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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No.78/2007

Date of decision: 25th May, 2011

**Hon'ble Dr. K.B. Suresh, Judicial Member.
Hon'ble Mr. Sudhir Kumar, Administrative Member.**

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Laxman Prasad Sharma S/o Shri Suraj Lal Sharma, aged about 51 years, R/o Suraj Bhavan, Near Adult Education Bhavan, Old Ginani, Bikaner, at present employed on the post of JE-II (P) way under ADEN (Track) Bikaner Division, N/W Railway, Bikaner.

Rep. By Mr. J.K. Mishra: Counsel for applicant. : Applicant.

Versus

1. Union of India through General Manager, North Western Railway, Jaipur.
2. Divisional Railway Manager, Bikaner Division, Bikaner, N/W Railway.
3. Divisional Personnel Officer, Bikaner Division, N/W Railway.
4. The Assistant Divisional Engineer (Track), Bikaner Division, Bikaner, N/W Railway.

: Respondents.

Rep. By Mr. Salil Trivedi : Counsel for respondents.

ORDER

Per Sudhir Kumar, Administrative Member.

The case of the applicant herein is regarding his prayer for protection of the higher salary drawn by him during the period he held an ex-cadre post in the Construction Organization of the respondent Railways, while his parent cadre was Bikaner Division.

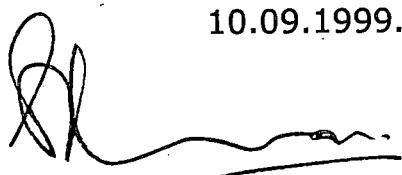
The applicant is before us with the prayers that the order of Annexure-A/1, by which it has been directed that the benefit of the pay scale allowed to him in the ex-cadre post cannot be continued to be granted to him on his reversion to his parent cadre, and he be.

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has prayed for parity with his junior, by making the following prayers in the O.A.:-

- "8(i). That the impugned order dated 08.03.2007 (Annexure-A/1) may kindly be declared illegal and the same may be quashed.
- 8(ii). The respondents may be directed to make the fixation of payoff the applicant at par with junior right from the promotion in the grade of Rs.5000-8000 with all consequential benefits and he may be paid the difference of amount till date.
- 8(iii). The respondents may further be directed to protect the pay of applicant on his repatriation to his parent department.
- 8(iv). Any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstance to this case in the interest of justice.
- 8(v). The cost may also be awarded to the applicant."

2. The facts of the case lie in very narrow compass. The applicant was engaged as a CPC Helper Khalasi on 07.12.1974 in the Bikaner Division. Thereafter, he was screened and placed on the panel for appointment as Gangman, through letter dated 25.03.1982, and was later posted on regular appointment as Gangman on 23.07.1982. Having obtained a substantive capacity in a cadre, he made a request on 24.08.1982 for being transferred to the construction organization. While on deputation to the construction organization, he was put to officiate in the grade of Clerk, purely on local and ad-hoc basis, through letter dated 10.05.1983. Thereafter, within the ex-cadre construction organization posting, he was promoted to officiate in the higher pay scale of PWM w.e.f. 24.07.1985. In the meanwhile, in his parent division, the applicant was accorded substantive pro-forma promotions as Senior Gangman on 01.08.1992, and as Keyman on 08.03.1993. After he had passed a suitability test, medical fitness and promotional course, he was also promoted pro-forma to the post of PWM in substantive capacity in his parent cadre on 10.09.1999.



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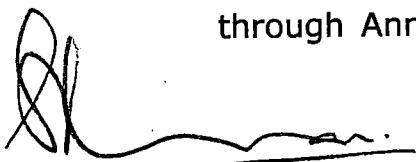
3. He reverted back from his deputation post to his parent cadre on 24.05.2001, when his substantive capacity in his parent cadre was PWM, as is evident by the pro-forma promotion order dated 8/15.12.1999 (Annexure-A/2), whereby even though his pro-forma promotion was ordered in his parent cadre, but he was allowed to be retained in the construction unit itself. Later, he was accorded substantive promotion as JE-II (P.Way) in the pay scale of Rs.5000-8000, on 12.10.2004, and he assumed charge on 14.10.2004. The applicant has relied upon the contents of Annexure-A/3, dated 24.05.2001, whereby the CAO/ Construction had allowed his transfer back to his parent division, Bikaner Division, in the same pay and capacity of PWS in the grade of Rs.4500-7000, which he was drawing, and which salary had been charged upto 31.05.2001 in the construction division. However, the respondents relied upon their circular No.9036 NRPS dated 08.09.1986 (Annexure-R/1), and passed the impugned order at Annexure-A/1 stating that the benefit of the applicant having worked on a higher ex-cadre post while on deputation in the construction organization, cannot be continued to be granted to the applicant on his reversion to his parent cadre. It appears that when on his return, his pay was fixed at a lower stage in the year 2001, the applicant did not represent in this behalf immediately. Later, as mentioned above also, through Annexure-A/4, dated 12.10.2004, he was granted substantive promotion as JE-II (Permanent Way) in the pay scale of Rs.5000-8000, which also he hu. accepted. The grievance of the applicant arose on the day when, according to him, similarly circumstanced employees were granted



regular promotion, and fixed on same pay which they had been drawing in the construction department on an ad-hoc basis.

4. The applicant has submitted that which being on deputation, he had also been promoted in the pay scale of Rs.4500-7000 on ad-hoc basis w.e.f. 16.05.1985, and subsequently he was also granted the pay scale of Rs.5000-8000. But after the order of promotion of Annexure-A/4, it so turned out that he was drawing less pay than that of his juniors only because he had not been allowed the benefit of proper fixation of his salary on promotion by the respondents. It was only thereafter that the applicant started representing to the respondents through Annexure-A/5, dated 16.03.2005, and Annexure-A/6 dated 28.12.2006. Through Annexure-A/7, the applicant produced the Pension Payment Orders issued in respect of his junior Shri Laxman Ram, who had in the meanwhile voluntary retired on 31.07.2006, and in whose case pension has been started from 01.08.2006, and, according to the applicant, benefit of the pay drawn by said Shri Laxman Ram in the construction division had been retained, and allowed at the time of his resumption of charge in his present cadre of PWS at Suratgarh on 16.11.1999.

5. Through his representation dated 22.03.2007 (Annexure-A/8), the applicant pointed out the case of three more persons, who had also been allowed to continue to draw the pay scales drawn by them in the construction division after their reversion to their parent Bikaner Division. He reiterated the same request through Annexure-A/9 dated 03.04.2007 also. The applicant has



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thereafter assailed the impugned order dated 08.03.2007 (Annexure-A/1), by which his pay has been fixed in the pay scale of Rs.4500-7000 w.e.f. 24.05.2001, the date of his reversion to his parent cadre, and subsequently in the pay scale of Rs.5000-8000, on the date of promotion. He had assailed the reduction of his pay and the change in his due date of his increment, and submitted that the reduction of pay and the change in the due date of his increment, was done without following the due process. He submitted that he was entitled to pay protection on being repatriated to his parent cadre, and, therefore, any reduction or recovery in the garb of fixation of his pay after his return on his parent cadre is not reasonable in the eyes of law, and unsustainable, as it has caused financial hardship and mental agony to him, and no opportunity had been afforded, and principles of the natural justice had not been followed before passing the impugned orders. In the result, he had prayed for the reliefs as mentioned above.

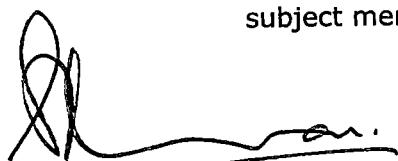
6. In their reply written statement, the respondents detailed the career graph of the applicant and submitted that his pay had been fixed correctly after he returned back to his parent cadre, in view of the circular No.9036 dated 08.09.1986, which states as follows:-

"The Board's have clarified that posts in construction department are to be treated as ex-cadre posts for the purpose of pay fixation and the benefit of pay drawn in such posts would not be admissible in cadre posts.

Copy of Rly. Board's Letter No.E(P&A) II/85/pp/13. Dt.7-8-1986.

Sub.- Benefit of fixation of pay in a Cadre post with reference to pay drawn in an ex.cadre post.

Reference your letter No.831/E/123/V/E(V) dated 24.12.1986 on the subject mentioned above.



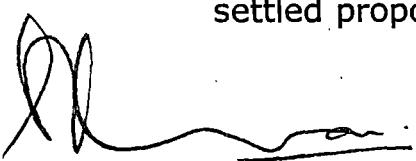
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2. The Board have considered the point raised in your letter dated 21.12.1985 and desire to clarify that posts in your Construction Department are to be treated as ex-cadre posts for the purpose of pay fixation and the benefit of pay drawn in such posts would not be admissible in cadre posts. The Board's instructions in their letter No.E(NG)I/70/SR6/43 dated 13.03.1972 covers the limited issue of seniority only and does not apply to pay fixation. Administrative instructions of this nature cannot modify or over-rule the Fundamental Rules.

3. It may also be noted that in such cases the FA&CAO should invariably be consulted and his comments forwarded to this office, if a reference to the Boards Office is considered necessary.

4. This issues with the concurrence of the Finance Directorate of this Department."

7. The respondents also submitted that on the basis of the representations submitted by the applicant, through Annexure-A/8 dated 22.03.20076, and through Annexure-A/9 dated 03.04.2007, pointing out the mistakes in the cases of some other persons, in whose case the pay was earlier fixed by protecting their pay drawn in the deputation posts in the construction organization, were also being looked into, and the correct procedure as per rules would be followed in their cases also. The respondents also submitted that no junior of the applicant is drawing more pay as JE-II grade of pay scale of Rs.5000-8000, and further submitted that since his substantive promotion to the grade of PWM in the grade of Rs.4500-7000 had been granted in the parent cadre w.e.f. 10.09.1999 therefore, the fixation of the next date of his increments to be on the first of September was also correct. It was also submitted that the applicant cannot be allowed to take advantage of an illegality committed with regard to pay fixation of other employees, and in those cases also action had already been initiated to proceed as per Rules. It was submitted that it is a settled proposition of law that any illegality cannot be perpetuated,



and an employee cannot be entitled to seek parity vis-à-vis those in whose cases the illegality has been committed, and whose cases had, therefore, been reopened already. It was therefore, submitted that the O.A. has no legs to stand upon, and is liable to be dismissed with costs.

8. Heard. During the arguments, both the learned counsel cited case law in support of their submissions. Learned counsel for the applicant cited the case of **Union of India Vs. Vishwamitra & Ors.**, 2005 (4) RDD 761 (Raj.) and the case of **Badri Prasad & Ors. Vs. Union of India & Ors.**, 2006 SCC (L&S) 92. It is seen that the case of **Union of India vs. Vishwamitra & Ors** (supra), relates to the case of regularization of employees and protection of their salary at the time of such regularization. Therefore, it appears that the facts of this case are not applicable to the present case. In the case Badri Prasad (Supra), the appellants had for long periods held temporary status in Group 'D' open line posts of the Railways, while being posted and working for long periods on the higher posts of Storeman/Clerk in Group 'C' posts. When they were reverted to the Group 'D' posts in the open line posts, the appellants sought their regularization and absorption in Group 'C' posts on the basis of their having regularly worked on the said post for long periods of more than ten years. In their case, it was held by the Hon'ble Supreme Court that though the appellants were not entitled to regularization on the Group 'C' posts merely on the basis of their ad hoc promotion, but were entitled to protection of the pay last drawn by them in the said posts even after their



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repatriation to Group 'D' post, and it was further held that when they were to be considered later for substantive promotion to Group 'C' posts, they would be entitled to claim age relaxation and advantage of experience for having spent long periods on higher posts. It is seen that this case cited by the learned counsel for the applicant also does not relate to the dispute of fixation of pay of an employee on return from an ex-cadre post to a cadre post, and, therefore, the facts of this case also do not come to the rescue of the applicant.

9. The learned counsel for the applicant also relied upon the judgment and order dated 08.04.2010 passed by a concurrent bench of this Tribunal in O.A. NO.182/2007 (**Virendra Deo Upadhyaya vs. Union of India & Anr.**). It is seen that this case also related to the plea of the applicant for regularization of his service against the post of typist, against which he had been working, even though the respondents had regularized him only as a Khalasi. The facts of this case were very similar to the facts of the case of Badri Prasad & Ors. (Supra) decided by the Hon'ble Supreme Court, and do not relate to the case of pay fixation at the time of reversion from an ex-cadre post to a cadre post, and, therefore, this order also does not come to the rescue of the applicant.

10. Alongwith his reply, the learned counsel for the respondents submitted a copy of the judgment dated 04.05.2010 of the Hon'ble High Court of Rajasthan at Jodhpur passed in D.B. Civil Writ Petition No.2566/2008, **Union of India & Another vs. Lehri Lal**





& Another. In this judgment, the Hon'ble High Court had examined the above cited case of Badri Prasad (Supra) and dealt with the case of an order of reversion passed in the case of the respondents before it. The Hon'ble High Court had observed that when admittedly the suitability of the respondents/original applicants was adjudged, in which they were declared not qualified, and therefore, the reversion order was passed, and had held that there was no question of granting the benefit of protection of pay last drawn prior to the reversion, and that the Tribunal had committed an error in applying the judgment of Badri Prasad's case (Supra) and granting relief of protection of last pay drawn at the time of reversion. It is seen that the facts of this case also do not directly relate to the present case, but establish a principle that when an employee was not qualified to hold a post and was reverted, there was no question of granting the benefit of protection of pay scale last drawn.

11. In this particular case before us, the crux of the matter is contained in the clarification which was sought by letter of G.M.(P) dated 21.02.1985 as reproduced at page 46, Annexure-R/1, of the O.A. and clarificatory reply issued through Railway Board's letter dated 07.08.1986 circulated through the Railway Circular NRPS NO.9036 dated 08.09.1986, already reproduced in para 6 above.

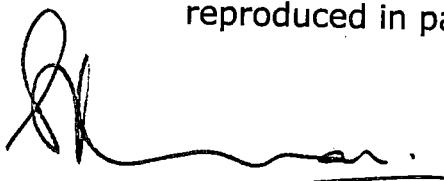
12. We have given our anxious consideration to the facts of this case. It is a well known fact in administration that when a person is deputed to an ex-cadre post, he may perhaps be given a higher pay scale than that admissible to him in his own parent cadre,



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according to the substantive post held by him. There is also provision in the Fundamental Rules and Supplementary Rules and in the Central Civil Services Rules that on being posted to an ex-cadre post, an official/officer can also choose to draw the scale of pay as applicable to that post in the organization to which he has been sent for deputation, even though such pay scale or pay-structure may be totally different than his parent pay scale. There are numerous instances of persons so deputed on ex-cadre deputation to the Central Public Undertakings and Autonomous Bodies being allowed to draw even industrial pay scales, with industrial dearness allowance, or even an entirely different higher pay scale, during such period of their ex-cadre deputation.

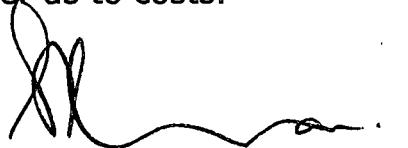
13. But, it is a settled proposition that such drawal of a higher salary or different salary in a different pay-scale, and even a different structure of pay, does not in any way affect their entitlement of pay in the substantive post, and pay scale, held by them in their parent organization. On reversion from such ex-cadre deputation to parent cadre/organization, the employee cannot claim protection of the entirely different structure and scale of pay which ^{he} has been allowed to draw during his ex-cadre deputation, as it would give him an unfair advantage over both his seniors and juniors in his parent cadre. This very principle has been reiterated in the Circular No.9036 dated 08.09.1986 reproduced in para 6 above.



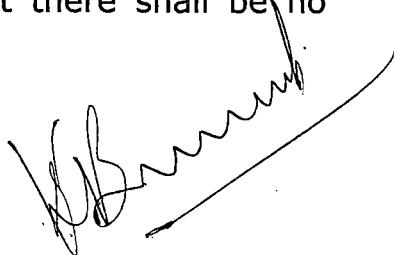
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14. In this case, the only difference is that the ex-cadre deputation of the present applicant was to the construction organization of the Railways itself, where he was allowed to hold higher post, and given higher pay scale. However, such benefits enjoined by him during his ex-cadre deputation cannot be allowed to create any right in his favour for protection of that higher pay even when he reverts to his parent cadre. Therefore, we do not find anything wrong or illegal either with the contents of the impugned order at Annexure-A/1 dated 08.03.2007, or the circular No.9036, Annexure-R/1, issued by the Railway Board, holding deputation to the construction division to be an ex-cadre deputation, as reproduced in para 6 above.

15. In the result, the O.A. is dismissed, but there shall be no order as to costs.



[Sudhir Kumar]
Administrative Member



[Dr. K.B. Suresh]
Judicial Member