

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 581/2004

Friday this the 23rd day of February, 2007

CORAM

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

K.V. George,
Welder, SE/PW/Q/QLN,
Southern Railway, Kollam,
residing at Kadakkamannil Puthenveedu,
Parayanali, Omalloor PO
Pathanamthitta.

.....Applicant

(By Advocate Mr. T.N. Sukumaran)

V.

- 1 Union of India, represented by the General Manager, Southern Railway, Chennai.3.
- 2 Senior Divisional Personnel Officer, Southern Railway, Thiruvananthapuram.14.
- 3 The Section Engineer, P.Way Southern Railway, Kollam.Respondents

(By Advocate Mr. Sunil Jose)

The application having been heard on 9.2.2007, the Tribunal on 23rd February, 2007 delivered the following:

ORDER

Hon'ble Mr. George Paracken, Judicial Member

The applicant has filed the present OA seeking a direction to the respondents to absorb him as Welder from 24/12/2001 in terms of Annexure A7 letter dated 19/3/2004 and to fix his pay in the same cadre based on his pay of Rs.4190/- which he was already drawing as

Welder itself as on 1.9.98 in the scale of pay of Rs.3050-4590 and to pay the arrears with 10% interest. In the alternative he sought fixation of his pay as Welder w.e.f 24.12.2001 based on the pay of Rs. 4140/- he was drawing as on 13.8.2000. He has also sought a direction to quash and set aside Annexure A-10 Memorandum dated 5/6/2003 refixing his pay on his regularization and posting as Sr.Gangman-II in the scale of pay of Rs.2650-4000 ignoring the past service rendered by him as Welder, the Annexure A-11 Memorandum dated 18/6/2003 fixing his pay at Rs.3725/- as on 12/4/2002 as Technician Grade-III (Welder) in the scale of pay of Rs.3050-4590 on his absorption to the said post based on the pay already refixed in the Annexure A-10 Memorandum as Sr.Gangman at Rs.3580/- in the scale of Rs.2650-4000 and the Annexure A-9 letter dated 7/7/2004 by which the respondents have ordered for recovery of Rs.43,295/- as the amount alleged to have been over paid to him.

2 The brief background of the case relevant for disposal of this O.A is as follows. The applicant is an ITI Certificate Holder in the trade of Welder. He was engaged as a skilled casual labourer (Welder) from 26/3/1980. He was conferred upon with temporary status w.e.f. 26/7/1980 and granted the scale of pay of Rs.196-232 from that date. Later, he was granted the temporary status in the skilled grade in the scale of Rs.260-400 w.e.f. 26/7/1980. After the acceptance of the IVth Pay Commission Report, he was granted the pay scale of Rs.950-1500 w.e.f. 1/1/1986. Thereafter, though he was empanelled for regular selection as Sr.Gangman in the scale of Rs.775-1025 vide order dated 8/11/1989, but he was allowed to be retained as Skilled Welder based on his past option for regular absorption towards the 25% quota for skilled Artisans. However, the respondents vide

order dated 23.5.97 terminated his service w.e.f 25.6.97 against which he approached this Tribunal vide OA 832/97 and vide order dated 18.6.97, this Tribunal directed the Chief Engineer, Southern Railway, Chennai to consider afresh the representation to be filed by the applicant against the termination order and explore the possibility of diverting unutilized decasualisation vacancies allotted to other Divisions, if any, or any other existing vacancies and give the applicant an appropriate order. Status quo was ordered to be maintained till the disposal of the representation. But the respondents turned down his representation to absorb him in Group 'C' Skilled category against the 25% quota vide order dated 25.9.98 and thereby forced him to continue s Gangman (Group 'D'). The applicant filed OA 1500/98 challenging both the termination order dated 23.5.97 and the order dated 25.9.98 rejecting his claim for absorption in Group 'C' skilled category. When the said O.A 1500/98 was pending, he was permitted to join as Sr.Gangman in the scale of Rs.2650-4000 with immediate effect from 13/10/1998 and he joined that post on 10/12/1998 and remained in that post till 11.4.2002. Since he was already drawing salary of Rs.4190/- in the scale of Rs.3050-4590 w.e.f. 1/9/1998, on his absorption as Sr.Gangman in the scale of Rs.2650-4000 also his pay was fixed at the maximum of the later scale with two additional stagnation increments w.e.f. 10/12/1998. The OA No.1500/98 filed by him against the said absorption as Sr.Gangman was disposed of by the Annexure A-1 order dated 5/9/2001. This Tribunal found that the order regularizing the applicant as Sr.Gangman Group 'D' was untenable and he was entitled to be considered for absorption in Group 'C' skilled category. Accordingly, the respondents were directed to absorb him as Welder in any existing

2

vacancy within Trivandrum Division without any break in continuity of service. Pursuant to the aforesaid orders, the respondents have absorbed him as Technician Grade-III (Welder) in the scale of Rs.3050-4590 against 25% of the promotion quota and posted at SE(PW)O/QLN vide Annexure A-2 order dated 12/4/2002. Being not satisfied with the said order absorbing him as Welder only w.e.f. 12/4/2002, the applicant made a further representation stating that the said compliance was not in true spirit of the order of this Tribunal in OA-1500/1998 (supra). He, therefore, requested the respondents to grant him the benefits of continuance in the post of Welder, the post that he had been holding from 26/3/1980. He has submitted that since he was drawing Rs.4190/- in the year 1998, he is entitled to get the pay fixed in the post of Welder taking into account of that basic pay and it could not have been brought down to Rs.3800/- as ordered by the respondents vide Annexure A-5 pay bills of May 2003 and June 2003. Since the applicant's aforesaid representation dated 17/7/2003 was not considered favourably, he approached this Tribunal vide OA No.1005/2003 which was disposed of on 7/12/2003 (Annexure A-6) with a direction to the respondents to consider his aforesaid representation and give him an appropriate reply within a period of three months.

3 The respondents in compliance of the aforesaid orders of this Tribunal dated 17/12/2003 issued the Annexure A-7 letter informing him that in terms of the Railway Board's letter dated 9/4/1997, they have identified a vacancy against 25% promotion quota against in the category of Technician Grade-III (Welder) w.e.f. 24/12/2001 and he was absorbed in the said post in the scale of Rs.3050-4590 under SE(PW)QLN. However, they had submitted that since he had joined as Gangman as per order of

8

this Tribunal in MA No.1016/1998, while fixing his pay in the post of Technician Grade-III (Welder) in the scale of Rs.3050-4590 the absorption to the post of Technician Grade-III (Welder) will be considered as a transfer from the higher post to lower post, such benefit of completed years of service in the higher post should be given for the purpose of advance increments in the lower post to which he was appointed and his pay on regular absorption as Gangman and subsequently Technician Grade-III (Welder) would be fixed as per extant rules. The respondents have accordingly vide the Annexure.A10 Memorandum dated 5.6.2003 refixed the pay of the applicant as Gangman in Group 'D' scale of Rs.200-250/775-1025/800-1150/2650-4000 right from 26/7/1980 to 1/3/2002 and his pay as on 1/3/2002 was fixed at Rs.3580/- in the scale of pay of Rs.2650-4000. Based on this refixation, Respondents have further issued Annexure A-11 Memorandum dated 18/6/2003 fixing the pay of the applicant at Rs.3725/- w.e.f. 12/4/2002 in the scale of pay of Rs.3050-4590. Vide Annexure.A9 order dated 7.7.2004 they have also ordered for the recovery of Rs. 43295/- which has been alleged to have been overpaid to him.

4 We have heard learned counsel Mr.T.N.Sukumaran and Mr.Sunil Jose for the applicant and respondents respectively. We have also perused the Service Book of the applicant made available by the respondents.

5 First of all, since the respondents themselves have already issued the Annexure A-7 letter dated 19/3/2004 absorbing the applicant as Technician Grade-III (Welder) in the scale of Rs.3050-4590 against the 25% promotion quota and posted him at SE(PW)QLN w.e.f. 24/12/2001

5

and it was also admitted in the same letter that Annexure A-2 Office order dated 12/4/2002 was issued because of the delay due to the formalities to be followed as per rules, the fixation of pay of the applicant in the scale of pay of Rs.3050-4590 made by the Annexure A-11 letter dated 18/6/2003 at Rs.3725/- w.e.f. 12/4/2002 has become infructuous. In terms of the said Annexure.A7 letter the respondents themselves should have withdrawn the Annexure.A11 Memorandum and the pay of the applicant in the scale of Rs.3050-4590 in the Technician Grade-III (Welder) should have been refixed w.e.f. 24/12/2001. Now the question is the stage at which the applicant's pay is to be fixed w.e.f. 24/12/2001. The respondents while fixing the pay of the applicant at Rs.3725/- w.e.f. 12/4/2002 in the scale of Rs.3050-4590 vide Annexure.A11 Memorandum did not take into consideration the pay drawn by him in Group 'C' category from 26/7/1980 to 13/8/1998 at all. Admittedly, the applicant remained absorbed and posted as Sr.Gangman-II in a Group 'D' post in the scale of Rs.2650-4000 w.e.f. 13.8.1998 to 11.4.2002. However, the fact remains that the applicant was drawing Rs.4110/- as on 1/9/1997 and the respondents ought to have protected the last drawn pay while fixing the pay in the lower grade of Rs. 2650-4000. Moreover, it was the finding of this Tribunal in OA-1500/1998 that the order regularizing the applicant as Sr.Gangman (Group 'D') was untenable and he was entitled to be considered for absorption in Group 'C' skilled category. Therefore, the absorption of the applicant as Gangman and his posting in that capacity from 13/8/98 to 11/4/2002 is to be treated as non est and the applicant shall deemed to have continued to work in the skilled category and worked as a Group 'C' skilled category till his absorption as a Technician Grade-III (Welder) w.e.f. 24/12/2001 against

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the 25% promotion quota as ordered by respondents vide Annexure A-7 letter dated 19/8/2004.

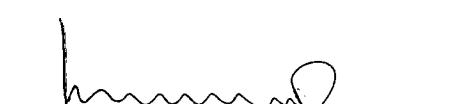
6 The applicant has relied upon the judgment of the Apex Court in *Bhadei Rai V/s. Union of India* 2006 SCC (L&S) 89 and *Badri Prasad and Ors V/s. Union of India and Ors* 2006 SCC (L&S) 92. Both the aforesaid judgments were based on the earlier judgment of Apex Court in the case of Inderpal Yadav V/s. Union of India (2005)II SCC 301 wherein it has been ordered that the pay of the petitioner which he was last drawing on the date of repatriation from Group 'C' to Group 'D' post shall be protected

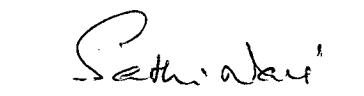
7 In view of the above facts of the case and judgments relied upon by the applicant's counsel, we hold that the refixation of the applicant's pay in the grade of Sr.Gangman-II made by Annexure A-10 Memorandum dated 5/6/2003 was not warranted and therefore the same is quashed and set aside. Being an admitted position that the applicant was drawing Rs.4110/- as on 1/9/1997 in the scale of pay of Rs. 3050-4590 and this Tribunal has clearly held that his absorption as Sr. Gangman-II in Group 'D' in the scale of pay of rs. 2650-4000 from 13.8.1998 to 11.4.2002 was untenable, the respondents shall grant him regular increments in pay to the applicant in the scale of Rs. 3050-4590 at the prescribed rate from 1/9/1999 onwards till he was absorbed on regular basis as Technician Grade-III (Welder) w.e.f. 24.12.2001 in terms of Annexure.A7 letter dated 19.3.2004, as if there was no absorption of the applicant as Sr. Gangman-II in Group 'D' post. Consequently, the Annexure A-11 Memorandum dated 18/6/2003 fixing his pay at Rs.3725/- w.e.f. 12/4/2002 in the scale of Rs.2650-4000 is also quashed and set aside. Having the aforesaid Annexures A-10 and A-

11 Memoranda quashed and set aside, Annexure A-9 order of recovery of Rs.43,295/- from the applicant's pay as over payment will not sustain and therefore the same is also quashed and set aside. Respondents have already agreed to treat the period from 14.10.98 to 9.12.1998 as leave, on the applicant making such an application, there will not occur any discontinuity in service. The respondents are therefore, directed to re-fix the pay of the applicant as Technician Grade-III (Welder) in Group 'C' post in the scale of Rs. 3050-4590- by continuing to grant the prescribed increments regularly from 1.9.98 ignoring the period of his absorption as Sr.Gangman-II in the Group 'D' post from 13.8.98 to 11.4.2002 which was found to be untenable by this Tribunal vide its order dated 5/9/2001 in OA 1500/1998 which has already attained finality. Respondents shall issue necessary orders in this regard within a period of two months from the date of receipt of this order. Arrears, if any, payable to him on account of such re-fixation shall be paid to him within one month thereafter. There shall also be no reduction in the pay of the applicant. However, in the present facts and circumstances of the case, the applicant is not entitled for any interest on the arrears payable to him.

8 There shall be no order as to costs.

Dated the 23rd February, 2007


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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