

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00594/15

Reserved on: 21.05.2019

Date of Order: 28.05.2019

C O R A M

HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

Nitish Kumar, Son of Sri Suresh Prasad, Confidential Assistant, Office of the Chief Personnel Officer, East Central Railway, Hajipur (Bihar).

.... Applicant.

By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the General Manager, East Central Railway, Hajipur, District- Vaishali (Bihar).
2. The General Manager (Personnel), East Central Railway, Hajipur, District- Vaishali (Bihar).
3. The Financial Advisor & Chief Accounts Officer, East Central Railway, Hajipur, District- Vaishali (Bihar).

.... Respondents.

By Advocate: - Mr. B.K. Choudhary
Mr. Vinay Kumar

O R D E R

Per Dinesh Sharma, A.M:- The instant OA is against the order dated 30.07.2015 issued by respondent no. 2 by which the salary of the applicant has been allegedly reduced from Rs. 11330 to Rs. 9800/- w.e.f. 01.04.2010 and due to the same reduction, his present pay of Rs. 14,360/- has also been reduced to Rs. 12,540/- without giving him any show cause notice.

2. The applicant has also filed an MA/050/00057/2016 by which he was allowed to amend his prayer to include a request for quashing another order dated 12.09.2015 by which his pay was allegedly reduced as

shown in Column-3 of that order (Annexure A/5). The applicant while working as Stenographer in the pay scale of 4000-6000 in the office of respondent no. 2 was sent on deputation to Railway Recruitment Board, Patna where he got promotion to the post of Sr. Stenographer (in the pay scale of Rs. 5000-8000/-) on ad-hoc basis by order dated 14.01.2005. Later, the applicant and others appeared in a suitability test for regular promotion to the same post of Sr. Stenographer and after being found suitable he was promoted in the parent cadre vide order dated 06.02.2008. He has been repatriated to this parent department on 31.03.2010 and has been working as such w.e.f. 01.04.2010. On his submitting a representation for grant of MACP on 12.02.2015 the applicant was informed, by order dated 30.07.2015 (impugned order, at Annexure A/4 of the OA), that since his promotion in RRB, Patna was not as per his seniority, he cannot be given benefit of pay on that promotion on his repatriation. The applicant has challenged this order as illegal, arbitrary and also contrary to provisions laid down under Fundamental Rules. This order was later amended and another order dated 22.09.2015 (Annexure A/5) has been passed which also amounts to reduction in his pay, though in lesser degree than the first order. The applicant has prayed for quashing these two orders.

2. The respondents have denied the claim of the applicant in their written statement. According to them, the promotion of the applicant by RRB, Patna by order dated 14.01.2005 (wrongly entered as 14.01.2003 in the WS) was an ad-hoc measure with clear instructions that it will not be his right to claim any regular promotion in cadre. The respondents have agreed

that the applicant was promoted in the regular cadre by order dated 08.02.2008 along with other staff working in parent cadre. It is stated that after repatriation to the parent department the applicant continued to avail the benefit of pay due to earlier ad-hoc promotion wrongly and he was not entitled to substantive pay more than what his seniors and next juniors were availing. When it came to the notice of the Department, his substantive pay was fixed as if he had continued in the Department and got promotion on the date it was given on a regular basis in the cadre (08.02.2008). According to the respondents, any higher emoluments/benefits received during a period of deputation cannot be continued after repatriation and the applicant cannot get higher substantive pay than his seniors. Therefore, the correction done by the Department is valid and such correction in fixation of pay does not require any process of giving show cause notice etc.

3. We have gone through the pleadings and heard the learned counsels of both the parties. It is clear that the impugned orders have been issued in order to bring the pay of the applicant at par with what it would have been if he had not gone on deputation. The facts in this case are not in dispute. The applicant, while remaining on deputation, was given ad-hoc promotion about three years before he got it by way of regular promotion in the cadre. The impugned orders have re-fixed his salary on repatriation assuming what it would have been if he got promotion w.e.f. the date he got regularly promoted in the cadre. This correction, is apparently reasonable as none can claim a higher salary in the parent cadre on the basis

of what was given to him, for whatever reasons, while he was working under deputation under a different authority. The Ld. Counsel for the applicant cited a decision of the Ahmedabad Bench of this Tribunal in OA 302/1987 decided on 23.09.1988 in **S. Natesan Iyer Vs. Union of India** to support his claim. In this decision, this Tribunal has decided about the applicability of 4th proviso to FR 22 C in case a person fulfils either of the following three conditions: -

“ Provided that if a Government Servant either –

(1) has previously held substantively, or officiated in –

- (i) the same post, or
- (ii) a permanent or temporary post on the same time scale, or
- (iii) a permanent post other than a tenure post, or a temporary post (including a post in a body, incorporated or not, which is wholly or substantially owned or controlled by the Government) on an identical time scale; or

(2) is appointed substantively to a tenure post on a time-scale identical with that of another tenure post which he has previously held substantively or in which he has previously officiated;

then proviso to FR 22 shall apply in the matter of initial fixation of pay and counting of previous service for increment.”

4. Going by the facts of the case reported before us, it is not clear whether the conditions mentioned in the decision above apply to the applicant in the present case and in what way will it affect the fixation of pay. The said rule (FR 22 C) is apparently deleted and is now substituted by another rule. In the absence of a specific pleading in the OA about which particular Fundamental Rule is violated and in what way, we cannot direct

the respondents to give a benefit to the applicant on the basis of the above quoted decision alone. In the light of the above, the OA is dismissed. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member