

Central Administrative Tribunal
Jodhpur Bench, Jodhpur

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Date of order: 9.2.2001

O.A.NO.99/1998

Nathi Lal S/o Shri Fateh Singh, aged about 45 years, working as Material Chasing Clerk in shor (M.C.C.), under the Dy.Chief Engineer (Construction), Northern Railway, Bikaner, R/o Quarter No. 232 'A', Railway Colony, Lalgarh, Bikaner.

..... Applicant.

Versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.

2. Dy.Chief Engineer (Construction), Northern Railway, Bikaner.

Branch Secretary, Uttar Railway Mazdoor Union (Construction), Kashmiri Gate, Delhi.

..... Respondents.

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CORAM :

HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

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Mr.Y.K.Sharma, Counsel for the applicant.
Mr.S.S.Vyas, Counsel for the respondents.

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O R D E R

PER HON'BLE MR.GOPAL SINGH :

In this application, under section 19 of the Administrative Tribunals Act, 1985, the applicant, Nathi Lal, has prayed for quashing the impugned order dated

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4.2.1998 (Annex.A/1).

2. Applicant's case is that he was initially appointed in Group 'D' post with the respondent Railways on 17.2.1979. While the applicant was working as a temporary status Khalasi in the Grade Rs. 196-232 in the Construction Organisation, he was promoted as Material Chasing Clerk (for short "M.C.C."), in the scale of Rs. 950-1500 with effect from 3.3.1987 with the Construction Organisation. The applicant was reverted to his original post of Khalasi w.e.f. 10.3.1989. He was again appointed in the Construction Organisation on the post of M.C.C. vide orders dated 16.12.1991 and his pay was fixed at Rs. 990/- in the Grade of Rs. 950-1500 with effect from 17.12.1991, vide respondents order dated 29.4.1992 at Annex.A/2. This pay fixation in the scale of Rs. 950-1500 at the stage of Rs. 990/-, was reduced to Rs. 950/- vide respondents order dated 4.2.1998 (Annex.A/1). The contention of the applicant is that once his pay has been fixed at the higher stage, it should not have been reduced without giving him notice. He also contends that his pay has been correctly fixed at Rs. 990/-, in terms of Para 2018-B. Feeling aggrieved, the applicant has filed this application.

3. In the counter, it has been stated by the respondents that initially the pay of the applicant was wrongly fixed at Rs. 990/- with effect from 17.12.1991. As a matter of fact, the applicant's case is not covered under Para 2018-B of the Indian Railway Establishment Code, instead the applicant's claim is covered under Para

2018-B

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1320 of the Indian Railway Establishment Code, Vol. II.

It has, therefore, been averred by the respondents that the application is devoid of any merit and is liable to be dismissed.

4. We have heard the learned counsel for the parties and perused the records of the case carefully.

5. The controversy in this case is, whether the pay fixation of the applicant on his appointment as M.C.C., is covered under Para 2018-B or Para 1320 of the Indian Railway Establishment Code. We consider it appropriate to reproduce below Para 1320 and Para 2018-B of the Code.

"1320. (F.R.26) Reckoning Service for Increments.— The following provisions prescribe the conditions in which service counts for increments in a time-scale—

(a) All duty in a post on a time-scale counts for increments in that time-scale:

Provided that, for the purpose of arriving at the date of the next increment in that time-scale, the total of all such periods as do not count for increment in that time-scale shall be added to the normal date of increment.

(b) (i)

Provided that the service rendered in an ex-cadre post shall not be reckoned for fixation of pay in another ex-cadre post and the pay in subsequent ex-cadre post shall be fixed under the normal rules with reference to pay in the cadre post."

"1316 (Old 2018-B).

1316. (F.R.22C). (1) Notwithstanding anything contained in these rules where a railway servant holding a post in substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or, officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay notionally

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arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued."

6. It is seen from the Para 1316 that it deals with pay fixation on promotion to a higher scale carrying higher duties and responsibilities. In the instant case, the applicant (A Gangman), has been appointed on the post of M.C.C. on deputation basis, thus, Para 1316 (2018-B), does not apply to this case. Para 1320, as reproduced above, states that the period spent on a post in a time-scale, would count for the purpose of increment in the same time scale if appointed again. In the instant case, the applicant was first appointed as M.C.C. in the year 1987 and he was repatriated to his permanent post in the year 1989. The applicant was subsequently appointed to the post of M.C.C. in the year 1991. In terms of the Para 1320, the earlier period of duty on the post of M.C.C. from 1987 to 1989, would count for the purpose of pay fixation on re-appointment of the applicant on the post of M.C.C. in the year 1991. The respondents have relied on the proviso that the service rendered in an ex-cadre post shall not be reckoned for fixation of pay ^{ex-} in another ex-cadre post and the pay in subsequent/cadre post, shall be fixed under the normal rules with reference to pay in the cadre post and, therefore, the pay of the applicant has been fixed at the minimum of the scale on his re-appointment as M.C.C. from 17.11.1991. Para 1320, however, provides that all duty in a post on a time-scale counts for increments in that time scale. The applicant was earlier holding the post in the time-scale of Rs.950-1500 and has been re-appointed in the said time-scale.

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In that view of the matter, the applicant would be entitled to count the period spent on the post earlier in that time scale for the purpose of pay fixation on his re-appointment to the time-scale. We are, therefore, of the view that the applicant on his re-appointment as M.C.C., cannot be brought to the minimum of the time-scale when he has already worked for more than two years in the same time scale and had earned two increments. Another aspect is that the applicant is not going from one ex-cadre post to another ex-cadre post so as to attract the provisions under Para 1320. The applicant was first reverted to his parent cadre and thereafter, again appointed on the post of M.C.C. In that view of the matter, the provisions under Para 1320, would not be applicable in the instant case.



7. In the light of the above discussions, we find merit in this application and the same deserves to be allowed. Accordingly, we pass the order as under :

8. The Original Application is allowed. The impugned order dated 4.2.1998 (Annex.A/1), is set aside.

9. No orders as to cost.

Gopal Singh
(GOPAL SINGH)
Adm.Member

A.K.MISRA
(A.K.MISRA)
Judl.Member

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R/Recd
DSTT/mt
16-2-2001

RE (007)
RE (008)
RE (009)

Part II and III destroyed
in my presence on 21-3-02
under the supervision of
section officer () as per
order dated 19-12-2002

Section officer (Record)