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CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No. 1122 of 1991

Rajendra Bahadur Singh & 31 others Applicants

Versus

Union of India & Others Respondents

Hon'ble Mr. Justice U.C.Srivastava, V.C.

Hon'ble Mr. K. Obayya, Member (A)

(By Hon'ble Mr. K. Obayya, Member (A)

The applicants who are working in the Ordnance Equipment Factory O.E.F. Kanpur in different grades as tailors and Machinists, have approached the tribunal feeling aggrieved by the orders dated 5.8.1991 and 24.9.91 that the service rendered by them in other units as labour B is not counted for purpose of pay fixation and that they are treated as fresh appointees in O.E.F. and accordingly their pay is being re-fixed. The applicants have prayed that the impugned orders be quashed and that their previous service be counted for purpose of seniority and also pay fixation.

2. The applicants were recruited as Tailors D/C in different production units namely Ordnance Clothing Factory Shahjahanpur, Ordnance Equipment Factory, Kanpur and Ordnance Parachute Factory, Kanpur during the years 1961-1964, as there was rush of work during the period following chinese aggression. Later the work load was reduced. Number of posts were abolished and the surplus staff faced retrenchment. The administration however, took a sympathetic view and decided to send them for one year training in the different engineering branches and ^{to} absorb them in the trades, they were trained and for this purpose, the

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applicants were transferred to other sister units in lower capacity as Labour-B. This was during the year 1965-66.

While this process was going on, the work-load in the original parent factories increased and the applicants were re-transferred. The re-trenchment and transfer of these employees to outside factories was on the basis of seniority, though some juniors were retained in the parent units on compassionate grounds on lower post of labour Grade-B. While the applicants were sent as Labour-B their pay was protected and they were given the same emoluments which they were drawing earlier prior to their transfer to sister factories. On their coming back to the parent units their pay was fixed with 2 increments. In the course of time they have also earned promotion to higher grades. The controversy is that whether the applicants were entitled for counting their services which they have rendered in the lower grade for the purpose of their pay fixation after their re-absorption in the parent unit. Initially this was allowed treating their case as special case. But later on the matter was examined and a decision was taken that allowing them to draw more pay in the lower grade was not correct and it was in violation of the rules. As such they should be asked to pay back the excess amount received and their pay should be fixed again properly. It is in accordance with this policy that notices were given to them intimating that their pay is being re-fixed. It is contended on behalf of the applicants that they were tailors C or D as the case may be before their transfer to other sister organisation and even if they were reverted as labour-B they were paid the same scale of pay which they were getting as Tailor C or D and that when they came back to the parent unit, it was decided that their pay would not be reduced.

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3. It is contended on behalf of the applicants that though they were sent to a lower grade of Labour-B to other units, their pay was protected in other words, they continued to draw same salary, which they were drawing in the grades of Tailors C/D, when they came back to their parent units they continued to be on some scale and as such they should not be made to suffer, if later on it was found that they were not entitled to a particular scale, that was not their fault.

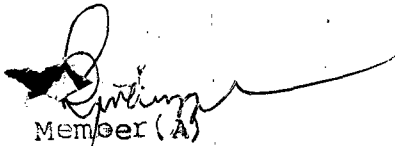
4. The respondents admit that their pay was protected when they were sent as Labour B and when they came back to their parent units, though protection continued, but however, as they were holding the post of Labour-B and not as Tailors, they were only entitled for the pay Labour-B and not that of Tailors. It is also stated that notional seniority was given to the applicants and even though pay protection was given, this was not accepted by higher authority namely Controller Defence Accounts, who ordered that payment of higher salary on lower post was not correct and that the excess amounts paid be recovered.

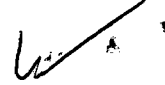
5. So far as the facts and circumstances of the case are concerned, there is no dispute. The applicants were facing retrenchment. But the administration took a sympathetic view and transferred them to different sister factories. It would appear that the intended training was not given to them. They all came back to their parent units sometime later and joined as labour-B and in course of time they were promoted to higher grades, The matter regarding re-fixation of their pay appears to have been taken up at different levels. Initially the administration was considering the question of counting their services

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as Tailors and accordingly notional seniority and pay was given to them. But later on it was withdrawn. The interse-seniority was, however, protected and there is no dispute so far as this aspect is concerned; From the documents annexed to the counter also it is very clear that the intention of the administration was to see that the applicants were not to be put to financial hardship. The letter dated 13.6.74 ~~XXXX~~ indicates that the reverted tailors working as labour B were promoted immediately after they were transferred back to their former grades in the parent units. Vide their letter dated 17.1.79 (Annexure C-4) the case of the applicants for their protection of their pay was also recommended. Article 107 of the Financial Code also provides that where an employee officiating in time scale draws a lower scale in the intervening period, his officiating pay should be fixed on the post and enhanced. There was also reference to the fact of personal pay and it is indicated that the personal pay granted to an employee should also be protected. Taking the overall facts of the case it is evident that the administration has not been following a consistent policy or attitude. It is seen that the retrenched employees were employed as Labour grade-B in other factories and their pay was also protected. No training was given to them in the engineering trade and they have been more or less taken back to their parent units as such and were also promoted in course of time. In the circumstances we are of the view that once a benefit is given to them by conscious decision considering the particular circumstance of the case, the administration cannot resile and deny the benefit now by reducing the pay scale of the applicants. Reference is made to the

case of State of Maharashtra Vs. Jagannath Achyut J. Karindikar (A.I.R. 1989 SC 1133) where in the Supreme Court held that the officials should not be penalised for lapses on the part of the government." Here, the government took a conscious decision to treat the transferred employees on a different footing and transferred them to a lower post, though there was no reduction in their emoluments drawn in their parent units. It is not known, how the orders to give them protection of emoluments were issued, if these orders were issued at a lower level, the remedy was to get them ratified. In any case, having treated the applicants on a different footing for purpose of pay fixation the matter cannot be dug-up now, since too much water has flown under the bridge and the applicants have received two or three promotions thereafter. The impugned orders are liable to be quashed and the application is allowed and the respondents are directed to maintain status-quo regarding pay and not to re-fix or downgrade the pay of the applicants by taking their period of service rendered in the lower grade as Labour-B and the benefits given to them earlier be treated as one time relaxation of rules if that is considered necessary. The application is allowed as above. The parties to bear their costs.


Member (A)


Vice-Chairman

Lucknow Dated: 25/2/1993.

(RKA)