

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
[CIRCUIT BENCH AT RANCHI]
OA No. 267/2006**

Dated : 2.8. July, 2012

C O R A M

Hon'ble Mr. A.K.Jain, Member [Administrative]

Hon'ble Ms. Bidisha Banerjee, Member [Judicial]

1. Jai Kumari Devi wife of Manohar
2. Suresh, son of Siboo.
3. Basudeo son of Risal.
4. Sukhdeo son of Foudi.
5. Naresh son of Parmesher.
6. Lootan son of Dukhi.
7. Nawalak son of Nemraj.
8. Musahroo son of Banari.
9. Jalo son of Ajo.
10. Jagdish son of Meghoo.
11. Ramdhari son of Dhumal.

All the applicants are working as Gangman/Trackman under Section Engineer [P.Way] East Central Railway, Lakhisarai, P.O. And Police Station Lakhisarai, District – Lakhisarai.

By Advocate : Shri Gautam Saha

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Applicants.

vs.

1. The Union of India through the General Manager, East Central Railway, Hajipur, Vaishali.
2. Shri K.B.L. Mittal, Divisional Railway Manager, Danapur Division, East Central Railway, Danapur, Khagaul, Patna.
3. Senior Divisional Engineer [Co-ordination], Danapur Division, East Central Railway, Danapur, Khagaul, Patna.
4. Divisional Engineer [1], Danapur Division, East Central Railway, Danapur, Khagaul, Patna.
5. Shri Sudhir Kumar, Assistant Engineer, Danapur Division, East Central Railway, Nawada.
6. Section Engineer [P.Way], Danapur Division, East Central Railway, Lakhisarai.

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Respondents.

By Advocate : Shri S.K.Griyaghey, ASC

ORDER**Bidisha Banerjee, Member [Judicial] :-**

Aggrieved by a speaking order dated 09.08.2005 [Annexure-1], passed pursuant to the direction of this Court in OA No. 768/2000, eleven applicants have filed this OA seeking the following reliefs :

- [I] For quashing the order issued vide No.E/Court Cell/OA 768/2004 Danapur dated 10.08.2005 [Annexure-1].
- [II] For quashing the order dated 05.01.2001 issued vide No.E/14 Nawada dated 17.09.2001 [Annexure-2].
- [III] For quashing the alleged order contained in letter No. E.U./E.R.M.C./I.M.M./2000 dated 18.02.2000 of Respondent No.2, if any, after calling the same from the respondents.
- [iv] For quashing the alleged seniority list containing the seniority position of the applicants, if any, allegedly prepared on the basis of decasualisation of the applicants and similarly situated persons after calling the same from the respondents.
- [V] For quashing the establishment office order No.16 year 2001 issued vide No.E./14 Nawada dated 29.08.2001 so far as the case of the applicant No.3 is concerned, by which the applicant no.3 has been granted Time Bound Promotion with effect from 01.10.1999 [Annexure-A/3].
- [VI] For quashing the office order No.15 year 2001 dated 4.10.2001 issued vide No. Establishment/14/01 Nawada dated 15.09.2001 [Annexure-4].
- [VII] For direction upon the respondents to reinstate the applicants on their respective positions/financial positions, in the scale of Rs.2650-4000 on which they had been validly promoted, as per their entitlement prior to the issuance of the impugned order dated 05.10.2001.
- [VIII] For direction upon the respondents, to refund the entire amount, illegally, arbitrarily and malafidely deducted, from the salary of th applicants along with

18% interest apart from arrears of salary along with 18% interest.

[IX] For direction upon the respondents to produce all relevant records as specified in para 5.21 of this original application before this Hon'ble Tribunal for its perusal and consideration by this Hon'ble Tribunal in the interest of justice and fairplay.

[X] For direction upon the respondents to make payment of the cost of the case for compelling the applicants to approach this Hon'ble Tribunal once again.

2. The relevant extracts of the speaking order dated 09.08.2005 are quoted verbatim :

"..... That the seniority list which was prepared after taking into account the case of casual engagement i.e. w.e.f. 16.1.87 on the basis of which the benefit of restructuring was given to them was wrong in terms of IREM Vol. II revised edition 1990, Chapter -XX Rule 2005 [a] whereas it should have been prepared after taking into account the date of de-casualisation, when this fact came into the light the seniority list was got corrected as a result of which the compassionate applicants became senior to the applicant.

Accordingly, the order of reversion in favour of the applicants was issued and the monetary benefit already paid to them was recovered.

That the above issue was also discussed and resolved in the meeting of Railway Administration and representative of recognised Trade Union in which it has been decided that the benefit of restructuring should be given to the permanent employee as per Rly. Rules, as such the benefit which was given inadvertently to the Gangmen who were appointed on casual basis w.e.f. 16.1.87, date of de-casualisation 30.4.93 was recalled and the said benefit was given to Sri Dinesh Prasad Singh and Subash Prasad, who were appointed on compassionate ground on 13.8.92 and 17.6.92 respectively.

Thereafter, the request as claimed by the applicants is not tenable in view of Railway Rule.

Accordingly, the representation stands disposed of."

3. The ground of rejection is quite apparent. The issue is whether the restructuring benefits which were allowed to the applicants were wrongly taken away vide order dated 17.02.2001 [Annexure-2] and

Whether recovery was justified.

4. A bare perusal of Annexure-7 which is the service record of the applicant Manohar [who is substituted by his wife Jai Kumari Devi] manifests as follows :

“Appointed as CPC Gangaman in scale Rs. 775-12-955-EB-14-1025 vide Sr. DEN-DNR L.No.W/70/6 Pt. III dt. 6.9.87.

.....

De-casualized as spl. Gangman vide Sr. DEN[Cord] DNR Office order No. 24 year 1993 DRT No. W/249/P.Way/pt. 5 dt. 30.6.93 and transferred to Puri GHZ on de-casualisation.

Pay raised on annual increment from 1.1.94 to Rs. 859/-

Pay raised on annual increment from 1.1.95 to Rs. 871/-

Pay raised on annual increment from 1.1.96 to Rs. 885/-

Pay raised on annual increment from 1.1.97 to Rs. 859/-

Opted [up-graded in scale Rs. 800-1150 vide office order no.09 of 1996

DKT No. E/14 GYD dt. 01.12.96 Pay fixed Rs. 935 from 1.1.97.

Due to 5th PC pay fixed in revised scale 2650-60-3150-65-3540 vide Sr. DPO DBNR No. E/V/PC/Cell/97 dt. 24.10.97 from 1.1.96 pay as on 1.1.96 Rs. 2790/-

Annual increment on 1.1.97 Pay Rs. 2850/-

Up graded to scale Rs. 2650-65-3300-70-4000 from 1.1.97 vide AEN [2] GYA office order no. 09 year 1996 DKT No. E/14 E. Rly. Gaya dt. 01.12.96. from 1.1.97 and opted hence 2850/- -60-2910 Next stage 2975 on 1.1.97.

Annual increment on 1.1.98 Pay Rs. 3040/-

Annual increment on 1.1.99 Pay Rs. 3105/-

Annual increment on 1.1.2000 Pay Rs. 3170/-

Annual increment on 1.1.2001 Pay Rs. 3235/-

Annual increment on 1.1.2002 Pay Rs. 3300/-.”

5. It is not in dispute that the applicants were appointed as Contingent paid casual Gangman [CPC in short] between 1981-83 and de-casualized - and absorbed with effect from June, 1993.

6. Annexure-5 dated 24.9.95 manifests that the applicants who were directed to be regularized were referred to as “casual labour from dormant list.”

7. It is noticed from Annexure-6 series that they were sent for medical examination for appointment as Gangman on 5.7.87 onwards. The certificate was meant for to be “used when a candidate is medically examined for fitness for

appointment to a Railway].

8. Annexure-7 indicates at para 7 - "Education qualifications at the time of first appointment 6.1.1987" and at para 16 reference to appointment Letter No. and Date vide DRM/DNR's letter No. W/70/6/CL/Pt. III of 6.9.87". But that cannot mean that the applicants were regularly appointed w.e.f.16.01.87, as contended by the applicants.

9. It is noticed that on 8.5.2008 this Court directed the respondents to produce the following documents :

[i] Letter dated 06.09.1987 issued by the Senior AEN, Danapur appointing the applicant no.1 as CPC Gangman.

[ii] Order No. 9/96 which refers to DPO, Danapur letter No. EP/84/FPC/Restructuring dated 18.2.1993 and CPO, Eastern Railway, Calcutta letter No. E/Estt./P.C./Restructuring dated 5.2.1993 for placing 55% of the employees in higher pay scale.

[iii] Letter dated 18.2.2000 referred to DRM, Danapur.

But the documents are not supplied.

10. Be that as it may, it is amply clear from the annexures to the OA that the applicants were de-casualised and absorbed as Gangman in June, 1993. Restructuring benefits were available, as on 18.2.1993, when the applicants were not even borne in the regular cadre and as such not entitled for restructuring benefits.

11. However, they were wrongly granted the restructuring benefits which resulted in the grant pay scale of Rs. 2650-4000 with effect from when the error was detected they were served and recovery was ordered in 2001. As the applicants were not regular Gangmen as on the date of restructuring they cannot claim the benefits from that date, or demand refund of recovered amount, due to their reversion. Their reversion or recovery or the speaking order cannot be faulted with.

12. While the earlier OA was decided, it was observed :

"9. So far as the objection raised by the ld. counsel for the respondents with regard to limitation is concerned, we are of the considered opinion that deducting amount from the salary of the applicants is recurring course of action, therefore, the present OA is held to have been filed by the applicants within the period of limitation.


"10. Needless to say that we have not expressed any opinion on the merit of the case is concerned."


Since the applicants were not at fault, and no misrepresentation was made on their part to get the scale of Rs. 2650-4000, instead of Rs. 2610-3540, they have prayed for refund of recovered amount. The applicants have relied upon the judgments of Sahib Ram and Purushottam Lal.

13. With regard to the grant of benefit to the compassionate appointees as indicated in the speaking order, it has been submitted by the applicants that the said appointees are wards of casual labourers, who can only be granted appointment as casual labourers even on compassionate ground which definitely has some substance. Authorities may look into the matter. Since such persons are not impleaded, no adverse orders are passed against them.

14. On the question of refund of recovered amount, since the amounts were already recovered long back and no stay was obtained by the applicants at relevant time, and as such recovery was justified, the prayer fails.

15. The OA is dismissed with no order as to costs.


[Bidisha Banerjee]
Member [Judicial]
mps.


[A.K.Jain]
Member [Administrative]