

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH : PATNA

Date of Decision: 2/7/12 NOV. 2000

Registration No. OA-654 of 1996

Sri Jairam Singh, Son of Late Ram Kripal Singh, resident of the Village & P.O. Srinagar via Reoti, P.S. Reoti, District Balia, Ex-Guard on the N.E. Railway, Narkatiaganj

... Applicant

- By Shri R.K.Jha, Advocate

Versus

1. The Union of India represented through the General Manager, N.E. Railway, Gorakhpur (U.P.)
2. The General Manager (P), N.E. Railway, Gorakhpur (U.P.)
3. The Divisional Railway Manager (P), N.E. Railway, Samastipur

... Respondents

- By Shri P.K.Verma, Advocate

Coram:- Hon'ble Shri Lakshman Jha, Member (Judicial):

ORDER

Hon'ble Shri Lakshman Jha, Member (J):-

1. The applicant, Jairam Singh, has prayed for dated 8.10.90 quashing Annexure-A-1 [ ] cancelling his stepped up pay and for further direction to the Respondents to restore the stepped up pay and to pay the recovered amount in view of the decision of the Hon'ble Supreme Court in Bhagwan Shukla Versus the Union of India and Others (1994 SCC (L&S) 1320) as at Annexure-A-4, and that of the Patna Bench of the CAT in Nageshwar Singh Versus the Union of India & Others (OA-596 of 1995) as at Annexure-A-5.

2. The applicant as well as Shri Bhagwan Shukla and Nageshwar Singh were initially appointed

in 1955, as Trains Clerk in the then pay scale of Rs. 110-180. In due course, the applicant and Shri Nageshwar Singh exercised options for the category of Guard 'C' and the aforesaid Shri Bhagwan Shukla for Senior Trains Clerk. Accordingly, the applicant was promoted as Guard 'C' in 1967, scale Rs. 130-225, as Guard 'B' in 1973, as Guard A in 1981, and lastly, as Mail Guard in 1992. Shri Bhagwan Shukla, who opted for the category of Trains Clerk, was promoted as Senior Trains Clerk in 1964, in the then scale of pay Rs. 150-240. After Shri Shukla was promoted as Senior Trains Clerk, he opted for promotion to the post of Guard 'C' and was promoted as Guard 'C' on and from 18.12.70. Shri Nageshwar Singh also came to be promoted as Guard 'C' on 11.7.67 (pay scale Rs. 130-225). The basic pay of Shri Bhagwan Shukla as Guard 'C' was fixed at Rs. 190/-, but he was junior to the applicant and also, to Nageshwar Singh in the category of Guard 'C' and his pay was fixed higher than that of the applicant and Shri Nageshwar Singh. Therefore, both of them represented for stepping up of their pay with reference to the pay of Shri Bhagwan Shukla. The representation was allowed and by order dated 9.11.87 (Annexure A) the basic pay of the applicant and also that of Nageshwar Singh, was stepped up and fixed at Rs. 190/- at par with the pay of Bhagwan Shukla on 18.12.70. However, it appears that while the applicant was enjoying the stepped up pay he received the impugned letter (Annexure-A-1) dated 8.10.90, of the DRM(P) that his stepped up pay was cancelled, being not found in order and lowered down his pay. The pay of Shri Bhagwan Shukla on his appointment from the post

of Senior Trains Clerk to that of Guard 'C' was also refixed and lowered down from Rs.190/- to Rs.181/- as on 18.12.70, on the ground that Shri Shukla on his option was appointed from the post of Senior Trains Clerk (scale Rs.150-240) to that of Guard 'C' in a lower grade, scale Rs.130-225/-. Shri Shukla filed OA-6 of 1992, against the refixation and lowering down of his basic pay from the stage of Rs.190/- to Rs.181/- which was dismissed by this Tribunal on 17.9.93. Shri Shukla filed SLP before the Hon'ble Supreme Court against the aforesaid order dated 17.9.93 of this Tribunal which was allowed on the ground that the reduction order had been passed without affording opportunity, which was violative of <sup>the</sup> principle of natural justice. Accordingly, his pay was restored to at Rs.190/- per month as on 18.12.70. Shri Nageshwar Singh, who was also aggrieved by the order cancelling his stepped up pay and re-fixation at lower stage, along with the applicant, filed OA-596/93, before this Tribunal. This Tribunal, vide order dated 17.1.96 allowed the prayer of Shri Nageshwar Singh and set aside the cancellation order with all consequential benefits as at Annexure-A-5.

3. The Respondents Railways have challenged the maintainability of the O.A. on the ground of limitation. It is stated that the order dated 8.10.90, as at Annexure-A-1 and order dated 21.6.91 as at Annexure-A-3, are sought to be quashed after a lapse of more than five years and, therefore, the OA is hit by limitation. It is stated that Shri Shukla opted for the category of Guard 'C' later on, and is ranked junior to the applicant as Guard 'C'. The basic pay of Shri Shukla as Guard 'C' was fixed with reference to their pay as Senior Trains Clerk at Rs.190/- with effect from 18.12.70. The applicant filed representation

in the year 1987 i.e. after more than 17 years for stepping up of his pay equal to Bhagwan Shukla, which was allowed vide order dated 9.11.87. However, it was later on detected that the stepping up of pay so allowed was irregular and was cancelled vide the impugned order dated 8.10.90 <sup>he</sup> as a result his pay was fixed at his earlier pay which ~~was~~ drawing before 18.12.70, and his retiral dues has, accordingly, been revised. The pay of Shri Bhagwan Shukla was also found to have been fixed up erroneously and some other similarly situated staff also represented for stepping up of their pay at par with Shri Bhawan Shukla. Therefore, the order stepping up ~~of Shri Bhagwan Shukla~~ and some others was cancelled. It is stated that Shri Bhagwan Shukla had ~~moved~~ from higher grade to lower grade and as such FR 22-C was not attracted. Accordingly, his pay was rectified and fixed at Rs. 180/- as Guard 'C'. The competent authority is empowered to rectify the mistake even without hearing of the applicant. It is denied that the case of the applicant is similar to the case of Shri Bhagwan Shukla and Shri Nageshwar Singh and, therefore, the applicant is not entitled to the relief prayed for.

4. Heard Shri R.K. Jha, the learned counsel for the applicant and Shri P.K. Verma, the learned counsel for the respondents and perused the record.

5. Shri P.K. Verma, the learned counsel for the Respondents, seriously challenged the maintainability of the application on the ground of limitation. He contended that this OA has been filed for quashing the order dated 8.10.90 (Annexure-A-1), and the order dated 21.6.91 (Annexure-A-3), on 1.10.96, i.e. after a lapse of more than five years. Therefore, the application is hit by limitation.

6. On the other hand, the learned counsel

for the applicant, Shri Jha, contended that Shri Bhagwan Shukla had filed the OA-6/92, with <sup>prayer for</sup> similar relief. The OA of Shri Bhagwan Prasad was dismissed by this Tribunal vide order dated 17.9.1993. However, Shri Shukla filed SLP before the Hon'ble Supreme Court against the order of dismissal, and it was allowed vide order dated 5.6.94 as at Annexure-A-4. The aforesaid Nageshwar Singh, who was similarly aggrieved, filed OA-596/95, before this Tribunal, which was decided, vide order dated 17.1.96, by this Tribunal as at Annexure-A-5. The applicant filed this OA, as said above, on 1.10.96, i.e. to say, after the matter was finally and conclusively decided by the order of this Tribunal in OA-596/95, on 17.1.96. The learned counsel for the applicant contended that the Respondents Department should have extended the benefit, in terms of the order dated 5.8.94, of the Hon'ble Supreme Court, and also, in term of the order dated 17.1.96 passed by this Tribunal as at Annexure-A-5. He should <sup>not</sup> <sup>compelled to</sup> have been ~~have been~~ rush to file this OA for the similar relief as has been extended to Shri Bhagwan Shukla and Shri Nageshwar Singh. In this connection, he referred to Annexure-A-3 also, which shows that the impugned order of cancellation of stepping up pay of the applicant has been passed along with Nageshwar Singh, who challenged the order in the aforesaid OA-596/95 with the result as stated above.

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7. The contention of the learned counsel for the applicant appears proper as the application seems to have been ~~filed~~ within the period of limitation from date of the ~~the~~ order passed in the OA-596/95.

8. ~~So far~~ the merit of the case is concerned, it seems to have been conclusively and finally settled by the Hon'ble Supreme Court in the case of Bhagwan Shukla (Supera). The Hon'ble Supreme Court in the aforesaid case held that in the case of reduction of pay on the ground of wrong fixation on ~~promotion~~ prior opportunity ought to have been afforded. The applicant in the instant case has admittedly not been afforded prior ~~opportunity~~ before passing the impugned order of reduction in pay. He has been directed to refund the excess of pay drawn right from the year 1970 from the DCRG. Further, it appears from the Annexure-A-5 that the similarly situated person, Shri Nageshwar Singh, filed the aforesaid OA-596/95 which was allowed in view of the aforesaid decision in Bhagwan Shukla's case. Thus, I find that the case of this applicant is squarely covered by the principles as laid down in Bhagwan Shukla's case and also, on facts by the decision of this Tribunal in Nageshwar Singh's case.

9. Accordingly, the application is allowed and the impugned order dated 8.10.90 (Annexure-A-1) and the order dated 21.6.91, as at Annexure-A-3, with respect to the applicant are hereby set aside and quashed. The applicant is held entitled to all consequential benefits with regard to the fixation of his pay as Guard, including re-fixation of pension and payment of settlement dues as admissible under the Rules on superannuation. The applicant is also held entitled to the refund of the amount deducted on account of

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refixation of pay at the lower stage. The Respondents are, accordingly, directed to complete exercise within ~~a~~ period of three months from the date of communication of this order. There shall be, however, no order as to costs.

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17.11.2000  
( Lakshman Jha )  
Member (J)