

CENTRAL ADMINISTRATIVE TRIBUNAL

O.A.No.217/99

Dated the 2nd of August, 2001

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI T.N.T.NAYAR, ADMINISTRATIVE MEMBER

R.Selvarajan,
Rest Giver Gate Keeper,
Southern Railway,
Under the Section Engineer/Permanent Way,
Nagercoil Junction,
residing at: Thevaravila Veedu,
Pudukkadam Post,
Kanyakumari District. ...Applicant

(By Advocate Sri T.C.G.Swamy)

vs.

1. Union of India through,
the General Manager,
Southern Railway,
Headquarters Office,
Park Town P.O.,
Madras-3.
2. The Divisional Personnel Officer,
Southern Railway,
Trivandrum Division,
Trivandrum-14.
3. The Section Engineer,
(The Permanent Way Inspector),
Southern Railway,
Nagercoil Junction.,
Nagercoil.
4. Shri K.Rajendran,
Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum Division,
Trivandrum-14. ... Respondents

(By Advocate Sri K.Karthikeya Panicker)

The Application having been heard on 2.8.01, the Tribunal on the same day delivered the following:-

ORDER

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

This application is directed against the order dated 8.11.95(A-1) by which the third respondent has retrospectively reduced the applicant's pay and refixed it at Rs.811/-,

instead of Rs.859/- w.e.f. 10.7.88 and proposed to recover an amount of Rs.5269/- and also against the order dated 5.1.99 of the Senior Divisional Personnel Officer disposing of his representation against the impugned order A-1, pursuant to the direction of this Tribunal in O.A.1469/95(A4). The facts of the case can be briefly stated thus . When the applicant was working as CPC Khalasi in the scale Rs.750-940 and drawing a pay at Rs.822/-with effect from 1.3.88, he was posted in the Permanent Way Track Maintenance with effect from 10.7.88. His pay as a Gangman was fixed at Rs.859/- with effect from 10.7.88. The applicant was thereafter regularly absorbed in service and was working as Rest Giver Gate Keeper in the scale of Rs.800-1150/2650-4000 under the Section Engineer, Permanent Way, Nagarcoil. While so, he was served with the impugned order A-1 issued by the third respondent retrospectively reducing his pay and proposing the recovery of alleged overpayment. Aggrieved by that, he made a representation. Finding no response to which he filed O.A.1469/95. That O.A. was disposed of directing the respondents to take a decision on the representation submitted by the applicant. It was , as per the above direction that the impugned order was issued by the 4th respondent confirming the order at A-1 on the ground that it was in accordance with the Headquarters's letter dated 15.5.95. Aggrieved by this, the applicant has filed this application seeking to have the impugned orders set aside.

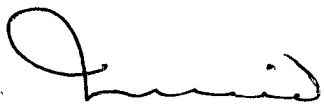
2. Respondents seek to justify the impugned orders A-1 and A-6 on the ground that the applicant having been engaged as a Casual Labourer Gangman, was brought into the scale of Rs.775-1025, and therefore the fixation of pay at Rs.859/with

effect from 10.7.88 treating it as a promotion was not in accordance with the rules and was against the instructions contained in the Headquarters, letter dated 15.5.95(R-1) which is only a reiteration of the Railway Board's circular dated 18.11.83(R-2). The respondents plead that the action having been taken to rectify an erroneous fixation, may not be interfered with.

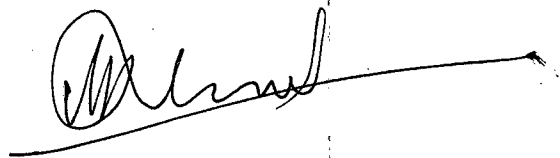
3. We have gone through the pleadings and other material placed on record. We are of the considered view that the Junior Engineer, PW being an authority subordinate to the DPO, who fixed the pay of the applicant with effect from 10.7.88, could not have validly set aside that fixation and refixed the pay with retrospective effect ordering recovery of alleged overpayment without even issuing a notice to the applicant, who is the affected party. For that reason alone, the impugned order is liable to be set aside. The impugned orders A-6 and A-1 are sought to be justified on the basis of the Headquarters' Personnel Branch letter dated 15.5.95 which has now been produced by the respondents as R-1. R-1 which is relied on by the respondents to justify the impugned order A-1 is only a D.O. letter written by one Assistant Personnel Officer to another Assistant Personnel Officer. It does not have the authority of law. Further, the letter was not issued as authorised or directed by the competent authority. Therefore, no reliance could be placed on R-1. Railway Board letter dated 18.11.83(R-2) only states that Casual Labourers working in Gang in the pay scale of Rs.196-232 should be immediately brought to the grade of Rs.200-250. The applicant as is seen from A-6 order, was not working in the Gang. He

was a CPC Khalasi. Further, R-2 does not speak about how the pay is to be fixed. In any case, pay fixed by the competent authority in the year 1988 could not be cancelled and refixed by a lower authority to the detriment of the applicant, without even giving an opportunity of being heard. Subsequent disposal of representation by Annexure A6 would not make the action valid.

4. In the light of what is stated above, we find that the impugned orders are unsustainable in law and therefore, we set aside the same with consequential benefits to the applicant. There will be no order as to costs.



(T.N.T.NAYAR)
ADMINISTRATIVE MEMBER



(A.V.HARIDASAN)
VICE CHAIRMAN

trs

LIST OF ANNEXURES REFERRED TO IN THE ORDER:

1. A-1: True copy of letter No.PWI/NCJ/6 dated 8.11.95 issued by the 3rd respondent.
2. A-6: True copy of letter No.V/P.483/1/Eng./NCJ dated 5.1.99 issued by the 2nd respondent.
3. R-1: True copy of the letter dated 15.5.95.
4. R-2: True copy of the Railway Board's letter No.E(NG)II-82/CL/7 dated 18.11.83.