

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING:BILASPUR

Original Application No.203/00605/2014

Jabalpur, this Tuesday, the 17th day of July, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Smt. Swapna Chatterjee Wife of Shri Jayant Kumar Chatterjee aged about 43 years, presently posted as Office Superintendent, Commercial Department, Office of Sr. Divisional Commercial Manager, South East Central Railway, Bilaspur Chhattisgarh 495004
-Applicant

(By Advocate –**Shri Abhyuday Singh** proxy counsel for
Shri Amrito Das)

V e r s u s

1. South East Central Railway,
Through the General Manager,
SECR Bilaspur
District Bilaspur
Chhattisgarh 495004

2. Chief Personnel Officer,
South East Central Railway
Personnel Department
Bilaspur District
Bilaspur Chhattisgarh 495004

3. Senior Divisional Personnel Officer,
South East Central Railway, Bilaspur Division
Bilaspur, District Bilaspur Chhattisgarh 495004

4. Senior Divisional Commercial Manager
South East Central Railway Bilaspur Division
Bilaspur District Bilaspur Chhattisgarh 495004 - **Respondents**

(By Advocate –**Shri R.N. Pusty**)
(*Date of reserving the order: 20.02.2018*)

ORDER

By Ramesh Singh Thakur, AM:-

This O.A. is against the order of the respondents whereby the basic pay of the applicant has been substantially reduced from Rs.13540/- to Rs.10650/- without any notice and without any order passed by the competent authority. The representation preferred by the applicant has been rejected by the respondent No.3 vide order dated 15.05.2014 (Annexure A-1).

2. The applicant in this Original Application has prayed for the following reliefs:-

“8(a) This Hon’ble Tribunal may kindly be pleased to call for the entire records concerning the action taken by the respondent authorities with respect to the reduction of pay of the applicant.

8(b) This Hon’ble Tribunal may kindly be pleased to quash and set aside the order dated 15.05.2014 (Annexure A-1) passed by respondent No.3.

8(c) This Hon’ble Tribunal may kindly be pleased to issue an appropriate direction directing the respondent authorities to restore the pay of the applicant to the basic pay of Rs.13540/- and grade pay of Rs.4200/- on the post of Office Superintendent.

8(d) This Hon’ble Tribunal may kindly be pleased to issue an appropriate direction directing the respondent authorities to make payment of the arrears of the difference of the salary entitled at basic of Rs.13540/- and the salary paid, with simple interest at the rate of 6% per annum, since December 2012, till the date of actual payment.

8(e) Any other relief (including the cost of the present proceedings) which this Hon’ble Tribunal deem just, fair

and equitable in the circumstances of the case may be granted."

3. Precisely the case of the applicant is that the applicant was initially appointed on the post of Progress Woman in the Railway Electrification (RE) Department in the scale of Rs.950-1500/- which is a Group D post on adhoc basis in the year 1989. The RE department was closed and the applicant was posted under the Construction Department on the same post. The suitability test conducted by the Construction Department for appointment on the post of Junior Clerk in which the applicant participated and was found fit for said post. Thereafter she was working on the post of Junior Clerk in the Construction Department vide order dated 22.09.1995 (Annexure A-2) on adhoc basis, though her lien was there in the Open Line Commercial Department.

3.1 Thereafter the Open Line Commercial Department conducted a selection examination for permanent appointment on the post of Junior Clerk, the applicant participated and she passed the said examination. The applicant was absorbed in the Commercial Department on the said post vide order dated 22.10.1998 (Annexure A-3). Even after regular absorption vide order dated 01/04.05.1999 and 31.05.1999 (Annexure A-4), the applicant was continued in the Construction Department.

3.2 The applicant was granted ad hoc promotion on the post of Senior Clerk in the Construction Department project in the year 1999. Thereafter the applicant was granted regular promotion on the post of Senior Clerk drawing the basic pay of Rs.5,500/- vide order dated 06.07.2007 (Annexure A-5) on participation in the exam for regular promotions conducted by the Commercial Department in the year 2006. The applicant was relieved for her joining at the Commercial Department vide order dated 02.01.2008 (Annexure A-7) as per the order dated 13.07.2007 (Annexure A-6) passed by the Sr. Divisional Commercial Manager, Bilaspur. The applicant was repatriated to the Commercial Department Open Line in the pay scale of Rs.4500-7000/- whereby was given the salary of Rs.5500/- with the relevant grade pay for a period of one month. The basic pay of the applicant was reduced to Rs.4625/- without giving any show cause notice and without any order. Applicant submitted her representation dated 24.06.2009 (Annexure A-8) in regard to restoration of her pay. The respondents restored the pay of the applicant on the basic which the applicant was drawing for the past years i.e. Rs.5500/- and even paid the arrears.

3.3 The applicant was promoted on the post of Office Superintendent in the Commercial Department vide order dated 22.10.2010 (Annexure A-9). On implementation of the 6th Pay

Commission Recommendations, the applicant was accordingly fixed basic pay as Rs.5500/- and the applicant was drawing the basic of Rs. 13540/- in the pay band of Rs.9300-34800/- with a Grade Pay of Rs.4200/-. The pay slip for the month of November 2012 is annexed as Annexure A-10. The billing clerk unilaterally re-fixed the salary of the applicant with the basic as 10650/- in the month of December 2012. The applicant again submitted a representation dated 13.02.2013 (Annexure A-11) but no orders have been passed on the said issue. The applicant thereafter preferred an Original Application No.203/00252/2014 which was disposed of vide order dated 08.04.2014 whereby the respondents were directed to dispose of her representation by way of speaking order. The respondent-authority rejected the claim of the applicant vide order dated 15.05.2014 (Annexure A-1).

4. The respondents in their reply has submitted that the applicant was appointed on daily rate basis on 30.01.1989 and appointed as regular Railway service on 12.07.1995 on the post of Group D and then promoted to Junior Clerk regular on 31.05.1999 (Annexure R/1) under Sr. DCM's office Bilaspur Division and transferred to Construction Organization wherein it has been clearly mentioned that the applicant lien will be maintained in concerned department in Open Line in Bilaspur Division from the

date of issue of order. Thereafter the applicant was promoted to Senior Clerk in the Construction Organization on adhoc measure against existing vacancy as per order No.132/1999 (Annexure R/2). The applicant returned back open line Sr. DCM's Office Bilaspur in her original post as Junior Clerk and promoted to Sr. Clerk vide office order dated 06.07.2006 (Annexure R/3) and her pay fixed as Estt. Serial No.125/73 (Annexure R/4). The applicant has been again promoted to Office Superintendent Grade Pay of Rs.4200/- on 22.10.2010. It has been specifically submitted that as per Rule 1313 in IREC Volume II the applicant availed all the promotions on adhoc basis in the ex-cadre posts and not on regular basis. Therefore the applicant is not entitled to claim benefits whatsoever she enjoyed on adhoc promotions after her repatriation to her cadre post in Open Line.

5. The applicant has also filed the rejoinder to the reply filed by the respondents wherein it has been specifically submitted by the applicant though she was earlier promoted on adhoc basis, but was subsequently found eligible to be promoted on the regular basis by being found eligible for the same. Furthermore, on repatriation the applicant was duly entitled to the pay protection as per the well settled law which she was granted. The pay protection was considered by the respondent authorities before and her pay was

fully protected by the finance department. The applicant has reiterated her earlier stand that the action of the respondents is against the basic principle of natural justice and her basic pay has been reduced without giving any notice. It has been specifically submitted by the applicant that the applicant was deputed on adhoc basis in Construction line as an administrative necessity for more than 9 years. On being repatriated to the parent department the employees are absolved of the fruits of their work and they are only provided the benefit of the lien, if provided. It is a very well settled position of law that such employees though cannot claim the promotion to the post in which they had been given adhoc appointment yet they will be entitled to the pay protection of the post so served.

6. We have heard the learned counsel for both the parties and have perused the pleadings and documents annexed therein.

7. It is admitted fact by both the parties that the applicant was initially appointed on the post of Progress Woman in the Railway Electrification (RE) Department in the scale of Rs.950-1500/- which is a Group D post on adhoc basis in the year 1989. It is also admitted fact that the applicant was promoted as Junior Clerk on regular basis on 31.05.1999. It is also admitted by both the parties that thereafter the applicant was transferred to Construction

Organization and the applicant had lien in the concerned department in Open Line in Bilaspur Division from the date of issue of order. In the Construction Organization the applicant was promoted to Senior Clerk against existing vacancy. In the Construction Organization the applicant was drawing basic pay of Rs.5500/. Thereafter the applicant was returned back to open line Sr. DCM's Office Bilaspur in her original post as Junior Clerk and promoted as Senior Clerk vide office order dated 06.07.2006 (Annexure R/3). On 22.10.2010 the applicant further promoted to Office Superintendent in the Grade Pay of Rs.4200/-

8. The main grievance of the applicant is that the applicant was drawing the basic pay in Rs.5500/- in the Construction Organization and on returning back to the Commercial department Open line in the pay scale of Rs.4500-7000/- and the basic pay was reduced to Rs.4625/- without giving any notice, which was restored later. When the applicant was promoted on the post of Office Superintendent on 22.10.2010 and on implementation on 6th Pay Commission her basic pay was fixed as Rs.5500/-. The main grievance of the applicant is that the enhanced salary which the applicant was drawing in the Construction Division should have been protected when the applicant was returned back to parent department.

9. The applicant has placed reliance on the order dated 20.04.2017 passed by Principal Bench of this Tribunal in Original Application No.1422/2013 (Kusum Lata Nayar) vs. Chairman Railway Board and others), whereby the Principal Bench after considering the case has held that on repatriation the earlier pay should be protected as personal pay to be adjusted against future increments.

10. The applicant has also relied upon common order dated 26.02.2015 passed by the Principal Bench of this Tribunal in Original Applications Nos.472/2014 and 474/2014.

11. On the other hand, the respondents have stated that the applicant was sent to Construction Organization on adhoc basis and the lien was maintained in concerned department in Open Line in Bilaspur Division. On repatriation the applicant was placed in the same position. Moreover it has been specifically submitted by the respondents that the applicant was sent to Construction Department on adhoc basis in the ex-cadre post and not on the regular basis.

12. It is pertinent to mention that the Construction Division is the extension of the cadre of posts in the Railway/Division which is clear from the letter No.E.1023/0/Pt.VIII dated 09.12.2011 addressed to GMs' all Indian Railways and others. According to which the Construction/Projects are treated as extension of the

cadre of posts in the Railway /Division in the jurisdiction of which such projects are located and all their requirements are being taken care of by Open Line Administration. The said document has been submitted by the learned counsel for the applicant. Moreover, as per judgment passed by Principal Bench in O.A. No.1422/2013 is also similar and in the said case after considering the various judgments of Tribunal and Hon'ble Apex Court, the Principal Bench has held for the protection in the pay as personal pay which was drawn earlier to repatriation to the parent department. Moreover, the relevant fact in the present case is that the respondent-department has firstly placed the applicant in the basic pay of Rs.4625/- on repatriation. But later on the basic pay of Rs.5500/- was restored and even arrears were also paid to the applicant. The Principal Bench of this Tribunal in O.A. No.472/2014 and 474/2014 has held that the person who holds lien in parent department on adhoc promotion to a higher grade, then on repatriation to parent department one's pay has to be protected and his adhoc officiation has to be reckoned for pay protection and other benefits. So, the instant case also fully covered by the law settled by Principal Bench of this Tribunal.

13. Resultantly this Original Application is allowed and the order dated 15.05.2014 (Annexure A-1) passed by respondent No.3

is quashed and set aside and the respondents are directed to restore the pay of the applicant to the basic pay of Rs.13540/- with Grade Pay of Rs.4200/- on the post of Office Superintendent. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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