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CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 582 of 2013

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

PRADEEP KR. PANDA

VS

UNION OF INDIA & ORS.

For the applicant : Mr. M. Karim, counsel

For the respondents : Mr. A. K. Banerjee, counsel

Order on : 26.8.16.

O R D E RMs. Bidisha Banerjee, J.M.

1. Ld. Counsels were heard and materials on records were perused.

2. This application has been filed seeking the following reliefs :

- An order do issue upon the respondent authorities to set aside and/or cancel and/or modify the impugned order being memo E Optg/5/11/IRT-M.Trif./BB-PP/2013 dated 7.2.13 issued by the Assistant Personnel Officer-III, for Sr. Divisional Personnel Officer, S.E. Railways, Kharagpur addressed to the ld. Advocate of the applicant whereby prayer for refixation of the scale of pay was rejected most illegally and arbitrarily within disclosing any reason;
- An order do issue upon the respondent authorities to set aside and/or cancel and/or modify the impugned order being memo ESB/3/8/DOS/PKP/12 dated 13.8.12 issued by the Divisional Personnel Officer, S.E. Railways, Kharagpur addressed to the applicant whereby prayer for refixation of the scale of pay was rejected most illegally and arbitrarily.

3. The facts in a nutshell would be as under :

The applicant while serving as ASM, Sealdah Division, Eastern Railway in the scale of Rs.4500-7000/- applied for mutual transfer with one Biplab Bhakta, ASM, Kharagpur Division, South Eastern Railway, who was also in the scale of Rs.4500-7000/-. The service particulars of both the transferees were forwarded to Headquarters, Eastern Railway with approval of Divisional Authority on 23.2.05. Meanwhile, the applicant was promoted to the post of SM in the scale of Rs.5000-8000/-. When the mutual transfer finally got approved, it effected his joining as ASM in Kharagpur Division in the scale of Rs.4500-7000/- as in terms of the rules and Railway Board's orders on mutual transfer

(RBE 107/07) such persons ~~were~~^{are} allowed from one seniority unit to another seniority unit of mutual exchange basis in any grade or own seniority or seniority of the employee with whom the exchange takes place whichever of the two is lower. The applicant was thus ordered to be transferred on 19.7.07 (Annexure R/4) on mutual exchange with Biplab Bhakta, ASM on reversion as ASM in the scale of Rs.4500-7000/- from the post of SM in the scale of Rs.5000-8000/-.

4. The applicant with full knowledge accepted such reversion in order to get the benefit of the transfer on mutual exchange to another Division and another Railway altogether. Therefore with open eyes he accepted his reversion as ASM in the scale of Rs.4500-7000/- from the post of SM in the scale of Rs.5000-8000/-.

5. Further in terms of the extant provisions no pay protection would be allowed upon his transfer on mutual exchange that the applicant was aware of.

6. Therefore the prayer of the applicant in 2013 seeking pay protection or protection of Grade Pay having accepted transfer on mutual exchange in 2007 with open eyes and being fully aware of the fact that if he accepted such transfer it would amount to his reversion, is not tenable. It is not his case that he was unaware of the provisions or that the provisions did not apply to him or that the provisions were wrongly invoked.

7. The prayer being thus untenable, the OA is dismissed. No order is passed as to costs.

(JAYA DAS GUPTA)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)

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