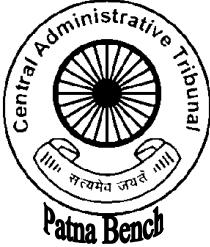


CENTRAL ADMINISTRATIVE TRIBUNAL**PATNA BENCH, PATNA**

OA/050/00455/2016

Reserved on :- 10.12.2019

Date of Order : 13.12.2019

C O R A M**HON'BLE MR. J. V. BHARAVIA, JUDICIAL MEMBER****HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**

Ashok Kumar Gupta, son of Late Shiva Chandra Prasad, resident of Shiva Niwas, Chhoti Badalpura, Khagaul, Patna, Ex Works Manager, Rail Wheel Plant, Bela, District-Saran (Bihar).

..... Applicant.

- By Advocate : Shri M.P.Dixit

-Versus-

1. The Union of India through the Chairman, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
2. The Secretary, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
3. The Additional Member (PU), Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
4. The Director Establishment (CG), Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
5. The General Manager, East Central Railway, Hajipur, District-Vaishali (Bihar).
6. The General Manager (Personnel), East Central Railway, Hajipur, District-Vaishali (Bihar).

..... Respondents.

By Advocate :- Shri R.B. Awasthe.

O R D E R

Per Mr. Dinesh Sharma, A.M.:- In the instant OA, the applicant has prayed for declaring the action of the

respondents reducing basic pay including Grade pay (of Rs. 25270+ Rs. 6600) which the applicant was drawing at the time of superannuation on 31.01.2015 (in the senior scale to the post of Works Manager) to Rs. 25200 + Grade Pay of Rs. 5400/- (in the post of Assistant Works Manager), vide their letter dated 20.02.2015 (Annexure A/6), as null, void-ab-initio and wrong. He has also prayed for directing the respondents to fix the pension and other benefit on the basis of his last pay Rs. 38870, drawn by him at the time of retirement, instead of Rs. 30640, and payment of arrears along with statutory interest @ 18% compound.



2. The applicant has stated that while working in Rail Wheel Plant, Bela as Assistant Works Manager, he was granted ad-hoc promotion in senior scale (Group B) in Pay Band 3 (Rs. 15600-39100) with grade Pay of Rs. 6600/- on recommendation by departmental promotion committee held on 06.05.2013. This order was implemented by Chief Administrative Officer, Rail Wheel Plant, Bela, vide order dated 13.05.2013 (Annexure A/2). He continued in that promotional post till his retirement upto 31.01.2015. The reduction made thereafter in his basic pay by order dated 20.02.2015 (Annexure 6, the impugned order) is without any legal basis and is against decisions of this Tribunal and various other

decisions of the Hon'ble Supreme Court (State of Punjab vs. Rafique-Masih). The applicant has also annexed with the OA, the decision of the Railway Board dated 19.08.2010 by which, it was directed not to consider the emoluments drawn in higher grade given on ad-hoc basis for staff working in construction organizations. This direction (RBE No. 124/2010 Annexure A/7) has been withdrawn by RBE No. 85/2011 (Annexure A/8) and, thus, it is wrong not to give benefit of ad-hoc promotion given to the applicant while working in a construction organization.



3. Written statement has been filed by the respondents in which they have denied the claim of the applicant. They have stated that fixation of pay on ad-hoc promotion in favour of the applicant, had not been done as per the rule in force. Since the promotion of the applicant, by Office Order dated 13.05.2013, was purely a temporary measure to look after the duties of higher responsibilities and since it was not by virtue of his seniority in cadre, the earlier fixation of his pay with higher grade pay of Rs. 6600/- was incorrect and, therefore, on observing this incorrectness, the pay has been re-fixed in Junior scale in Grade Pay of Rs. 5400/- plus charge allowance for the period for which he worked

against higher post. This has been reconfirmed by Railway Board's letter No. 295/CO)/II/24/12 dated 09.11.2016.

4. Respondents have also stated that the Railway Board's letters dated 19.08.2010 and 09.06.2011 (RBE 124/2010 and RBE 85/2011 respectively) are not related in this case. The ad-hoc promotion was purely on temporary basis to look after the duties of higher responsibilities and, therefore, re-fixation of pay, which has been further re-validated by Railway Boards letter dated 09.11.2016 (Annexure /3A) is the correct way of dealing his case and, therefore, the OA deserves to be dis-allowed.



5. The applicant has filed a rejoinder in which besides reiterating his claim, he has denied the averments made in the written statement. The applicant has also cited decision of this Tribunal and Hon'ble High Court dated 31.03.2017, 01.04.2015 and 22.08.2017 passed in OA 436/2013, OA 607/2012 and CWJC No. 5401 of 2017 respectively.

6. We have gone through the pleadings and heard the arguments of learned counsels of both the parties. The main issue is whether the applicant's pension should be fixed taking into account emoluments as fixed following his ad-hoc

promotion dated 13.05.2013 (Annexure A/2) or whether this should be fixed as done by the respondents by their order dated 20.02.2015 (Annexure A/6) in which, his pay has been fixed at a level before his ad-hoc promotion while adding Rs. 1500/- as charge allowance for the period for which he worked at senior scale post on ad-hoc basis. The applicant has based his claim on RBE No. 85/2011 (Annexure A/8) by which an earlier direction given in RBE No. 124/2010 was withdrawn. The applicant has also cited a number of decisions quoted (supra) where the Tribunal has directed the respondents therein to grant retirement benefits while considering their ad-hoc promotions. The respondents have countered these arguments mainly on the ground that the ad-hoc promotion given in the present case was while the person was working away from his parent cadre, was not in terms of his eligibility as per his seniority and was by way of a temporary arrangement, for which, only a charge allowance was due under the rules. In such a situation, the respondents have argued that RBE No. 85/2011 is not applicable to the facts of this case nor are the decisions cited by the applicant.

7. After going through the decisions cited by the applicant (OA 607/2012 and OA 1047/08), we find that in these cases, a number of ad-hoc promotions were granted. In



one case, the promotion was given decades before the retirement and, thus, not considering such promotions while fixing their retirement dues would have been grossly unjust.

These cases relate to employee of D and C category attracting the application of decision in Rafique-Masih case. In the case

before us, the applicant is a Gazetted Officer and the ad-hoc promotion given to him was less than two years before his retirement. The department has not found fault with this ad-hoc promotion but has only questioned the fixation of his pay,

which, according to their rules, should have been limited to grant of charge allowance for officiating at the higher post and not revising his pay to higher grade pay. The correspondence cited by the applicant (Annexure A/10 and A/11) also shows that the matter was taken-up by Rail Wheel Plant, Bela with

the Railway Board for clarification in this matter and it was finally clarified by Railway Board's letter dated 09.11.2016

(Annexure R/3 A) that his pay on ad-hoc promotion in senior scale was to be fixed in Junior scale plus charge allowance as this would have the scale that he would have held in his parent

cadre/E.C. Railway. Thus, the subsequent correction in the emoluments given to the applicant, under these circumstances, appears to be correct. Since the applicant does not fall in the category of low paid employees nor do the

wrongly paid emoluments relate to a period longer than five



years before these were adjusted, we do not think that the applicant deserves to be given special treatment as suggested by the decision of the Hon'ble Apex Court in Rafique-Masih case. The OA is, therefore, dismissed. No costs.

[Dinesh Sharma]
[Administrative Member

[J.V. Bhairavia]
Judicial Member

Pkl/







