

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. No.2786/2003

New Delhi, this the 26th day of July, 2005

**HON'BLE SHRI V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)**

Shri Girwar Singh,
S/o Sh. Budh Singh,
Retd. As Mason (Adhoc),
R/o 12/290, Kalyanpuri,
New Delhi-110 091.

-Applicant

(By Advocate Shri K.K. Patel)

-Versus-

1. Union of India through
the General Manager,
Northern Railway,
Head Quarter Office,
Baroda House,
New Delhi.
2. Divisional Railway Manager,
Northern Railway,
DRM Office (State Entry Road),
New Delhi.
3. Dy. Chief Engineer (Construction),
Northern Railway,
State Entry Road,
New Delhi.

-Respondents

(By Advocate Shri R.L. Dhawan)

1. To be referred to the Reporters or not
2. To be circulated to the outlying Benches

Yes/~~No~~ *yes*
Yes/~~No~~ *yes*

S. Raju
(Shanker Raju)
Member (J)

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ORDER

Mr. Shanker Raju, Hon'ble Member (J):

Applicant impugns respondents' order dated 30.01.2002, whereby a show cause notice has been issued to him and his pay fixation has been proposed to be corrected and re-fixed with recovery of excess payment of salary. Applicant also assails respondents' action of withholding his retiral benefits.

2. Applicant who belongs to reserved category was screened as a regular Gangman on 27.3.1970 and promoted on ad hoc basis as Meson in the grade of Rs.260-400 on 12.8.1970. While working in the Construction Organization and retaining his lien in open line, applicant was also promoted on ad hoc basis as highly skilled Meson in the grade of Rs.1200-1800 on 14.6.1988. However in the parent cadre at New Delhi Division applicant was regularized as Meson in the grade of Rs.950-1500 on 27.6.1990.

3. On regular promotion as Meson in the parent Division applicant made a representation to include his name in the seniority list of artisan staff of Delhi Division.

4. Applicant was, however, issued a show cause notice on 30.1.2002 to fix his pay as per Railway Board's instructions dated 17.8.1998, as while being promoted on ad hoc basis in ex cadre of construction organization allegedly his pay was erroneously fixed in the ex cadre lower grade whereas the same should have been fixed as per PS 9824. A reply to the show cause notice was sent by applicant.

5. Applicant had made representation to respondents as his juniors in the parent cadre had been promoted in the grade of Rs. 1200-1800/-.

6. Applicant retired on superannuation from Construction Organization as ad hoc Mason on 31.8.2003 in the scale of Rs. 4000-6000/-.

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7. Learned counsel for applicant states that as the juniors had been promoted in the division ignoring case of applicant as the wrong fixation is not an outcome of either fraud or misrepresentation by applicant and it is not attributable to him if the recovery is bad in law in the light of the decision of Apex court in **Shyam Babu Verma vs. Union of India**, 1994 (27) ATC (SC) 121 and **Sahib Ram vs. State of Haryana**, 1995 SCC (L&S) 248.

8. Learned counsel states that PS 7898 has no application in the case as respondents' own letter dated 18.3.1997 issued by Railway Board clearly provides that work charged post in Construction are to be reckoned as extension of the cadre of post in Railway/Division.

9. Learned counsel relies upon a decision of this Bench in OA No. 325/98 **Ranbir Singh vs. Union of India**, decided on 17.10.2000 where a similar proposition has been laid down.

10. Learned counsel states that in CWP No. 752/83 in **T.D. Kakkar vs. G.M., Northern Railway**, decided on 9.7.1984 relying on PS 5915 where in the case of hardship the difference between the pay already fixed and fixation of revised order has been treated as personal pay, the stand of the respondents is belied.

11. A recent decision of the Apex Court in **Badri Prashad vs. Union of India**, 2005(4) SCALE 725 has been relied upon to say that in case of ad hoc promotion in Construction Organization, pay of concerned has to be protected in Group 'C' with all

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benefits of pay protection, counting service towards higher post, etc.

12. On the other hand respondents' counsel Shri R.L. Dhawan vehemently opposed the contention and stated that in the matter of pay fixation on appointment from ex-cadre post to another ex-cadre post when employee opts to draw pay in the ex-cadre post in the second cadre post, pay should be fixed under the normal rules. As the pay of applicant was erroneously fixed de hors the circular, respondents have rectified their mistake and their action is in accordance with law.

13. Shri Dhawan further states that the applicant was promoted as Highly Skilled Mason on ad hoc basis though his name in the parent cadre was incorporated at serial no. 41 of the seniority list of Mason, the fixation of pay on account of ad hoc promotion was not correctly done leading to excess pay and allowances. As such, recovery is being made.

14. We have carefully considered the rival contentions of the parties and perused the material on record.

15. In the light of decisions of the Supreme Court in the case of **Sahib Ram** (supra) and **Shyam Babu Verma** (supra), when a fixation is done without any mistake or attribution of the concerned employee a recovery post retirement and withholding of retiral benefits is not only against equity but also contrary to good conscience.

16. However, as regards pay fixation, the circular cited by the respondents, which was issued in 1998 with respect to Construction Organization for regularization of casual labour, the Construction Organization and project are reckoned as extension of the cadre of the post in the railway/division, then for the purpose of fixation of pay, a different yardstick without any reasonable nexus with the object sought to be achieved is not valid and the aforesaid action smacks of discrimination and is violative of Article 14 of the Constitution.

17. Moreover, in the Division Bench's decision in OA No. 325/1998, the following observations have been made:-

"7. So far as the import of Rule 1316 (F.R.22C) is concerned, in our view the President's decision dated 16.5.1973 is not applicable to the facts of the present case. The President's decision relates to a case where the Railway servant was appointed in his parent cadre to a post higher than the ex-cadre post immediately held before reversion. In the present case, the applicant was holding a higher post in the ex-cadre Construction Division prior to his repatriation to the parent cadre. Therefore, the clarification under Rule 1316 would certainly not be applicable to the present case. In the matter of M. Prabhakaran and Others (supra) the applicants on repatriation back to open line cadre were posted to their original grade in the lower scale. In the present case it did not happen so as the applicant was holding a higher position while in Construction Wing and on repatriation has also been accorded the same scale of pay. The benefit of promotion in the ex-cadre, therefore, cannot be denied.

8. We are in agreement with Shri Sawhney that the provision of Rule 1320 are applicable to the facts of the present case as under sub-rule (b)(I) service in another post other than a post carrying less pay whether in a substantive or officiating capacity, service on deputation out of

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India and leave except extraordinary leave taken otherwise than on medical certificate shall count for increments in the time-scale applicable to the post or posts on which the Railway servant holds a lien as well as in the time scale applicable to the post or posts if any on which he would hold a lien and his lien not been suspended. It has also been clarified under provisio to sub-rule (b) that service rendered in an ex-cadre post shall not be reckoned for fixation of pay in another ex-cadre post which is not the position in the present case. Therefore, the service rendered by him in the higher post and pay scale shall have to be reckoned for fixation of his pay on repatriation. The Audit Instruction below Rule - 1320(FR-26(2)(c) also explains the intention of this rule which is to allow the concession irrespective of whether the higher post is within or outside the Department to which the Government servant belongs. In the present case, the applicant has been holding an ex-cadre post within the same Department."

18. If one has regard to the above, the proposition laid down supports the contention of the applicant.

19. Moreover, in **Badri Prasad**(supra) while dealing with regularization persons working on higher post in Group 'C' in Construction division, the following observations have been made:-

"12. Reliance is placed on the decision on this Court in the case of Inder Pal Yadav vs. Union of India in Writ Petition No. 548 of 2000 decided on 13.1.2003. In that case, similarly placed railway employees, who were substantively holding Group 'D' post were made to work for long period on a higher group 'C' were granted partial relief by making the following directions:

"However, while the petitioners cannot be granted the reliefs as prayed for in the writ petition, namely, that they should not be reverted to a lower post or that they should be treated as having been promoted by reason of their promotion in the projects, nevertheless, we wish to

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protect the petitioners against some of the anomalies which may arise, if the petitioners are directed to join their parent cadre or other project, in future. It cannot be lost sight of that the petitioners have passed trade tests to achieve the promotional level in a particular project. Therefore, if the petitioners are posted back to the same project they shall be entitled to the same pay as their contemporaries unless the posts held by such contemporary employees at the time of such re-posting of the petitioners is based on selection.

Additionally, while it is open to the Railway Administration to utilize the services of the petitioners in the open line, they must, for the purpose of determining efficiency and fitment take into account the trade test which may have been passed by the petitioners as well as length of service rendered by the petitioners in the several projects subsequent to their regular appointment."

13. The practice adopted by the railways of taking work from employees in group 'D' post on a higher Group 'C' post for unduly long period legitimately raises hopes and claims for higher posts by those working in such higher posts. As the railway is utilizing for long periods the services of employees in group 'D' post for higher post in Group 'C' carrying higher responsibilities benefit of pay protection, age relaxation and counting of their service on the higher post towards requisite minimum prescribed period of service, if any, for promotion to the higher post must be granted to them as their legitimate claim.

14. As held by the High Court - the appellants cannot be granted relief of regularizing their services on the post of Store man/Clerk merely on the basis of their ad hoc promotion from open line to higher post in the Project of construction side. The appellants are, however, entitled to claim age relaxation and advantage of experience for the long period spent by them on a higher group 'C' post.

15. Without disturbing, therefore, orders of the Tribunal and the High Court the appellants are held entitled to the following additional reliefs. The pay last drawn by them in group 'C' post shall be protected even after their repatriation to group 'D' post in their parent department. They shall be considered in their turn for promotion to group 'C'

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post shall be given due weightage and counted towards length of requisite, if any, prescribed for higher post in group 'C'. If there is any bar of age that shall be relaxed in the case of the appellants."

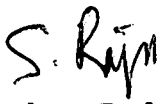
20. If one has regard to the above, it is no more res integra that for a person, who holds lien in parent department on ad hoc promotion to a higher grade, then on repatriation to parent department one's pay has to be protected and his ad hoc officiation has to be reckoned for pay protection and other benefits.

21. Here is a case where applicant though regularized as Mason in his parent department and juniors had been promoted to Higher Skilled Mason Grade, yet applicant has not been promoted before his continuance in Construction Organization. Had he been repatriated or considered for promotion in division, he would have been in this pay scale on which he retired on superannuation from the Construction Organization. Once, the ratio that an ad hoc employee in Construction when repatriated to the Group 'D' is entitled for protection of pay then fixation of pay of applicant cannot be found fault with.


22. Moreover, the condition precedent for application of Railway Board's Circular dated 17.8.1998 that while fixation of pay, railway employee should be extended an option to draw pay in the scale of pay in the ex-cadre post. As, such an option has not been sought from applicant, the aforesaid letter would not in any manner be applicable to his case.

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23. In the result, for the foregoing reasons, Original Application is allowed. Impugned orders are set aside. Respondents are directed not to make recovery from applicant and his withheld retiral benefits be released to him within two months from the date of receipt of a copy of this order along with simple interest of 9% per annum from the date it became due till actual disbursement. No costs.



(Shanker Raju)
Member (J)



(V.K. Majotra) 26/7/05
Vice-Chairman (A)

'San.'