

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH****OA No. 060/00605/2016****Pronounced on : 11.04.2018****Reserved on : 26.03.2018****CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MRS. P. GOPINATH, MEMBER(A)**

Manjeet Singh s/o Surjit Singh, aged 60 years, resident of House No.
27, Bitna Seuri, Pinjore, District Panchkula.

.....Applicant

BY ADVOCATE: Sh. D.R. Sharma**VERSUS**

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Ambala Cantt.
3. Sr. Divisional Personnel Officer, Settlement, Northern Railway, Ambala Division, Ambala Cantt.
4. Senior Divisional Finance Manager Northern Railway, Ambala Cantt.
5. Assistant Divisional Engineer, Northern Railway, Ambala Division, Ambala Cantt.

.....Respondents

BY ADVOCATE: Sh. G.S. Sathi**ORDER****BY MRS. P. GOPINATH, MEMBER(A):-**

1. The applicant in the OA is challenging the action of the respondents treating him as a Khalasi from 1977 to 20.06.1983.

Applicant argues that he was recruited as Carpenter (skilled) on casual basis and continued to work in the post and it is only on the closing of his service, the respondents have reduced the pay from that of Carpenter to Khalasi and recovery made from his pensionary benefits.

2. Applicant submits that his case is covered by the Tribunal orders in **OA No. 653/PB/1994 titled Shri Peush Kumar & Ors. Vs. OI & Ors. decided on 13.02.2014** and **OA No. 236/PB/1999 titled Gurdeep Singh Vs. UOI decided on 08.12.1999** . Applicant also cites **State of Punjab & Ors. Vs. Rafiq Masih and Others, SCT 2015(1) 195** wherein it was held that there will be no recovery from Group 'C' employees.

3. The case of the applicant is that he was appointed as a Carpenter in 1977 in the scale of pay of Rs. 260-400. He was also granted annual increments in the said pay scale. The respondents, on the other hand, treat him as a Khalasi and argue that he was promoted as a Carpenter on 29.06.1983 in the pay scale of Rs. 260-400.

4. The prayer of the applicant is that his pay cannot be reduced from that of a Carpenter to Khalasi and no recovery can be made from his gratuity. Applicant also prays for payment of retiral benefits on the basis of the last pay drawn by him i.e. Rs. 21210 instead of Rs. 20830 as re-fixed by respondents. Applicant also prays for refund of the recovery made from his gratuity with interest.

5. Respondents in the reply submit that the applicant joined as a Temporary Khalasi and was made to work as a Temporary Carpenter (skilled/Group C) in the pay scale of Rs. 260-400 and also drew annual increments in the pay scale of Carpenter. The post of Khalasi was in lower pay scale of Rs. 196-232. The main argument of the respondents is that there is no direct recruitment to the post of Carpenter. As per Rule 159 of IREM governing appointment/promotion to Group 'C' posts for semi skilled and unskilled staff, the vacancies are filled 25% from semi-skilled and unskilled staff with educational qualifications as laid down in Apprenticeship Act. Hence, the post of Carpenter could be held by the applicant by way of promotion and not on direct appointment.

6. The respondents also argue that no recovery is being effected w.e.f. 20.12.1977 to 20.09.1983 and only thereafter on refixation of pay w.e.f. 29.06.1983, the recovery due to overpayment was ordered.

7. The respondents would like to label the recovery as a rectification of a mistake. The Bench notes that this mistake was made when the applicant joined in 1977 and was corrected at the time of his retirement on 31.07.2015 i.e. almost after 38 years. This exhibits rather a lackadaisical attitude as the respondents themselves admit in para 1 of the written statement that the applicant joined service as Temporary Khalasi and was put to work as Temporary Carpenter. Having extracted the services of the applicant as a Carpenter, the respondents belatedly would like to call the act a

mistake which was being rectified on retirement of applicant after 38 years. Respondents have no doubt that the applicant was not working as a Khalasi, but as a Carpenter. It cannot even be said that the job of a Khalasi and job of a Carpenter are so alike that extracting the work of a Carpenter went unnoticed.

7. We cannot accept the arguments of the respondents that the applicant could not have been regularly appointed as a Carpenter and he can only be promoted as a Carpenter from the post of Group 'D'. If this was so, then the applicant's services as a Carpenter should not have been taken. Having extracted the services of a higher post of Carpenter, the respondents have no right to treat him as if promotion was due to applicant from the lower post of Khalasi.

8. The Apex Court in *Jaswant Singh Vs. Punjab Poultry Field Staff Association & Ors.* (2002) 1 SCC 261 had held as follows:-

“.....while the appellants promotion to the post of chick sexer cannot be upheld, given the fact that the appellant had discharged the duties of a chick sexer, he was at least entitled to the pay and other allowances attributable to that post during the period he carried out such duties.”

Going by the same analogy, having extracted the work of a Carpenter, the applicant is entitled to the pay of the post upto the period, work for the post was extracted, and all consequential promotional pay scale. Applicant cannot be held responsible for the respondents' mistake of extracting the work of the wrong higher post and needs to be not only reimbursed, but also given the consequential benefits.

9. The consequences of the mistake committed by respondents cannot rest on the applicant. Applicant having worked in the post of Carpenter would have looked forward to the opportunity of further advancement thereon. To be informed at the time of retirement, that the opportunity offered, not on his asking but by the respondents was misplaced, is righting a wrong too late which is required to be set aside and viewed adversely against the respondents who detected the mistake at the fag end of applicant's career. Instead of penalizing applicant, such a respondent needs to be proceeded against for dereliction of duty of detection of the wrong extraction of work at the appropriate time.

10. This is a case where the administrative action of the respondents in the matter, on the basis of the statutory discretion vested in them, would fail the "Wednesbury Test" of proportionality which a sensible decision maker within the framework of law would have arrived at. The relevant matter of having extracted the work of a higher post is overlooked and the recruitment rules, which is not a new one but existed even when applicant worked as a Carpenter, was overlooked or ignored. Correcting the wrong was an alternative available to the respondents in 1977 but not exercised. It is an outrageous defiance of logic to have not corrected the mistake in 1977 and rest the mistake of the respondents as a recovery from applicant's retiral benefits, an act which would on a fair balancing, disproportionately negate the applicant's expectation of receipt of retiral benefits to lead a comfortable retired life.

11. With the above observations, we allow this OA. The refixation of the pay at the time of the retirement of the applicant is set aside. Applicant's pension be fixed as per the last pay drawn. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 11.04.2018

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