

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH

Registration No.OA-370 of 1996

Date of decision 22.11.1996

Hon'ble Mr. Justice V.N.Mehrotra, Vice-Chairman

N.K.P. Singh

S/o Shri Harihar Singh,

Resident of Village - Phulma, P.O.Nemadarganj,

P.S. Akbarpur, Distt. Nawada.

At present a Clerk, Grade-I in the office

of the Sr. D.P.O.Eastern Railway,

Dhanbad Applicant

By Advocate Shri R.K.Jha

Versus

1. Union of India

Represented through the

General Manager, Eastern Railway

Fairlie Place, 17, Netaji Subhash Road,

Calcutta-1.

2. The Chief Personnel Officer,

Eastern Railway, Fairlie Place,

17, Netaji Subhash Road,

Calcutta-1.

3. The Sr. Divisional Personnel Officer,

Eastern Railway,

DRM's Office Building Dhanbad.

4. The Divisional Personnel Officer,

Eastern Railway, DRM's Office Building

Dhanbad.. . . . Respondents


By Advocate Shri Gautam Bose.

O R D E R

Hon'ble Mr. Justice V.N.Mehrotra, V.C.

This application has been filed by applicant N.K.P.Singh with the prayer that the order dated 28.3.1996 dated 24.4.1996 - Annexure-A/8 by the Divisional Personnel Officer, Eastern Railway, Dhanbad and the subsequent orders at Annexure-A/10 and A/11 by which the pay of the applicant has been refixed at Rs.950/- from 16.2.1987 be quashed. It has also been prayed that the respondents be directed to restore pay as fixed vide Annexure-A/3 and also to refund the amount recovered from the applicant on the basis of re-fixation vide Annexure-A/8.

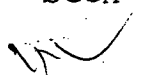
2. The applicant was appointed as Casual Works Mistry under the then DEE, Railway Electrification, Ranchi and was posted at Bokaro Steel City on 24.4.1984. He was, vide order dated 26.2.1987 Annexure-A, granted temporary status with effect from 19.4.1985. Subsequently it was decided that the Railway Electrification Department should be abolished and the employees, even of casual nature, be absorbed in the Eastern Railway against regular cadre. The applicant was released from that Department on 15.2.1987 as per Annexure-A/1. At the time of the release of the applicant, he was drawing Rs.1440/- as pay in the scale of Rs.1400-2300 and the C.P.O. (Respondent No.2) issued orders on 8.12.1988 that the last pay drawn by the project casual labour had to be taken into account while fixing the pay on absorption to regular cadre after screening. The pay of the applicant on absorption after necessary screening was fixed in the scale of Rs.1400-2300 at Rs.1425/- plus Rs.15/- as personal pay with effect from 16th February, 1987, which was the date of his joining the Eastern Railway. He also drew increments for the completed years of service vide DPO's office letter dated 28.3.1990, Annexure-A/3. The applicant



was absorbed as Fitter Grade-III, TRD (Traction Depot) in the scale of Rs.950-1500 and his pay was fixed vide Annexure-A/3 giving the protection of pay after getting the temporary status. Subsequently, the applicant, being medically unfit was posted as a Clerk Grade-II in the same scale of 950-1500 from August, 1991 and was promoted as Clerk Grade-I in scale of Rs.1200-2040 with effect from 15.5.1995 and he was still working in that post. The DPO, Eastern Railway, Dhanbad then issued letters dated 27.8.1994, 7.9.1993 and 24.1.1994 mentioning that the pay of the applicant had been wrongly fixed at the time of his absorption. The applicant filed reply to these letters. However, the DPO passed order, Annexure-A/8 refixing the pay at Rs.950/- with effect from 16.2.1987. He also directed that over-payment be calculated and recovered from the applicant. The applicant thereafter preferred appeal to Respondent No.3 but the same was rejected vide Annexures-A/10 and A/11. The respondents have started making recovery from the month of July, 1996.

3. The applicant has contended that as he was drawing Rs.1440/- as his pay at the time of his absorption and appointment as Fitter Grade-III, his pay was rightly fixed at Rs.1425/- plus Rs.15/- with effect from 16.2.1987. It is further asserted that the order by the authority concerned re-fixing his pay at Rs.950/- was totally wrong. In view of these facts the above mentioned reliefs have been sought.

4. On behalf of the respondents the facts about the appointment of the applicant as Casual Works Mistry and even grant of temporary status and his ultimate absorption as Mistry Grade-III has not been denied. It has also not been denied that at the time of the absorption, the applicant was drawing Rs.1440/- as his pay in the scale of 1400-2300. It is, however, contended that when he was absorbed in the Grade of Rs.950-1500, his pay should have been fixed at the bottom of the scale i.e. at Rs.950/- with



effect from 16.2.1987 and not at Rs.1440/-. It is asserted that the pay of the applicant was wrongly fixed at Rs.1440/- and that mistake has been corrected by the authority concerned by passing the impugned order.

5. I have heard the learned counsel for the parties and have perused the material on record. The area of dispute in this case is quite narrow as most of the facts are admitted. As will appear from the facts mentioned above, the applicant, at the time of his absorption as Fitter Grade-III was drawing Rs.1440/- in the scale of Rs.1400-2300. He was absorbed in the Grade of Rs.950-1500. The question to be considered is as to whether on his absorption, his pay was liable to be fixed at Rs.950/- as has been done by the competent authority vide Annexure-A/8 or it was rightly fixed at Rs.1440/- i.e. at the same stage on which the applicant was working at the time of his absorption.

6. On behalf of the applicant a reference has been made to the letter Annexure-A/2 dated 5.12.1988 by the Chief Personnel Officer and it has been argued that on the basis of this letter also, the pay drawn by the project casual labour has to be taken into account while fixing the pay on absorption to regular cadre after screening. The learned counsel for the respondents has, however, argued that this letter was with reference to the absorption of casual labourers as regular Class-IV staff in Loco Sheds of Dhanbad and so it is further argued that this letter cannot be of any help to the applicant. Similarly, the learned counsel for the applicant has also referred to another letter dated 14.6.76 Annexure-R/1 and has argued that this letter too related to the casual labourers who were absorbed in a regular Class I

post.



7. It is true that both these letters referred to the absorption of casual labourers as regular Class IV employees ^{and} do not directly refer to the absorption of casual labourers who have been given temporary status to Class III post. The contention by the learned counsel for the respondents is that when a casual labourer with a temporary status is absorbed as a Class III employee, his pay must be fixed at the lowest of the grade irrespective of the pay which he was drawing earlier as it must be held that he was a freshly or newly appointed Railway employee. In case, this argument is to be accepted then the same will apply to the absorption of casual labourers as Class IV employees and they should also be placed at the bottom of the grade applicable to them but, as referred to above, letters have been issued regarding the fixation of pay of such employees after taking into account the pay which they were drawing as casual labourers. It is true that a casual labourer with temporary status is not a Railway employee at par with temporary Railway employees, but he has got certain greater rights as compared to casual labourer who have not been granted temporary status. Rule 2001 of the Indian Railways Establishment Manual, Vol. II specially provides that the conditions applicable to permanent and temporary staff do not apply to casual labour. Under Rule 2002 it has been provided that the casual labour are not eligible for any entitlement and privileges other than those statutorily admissible under the various Acts such as Minimum Wage Acts, Workmen's Compensation Act, etc. or those specifically sanctioned by the Railway Board from time to time. As compared to the rights and privileges of casual labour, certain additional rights have been given to casual labour who have been given temporary status as provided under Rule 2005. In their case it is provided that they will be entitled to the benefit of D & A Rules and they will also be entitled to

me

the rights and benefits admissible to temporary Railway servants as laid down in Chapter XXIII of the Manual. However, it has also been provided that their services prior to absorption in temporary/permanent/regular cadre after the required selection/screening will not count for the purpose of seniority and the date of their regular appointment after screening/selection shall determine their seniority vis-a-vis other regular/temporary employees. It has also been provided that such employees shall be eligible to count only half the period of services rendered by them after attaining temporary status on completion of prescribed days of continuous employment and before regular absorption as qualifying service for the purpose of pensionary benefits. They are also entitled to carry forward the leave at their credit to new posts on absorption in regular service.

8. In view of these rights and privileges accorded to the casual labour who have been granted temporary status it may ~~not~~ be difficult to accept that when such persons are absorbed after screening they should be treated to have been appointed in Railway service for the first time and their pay should be fixed at the bottom of scale in which they are absorbed.

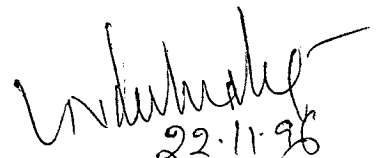
9. In the case of casual labour with temporary status who are absorbed in Class IV post, the learned counsel for the respondents states that in such a case the pay of such employees can be fixed after taking into consideration the pay which they were drawing at the time of their absorption as will appear from the letter at Annexure-A/2 but when such an employee is absorbed in Grade-III, such a benefit cannot be granted to him. It is difficult to accept such a contention. It will be anomalous to say that had the applicant been absorbed as Class IV employee, his pay would have been fixed at Rs.1440/- but when he was absorbed in

Class III, he was entitled to Rs.950/- only as his pay. There is no rationale in making such a classification. Moreover, if such a classification is made, it will be unfair and unjust and discriminatory and should not be accepted. It will be relevant to state that the learned counsel for the respondents has not produced any order or notification under which the pay of an employee having temporary status was to be fixed at the bottom of the scale at the time of his regular absorption ^{in grade III} in disregard of the pay which he was drawing as a casual labour with temporary status.

10. Considering the above discussion it is held that the pay of the applicant was rightly fixed at Rs.1440/- at the time of his absorption on 16.2.1987. The order by the authority concerned Annexure-A/8, refixing the pay of the applicant at Rs.950/- is not correct and was, therefore, liable to be quashed. The subsequent orders Annexure-A/10 and A/11 are also to be quashed.

11. This OA is accordingly allowed. The order dated 28.3.1996/24.4.1996 Annexure-A/8 as well as the orders dated 31.5.1996 Annexure-A/10 and dated 11.7.1996 (Annexure-A/11) are hereby quashed. The pay of the applicant shall be restored as was fixed vide Annexure-A/3. The amount, if any, recovered from the applicant on the basis of Annexure-A/8, shall be refunded to him.

12. No order as to costs.


22.11.96
(V.N. MEHROTRA)
VICE-CHAIRMAN