

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH : PATNA**

Registration No. :- OA 691 of 2005

Date of Order :- 6th May 2011

C O R A M

HON'BLE MRS. JUSTICE REKHA KUMARI,MEMBER [J]
HON'BLE MR. A. K. JAIN,MEMBER [A]

Bishambhar Singh, Son of Late Mochan Singh, resident of Village- Barauni
Flag, P.O.- Barauni Deorahi, District-Begusarai, Ex-Mate under Dy. Chief
Engineer, B.G. (Con.), E.C. Railway, Hazipur.

..... Applicant.

By Advocate :- Shri M.P.Dixit.

Versus

1. The Union of India through the Chairman, Railway Board, Rail Bhawan,
New Delhi.
2. The G.M., E.C. Railway, Hazipur.
3. The chief Administrative Officer (Con.), E.C. Railway, Mahendrughat,
Patna.
4. The Deputy Chief Engineer, (Con.), E.C. Railway, Hazipur.
- 5.

..... Respondents.

By Advocate :- Shri Nirmal Kumar.

ORDER

A. K. JAIN, MEMBER [A] : This OA has been filed for quashing
and setting aside the order dated 11.10.2004 [Annexure A/2] with respect
to relief regarding granting of pay protection. The applicant has also sought
for a direction upon the respondents to protect his pay which he was getting
in Group 'C' post before his absorption/reversion in Group 'D' in view of



Annexure A/1, A/4, A/5 and A/7 and to pay arrears accordingly with interest at the rate of 18% per annum.

2 Heard the learned counsels for both the sides.


3 The applicant's case is that he was initially appointed as casual male in Group 'C' category on 20.01.1981. He was granted temporary status w.e.f. 01.01.1984 and subsequently granted skilled mate scale in 1996. While working in highly skilled mate scale, he was sent for medical examination but he was declared unfit for B-2 category and fit only in C-2 category. On that basis, the respondents issued an order on 29.05.1998 reverting the applicant on Group 'D' post of 'Chowkidar'. The applicant filed OA 714 of 1999 which was dismissed vide order dated 02.12.2003 with direction to the respondents as under [Annexure A/1] :

“However it is made clear and concerned respondents are hereby directed that if pay protection has not been so given to the applicant which was to be given, the same rather be given to the applicant as per the rules and as also so given to similarly situated persons in some of the cases referred to by the respondents side in connection with this matter”.

4 The order of the Tribunal was challenged by the respondents in a writ petition filed before the Hon'ble High Court o Patna. The said writ petition was disposed of by the Hon'ble Court vide order dated 04.08.2004 [Annexure A/3] with following observation :

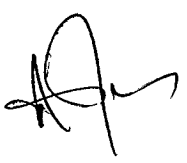
“The petitioners are aggrieved by the last part of the order dated 02.12.2003, whereby the Central Administrative Tribunal has directed to consider the pay protection of the respondent no. 1.

It appears from the said part of the order that the Tribunal has not issued any direction for giving pay protection to respondent no.1 and it has only directed to consider the question of grant of pay protection according to law”.



5 Thereafter the respondents issued the impugned order dated 11.10.2004 [Annexure A/2] under which claim of the applicant for pay protection was rejected. The said speaking order was passed in pursuance of the order of this Tribunal and Hon'ble High Court as it transpired from the order.

6 The learned counsel for the applicant submitted that the order of this Tribunal in OA 714 of 1999, which was challenged by the respondents in respect of pay protection, was not set aside, rather the Hon'ble High Court observed that the question of pay protection be considered according to law. The learned counsel for the applicant further submitted that in their submissions made in OA 714 of 1999, the respondents gave a categorical assurance of giving pay protection to the applicant and the same has been recorded in para 5 and 7 of the judgment. Thus the action of the respondents is against the principle of promissory estoppel which amounts to contempt of Court. Some similarly situated cases were also mentioned as noted in paragraph 5, 6 and 7 of the judgment passed in the OA which clearly show that persons working in Group 'C' and regularized in Group 'D' are liable to be given pay protection of Group 'C'. Furthermore, the Railway Board's Circular dated 09.01.2001 as contained in Annexure A/4 allows pay protection in such cases. Another example of a similar case of Aslam Khan of Western Railways also referred to in the judgment in OA 714 of 1999, was cited by the learned counsel for the applicant. The Full Bench judgment of CAT, Jaipur Bench in that matter is annexed as Annexure A/5. It was further contention of the learned counsel for the applicant that the applicant that the applicant was reverted in the year



1998 when he was an employee of N.E. Railway, Gorakhpur under the control of C.A.O. (Con.) upto 30.09.2002. Then became employee of E. C. Railway. Prior to setting-up of E.C. Railway, similar benefit was granted to one Ramashray Prasad, an ad-hoc mate, vide order dated 05.11.2001. A photo copy of order passed by C.A.O. (Con.), Gorakhpur in case of Ramashray Prasad has been annexed as Annexure A/7.

7 The applicant had earlier filed a Contempt Petition also which was disposed of on 15.09.2005 with liberty to take recourse against the order passed by the respondents in accordance with law (Annexure A/6).

8 In view of the submissions made, the learned counsel for the applicant argued that the impugned order is arbitrary, illegal, unconstitutional, discriminatory and even against the various decisions including order as contained in Annexure A/1 as also against Railway Board's Circular. He therefore prayed for allowing the OA.

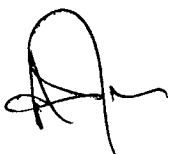
9 The respondents have submitted that the applicant was initially engaged as casual labour/casual mate on daily wage basis from 20.01.1981 and granted temporary status w.e.f. 01.01.1984 as senior skilled T.S. Mate on adhoc basis in scale of Rs. 800-1500. His engagement was short gap arrangement against emergent labour requirement. He was wrongly granted scale of highly skilled mate Rs. 1200-1800 on ad-hoc basis without being regularized in the feeder post of Khalasi in Group 'D' in the scale of Rs. 2550-3200. Orders were initially issued on 03.01.1998 regularizing the applicant along with other T.S. Employees in Group 'D' in the post of Khalasi subject to medical fitness in B-1 category. The applicant was sent for medical examination for B-1 category but he was found unfit. He was



found fit for C-2 medical category and accordingly he was absorbed against the Group 'D' post of Chowkidar in scale of Rs. 2610-3540 as per extent rule. The applicant was so absorbed and regularized in Group 'D' post as he was declared medically unfit even for the post of Khalasi, the feeder cadre of mate. Since the applicant was given wrong ad-hoc promotion as highly skilled mate in advance, without regularizing him in the feeder cadre in khalasi and that there is no provision/rule to give ad-hoc promotion without proper regularization in feeder grade/post, the applicant was not entitled to any benefit of ad-hoc promotion of mate in Group 'C' category.

10 It was further submitted by the learned counsel for the respondents that Railway filed CWJC No. 8853 of 2004 in Hon'ble Patna High Court against the direction passed this Tribunal in OA 714 of 2003 and the said W.P. was disposed of by the Hon'ble High Court on 04.08.2004 with observations. Accordingly, respondent authority, immediately with the approval of competent authority, passed speaking order dated 11.10.2004 [Annexure A/2]. The applicant again filed CCPA before this Tribunal in which, the Tribunal held that no contempt was committed by the respondents.

11 The learned counsel for the respondents further submitted that the Railway Boards Circular dated 09.11.2001 regarding pay protection in case regularization of employee in a lower pay scale as only for those staff who are regularized in feeder cadre to the higher scale. The learned counsel for respondents stated that the said circular is not applicable in case of the applicant as he was not regularized either as mate or in the feeder cadre of mate i.s. Khalasi. As such, pay protection in the scale of Rs. 4000-6000 was




not entitled to him. The learned counsel for respondents added that the judgment of the CAT, Full Bench, Jaipur [Annexure A/5] as cited by the applicant is also not applicable in the instant case as in the said judgment, the Hon'ble Full Bench held :-

“ A person directly engaged on Group 'C' post (Promotional) on casual basis and has been subsequently granted temporary status would not be entitled to be regularized on Group 'C' post directly but would be liable to be regularized in the feeder cadre in Group 'D' post only. His pay which he draw in the Group 'C' post, will however be protected”.

12 Thus, the issue of protection of pay would have been relevant only if the applicant was regularized in the feeder cadre of the mate. Since he was not found medically fit even for the feeder of mate i.e. khalasi so he could not be regularized in that post and was given alternative post of chowkidar. Thus, the question of pay protection does not arise. Similarly the case of an employee of N.E. Railway cited by the applicant [Annexure A/7] is also different from the case of the applicant for the same reason.

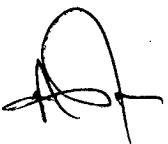
13 As regards the averment made by the learned counsel for the applicant that the respondents gave a commitment to grant pay protection as recorded in the order passed in OA 714 of 1999 and hence, the principle of promissory estoppel applies, the learned counsel for the respondents submitted that the respondents only assured to consider the matter as per law. Even the Hon'ble High Court in its order dated 04.08.2004 [Annexure A/3] clearly noted that there was no direction by the Tribunal to give pay protection and it had only directed to consider the question of grant of pay protection according to law. In view of the submissions made, the learned counsel for the respondents pleaded for dismissal of the OA.



14 We have perused the records and considered the rival submissions made by the parties.

15 At the out set, we note that it is clear from the order passed by the Tribunal in OA 714 of 1999 that the direction of the Tribunal was to give pay protection to the applicant as per rules and also in the light of such pay protection given to similarly situated persons in some of the cases referred to by the respondents side in connection with this matter. This clearly implies consideration by the respondents as to whether the stipulation in the order are met in the case of applicant or not. The Hon'ble Patna High Court in its order also observed that the pay protection question is to be considered according to law.

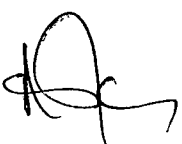
16 As to the issue of promissory estoppel raised by the learned counsel for the applicant, we note that in the order passed in OA 714 of 1999, in para 5, it is noted that "the respondents are ready to give the applicant in the background of the facts and circumstances of the case, the pay protection of Group 'C' post". In para 6, it is noted that "the respondents undertake as to give that protection to the applicant as per law and as per the decisions so given in the context by the competent authority". In para 7, it has been noted that "the learned counsel for the respondents, Mr. Gautam Bose, has undertaken as to give the applicant, if not given, the pay protection in this regard in the background of the facts and circumstances as was given in the other cases". We have considered these observations recorded in the order in the light of the orders passed in the OA as well as by the Hon'ble High Court. We are inclined to agree with the learned counsel for the respondents that the commitment given implies commitment



to consider the pay protection as per law/rules and in the light of similarly situated cases.


17 We also note that as per applicant own version, he was appointed as casual mate in Group 'C' in 1981 and was granted temporary status on 01.01.1984. we also note that the respondents have submitted that the applicant got temporary status as T.S. Mate on ad-hoc basis in scale of rs. 800-1500 and he was wrongly granted scale of highly skilled mate Rs. 1200-1800 (Revised Rs. 4000-8000) without being regularized in khalasi group 'D'. This has not been denied by the applicant by filing rejoinder, We also note that feeder post for mate is khalasi in Group 'D' category for which medical category B-1 is required. In the judgment dated 30.10.2000 of Full Bench, Jaipur in the matter of Aslam Khan Vs. U.O.I. & Others reported in 1997-2001 A.T. Full Bench Judgment page 157, the main issue under consideration was regularization in Group 'C' post directly. The Hon'ble Full Bench held that the applicant was not entitled to be regularized on Group 'C' post but would be liable to be regularized in feeder cadre in Group 'D' post only and that his pay which he drew in Group 'C' post would, however, be liable to be protected. This observation is therefore in the context if regularization is in the feeder post in Group 'D'. The case of applicant is different as he was not regularized in the feeder post of mate in Group 'D' namely khalasi as he was not found fit in appropriate medical category, instead he was regularized in alternative appointment of chowkidar.

18 We also note that applicant was initially engaged to work charge casual mate in 1981 and later he was granted temporary status as mate on 01.01.1984 in the scale of Rs. 800-1550 as admitted by the



respondents, though the respondents have stated that the same was on ad-hoc basis. Again, we note that for mate there is a scale of Rs. 3050-4590 as it clear from the order at Annexure A/7. Further, the scale of highly skilled mate is Rs. 1200-1800 (Rs. 4000-6000) was given to applicant on ad-hoc basis, though respondents have claimed that the same was given wrongly without being regularized in the feeder post of khalasi in Group 'D' for which the applicant was not found suitable. Considering the submissions made by the parties on this aspects, we are inclined to agree with the respondents that the ad-hoc promotion to the scale of highly skilled mate was wrongly given to the applicant especially when he was not een regularized in the feeder cadre of khalasi which is two scales below.


19 We further note that in the order dated 11.10.2004, passed by Dy CE/C/II SPJ, the ground for not giving pay protection has been indicated that ad-hoc promotion to mate does not entitled anybody for pay protection because ad-hoc promotion is given only on temporary basis. However, from the facts of the case, it is clear that the applicant was first engaged as casual labour/casual mate and then granted temporary status in 1984 which obviously entitled him to same benefits including the scale of mate. Even in the order passed in OA 714 of 1999 in para 3, it is noted that he was granted temporary status on 01.01.1984 with all benefits and privileges admissible to a regular employee. At that time, he was an employee of N.E. Railway. From the order passed in case of one Ramashray Singh dated 05.11.2001 as contained in Annexure A/7, we note that he was working on ad-hoc basis on a Group 'C' post of mate in the scale of Rs. 3050-4590 and on his regularization in Group 'D' post in the scale of Rs. 2550-3200. his pay



which he was drawing as Group 'C' employee at the time of regularization even as an ad-hoc employee was protected as per order of the CAT Allahabad Bench.

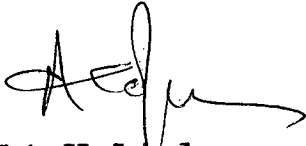
20 We also note that prima facie the circular of the Railway Board dated 09.11.2001 as contained in Annexure A/4 does not indicate that an employee who does not get absorbed in lower scale in the feeder cadre due to medical de-categorization and gets absorbed in another scale according to the medical category will not get the benefit under the order. However, ^{as} the earlier letter quoted in the said circular has not been produced before us, we are not in a position to express a definite view on this. In any case, the plea taken in the order that pay protection in case of ad-hoc appointment is not permissible does not appear to be convincing. Thus, in so far as granting the pay protection in the scale of mate to the applicant is concerned, while we are in agreement with the respondents that the pay protection in the scale of Rs. 4000-8000 is not admissible ~~as~~ on the ground that the said ad-hoc promotion was not permissible as per rules, we are of the view that the applicant has a case for consideration of pay protection in the lower scale of mate in which he worked in temporary status, particularly in view of the fact that another employee was granted such protection as is clear from Annexure A/7 though he was on ad-hoc mate.

20 In view of the foregoing discussion, we quashed the order dated 11.10.2004 passed by the Dy CE/C/11SPJ to the extent it rejects the granting of pay protection to the applicant in sub para 2 and remit the matter to respondent no.2 to consider granting of pay protection to the applicant in the scale of mate in which he was granted T.S. ^{And} And/or worked



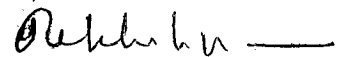
till the granting of the scale of highly skilled mate as per rules and keeping in view the observations made in this order.

21 The OA stands disposed of with the above direction. No costs.



[A. K. Jain]
Member (A)

pkf/



[Rekha Kumari]
Member (J)