

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 700/2002

Jabalpur, this the 4<sup>th</sup> day of February, 2004

Hon'ble Shri M.P. Singh, Vice Chairman  
Hon'ble Shri G. Shanthappa, Judicial Member

Kedar Nath Garg,  
s/o Sh. Shanker Prasad Garg,  
Junior Engineer-II (Mech.)  
Central Railway,  
R/o Jain Colony, Naya Gaon,  
New Katni (MP).

...Applicant

(By Advocate: Shri L.S.Rajput)

-versus-

Union of India through

1. The General Manager,  
Central Railway,  
Mumbai-CST (Maharashtra).
2. The Divisional Railway Manager,  
Central Railway, Jabalpur (MP).
3. The Divisional Railway Manager,  
Central Railway, Bhusawal,  
(Maharashtra).

...Respondents

(By Advocate: Shri M.N. Banerjee)

O R D E R

By Shri G. Shanthappa, Judicial Member -

The above O.A. is filed seeking relief for direction to the respondents not to change the fixation of pay of the applicant, to the disadvantage of the applicant, holding that the present fixation of pay of the applicant as J.E.-II(Mech.) is proper and correct and further relief for direction to the respondents not to make any recovery from the pay towards alleged over payment and quash the impugned order dated 11.10.2002 (Annexure A-1) including letters of respondents no.3 being illegal and void.



2. The brief facts of the case are that the applicant was appointed by the respondents through the Railway Recruitment Board Allahabad on 16.03.1991 as Assistant Driver in Grade Rs, 950-1500(RPS) in Allahabad Division. The applicant came to Bhusawal Division on 1.1.1995 by taking mutual transfer with one Shri Satish Babu Verma in the same grade & capacity.

3. The first respondent notified a General Department Competitive Examination (GDCE for short) to fill up 25% vacancies of Pro-ASMS Grade Rs. 1200-2040 (RPS)/Grade Rs.4500-7000(RSRP) on 5.11.1996. The applicant, being eligible to compete, also applied for the said post. He was successful in the competition and was finally selected for the post of Asstt. Station Master Grade Rs. 4500-7000 (RSRP) on 26.5.1997.

4. In the meantime the applicant was promoted as Goods Driver Grade Rs. 1350-2200/Grade Rs. 5000-8000(RSRP) on 14th July, 1997 vide respondents' order dated 14.7.1997 (Annexure A-2). The name of the applicant is at serial no. 17 in the said order. After successful completion of A.C. conversion course from zonal Training College, the applicant was posted as Goods Driver and his pay was fixed at the minimum of Grade i.e. at Rs. 5000/- in the scale of Rs. 5000-8000 (RSRP). The applicant was directed to attend the promotion course of Pro-ASMS to be held in zonal Training School, Bhusawal from 2.7.1998 to 17.10.1998 including repeat course No. 136 from 18.9.1998 to 17.10.1998. The applicant was declared passed in the Pro-ASM's course and posted as Assistant Station Master on a working post vide their letter dated 15.12.1998. The applicant resumed his duties on 29.12.1998.

5. Before joining as ASM, the applicant had earned one increment as Driver in July, 1998 and his basic pay was raised to Rs. 5150/- when the applicant joined as ASM. The post of Driver belongs to running category and as per existing rules when a running staff is put to work on any stationary post like ASM, his pay is fixed by adding 30% of pay as an element of

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mileage in the substantive pay as per Rule 924(1)(d) of I.R.E.M. Vol.I, 1989. Accordingly, the pay of the applicant was fixed at Rs. 6625/- plus Rs. 70/- as personal pay w.e.f. 29.12.1998. The order of pay fixation was also passed by respondent no. 3 on 21.1.1999 vide Annexure A-6.

6. Respondent no. 1 has also issued notification to fill up 50% of direct recruitment vacancies in group 'C' technical categories in Grade Rs. 5000-8000(RSRP) by holding GDCE in March, 1999. The applicant also applied for the same and he was selected for the post of Apprentice Mechanic Grade Rs. 5000-8000(RSRP). The applicant was relieved from the post of ASM on 14.5.1999 and he was directed to attend inservice training and after qualifying in the said training he was posted as Junior Engineer-II(Mech.) in Grade Rs. 5000-8000(RSRP) in Diesel Shed at New Katni Jn. vide their order dated 9.11.2000. At the time of joining as J.E.-II(Mech.), the applicant was drawing Rs. 6625/- as basic pay plus Rs. 70/- as personal pay as ASM. On resuming as Apprentice J.E.-II (Mech,) on 18.5.1999, applicant's basic pay was fixed and progressed as under in Grade Rs. 5000-8000(RSRP):

i)	18.05.1999	-	Rs. 6950-00
ii)	01.05.2000	-	Rs. 7100.00
iii)	01.05.2001	-	Rs. 7250.00
iv)	01.05.2002	-	Rs. 7400.00

Thus the applicant is drawing his pay correctly at the rate or Rs. 7400/- till the date of filing the present O.A.

7. All of a sudden, without any prior notice and without any reason, the respondent no. 2 issued an order dated 11.10.02 vide Annexure A-1, giving reference of two letters of respondent no. 3 vide which respondents have ordered to reduce the basic pay of the applicant from Rs. 7400/- to Rs. 5450/- and also ordered to recover a huge amount of Rs. 1,21,182/- towards alleged over payment, which action of the respondents is illegal, arbitrary and against the principles of natural justice.



8. The applicant received the impugned order on 18.10.2002 and submitted his representation to respondent no. 2 through proper channel. The said representation was rejected with an observation that there is no scope for ~~entertaining~~ <sup>the</sup> the said representation.

9. The applicant challenged the said impugned order and made his grounds by citing the following judgements pronounced by various courts/Tribunals,

1. 1993(23)ATC 902 - Swapan Kumar Saha vs. UOI & Ors.
2. 1997(3)SLJ 36(CAT-New Delhi) Hari Singh & Ors. vs. Union of India & Ors.
3. 1998(1) SLJ 21 (CAT-New Delhi) - Sardar Gulzar vs. Union of India & Ors.
4. 2003(1)(CAT) 382 (CAT-New Delhi) - A.K.Aggarwal vs. Union of India & Ors.
5. 2002(3)130 (CAT-Bangalore) - G.Mahendra vs. The Airforce Central Accounts and Anr.

10. Per contra, the respondents have filed their reply denying the averments made in the original Application. The respondents have admitted that the applicant was working as Goods Driver in the grade of Rs. 5000-8000 (RSRP) and was drawing pay of Rs. 5150/- w.e.f. 1.7.1998 and was selected for the post of ASM through GDCE at his own request. His pay was wrongly fixed by DRM(P) BSL in terms of Railway Board's letter dated 24.2.1995 and the order of pay fixation dated 21.1.1999 issued by the DRM(P) BSL is also wrong. In terms of the Railway Board's letter dated 20.8.1999, it is clarified that in case of an employee holding a higher grade post in regular basis and has completed a minimum period of 24 months in the higher post and seeks transfer on his own request to a lower post, his fixation of pay is to be protected. Since employee has completed only 1 year 5 months and 13 days (from 15.7.1997 to 28.12.1998), the applicant is not eligible for protection of fixation of pay. The respondents have supported their action under the Railway Board's letter dated 18.7.2002 A.C.S. No. 19 issued vide Railway Board's letter of even number dated 24.2.1995 be deleted, which is annexed as Annexure R-3.

11. The contention of the respondents is that the case of the applicant cannot be accepted on the ground that one Smt. Rajni Garg had submitted a representation dated 24.6.2002 for cancellation of over payment of ~~his~~ <sup>her</sup> husband and further that Shri K.N. Garg has been advised through SSE(Loco) NKJ vide his letter dated 11.10.2002 with detail and recovery towards over payment of Rs. 1,21,182/- has been acknowledged on 18.10.2002. The applicant has stated that there was no prior notice to him the said contention has been denied by the respondents. Respondents contended that the applicant was fully aware of the wrong fixation of pay and, moreover, he has not exhausted all the remedies available to him to challenge the impugned order.

12. The respondents have taken the main contention vide Annexure R-1 dated 24.2.1995, in exercise of powers conferred under Article 309 of the Constitution, the President has issued directions that sub-para (iii) may be inserted below para sub-para (a)(ii) under para 604 of IREM Vol.I (Edition 1989). All the matters covered under the said para will continue to apply in future. The relevant portion, which is applicable to the present case, is extracted as under:-

"In all matters, not specifically covered under these rules, Ministry of Railway's Orders/ President's decisions issued from time to time as contained under erstwhile para 604 of IREM (1989 Edition) will continue to apply."

13. Subsequent to filing the reply, the applicant has filed his rejoinder. In the said rejoinder, the applicant has not clarified much to the averments made in the reply. He has, however, referred to some of the judgements of the Tribunal in support of his relief as prayed in the O.A.

Alongwith the M.A. for taking additional documents on record, the applicant has filed an order dated 2.7.2002 regarding pay fixation of Shri K.N.Garg, JE-II, DSL Shed, NKJ, Ex.ASM BDI on BSL Division in which the pay fixation of Shri Garg has been made at Rs. 4500/- from 29.12.1998 as ASM in Grade Rs. 4500-7000(RSRP) as concured by Sr. D.A.O. BSL and as such the overpayment involved during the period from 29.12.1998 to the date he joined duty, may be recovered with an advice to him.

14. The respondents have filed reply to the rejoinder and have contended that the applicant was made aware of the alleged recovery before passing the impugned order of recovery. They have produced Annexure R-5 in ~~token of~~ <sup>which for</sup> having received the intimation by the applicant. It is further contended that in terms of Railway Board's letter dated 20.08.1999 wherein it is clarified that in case of an employee holding higher grade in regular basis and has completed minimum period of 24 months in higher grade post and seeks transfer on his own request to a lower post, fixation of pay is to be protected. Since the applicant has completed only 1 year, 5 months and 13 days, his pay cannot be protected. As such, an amount of Rs. 1,21,182/- towards overpayment is liable to be recovered from the applicant in accordance with the rules.

15. We have heard the learned counsel for both the parties and have carefully gone through the pleadings and submissions made by the counsel on either side.

16. The admitted facts are that the applicant was working as Goods Driver in the grade of Rs. 5000-8000 and was drawing the basic pay of Rs. 5150/- w.e.f. 1.7.1998 when he was selected for the post of ASM through GDCE at his own request in Grade 4500-7000. The applicant is disputing that there was no opportunity to him while fixation of pay and according to the wrong fixation the respondents have initiated the proceedings for recovery of Rs. 1,21,182/-.

17. The applicant has stated that he joined as J.E.II (Mech.) and was drawing Rs. 6625/- as basic pay plus Rs.70/- as personal pay as ASM. On resuming as Apprentice J.E.II (Mech.) on 18.5.1999, the applicant's pay was fixed at Rs.6950/- as on 18.5.1999, at Rs. 7100/- as on 1.5.2000, at Rs. 7250/- as on 1.5.2001 and at Rs. 7400/- as on 1.5.2002 and the applicant was drawing his pay at the rate of Rs. 7400/- till the date of filing of the present application, while passing the impugned order dated 11.10.2002 (Annexure A-1), admittedly the respondents had not issued the notice to the applicant which violates the principles of natural justice.

18. The applicant has relied on the rule position i.e. Para 604 of IREM Vol.I (1989 Edition) which reads as under:-

"Subject: Addition to Para 604 of IREM Vol.I (1989 Edition).

In exercise of the powers conferred by proviso to Article 309 of the Constitution, the President is pleased to direct that sub-para (iii) may be inserted below para sub-para (a)(ii) under para 604 of Indian Railway Establishment Manual Vol.I (Edition 1989) as in the advance copy of correction slip No. 19, sent herewith.

In all matters, not specifically covered under these rules, Ministry of Railway's Orders/President's decisions issued from time to time as contained under erstwhile para 604 of IREM (1989 Edition) will continue to apply.

These rules shall come into force from the date of issue.

Advance Correction Slip No. 19.

The following may be inserted as sub-para (a)(iii) in para 604 of IREM (1989 Edition) below sub-para (a)(ii).

"When a Government servant, holding the higher post substantively on regular basis seeks transfer from that higher post to a lower post at his own request and the pay drawn in such higher post is less than or equal to the maximum of the scale of pay of the lower post, then the pay drawn in such higher post will be protected....."

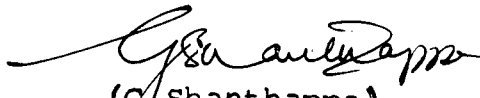



19. The case of the respondents is that the applicant was well aware of the wrong fixation of his pay and he is now trying to take the benefit of the wrong order. According to Para 604 of IREM(1989 Edition), the applicant is not entitled to the relief as prayed for in the O.A.

20. The Principal Bench of this Tribunal has passed an order in OA No. 965/2001 on 7.3.2002 in the case of A.K. Agarwal Vs. Union of India & Ors., reported in 2003(1)<sup>SLJ</sup> (CAT) 382, quashing the order of recovery of overpayment. while deciding the said case, the Tribunal has also relied on the judgement of the Hon'ble Supreme Court in the case of V.Ganga Ram Vs. Regional Joint Director & Ors., reported in (1996) 6 SCC 139; Sahib Ram Vs. State of Haryana & Ors., reported in (1995) SCC(L&S) 248 and in the case of R.B. Saxena Vs. Union of India & Ors., 1996(2) SLJ 142.

21. The present case of the applicant is squarely covered by the judgment of the Principal Bench of this Tribunal, referred to above. Accordingly, the action/procedure of the respondents while passing the impugned order (Annexure-A-1) is illegal and the same is liable to be quashed, as there is no mistake or misrepresentation on the part of the applicant.

22. In view of the above discussion and following the above decisions the impugned order dated 11.10.2002 (Annexure-A-1) is quashed only to the extent of recovery of Rs. 1,21,182. Accordingly, the O.A is allowed in part with no order as to costs.

  
(G. Shanthappa)  
Judicial Member

  
(M.P. Singh)  
Vice Chairman