

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.529 of 2006

Cuttack, this the ~~28th~~ day of November, 2008

C O R A M:

THE HON'BLE MR.A.K.GAUR, MEMBER (J)

A N D

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

V.Vithal Rao, aged about 60 years, S/o.Late V.V.Ramana (Ex-Supervisor (Civil Engineering) under S.S.E (P.Way) MYD Waltair, East Coast Railway, Visakhapatnam, at present C/o.Y.Hara Gopal, D.No.4/57/5-2, IInd Floor, LIG-153, Lawsons Bay Colony, Visakhapatnam(AP).

.....Applicant

Legal practitioner :M/s.A.K.Nanda, Miss.Geetanjali Majhi,
Counsel.

- Versus -

1. Union of India represented by the General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar-751 023, Dist.Khurda.
2. Divisional Railway Manager (P), East Coast Railway, Station Road, Waltair, Visakhapatnam-530004 (AP).
3. Senior Divisional Financial Manager, East Coast Railway, Waltair, Station Road, Visakhapatna-530004(AP).

....Respondents

Legal Practitioner :M/s.S.K.Ojha, A.K.Sahoo, Counsel.

O R D E R

MR. C.R.MOHAPATRA, MEMBER (A):-

The Applicant is a retired employee of the East Coast Railway. According to him on 16.07.1973 he was appointed Gangman in Open Line of Waltair Railway Division. On 13.12.1981 he was confirmed and on 10.07.1984 he was promoted to the post of Senior Gangman. On 24.07.1987, he was posted to Construction Wing of the Railway as Senior Gangman and while working as such, on 15.05.1987/01.11.1987 he was promoted to the post of P.Way Mistry (Supervisor P.Way). While working as P.Way Mistry in Construction

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Wing of the Railway, Open Line Wing of Waltair Division conducted a selection for promotion to the post of P.W.Mistry (Supervisor Civil Engineering P.Way) in the scale of Rs.4500-125-7000/-. Applicant appeared in the selection and was declared to have been qualified and accordingly, vide order under Annexure-A/1, he was appointed as P.Way Mistry, in the scale of pay of Rs.4500-125-7000/-. On 01.11.1998, his pay in the time scale of pay of Rs.4500-125-7000/- was fixed at Rs.5, 625/-. He reported for duty as P.Way Mistry in the open line on 16.07.1999. On receipt of annual increments his basic pay was enhanced to Rs.6, 375/- w.e.f. 01.11.2004. He was not allowed to draw his annual increment w.e.f. 01.11.2005 on the pretext that his pay in the time scale of pay of Rs.4500-7000/- was wrongly fixed with effect from 09.6.1999 in the Open Line of the Railway and accordingly, under Annexure-A/3 dated 08.11.2005, his pay was ordered to be re-fixed at Rs.5250/- as on 01.06.2005 with direction to recover the excess payment made to the Applicant from 9.6.99 to 31.10.2005 in installments. He retired from service w.e.f. 31.12.2005 and the differential amount worked out by the Department to be of Rs.1, 42,568.00 which was recovered from the retirement dues of the Applicant. Representations of Applicant did not yield any fruitful result; he has approached this Tribunal in the present Original Application for the following relief:

- (a) To quash the office order No.BS-VIII/Engg./108/A dated 08-11-2005 issued by the office of respondent No.2 reducing the applicant's pay to Rs.5,250/- (Annexure-3);
- (b) To declare the reply letter issued by DRM(P)/WAT (respondent No.2) under BS

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VIII/Engg/108(A) RF/VVR dated 17/23/03/2006 denying the applicant's claim as illegal and unwarranted (Annexure-5);

- (c) To declare the reply letter issued by G.M. E.Co.Rly/BBS (respondent No.1) under No.ECoR/GA/PG-4/1/05/2006(W) dated 17.5.2006 (Annexure-7) as illegal and unwarranted;
- (d) To direct the respondents to refund the alleged over payment of Rs.1,42,568.50 recovered from the settlement dues to the applicant with interest thereon;
- (e) To recalculate pensionary benefits including leave salary on the basis of Rs.6500/- instead of Rs.5,250/-;
- (f) To allow the applicant to draw 1st class post retirement complimentary passes based on his unreduced pay of Rs.6,500/- instead of reduced pay of Rs.5,250/-;
- (g) To allow this OA with exemplary costs."

2. Respondents by filing counter have stated that the Applicant while working as Sr. Gangman went on deputation to Construction Organization at his own request w.e.f. 22.7.1986 and thereafter he was promoted on adhoc basis as Mate w.e.f. 29.1.1987 and later on he was again promoted as PWM w.e.f. 1.11.1987 purely on adhoc basis without any positive selection as provided under the Rules. On being selected by way of positive act of selection, he was released from Construction Organization and accordingly reported to his duty in Open Line Organization on 15.7.1999 as PWM. On his joining in the promotional post of PWM, his pay ought to have been fixed in the scale of Rs.4500-7000/- in the Open Line from his substantive post of Sr. Gangman as per extent rules. But his pay was erroneously fixed on the last pay drawn by him in the construction organization thereby he was allowed to draw pay at Rs.6375/- instead

of actual pay of Rs.5635/-. As the applicant was to retire 31.12.2005 on review of his service record it was found that there has been excess payment due to erroneous fixation of the pay of the applicant and accordingly, order of recovery was passed. According to the Respondents there has been no wrong in the recovery of the amount of Rs.1,42,568.50 from the DCRG amount of the Applicant which was in accordance with Para-15 of the Railway Services (Pension) Rules, 1993. Accordingly, the Respondents have opposed the contentions of the applicant raised by the Applicant and have prayed for dismissal of the OA.

3. It is the specific contention of the Respondents that the Applicant while continuing on deputation in the Construction Organization got adhoc promotion to PWM and on his repatriation to Open line on regular selection his pay was bound to be re-fixed and he was not entitled pay protection as drawn by him. As such, no wrong has been committed by them.

4. On the other hand, relying on the decision of this Tribunal of Hyderabad Bench dated 04.02.2008 in OA No. 11 of 2006 (P.Sankara Narayana v UOI and others), it has been argued by ^{Applicant} ~~him~~ that since the reason/logic based on which re-fixation of pay thereby recovery has been made from the DCRG amount of the applicant was held to be bad by this Tribunal in the case of P. Sankara Narayana (supra) and as the issues raised in this OA are fully covered by the above decision, this OA is liable to be allowed.

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5. After having heard the parties, we have perused the materials placed on record including the decision of the Hyderabad Bench in the case of P. Sankara Narayana (supra). We find that the ground upon which, according to the Respondents there has been erroneous fixation of pay of the Applicant which necessitated re-fixation and recovery of excess amount of Rs.142, 568.50 from the DCRG amount of applicant, is exactly the reason of reduction of pay and consequent recovery ordered by the Railway which was challenged by the applicant P. Sankara Narayana (supra) before the Hyderabad Bench. The Hyderabad Bench of the Tribunal after taking note of the Rules of the Railways and decisions cited by the parties, came to the following conclusion:

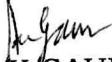
“8. It would appear from the forgoing that the law is fairly settled on this issue. Since in this case the applicant had worked on a deputation post since December, 1972 till July, 1985 i.e. for a period of more than 12 years his last pay drawn in the Construction Organization should have been protected. We are therefore of the view that the action of the Respondents in reducing his pay from Rs.6250/- to Rs.5625/- in the pay scale of Rs.4500-7000/- and recovery the excess payment of Rs.99,970/- from his DCRG is irregular. The impugned order is therefore set aside and the Respondents are directed to work out the applicant's retiral benefits giving full protection to the pay last drawn by him in the Construction Organization and to refund the amount recovered from the applicant within a period of two months from the date of receipt of a copy of this order.

6. Respondents have placed no other rules or decision so as to enable us to differ from the view already expressed by the Hyderabad Bench of this Tribunal in the case of P. Sankara Narayana (Supra). In view of the above, the impugned orders are set aside and the Respondents are directed to work out the applicant's retiral

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benefits giving full protection to the pay last drawn by him in the Construction Organization and to refund the amount recovered from the DCRG dues of Applicant within a period of two months from the date of receipt of copy of this order.

7. In the result, this OA stands allowed in the afore-stated term. There shall be no order as to costs.


(A.K. GAUR)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)