

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 409/2002
T.A. No.

200

DATE OF DECISION

VC

Suprayan Petitioner

Mr. Nand Kishore Advocate for the Petitioner(s)

Versus

UOI and two others. Respondent

Mr. Tej Prakash Sharma Advocate for the Respondents(s)

CORAM:

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman.

The Hon'ble Mr. A.K. Bhandari, Administrative Member.

(A.K. Bhandari)
Administrative Member.

(G.L. Gupta)
Vice Chairman.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH JAIPUR

O.A. No. 409/2002

Date of decision 20.02.03

Suprayan, S/o Narayanan, Senior Gangman, Gang No. 41, aged about 56 years, working under FW-1/Section Engineer(P-Way) Western Railway, Sikar, residence of Gang Quarters at Sikar Station on Western Railway.

:Applicant.

VERSUS

1. Union of India through General Manager, Western Railway, Church Gate Mumbai.
2. Divisional Railway Manager, Western Railway, Jaipur (Raj)
3. Senior Section Engineer (P-Way) Western Railway Sikar,(Rajasthan)

:Respondents.

Mr. Nand Kishore : Counsel for the applicant.

Mr. Tej Prakash Sharma: Counsel for the respondents.

CORAM:

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman

The Hon'ble Mr. A.K. Bhandari, Administrative Member.

O R D E R

Per Mr. Justice G.L.Gupta:

The applicant was engaged as Mate on 06.11.1972 by PWI, Rajkot in



construction unit of Western Railway. He worked at various placed between 6.11.72 and 3.8.85. He was not in engagement between 24.02.78 and 10.09.78. He was granted temporary status as Mate with effect from 01.01.84 vide order Annex.A.1, and his pay was fixed at Rs.225/- in the scale of pay of Rs. 225-308. The said scale of pay was revised to Rs.950-1500 with effect from 01.01.86 and his pay was fixed at Rs.950/-. On 01.01.94, he was drawing Rs.1110/- as basic pay. The applicant was appointed as Gangman on regular basis in the scale of pay of Rs.775-1025, vide order Annex. A.2 dated 15.12.94. After getting stagnation increment as on 01.01.97, his pay was fixed at Rs.1039/-. Pursuant to the recommendations of the 5th Pay Commission, his pay was revised in the scale of pay of Rs.2610-3540 and his pay was fixed at Rs.3280/-

2. The grievance of the applicant is that vide order dated 15.12.94, (Annex. A.2) he was placed in the lower scale of pay and his pay was reduced, which could not be done. He made representations from 11.05.95 to 17.12.2001. When his grievance was not redressed, he filed this O.A. seeking directions to the respondents to protect his pay and to revise his pay in the pay scale of Rs.3050-4590. It is also prayed that the respondents be directed to consider his case for the post of Mate in Group 'C' as he is entitled to get promotion.

3. In the counter, the respondents have come out with the case that the applicant was initially engaged as Beldar but was granted temporary status as Mate with effect from 01.01.94 as he was working on the post of Substitute Mate (Avajee). It is averred that the applicant could not be appointed directly as Mate as it is the promotion post from Gangmen. It is further stated that the lien of the applicant was lying in the Office of the DRM, Jaipur, and he was rightly regularised in Group 'D' in the scale of pay of Rs.775-1025 (revised Rs.2610-3540) on the post of Gangman and his pay has been fixed in terms of the Railway Board's letters.



4. In the rejoinder, the applicant has reiterated the facts stated in the O.A.. It is also stated that the applicant's pay could not be reduced but it has been done by the respondents in the order dated 08.04.2003.

5. We have heard the learned counsel for the parties and perused the documents placed on record.

6. The contention of Mr. Nand Kishore, learned counsel for the applicant was that the temporary status was conferred on the applicant in his capacity as Mate and therefore his pay could not be reduced and he ought to have been kept in the pay scale of Rs.225-308, even after the order Annex. A.4 was issued. His further contention was that as matter of fact, the applicant ought to have been regularised on the post of Mate. He contended that in any case, the respondents have erred in issuing the order dated 08.04.2003, reducing the pay of the applicant after filing this O.A.

7. On the other hand, Mr. Sharma learned counsel for the respondents contended that as the applicant was working as Substitute Mate on the date of issue of the order Annex. A.1, he was conferred temporary status on the post of Mate. However, he pointed out, there is no direct recruitment on the post of Mate. and it is the promotional post from Gangmen. According to him, the applicant has been rightly appointed as Gangman vide order Annex. A.2. He also justified the order Annex. R.2 dated 08.04.2003, whereby the pay scale of the applicant has been reduced from 01.01.84.

8. We have given the matter our thoughtful consideration. It is seen that the applicant has called in question the order Annex. A.2 issued on 15.12.94, by filing this O.A. on 16.09.2003. Obviously, this O.A has not been filed within the prescribed period of limitation. Therefore, we would have dismissed this O.A on the sole ground of limitation. However, in view of developments that have taken place during the pendency of the O.A. it

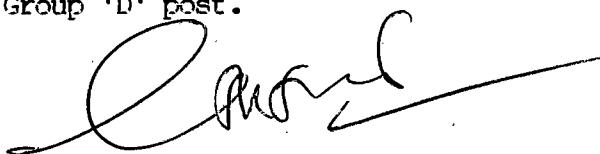


has become necessary for us to pass appropriate order.

9. After filing this O.A, the respondents have issued the pay fixation order Annex. R.2 dated 08.04.2003. By the said order, the pay of the applicant has been reduced to Rs.300/- in the scale of pay of Rs.220-250 with effect from 01.01.84 and from 01.01.86 his pay has been revised in the scale of pay of Rs.775-1025/-. Recovery is bound to be made from the applicant on the basis of this order. This order certainly has given a fresh cause of action to the applicant.

10. It is not disputed that the post of Mate is a promotional post and there is no direct recruitment to the post of Mate. It is not disputed that the applicant was working as Substitute Mate on the project when the order Annex. A.1 was issued in December 1984. Since he was working as Substitute Mate, temporary status was conferred on him in that capacity and his pay was fixed in the scale of pay of Rs.225-308. However, this order did not confer right on the applicant to continue in the same pay scale. The applicant was initially engaged as Beldar and his lien was kept in the Jaipur Division. The respondents were therefore perfectly justified in issuing the Order Annex. A.3 on 15.12.91, regularising the services of the applicant as Gangman in the pay scale of Rs.775-1025.

11. The case of Aslam Khan vs. Union of India and others [1997-2001 FB cases ATJ-157] cited by the learned counsel for the applicant did not state the principle that once an employee is conferred temporary status while working on the higher post, he cannot be regularised in the lower scale. In the case of Aslam Khan (*supra*) , it has been clearly laid down that a daily wager or Casual worker against a particular post who acquires a temporary status having worked against the said post for a specified number of days does not acquire a right to be regularised against the said post ; he can only be considered for regularisation in accordance with rules i.e. he can be considered for regularisation only to Group 'D' post.

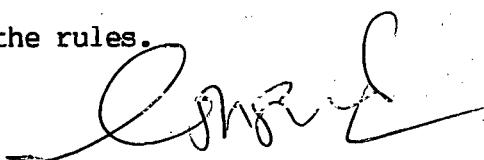


11.1 In view of the legal position stated in the case of Aslam Khan (supra) , it has to be held that the respondents had not erred when the applicant was regularised in group 'D' post as Gangman in the scale of pay of Rs.775-1025.

12. In the case of Kallu and others vs. Union of India and others [2000 (3) Western Law Cases (Raj) 8] relied on by Shri Nand Kishore, it has been clearly held that a person cannot claim regularisation merely on the basis of long working on the post on which he had not been regularly appointed. That being so, it has to be held that the respondents had not erred when the pay scale of the applicant was changed from Rs.950-1500 to Rs.775-1025.

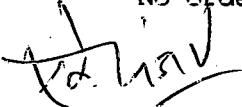
13. However, the respondents, after filing the O.A have issued Annex. R.2 whereby the pay scale of the applicant has been reduced with effect from 01.01.84. This order is wholly illegal, because the pay scale of the applicant could not be changed from 01.01.84. He was working on the higher post of Mate during that period. The order is therefore liable to be quashed.

14. Now the point to be considered is whether the pay of the applicant was required to be protected. It has been held in the case of Aslam Khan (supra) that the pay of the incumbent which he was drawing on the higher post should be protected. Keeping in view the principle laid down by the Full Bench in Aslam Khan's case , the pay of the applicant i.e. Rs.1110/- could not be reduced pursuant to the order Annex. A.2. At that time the applicant was drawing more than the maximum of the pay scale of Rs.775-1025. The proper course for the respondents was to keep the difference i.e. (Rs.1110-Rs.1025 = Rs.85) as the personal pay of the applicant, which could be adjusted in future increments in accordance with the rules.



15. Consequently, the order Annex. R.2 filed with the reply is hereby quashed. The respondents are directed to refix the pay of the applicant as on 15.12.94 keeping in view the observations made above. The pay of the applicant may be revised in the corresponding scale of the 5th Pay Commission. If any amount is found to be payable to the applicant due to refixation it should be paid within a period of two months from the date of receipt of a copy of this order.

16. No order as to costs.


(A.K. Bhandari)

Administrative Member.


(G.L. Gupta)

Vice Chairman.

jsv.