station Master, Badakhandaita Railway Station, P.O-Somapur, District-Jagatsinghpur
2. Nityananda Kar, aged about 36 years, son of Natha Kar, resident of Bharagol, P.O-Amberi, District-Jagatsinghpur, at present Assistant Station Master, Rahama Railway Station, P.O-Rahama, District-Jagatsinghpur
3. Nityananda Nayak, aged about 36 years, son of Ainthu Nayak, resident of Telipatna, P.O-Sinduria, P.S-Ranpur, District-Nayagarh, at present Leave Reserver Assistant Station Master, Gurudijhatia Railway Station, P.S-Gurudijhatia, District-Cuttack

In OA 792/95

1. Chakradhar Rout, aged about 35 years, son of late Dasarathi Rout, resident of Jiral, P.O.Jiral, Via-Marthapur, P.S-Kamakhya Nagar, District-Dhenkanal, at present serving as Assistant Station Master, Budha Park, under Khurda Division of South Eastern Railway
2. Durga Charan Nayak, aged about 38 years, son of Jadumani Nayak, resident of Purusottampur, P.O.Sisua, P.S-Salipur, District-Cuttack, at present Assistant Station Master, Ghantikhali-Nidhipur Railway Station, P.S-Gurudijhatia, District-Cuttack, under Khurda Division of South Eastern Railway

In OA 793/95

1. Gouri Prasad Dash, aged about 35 years, son of Pranabandhu Dash, resident of Satichoura, P.O-Chandinchowk, District-Cuttack, at present Assistant Station Master, Budhapark under Khurda Division
2. Laxmidhar Mishra, aged about 36 years, son of Makunda Mishra, resident of Marthapur, P.O-Marthapur, District-Dhenkanal, at present serving as Assistant Station Master, Hindol Road, Railway Station, District-Dhenkanal

In OA 195/96

1. Satyanarayan Dash, aged about 36 years, son of Banambar Dash, resident of Badatota, P.S-Balanga, District-Puri, at present serving as Assistant Station Master, Radhakishorepur Station under Khurda Road Division, Khurda
2. Pradip Kumar Chand, aged about 35 years, son of Brundaban Chand, at Khuard P.S-Raibania, District-Balasore, at present serving as Assistant Station Master, Ghantikhali Railway Station, P.S-Gurudijhatia, Cuttack, under Khurda Division, Khurda

.....APPLICANTS

-versus-

In all the cases:

1. Union of India, represented through the General Manager, South Eastern Railway, Garden Reach, Calcutta, West Bengal.
2. Divisional Personnel Officer, South Eastern Railway, Khurda Road, At/P.C-Jatni, District-Khurda

.....RESPONDENTS

Advocates for the Applicants - M/s R.K.Patnaik,
S.C.Puspalka, S.Jena,
P.K.Nayak, T.K.Sahoo, S.Ray, &
A.N.Samantaray

Advocates for the Respondents - M/s B.Pal, O.N.Ghose &
S.K.Ojha
And
Mr.R.C.Rath (in OA 195/96)
..... OA 792/96

O R D E RN.SAHU, MEMBER (ADMN.)

Common grounds, common facts and similar
reliefs are ^{claimed} in all these eight Original Applications and therefore
they are consolidated together and disposed of in a common order.

2. Illustrative of these applications are the facts in O.A.No.742 of 1995. It is enough if the facts in this application

are first succinctly summed up. All the three applicants, working as Assistant Station Masters in the scale of Rs.1200-2040/- in Chakradharpur Division were promoted temporarily to officiate as Assistant Station Masters in the scale of Rs.1400-2300/- on ad-hoc measure by D.P.C., Chakradharpur's Office Order dated 22.12.1984. They were transferred to Khurda Division on their own request by accepting bottom seniority in the initial grade of Rs.1200-2040/-. They accepted other terms and conditions applicable to inter-divisional transfers. The counter says that such transfer can be made only in the initial recruitment grade in A.S.M. category - (Rs.1200-2040). Their pay was protected at Khurda Division establishment in the reversion grade of Rs.1200-2040/-. Their common basic pay before their transfer was Rs.1560/- in the scale of Rs.1400-2300/- whereas at Khurda they were fixed at Rs.1410/-. Their representations having elicited no response, they claim in this O.A. pay protection at Rs.1560/- as per their L.P.C. to begin on joining at Khurda.

2. The Respondents agree in view of Rule 227(a)(2), Rule 1313(a)(iii) and also Establishment Circular No.50 of 1995 to protect the last pay drawn, but such protection is admissible only to those regularly holding the post and not ad-hoc employees. Ad-hoc employees on transfer will be accorded "proforma progress of increments notionally as if they continued as A.S.Ms. in the scale of Rs.1200-2040/-.

The relevant Rules are as under:

"(iii) when appointment to the new post is made on transfer at his written request under Rule 227(2) (FR 15A) and maximum pay in the time scale of the post is less than the substantive pay in respect of the old post, he will draw that maximum as initial pay."

12

When a Government servant, holding the higher post substantively on regular basis seeks transfer from that higher post to a lower post at his own request and the pay drawn in such higher post is less than or equal to the maximum of the scale of pay of the lower post, then the pay drawn in such higher post will be protected.

When a Government servant seeks transfer to a post from which he was promoted, it will be treated as a case of reversion and his pay will be fixed at a stage what he would have drawn, had he not been promoted.

When appointment on transfer from a higher post to a lower post is made on his own request under Rule 227(a)(2)-RE (FR 15-A(2) and the maximum pay in the time scale of that post is lower than his pay in respect of the old post held regularly, he shall draw that maximum as his initial pay, in accordance with FR 22(1)(a)(3)."

On a similar point, the C.A.T., Ernakulam Bench in OA 333/92, OA 400/92 and OA 436/92 held by its Order dated 26.2.93 as under:

"The pertinent point urged by the learned counsel for applicant is that reduction of pay cannot be done without application of a legal provision. The legal provision brought to my notice as contained in Rule 1313 of the Indian Railway Establishment Code, as reiterated in Annexure-A-s, is that a fixation of pay of staff on inter-divisional transfer is only after giving protection of pay which the said Railway employee was enjoying in the original division."

and

"I allow the application and direct the respondents to fix the pay of the applicants in terms of Rule 1313 of the Railway Establishment Code taking into consideration the pay which the applicants were drawing in the division from where they were transferred to Trivandrum Division on request."

In O.A.No.241 of 1994, the C.A.T., Cuttack Bench by its Order dated 10.5.1995 allowed the applicant's claim for pay protection on similar facts.

13 17

3. What remains to be examined is the contention of the Respondents that the applicants held the higher post at Chakradharpur Division on ad-hoc basis and hence their last pay drawn at that Division could not be protected. What the Respondents had done is they protected the basic pay in the lower grade fixed at a stage which the applicants would have drawn had they not been promoted on ad-hoc basis in grade - Rs.1400-2300/-. This argument is fallacious . There can be no distinction between pay drawn in a higher post in an ad-hoc manner or a regular manner. Till he is reverted he is entitled to pay protection in the higher grade although he works ad hoc. This is not a case of unilateral reversion by Government. This is a case of voluntarily accepting conditionalities of an inter-divisional transfer.

4. There are only three principles of pay fixation: on direct appointment to a post; on appointment to another post which is not higher; and on promotion/appointment to a higher post. The second principle (Swamy's F.R., S.R Part-I) is applicable in 1996, the present case. As stated in Swamy's Handbook/ page 42:

"2. On appointment to another post which is not higher.-The pay will be fixed at the stage of the time-scale of the new post which is equal to his pay in the old post held by him on regular basis, if there is such equal stage in pay scale of the new post, and he will draw his next increment on the same date on which he would have drawn increment in the old post.If there is no such equal stage, his pay will be fixed at the stage next above his pay in the old post held by him on regular basis.He will draw his next increment in the new post after a qualifying period of 12 months.Pay on appointment to a non-functional Selection Grade post will also be regulated in this manner."

5. The C.A.T., Calcutta Bench in O.A.No.76 of 1992 in Jayanta Kumar Choudhury v. Union of India (date of judgment - 15.3.93)

14

14

protected the pay of an Electrical Chargeman promoted to Grade 'A' in the electrical branch at Sealdah. At his own request he was offered a post in Kanchanapara Workshop as Electrical Chargeman, Grade 'B' on his assenting to the bottom seniority as on that date. At Sealdah the applicant was getting a substantive pay of Rs.1700/-, but in the new post at Kanchanapara his substantive pay was fixed at Rs.1640/-. He was thus denied of the benefit of higher pay drawn by him. The Calcutta Bench upheld the claim of the applicant on the ground that according to the provisions of the Railway Establishment Code, the basic pay of a Railway servant who had been previously in employment of the concerned Railway, on a fresh appointment, cannot be less than his previous pay. If in the scale of pay of the new post there is no such stage, the basic pay is to be fixed at the next below stage and the difference be made up by allowing the person concerned a personal pay which is to be absorbed on getting subsequent increments. Thus it is clear that the applicants cannot be denied pay protection on the ground that they were holding the higher post on ad-hoc basis. Therefore, allow the claim and direct the Respondents to protect the applicants' pay as per the last pay certificate issued by their respective Divisions in the manner discussed above. The Respondents are also directed to calculate the arrears while fixing the pay in the grade of Rs.1200-2040/-. The basic pay plus personal pay would begin from Rs.1560/- and not Rs.1410/- as at present.

The applications are allowed. No costs.

N. Sahu
 (N. SAHU) 12/8/96
 MEMBER (ADMINISTRATIVE)

A. Nayak, P.S.