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CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH
JABALPUR

Original Application No. 422 of 2002

Jabalpur, this the 19th day of July, 2006

Hon'ble Dr. G.C. Srivastava, Vice Chairman
Hon'ble Ms. Sadhna Srivastava, Judicial Member

Shri Ashok Kumar Saxena,
S/o. Shri R.R. Saxena,
Aged about 43 years,
R/o. F-100-A, 3 Bungalow,
Railway Colony,
Itarsi (MP).

..... Applicant

(By Advocate – Smt. S. Menon)

VERSUS

1. Union of India, through
The General Manager,
Central Railway,
CST, Mumbai.

2. Divisional Railway Manager,
Central Railway,
Habibganj, Bhopal.

3. Sr. Divisional Electrical
Engineer, TRS Shed, Itarsi.

..... Respondents

(By Advocate – Shri S.P. Sinha)

ORDER

By Dr. G.C. Srivastava, Vice Chairman –

This case has travelled back to the Tribunal as per order dated 8.9.2005 of the Hon'ble High Court of Madhya Pradesh in Writ Petition No. 5237/2002, remitting the case to us for recording a finding whether the applicant belonged to an ex-cadre post.

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2. The facts in brief are that the applicant Ashok Kumar Saxena was initially appointed as Trained Apprentice (EL) in the scale of Rs. 550-750/- and was posted in the Railway Electrification Project on 10.1.1984 after having been selected through the Railway Service Commission, Bombay. He got two adhoc promotions in the Railway Electrification Project, first as Traction Foreman (pre-revised scale Rs. 700-900/- revised to Rs. 2000-3200/-) on 16th May, 1986 and thereafter as officiating Chief Traction Foreman (scale Rs. 2375-3500/-) on 30th May, 1989. These promotions were given within the Railway Electrification Project. Subsequently, he got regular promotion in the open line as Foreman-B (scale Rs. 2000-3200) with effect from 1.3.1993. The applicant came to the open line on 23rd June, 1994 on transfer to TRS Department of Bhopal Division as TFO in the scale of Rs. 2000-3200/-. On coming to the open line, the pay of the applicant was fixed in the scale of Rs. 2000-3200/- at the basic pay of Rs. 2525/- (vide annexure A-10) on the basis of the last pay drawn by him in the Railway Electrification Project as ~~Gen~~^{Gen} Traction Foreman. Subsequently, he was promoted in the open line as CTFO in the scale of Rs. 2375-3500/- (revised to Rs. 7450-11500/-) on a regular basis with effect from 11.12.1996 and his pay was fixed at Rs. 8350/-.

3. On 21.11.2001 an order was issued re-fixing the pay of the applicant (vide annexure A-14) by which his basic pay as on 23.6.1994 was reduced from Rs. 2525/- to Rs. 2180/- (and consequently from Rs. 8350/- to Rs. 7450/- as on 11.12.1996) on the ground that it was wrongly fixed earlier on the basis of the actual pay drawn in the Railway Electrification Project as officiating ~~Gen~~^{Gen} Traction Foreman instead of taking the presumptive pay as on this day if he would have been on the cadre post in the open line. The applicant aggrieved by this re-fixation of pay submitted a representation to the competent authority in his department on 1.12.2001 and at the same time filed OA No. 816/2001 in this Tribunal for quashing the order dated

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21.11.2001 (annexure A-14) by which his pay was re-fixed. This OA was disposed of by order dated 21.12.2001 directing the applicant to file a fresh representation to the competent authority, who was required to dispose of the representation within two months by a speaking order. In compliance of this order, the fresh representation filed by the applicant was disposed of by the competent authority in his department. The competent authority rejected the representation and ordered for recovery of the excess payment besides reducing the basic pay. The applicant filed OA No. 422/2002 against this order of the department (annexure A-21). The Tribunal, vide its order dated 5th August, 2002, allowed the application partly by ordering that the excess amount cannot be recovered in view of the apex court's decision in the case of Shyam Babu Verma & Ors. Vs. Union of India & Ors. (1994 (27) ATC 121). The Tribunal however, did not interfere with the re-fixation of pay on the basis of the presumptive pay. This made the applicant file Writ Petition No. 5237/2002 in the Madhya Pradesh High Court, which, while confirming the directions of the Tribunal in respect of recovery of the excess payment, observed, in its order dated 8.9.2005, that the Tribunal has not given any finding on the issue that the re-fixation of pay was done on the ground that the applicant, while posted in the Railway Electrification Project was holding^d an ex-cadre post. Accordingly, the case was remitted to the Tribunal "for recording a finding with regard to the future prospect whether the petitioner belongs to ex-cadre post". Therefore, the short question that is to be decided by this Tribunal is whether the posting of the applicant in the Railway Electrification Project was on an ex-cadre post. The implication is that if it was an ex cadre post, reversion to the open line would not give any benefit to the applicant for the higher pay that he has been drawing or the higher post that he has been holding in the Railway Electrification Project and he has to be treated at par with other employees of his seniority in the matter of fixation of pay on his coming to the open line, as per FR22(IV)/rule 1313(IV).

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4. The case was argued extensively by the counsel of both the sides. A plethora of circulars and instructions issued by the Railways were also produced before us for perusal.

5. The main argument of the applicant is that on his initial appointment, he was posted directly to the Railway Electrification Project and was never informed that he was holding an ex-cadre post. He should, therefore, be entitled to protection of pay and the rule applicable to ex-cadre posts should not be relevant to his case.

6. Opposing this contention, the learned counsel for the respondents argued that the Railway Electrification Project does not have any cadre of its own and therefore anybody assigned to this project has to be treated as being on an ex cadre post. In support of his argument, the learned counsel for the respondents drew our attention to RBE No. 115 of 2003 (Annexure AR-I) which was issued following the judgment of the Supreme Court dated 13.1.2003 in Writ Petition (Civil) No. 548/2000 (Inderpal Yadav & Ors. Vs. Union of India & Ors.). This case relates to casual employees who were given temporary status subsequently and were required to work in different projects or in the open line. The Court laid down certain principles on the basis of which their seniority and pay have to be determined on transfer from one project to another or on being posted to the open line. Consequent to the afore-mentioned ruling of the Apex Court, RBE No. 115 of 2003 was issued by the Railway authorities laying down the terms and conditions by which the staff working against work-charged posts are to be governed. We are of the view that this circular is not relevant to the present case for two reasons. Firstly, it deals with work-charged staff and secondly even if it were applicable to regular staff also, it would not have been relevant to the case of the applicant who was posted in the Railway Electrification Project almost 20 years before the issue of this circular. The learned counsel also drew our attention to Railway Board's circular No. E(NG)I7OSR6/43, dated 13th March, 1972 which deals with the "seniority of staff in construction and

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survey department vis-à-vis in regular Department – Civil Engineering”. This circular lays down the principle on which the seniority of the staff in the survey and construction department is to be fixed on its merger with the open line cadre. This circular also, we find, is not relevant to the instant case, as it nowhere mentions about Railway Electrification Project and there has not been merger of the project with the open line.

7. Two circulars which deal specifically with Railway Electrification Projects have also been brought to our notice. One is E(NG)II-80/RC1/81, dated 25.8.1981 which deals extensively with “man power mobilization for Railway Electrification projects”. The other circular is No. E/O/29, dated 30.9.1988 dealing with “seniority and adhoc promotion of staff working in Railway Electrification Organisation”. The first circular lays down two very relevant principles, viz. (i) ad hoc promotions within Railway Electrification project will not confer any benefits of seniority and (ii) the staff directly reporting to Railway Electrification project should be treated as on transfer to Railway Electrification project. The second circular permits ad hoc promotions within the Railway Electrification projects.

8. None of the two circulars^{ln} mentioned above, anywhere state that the posting of directly recruited staff to Railway Electrification project will be treated as posting against an ex-cadre post. Instead, the circulars mentioned above clearly state that staff reporting directly to a Railway Electrification Project will be treated as on transfer to Railway Electrification Project and they are entitled to get adhoc promotions within the project, but these promotions will not confer any benefit as regards their seniority in the open line. We have, therefore, no doubt that since the posting of the applicant in the Railway Electrification Project was done directly on selection, it cannot be treated as posting against an ex cadre post. It has to be treated as posting on transfer for the purpose of fixation of pay on his reversion to the open line. While he will not be entitled to any benefit in respect of seniority

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because of his ad hoc promotions in the Railway Electrification Project, he will certainly be, on reversion to the open line, entitled to get the benefit of FR 22(I)/rule 1313(I) for higher posts held on ad hoc basis in the Railway Electrification Project in the light of the apex court's ruling in R. Swaminathan's case [UOI and another Vs. R. Swaminathan and others, (1997) 7 SCC 690]. The fixation of pay on reversion to the open line, on 23.6.1994 as well as on regular promotion therein, therefore, has to be done in accordance with the provisions of FR22(I)/rule 1313(I).

9. In view of the discussion above, we hold that the applicant's posting in Railway Electrification Project directly after selection is to be treated as transfer and not as posting on ex-cadre post and he is entitled to pay fixation in accordance with the provisions of FR22(I)/rule 1313(I) on reversion to and regular promotions in the open line. The matter is disposed of accordingly. There shall be no order as to costs.

Sadhna Srivastava
(Ms. Sadhna Srivastava)
Judicial Member

G.C. Srivastava
(Dr. G.C. Srivastava)
Vice Chairman

"SA"

पृष्ठंकन सं ओ/ग्या..... जबलपुर, दि.....
पतिलिपि अद्योषित:-
(1) सचिव, उच्च न्यायालय बार एसोसिएशन, जबलपुर
(2) आवेदक श्री/श्रीमती/कु..... सं काउंसल S, nreva L, AD, JBP
(3) प्रत्यर्थी श्री/श्रीमती/कु..... सं काउंसल S.P. Singh AD, JBP
(4) ग्रंथपाल, के.प्र.अ., जबलपुर न्यायपीठ
रसूचना एवं आवश्यक कार्यवाही हेतु
उप-रजिस्ट्रार

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