

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 290/00159/15

Jodhpur, this the 24th day of April, 2015

CORAM

Hon'ble Justice Mr K.C. Joshi, Judicial Member

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Ku. Ujjawala Kendurkar D/o Shri Sharad Rao Kendurkar aged about 54 years resident of M-40 A, Old Railway Colony, Near Satyam Hospital, Jodhpur at present employed on the post of Senior Compilation Clerk under CMS (FW) in Family Welfare Centre, Railway Hospital, Jodhpur.

.....Applicant

By Advocate: Mr. J.K. Mishra.

Versus

1. Union of India through General Manager, HQ Office, North-Western Railway, Malviya Nagar, Near Jawahar Circle, Jaipur-17.
2. Divisional Railway Manager, North-Western Railway, Jodhpur Division, Jodhpur.
3. Senior Divisional Personnel Officer, North-West Railway, Jodhpur Division, Jodhpur.
4. Chief Medical Superintendent, North Western Railway, Jodhpur.

.....Respondents

By Advocate : Mr Vinay Jain.

ORDER

Per Justice K.C. Joshi

The applicant has filed this OA under Section 19 of Administrative Tribunals Act, 1985 challenging the show cause notice dated 10.04.2015 (Annex. A/1) and refixation order dated 30.08.2013 (Annex. A/2) and sought following relief(s):

- (i) That impugned order dated 10.04.2015 (Annex. A/1) and order dated 30.08.13/02.09.13 (Annex. A/2), and all subsequent orders thereof, if any passed, may be declared illegal, and the same may be quashed.
- (ii) That the respondents may be directed to continue to pay the due benefits of pay on promotion in the pay scale of Rs 5000-8000 already granted to the applicants with all consequential benefits including the refund of amount, deducted/recovered in pursuance of the impugned orders, including arrears of difference of pay and allowances along with market rate of interest.
- (iii) That the applicant may be allowed the benefit of 2nd MACP on completion of 20 years' service w.e.f. due date 06.10.2009 with all consequential benefits.
- (iv) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the circumstances of this case in the interest of justice.
- (v) That the cost of this application may be awarded.

2. The brief facts, as averred by the applicant, are that the applicant was initially appointed to the post of Field Worker (Female) in the family welfare organisation on 06.10.1989 in the

Ajmer and posted at Jodhpur. The post of Field Worker was upgraded to the pay scale of Rs 1200-2040 and designated as Senior Field Worker. 3 Posts each of Sr. Field Worker (F) and Sr Field Worker (M) were available in the erstwhile Northern Railway to which the applicant belongs and the restructuring was to be done on the basis of seniority. The applicant including other Field Worker were declared surplus vide order dated 03.08.1995 and the post in the grade 950-1400 was surrendered. The applicant was wrongly declared as surplus being senior while one junior Shri Radhey Shyam was retained and continued to work on the same post and subsequently he was upgraded in the grade of Rs 4000-6000 w.e.f. 02.04.1999. The applicant represented against the same to higher authorities but nothing was done till 04.07.2001. Meanwhile, the applicant was promoted to the post of Sr. Field Worker in the grade of Rs 4000-6000 and transferred to vacant post at Bikaner vide order dated 24.05.2000 (Annex. A/5). After the said promotion, the grievance of the applicant drew attention of the competent authority and the error committed by the respondent in declaring the applicant surplus and retaining the junior employee was corrected by according sanction for grant of NBR (Next Below Rule) to the applicant at par with her junior Radhy Shyam, vide order dated 04.07.2001 (Annex. A/6) and the applicant was allowed seniority in the grade of Rs 4000-6000 w.e.f. 19.10.1994

cadre strength vide order dated 25.11.1994, therefore, the same cannot be treated as promotion. Thereafter, the applicant was allowed her first promotion to the post of Sr. Compilation Clerk in the pay scale of Rs 1400-2300/5000-8000 and transferred to Family Welfare Centre, Divisional Hospital, Jodhpur vide order dated 15.06.2005 (Annex. A/8) and her pay on promotion was fixed in the grade of Rs 5000-8000 w.e.f. 29.08.2005 vide order dated 03.10.2007 (Annex. A/9). The pay of the applicant in the scale of Rs 5000-8000 has been refixed by reducing her pay scale to the grade of Rs 4500-7000 by taking shelter of RBE No. 179/02 w.e.f. 29.08.2005 vide order dated 30.08.2013/02.09.2013 (Annex. A/2) and asked to submits her objections within 10 days. The applicant demanded some relevant documents for making proper representation but the same were not supplied by the authority timely. The applicant made representation followed by reminders but her claim was turned down vide letter dated 25.03.2014 (Annex. A/10) by reiterating the provisions mentioned in Annex. A/2. The applicant vide letter dated 08.05.2014 (Annex. A/11) has been informed that the relevant record and the service book of the applicant has been seized by the Vigilance Branch, therefore, as & when it is received the further necessary action would be taken. Now, the respondent No. 3 has issued the order dated 10.04.2015 (Annex. A/1) and a firm decision has been taken to recover the

30.08.2013/02.09.2013 (Annex. A/2) and inviting the objection against it is a mere formality, therefore, the applicant has filed the present OA seeking relief(s) as extracted above.

3. In the present OA notices were issued to Mr Vinay Jain, Standing Counsel for Railways in Central Administrative Tribunal and Mr Vinay Jain submits that this OA has been filed against the show cause notice (Annex. A/1) served upon the applicant by respondent-railway for inviting objections against the proposed recovery of Rs 2,13,127/- in 43 instalments of Rs 5000/- per month and also against the reduction of pay. Mr Vinay Jain further submits that he does not want to file reply and the OA may be decided without there being any reply on record.

4. Heard both the counsels. Counsel for applicant submits that the respondents have reduced the pay of the applicant and imposed recovery of Rs 2,13,127/- upon the applicant. Although, the respondent-department has issued the show cause notice for the same but it is a mere formality and the present OA has also been filed against the reduction in pay.

5. Per contra, counsel for respondents submits that the applicant has filed this OA against the order Annex. A/1 which is a show-cause notice inviting objection from the applicant on proposed recovery. Therefore, this OA is pre-mature.

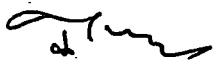
6. In view of the submissions made by both the counsels, we propose to dispose of this OA with the following directions :

- (i) The applicant shall file reply to the show cause notice dated 10.04.2015 (Annex. A/1) before the respondent No. 3 within 15 days from the date of receipt of this order and the applicant while presenting her objections to the proposed recovery, may inter-alia raise all her objections regarding reduction of pay scale, pay fixation etc while filing her objection to the recovery before the respondents.
- (ii) Thereafter, the respondents shall pass a reasoned speaking order within a month from the date of receipt of representation.
- (iii) No recovery shall be made till representation of the applicant is finally decided by the competent authority of the respondent-department.

7. In terms of above directions, OA No. 290/00159/2015 is disposed of with no order as to costs.


[Meenakshi Hooja]
Administrative Member

ss


[Justice K.C. Joshi]
Judicial Member

Recd. by
J. S. S.
12/5/15

R. C.
K. S.