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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.495 OF 1996

Cuttack, this the 30th day of March, 1998

Pradeep Kumar Satapathy Applicant

Vrs.

Union of India and 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

Central Administrative Tribunal or not?@ No.


(S.K.AGRAWAL) 30/3/98

MEMBER (JUDICIAL)


(SOMNATH SOM)

VICE-CHAIRMAN 30.3.98

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI S.K.AGRawal, MEMBER(JUDICIAL)

.....

Pradip Kumar Satapathy, aged about
33 years,
s/o Balaram Satapathy,
Vill-Niladripur, P.O-Mahipur,
Dist.Nayagarh, at present resident
of Choudhury Colony, near office
of the Deputy Accountant General,
Puri-752 002, Dist.Puri, working as
Junior Trains Clerk)TNC),
Puri Railway Station, Puri

Applicant

By the Advocates -

M/s R.B.Mohapatra
S.Sarkar,
N.R.Routray &
S.K.Sahoo.

Vrs.

1. Union of India, represented through
the General Manager,
South Eastern Railway,
Garden Reach, Calcutta-43 (WB)
2. Divisional Railway Manager,
Khurda Division, At-Khurda Road
Railway Station, P.O-Jatni,
Dist.Khurda.
3. Divisional Personnel Officer,
South Eastern Railway,
Khurda Division,
At-Khurda Road Railway Station,
PO-Jatni, Dist.Khurda.
4. Divisional Personnel Officer, Adra Division,
At/PO-AAT/PO-Adra Railway Station,
S.E.Railway, Bihar

Respondents.
Mr.L.Mohapatra

By the Advocate -

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of

Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to the respondents to protect the higher scale of pay of the applicant at Rs.1200-2040/- fixed at Rs.1260/- with effect from the date of his reversion, i.e., 4.11.1993 consequent upon his inter-Divisional transfer on his own request and to pay him the arrears.

2. Facts of this case, according to the applicant, are that he came through the examination conducted by the Railway Recruitment Board and was appointed as Trains' Clerk (T.N.C.) on 11.11.1986 and was posted at Bokaro Steel City Railway Station under Adra Division of S.E.Railway. While he was working as T.N.C., he made a representation to General Manager, S.E.Railway (respondent no.1) for his transfer to Khurda Division. Prior to this, he had also given an undertaking to Divisional Personnel Officer, Adra Division (respondent no.4) to the effect that his seniority as Sr.T.N.C. would be placed at the bottom of the list. But without any reason respondent no.4 reverted the applicant to the post of Junior T.N.C. in the scale of pay of Rs.950-1500/- from the post of Sr.T.N.C. carrying the scale of pay of Rs.1200-2040/-

Common Jmd.
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on the plea that such reversion was made at the request of the applicant. This reversion order is at Annexure-A/1. Vide Annexure-A/2, dated 17.11.1993 he was transferred as Jr.T.N.C. in his existing scale of pay from Adra Division to Khurda Road Division in an existing vacancy at his own request subject to his accepting the terms and conditions which were also indicated in the order. This order inter alia provided that he would be juniormost in the permanent officiating and temporary Jr.T.N.C. in the scale of pay of Rs.950-1500/- on the date of his joining in the new seniority unit in Khurda Road Division. By order dated 10.12.1993 at Annexure-A/4 the applicant was posted in Khurda Road Division as Jr.T.N.C. in the pay scale of Rs.950-1500/- and was temporarily adjusted against a leave vacancy of Goods Guard. After joining at Khurda Road Division on 30.11.1993 the applicant filed a representation to the Senior Divisional Personnel Officer, Khurda Road Division, to protect his scale of pay of Rs.1200-2040/- (pay at Rs.1260/-) which he was drawing as Sr.T.N.C. at Adra Division, in terms of paragraph 1313(a)(iii) of Railway Establishment Code. In that representation, which is at Annexure-A/5, the applicant mentioned that his case

Sumit Jm.
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is similar to one S.N.Bhokta who also came on transfer at his own request. The Cuttack Bench of the Tribunal in their order dated 10.5.1995 in O.A.No.241 of 1994 gave him protection of scale of pay relying upon an earlier decision of the Hyderabad Bench of the Tribunal in O.A.No.1252 of 1994. As no order was passed on his representation in spite of sending a reminder at Annexure-A/7, the applicant has come up with the prayers referred to above.

3. Respondents have filed a counter in which they have submitted that he was appointed as Trains' Clerk (T.N.C.) on 11.11.1986 in the scale of pay of Rs.950-1500/- and while working as such in Bokaro Steel City Railway Station under Adra Division, S.E.Railway, he was promoted to the post of Sr.T.N.C. in the scale of pay of Rs.1200-2040/- with effect from 18.1.1991. He was transferred to Khurda Road Division on his own request in the scale of pay of Rs.950-1500/- as inter-Divisional transfer can be made on initial recruitment grade in T.N.C. category. The higher scale of pay of Rs.1200-2040/- was not extended for inter-Divisional transfer as there was no element of direct recruitment quota in that scale. The applicant agreed to such transfer in the lower scale of pay and submitted his declaration accepting the reversion

Somnath Jyoti
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to the post of Jr.T.N.C. in the scale of pay of Rs.950-1500/- and bottom seniority. Thus while the applicant was working as Sr.T.N.C. in the scale of pay of Rs.1200-2040/- and getting a pay of Rs.1260/- in Adra Division, he was transferred to Khurda Road Division in the lower scale of pay of Rs.950-1500/-. He reported at Khurda Road Division on 27.11.1993 and his pay was fixed at Rs.1090/- by allowing him increments in the scale of pay in which he was absorbed, i.e., Rs.950-1500/-. The respondents have indicated that in the case of S.N.Bhokta decided in OA No.241/94, the facts were quite different. There Shri Bhokta regularly held the erstwhile higher grade and pay and therefore, order passed by the Tribunal has been rightly implemented. The facts of the instant case, according to the respondents, are quite different and his inter-Divisional transfer took place on account of his own request on his reversion and such decision in the case of Shri S.N.Bhokta is not applicable to the present case. On the above grounds, the respondents have opposed the prayer of the applicant for protecting his scale of pay of Rs.1200-2040/-. As regards protecting his pay at Rs.1260/- which he was getting in

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Adra Division, the respondents have stated in paragraph 5 of the counter that Paragraph 1313(a)(iii) of the Railway Establishment Code, copy of which has been enclosed at Annexure-R/2 is silent as regards a person drawing any pay below the maximum pay. But as per Establishment Serial No.50/95, pay of the applicant can be protected in the last pay drawn fixing his pay in the initial recruitment grade of Rs.950-1500/- and the difference shall be his personal pay if he held the erstwhile grade in regular measure. This point has again been reiterated in paragraph 7 of the counter and the relevant portion of the counter is quoted below:

".....it is reiterated that as stated in the foregoing paragraphs, an administrative stand has been taken to protect the erstwhile pay in the initial recruitment grade i.e. Rs.950-1500/-, if one has held the erstwhile grade in regular and the difference shall be given as personal pay. As stated by the applicant, his pay is to be fixed at Rs.1260/- as per para 1313(a)(iii) of IREC but the same is silent for below maximum cases. With the aforesaid conditions, the pay of the applicant can be protected as per Estt.Srl.No.50/95 the copy of which is filed herewith as ANNEXURE-R/3."

4. We have heard the learned lawyer for the petitioner and Shri L.Mohapatra, the learned counsel appearing on behalf of the respondents, and have also perused the records.

Sanjay Jm.
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5. The learned lawyer for the applicant has filed, at the time of hearing, Railway Board's letter dated 2.12.1996, with copy to the other side, and this is kept on record. The first part of the prayer of the applicant is that in Khurda Road Division, he should be given the scale of pay of Rs.1200-2040/- which he was getting as Sr.T.N.C. in Adra Division. In support of this contention, the learned lawyer for the petitioner has relied on the order dated 10.5.1995 of the Tribunal passed in OA No.241/94 dealing with the case of Shri S.N.Bhokta. We have gone through this order, which is at Annexure-A/6. The facts of S.N.Bhoka's case are totally different. In paragraph 1 of the order, the Tribunal have noted that in the impugned order it has been stated that a declaration has been obtained from the applicant that he is willing to go on transfer in lower grade. But the Tribunal noted that there is nothing to say that such a concession was made. The Tribunal also noted that the respondents have not shown any document to justify the impugned order on the ground that the transfer was at his own request. In the instant case, the admitted position is that transfer from Adra Division to Khurda Road Division was at the request of the applicant and

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therefore, the facts of the case of S.N.Bhokta are totally different from the facts of the present case. The other aspect of the picture is that the posts of Sr.T.N.C. are filled up 100% by promotion and inter-Divisional transfer in that grade has not been permitted by the Railway Board because that will depress the chances of promotion of persons in the grade next below in the seniority unit if other persons come and join the promotional posts in the higher grade. As such the applicant has rightly been taken in the lower grade of Rs.950-1500/-. It is also seen from Annexure-A/2 that his transfer to Khurda Road Division was on the specific condition that he would be juniormost amongst the officiating and temporary Junior T.N.C. in the scale of pay of Rs.950-1500/-. Therefore, we find no merit in the prayer of the applicant that on his joining at Khurda Road Division, he should be allowed the scale of pay of Rs.1200-2040/-. This prayer is also untenable because that will have the effect of allowing him to join at Khurda Road Division in the rank of Senior T.N.C. which is against the Rules, there being no element of direct recruitment in that grade, as already noted. This prayer is, therefore, held to be without any merit and is rejected.

Somnath Jm.
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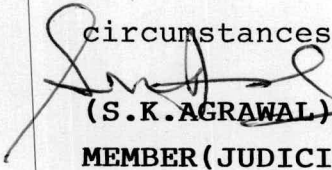
6. The other aspect of the matter is that the applicant was getting the pay of Rs.1260/- in Adra Division and on his joining in Khurda Road Division, his pay was fixed at Rs.1090/- in the scale of pay of Rs.950-1500/-. The first point to be noted is that Rs.1260/- is within the scale of pay of Rs.950-1500/-. The respondents have enclosed at Annexure-R/3 the amended copy of Paragraph 604 of Indian Railways Establishment Manual, Volume I, in which it has been laid down that 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. The respondents have also mentioned in their counter that in case the transferee was holding higher post in the other seniority unit on regular basis, then his pay in the new unit will be protected and the difference will be given to him as his personal pay, presumably to be absorbed against future increments which is the normal practice. The respondents in paragraph 4 of the counter have admitted

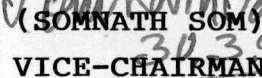
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Jomram Jm.

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that the applicant was promoted to the post of Senior T.N.C. with effect from 18.1.1991. There is no averment that this promotion was otherwise than on regular basis and therefore, it must be held that his promotion as Senior T.N.C. in Adra Division was on regular basis and he is entitled to have his pay at Rs.1260/- protected in the scale of pay of Rs.950-1500/-. In consideration of the above, it is ordered that the pay of Rs.1260/- drawn by the applicant in Adra Division should be protected while fixing his pay afresh in the scale of pay of Rs.950-1500/- on his joining in Khurda Road Division. This exercise should be done within a period of 90 (ninety) days from the date of receipt of copy of this order and the arrears should be paid to the applicant within 30 (thirty) days thereafter.

7. In the result, therefore, the application is allowed in part, but, under the circumstances, without any order as to costs.


(S.K.AGRAWAL)
MEMBER (JUDICIAL) 30/3/98


(SOMNATH SOM)
VICE-CHAIRMAN 30/3/98

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