

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No.124 of 1998

Jabalpur, this the 17th day of February, 2003.

Hon'ble Mr. Justice N.N. Singh- Vice Chairman  
Hon'ble Mr. R.K. Upadhyaya- Member (Admnv.)

Anil Shrivastava S/o Shri H.R. Shrivastava,  
aged 30 years, employed as Temporary  
Chowkidar under Deputy Chief Signal  
and Telecom Engineer (Construction),  
S.E. Railway, Bilaspur (MP), resident  
of Badi Koni, Bilaspur (MP)

-APPLICANT

(By Advocate- Mr. L.S. Rajput)

Versus

1. Union of India represented through  
the General Manager, S.E. Railway,  
Garden Reach, Calcutta-43.
2. Deputy Chief Signal and Telecom Engineer  
(Construction), S.E. Railway, Bilaspur-  
R.S. (MP)
3. Deputy Financial Advisor and Chief  
Accounts Officer (Construction), S.E.  
Railway, Bilaspur-RS (M.P.)

-RESPONDENTS

(By Advocate- Mr. M.N. Banerjee)

O R D E R

By R.K. Upadhyaya, Member (Admnv.):

By this application, the applicant has sought quashing of Annexure A-6, Annexure A-8 and Annexure A-10, and has also sought a direction to pay the arrears of protected pay from 27.12.1989. By Annexure A-6 dated 29.5.1995, Dy.FA & CAO (Con), Bilaspur has stated that the authority under which Rs.183/- has been granted as special pay for pay protection to medically unfit person. He intimated to him that excess payment w.e.f. 27.12.89 be recovered. Annexure A-8 dated 18.7.1995 is another letter from Dy.FA & CAO (Con) requesting urgent action regarding correct pay fixation of the applicant. Annexure A-10 dated 3.2.1997 issued from the office of Dy.FA&CAO

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*(Signature)*

(Con), Bilaspur states that fixation of pay of the applicant is not entitled to any privileges in terms of Para 1313 of IREM (1989 Edition).

2. It is stated by the applicant that he was appointed as Casual Diesel Mechanic on 1.9.1987 as per letter dated 27.8.1987 (Annexure A-1). He was also granted temporary status w.e.f. 1.9.1988 in the scale of Rs.950-1500 (RPS). While working as Diesel Mechanic (Temporary Status), the applicant was sent for medical examination and he was not found fit in medical category A-1/B-2. However, he was found fit for 'C'-one and below category. Accordingly, he was offered alternative post of Chowkidar in the scale of Rs.775-1025 (RPS) as per letter dated 18.4.1990 (Annexure A-3). The learned counsel of the applicant states that the applicant was getting pay @ Rs.970/- per month at the time of medical examination. Therefore, his pay in the lower post of Chowkidar was protected in terms of Para 1313 of IREM. By order dated 15.12.1994 (Annexure A-4), the applicant was allowed pay fixation at Rs.787+183 as special pay with effect from 27.12.1989. It is stated by the applicant that such pay was paid to him for February 1995 to May 1995. From June 1995 his pay was suddenly reduced to Rs.847/- without any notice or opportunity of hearing. When this came to the notice of Chief Signal and Telecom Engineer (Con), Calcutta, he passed order dated 6.3.1995 (Annexure A-5) regarding regularisation of the pay fixation of the applicant after obtaining approval of the Head of the Department. According to the learned counsel of the applicant, the employees who are granted temporary status in terms of Para 2511 of the IREM (1968 Edition) are eligible to all the rights and privileges admissible to the temporary Railway servants. Attention

was also drawn to the decision of Hon'ble Supreme Court in the case of Ram Kumar & ors. Vs. Union of India & ors., 1996 (1) SLJ (SC) 116 for the proposition that there was no distinction between casual labour with temporary status and temporary Railway servants. He also invited attention to the decision of Bangalore Bench of this Tribunal in the case of G. Mahendra Vs. The Airforce Central Accounts & another in OA No. 381/2001 decided on 11.2.2002, wherein it has been held that higher wages paid for years <sup>and</sup> sudden reduction of pay-scale and order of recovery of huge amount as over payments without giving any opportunity cannot be sustained. He also placed reliance on the decision of this Tribunal in OA No. 422/2002 in the case of Ashok Kumar Saxena Vs. Union of India & ors., wherein by order dated 5.8.2002 relying on the decision of Hon'ble Supreme Court in the case of Shyam Babu Verma & others Vs. Union of India & others, 1994 (27) ATC 121, this Tribunal held that higher pay scale having been received by the applicant due to no fault of his, recovery of excess amount cannot be made.

3. The learned counsel for the respondents stated that the applicant was engaged as Casual Diesel Mechanic on 1.9.1987. He should have been sent for prescribed Medical Examination atleast while granting temporary status. However, the Railway Administration granted him temporary status with the designation as Diesel Mechanic in the scale of Rs. 950-1500 (RPS) on 1.9.1988 without sending for medical fitness. Subsequently, he was sent for medical fitness for the post. Such a medical fitness is compulsory before an employee is regularised in any post. On Medical Examination, he was found unfit in Category A2/B1. However, he was declared fit in Category C1 and below as per

*Concurrence*

certificate of Medical Superintendent dated 29.12.1989. In view of this medical report, the applicant was posted as temporary status Chowkidar in the scale of Rs.775-1025/- (RPS) w.e.f. 1.9.1988. The respondents have further stated that the applicant cannot be granted pay, which is due as temporary status Diesel Mechanic as he was not found medically fit. According to the respondents, it is not a suitable case of pay protection, as such protection is allowed to those who were once declared fit in a particular Medical category and working in a post when sent for periodical Medical Examination. The learned counsel stated that a mistake can be corrected as soon as the same is discovered. Therefore, the impugned orders of recovery cannot be challenged.

4. We have heard the learned counsel of both the parties, and have perused the material available on record carefully.

5. In the present case, the applicant was appointed as casual Diesel Mechanic on daily rated basis w.e.f. 1.9.1987. He was also granted temporary status w.e.f. 1.9.1988 in the scale of Rs.950-1500 (RPS). As per existing instructions of the respondents, the applicant should not have been allowed to join duty without Medical Examination or in any case he should have <sup>not</sup> been granted temporary status without Medical Examination. He has been sent for Medical Examination for the first time after a lapse of more than two years. The whole controversy has ~~come~~ into existence because of lapse on the part of the respondents. However, without entering into such a controversy, it may be stated that the applicant did discharge the functions of casual Diesel Mechanic before he was offered the regular ~~post~~ of temporary Chowkidar in the scale of Rs.775-1025 (RPS). He has also

drawn higher pay-scale and higher pay fixation in terms of the orders dated 15.12.1994 (Annexure A-4) of the respondents. There is nothing on record to suggest that the applicant at any stage mis-represented his claim or over payment is on account of any fraud committed by him. Therefore, it shall only be just and proper not to recover any excess amount already paid to him. The Hon'ble Supreme Court in the case of Shyam Babu Verma & Ors. Vs. Union of India & Ors., (1994) 27 ATC 121 have held accordingly. However, if any amount claimed by the applicant in respect of a period prior to his regularisation as Chowkidar, if not already paid may not become payable on account of this order. At the time of hearing, the learned counsel of the applicant informed that no recovery in pursuance to the impugned orders has been enforced so far. We, therefore, <sup>that</sup> direct/no recovery for any over payment as claimed by the respondents for period prior to his appointment as temporary Chowkidar in the scale of Rs.775-1025 (RPS) may ~~not~~ be recovered from him now. At the time of hearing, the learned counsel for the respondents had raised a preliminary issue that the applicant has claimed relief for the period starting from 27.12.1989 and this O.A. has been filed in February 1998. Therefore, the claim is apparently barred by limitation. We do not find any merit in this contention, on behalf of the respondents as it is on account of the failure of the respondents themselves that the applicant was not sent for Medical Examination in time. The applicant was also granted pay protection with the approval of the Head of the Department when he was granted employment as temporary Chowkidar. These orders have been issued as late as in 1995 and the process of recovery has not taken place even upto the date of filing of this application.

*Amrinder*

The applicant has never sat idle after receiving the order of recovery. He not only asked for lenient view, but also sent for a legal notice dated 05.09.1996 (Annexure A-6). The applicant has also enclosed copy of Note dated 27.3.97 (Annexure A-11), which indicates that the matter was still under consideration of the respondents. If this note is taken into account, the present application has been filed within a year. Therefore, we do not intend to reject the claim of the applicant on technical ground of delay in filing this application.

6. In view of discussion in the preceding paragraph, this application is allowed to the extent indicated therein without any order as to costs.

(R.K. Upadhyaya)  
Member (Admnv.)

(N.N. Singh)  
Vice Chairman

'MA'

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पृष्ठंकन सं ओ/व्या.....जबलपुर, दि.....

पतिलिपि अन्ते धितः—

- (1) सचिव, उच्च न्यायालय वार एडमिनिस्ट्रेशन, जबलपुर
- (2) आवेदन श्री/श्रीमती/कु.....के कार्यालय
- (3) जलपानी श्री/श्रीमती/कु.....के कार्यालय
- (4) ब्यवसाय, के.ए.अ. जबलपुर जलपानी  
शुचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

18.2.03

L.S. Royput A/c  
M.N. Borkar A/c

Issued  
On 18.2.03  
BS