

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.111/02

Thursday this the 17th day of June 2004

C O R A M :

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR. S.K.HAJRA, ADMINISTRATIVE MEMBER

K.Rajagopalan,
Binder, Works Branch,
Divisional Office,
Southern Railway, Palakkad.

Applicant

(By Advocate M/s.Santhosh & Rajan)

Versus

1. Union of India represented by
the General Manager,
Southern Railway,
Chennai - 3.
2. The Chief Personnel Officer,
Southern Railway,
Chennai - 3.
3. The Senior Divisional Personnel Officer,
Southern Railway, Palakkad.

Respondents

(By Advocate Mr.P.Haridas)

This application having been heard on 17th June 2004 the
Tribunal on the same day delivered the following :

O R D E R

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN


The applicant who commenced his service as a Casual Labourer was screened and posted as Peon as he was found medically not suitable to be appointed as Khalasi. On being successful in the trade test of Binder (Semi-skilled) in the scale Rs.800-1150 the applicant was by Annexure A-1 order promoted as Binder (Semi-skilled). He was further promoted as Binder (Skilled) in the scale Rs.950-1500 on passing the trade test by Annexure A-2 order dated 20.9.1988. He was further



promoted as Binder Highly Skilled Grade II in the scale Rs.1200-1800 by order dated 15.3.1991 (Annexure A-3) as also as Binder Highly Skilled Grade I in the scale Rs.1320-2040 by order dated 14.11.1994 (Annexure A-4). Apprehending reversion from the post of Binder Highly Skilled Grade I the applicant filed OA 718/95 challenging the proposed action. The Tribunal directed maintenance of status quo during the pendency of the OA and ultimately disposed of the application by Annexure A-5 order permitting the applicant to take up the matter with the department. On the basis of the observation in the said judgement the applicant submitted representation which has not been disposed of, but the applicant continued in the Highly Skilled Grade, and drew pay in that scale as is seen from Annexure A-6, Annexure A-7 and Annexure A-8. When the pay of the applicant was revised in terms of the Revised Pay Rules 1996 the applicant's pay was revised reckoning the pay drawn by him at Rs.1380/-. However his pay has been refixed at Rs.3350/- with effect from 1.1.1996 taking into account his pay as Rs.1090/- in the scale Rs.950-1500 with effect from 1.1.1996 (Annexure A-9). The applicant challenged Annexure A-9 in OA 1507/97. The respondents filed a reply statement in that case wherein it was contended inter-alia that no order of reversion of the applicant to the grade Rs.950-1500 had been issued. The OA was disposed of by order dated 20.7.2000 (Annexure A-11) directing the Chief Personnel Officer to look into the matter as to whether the applicant was reverted or not and issue appropriate orders. On the basis of the directions contained in the judgement in OA 1507/97 the Chief Personnel Officer issued Annexure A-12 order dated 26.9.2000 directing fixation of the pay of the applicant on

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the basis of the pay actually drawn by him at Rs.1380/-on 31.12.1995 however making it clear that if any wrong fixation had been made earlier the pay should be refixed after issuing appropriate notice. Based on Annexure A-12 order the pay of the applicant with effect from 1.1.1996 was fixed at Rs.4500 in the scale Rs.4500-7000/- by order dated 13.11.2000 (Annexure A-13). Thereafter, Annexure A-14 show cause notice was issued to the applicant wherein it was stated that the applicant was reverted with effect from 1.6.1995 and consequently his pay was required to be refixed at Rs.3050-4590 with effect from 1.1.1996. In reply to the above show cause notice the applicant submitted Annexure A-15 explanation in which he contended that as no order or reversion have been issued by the competent authority it was not permissible to refix the pay of the applicant with effect from 1.1.1996 without reckoning the actual pay drawn by him at Rs.1380. The explanation was considered and the 3rd respondent has issued impugned order by which the objections contained in Annexure A-15 was over-ruled stating that the Senior Divisional Engineer, Palakkad had issued order reverting the incumbent of the post of Binder with effect from 1.6.1995 and that as the applicant was only occupant of the post to be reverted as Binder Grade III (Work Charged) on adhoc basis in the scale Rs.950-1500 his pay has been refixed at Rs.3050-4590 with effect from 1.6.1995. Aggrieved by this the applicant has filed this application seeking to set aside the impugned order declaring that the fixation of pay of the applicant in Annexure A-13 is in order and for a direction to the respondents to give the consequential arrears to the applicant with 18% interest per annum declaring also that the retrospective reversion of



applicant with effect from 1.6.95 and the consequential fixation of his pay is illegal. It has been alleged in the application that before Annexure A-14 show cause notice no order reverting the applicant as Binder Skilled in the scale Rs.950-1500 has been issued and therefore the impugned order as also re-fixation of applicant's pay is unsustainable.

2. The respondents seek to justify the impugned action on the ground that the promotion of the applicant to the Grade of HSG I by Annexure A-4 order was only on adhoc basis till sanction exist and that by Annexure R-2 general order the applicant was to be reverted with effect from 1.6.1995 as Binder Skilled Grade in the scale Rs.950-1500 and therefore re-fixation of the applicant's pay is perfectly in order. As a show cause notice has been given to the applicant the impugned action cannot be faulted, contend the respondents.

3. We have carefully gone through the pleadings and material placed on record and have heard Shri.Rajan learned counsel for the applicant and Ms.Deepa for the respondents. It is evident from the materials on record that the applicant was promoted to HSG I by Annexure A-4 order only on adhoc basis and making it clearly understood that when the sanction lapses the applicant would be reverted. Re-fixation of the applicant's pay would arise only in the case of promotion or reversion. It is not disputed that by Annexure A-4 order the applicant was promoted on adhoc basis to HSG I in the scale Rs.1320-2040 and as on 13.12.1995 the applicant was drawing the pay at Rs.1380. It is also not in

dispute that throughout the pendency of OA 1507/97 the applicant continued to work against the post of HSG I in the scale Rs.1320-2040 on the basis of an interim order and that in terms of the directions contained in the judgement in that case the 2nd respondent passed Annexure A-12 order directing fixation of the applicant's pay reckoning the pay drawn by him at Rs.1380/in HSG I reserving the right of the competent authority to revise the pay if later found that the pay drawn by him was erroneously fixed. It is further seen by Annexure A-13 order dated 13.11.2000 that the applicant's pay was refixed reckoning his pay as Rs.1380/- with effect from 1.1.1996. We see that before issuing Annexure A-14 show cause notice no order of competent authority has been issued reverting the applicant as Binder Skilled Grade in the scale Rs.950-1500. If the proposal in A.14 was to revert the applicant to that grade in the order Annexure A-16 considering the representation there should have been an order of reversion. Even in Annexure A-16 there is no mention of any order of reversion having been issued but what is stated is that the order was issued by the Sr.DEN/Co-ord/PGT for reverting the incumbents of the post of Gestetner Operator, Binder etc. with effect from 1.6.1995. Even if the averment in Annexure A-14 show cause notice that the applicant was reverted with effect from 1.6.1995 is taken as the order of the competent authority of reversion which as a matter of fact is not an order of reversion with retrospective effect could not have been validly issued. By an order of a subsequent date the officiation of an incumbent in a higher post cannot be practically annulled. It could only have been made prospectively that too giving an opportunity to show


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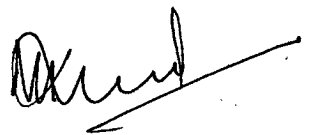
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cause against reversion. Since as on 1.1.96 the applicant was actually working on Highly Skilled I Grade in the scale Rs. 1320-2040 and was drawing pay at Rs. 1380/- the fixation of pay under Annexure.A13 was perfectly in order and does not call for any refixation, for no reversion has been effected on that date by issue of an order by competent authority pursuant to Annexure.R.2 order. Therefore, the impugned order Annexure.A16 is unsustainable.

4. In the result, the impugned order Annexure.A16 is set aside declaring that as the applicant had not been reverted to Highly Skilled Grade Rs. 950-1500, w.e.f. 1.6.1995 the fixation of pay as per Annexure.A13 is perfectly in order. We also direct the respondents to pay to the applicant the consequential arrears if any with interest at 6% per annum within two months from the date of receipt of a copy of this order. The application is disposed of as above. No order as to costs.

(Dated the 17th day of June 2004)


S.K. HAJRA
ADMINISTRATIVE MEMBER
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A.V. HARIDASAN
VICE CHAIRMAN