

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22206 of 2013

- =====
1. The Union of India through the General Manager, E.C. Railway, Hazipur
 2. The Chief Personnel Officer, E.C. Railway, Hazipur
 3. The Divisional Railway Manager, E.C. Railway, Danapur
 4. The Sr. Divisional Personnel Officer, E.C. Railway, Danapur
 5. The Sr. D.E.N. (Co-Ordination), Eastern Railway, Danapur

.... Petitioners

Versus

D.K. Singh Son of Late Sadhu Singh Section Engineer Works/Bridge, E.C. Railway, Danapur, Resident of Mohalla- Maurya Vihar, Opposite M.P. 16, Phulwari, P.O.- Khagaul, District- Patna

.... Respondent

=====

Appearance :

For the Petitioners	:	Mr. Anil Singh, Advocate
For the Respondent	:	Mr. M. P. Dixit, Advocate
		Mr. S.K. Chaubey, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
And
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 07-08-2015

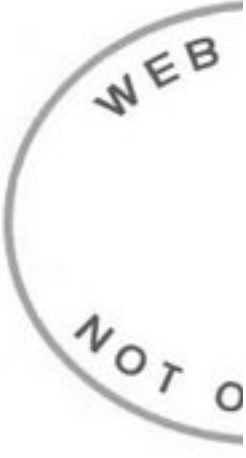
The Railways being aggrieved by the order of the Central Administrative Tribunal dated 24th July, 2012 passed in O.A. No. 240/2007 (D.K. Singh Vs. Union of India and another) have filed this writ petition.

2. Heard Sri Anil Singh, learned counsel for the

Railways and Sri M.P. Dixit, learned counsel for the sole contesting respondent at length and with their consent this writ petition is being disposed of at this stage itself.

3. There are no dispute with regard to fact. The Railway employee was selected in the year 1982 and appointed as Inspector of Works – Grade III (in short the “I.O.W-III”). Immediately, thereafter he was deputed in Railway Electrification Project, which was outside his cadre. Because of extra work and extra scale in the Railway Electrification Project in 1984, he was given a purely temporary *ad hoc* promotion and made I.O.W-II in the higher pay scale.

4. It is not in dispute that the Railway employee was told that this is purely temporary *ad hoc* and limited to his tenure in the Project. He worked, as such, in the Project till 1988. In the year 1988, he was reverted to his parent cadre in open line. While reverting him, the order of release clearly shows that he was being released as I.O.W-III (Annexure – 5/1). But, when he came, the authorities noticed that substantively he was I.O.W-III, but had been worked as I.O.W-II, and therefore, when a posting had to be made, a post of I.O.W-I had been downgraded to I.O.W-II, and he was posted there. Accordingly, he was treated as I.O.W-II, and in that pay



scale. In 1992, the employee underwent a series of test and having qualified, he was substantively promoted as I.O.W-II. In 1998, it appears an anomaly was realized by the Railways. They realized that the *ad hoc* promotion, which the employee enjoyed in the Railways Electrification Project, was purely temporary for the tenure of his being in the Railways Electrification Project, but, had wrongly been carried over. When he came to his substantive cadre in the open line, in other words, his fitment upon return from the Railways Electrification Project, in his cadre in open line, was wrongly done. It was wrongly done, because, he was allowed to continue in the status and salary of I.O.W-II, where substantive cadre, in the open line, he was I.O.W-III.

5. Thus, by the impugned order, as challenged before the Tribunal, Railways had sought to demote him or reverted him to his position as I.O.W-III for the period 1988 – 1992 and seek recovery of the dues in remuneration. This is what brought the employee to the Tribunal.

6. The Tribunal basically followed the judgment of the Ahmedabad Central Administrative Tribunal. It was virtually on the same lines and chose not to follow the judgment of the Apex Court in the case of **Inder Pal Yadav and others**

Vs. Union of India since reported in **2005 (11) SCC 301**. The Tribunal proceeded and held that the employee be entitled to a pay protection upon returning to his parent cadre, and therefore, held that the proceedings taken up by the Railways could not be sustained. The Railways being aggrieved has challenged the order of the Tribunal.

7. In the facts noted above and having considered the judgments of the Apex Court, the first thing we would like to notice is that there is no allegation that the employee at any point of time mislead the Railways Authority into granting him any higher pay scale or remuneration in any manner. The Officers, upon reversal, noticing the pay scale that he was receiving and also noticing that he was substantively I.O.W-III, chose to maintain the pay scale instead of reducing it. It is after 10 years that it is being sought to be corrected. Right to correct is inherent right of an employer. There cannot be any dispute, but, it should not act to the prejudice of the employee. Facts would show that the employee had worked for four long years in the Railways Electrification Project as I.O.W-II and drawing higher pay scale. When he was reverted to his parent cadre in the open line, if he, was suddenly then shown to be I.O.W-III on a lower pay scale, it causes immense humiliation among his

friends, colleagues for being downgraded. Fortunately, mistakenly or otherwise, this *ad hoc* promotion, which was to be allotted for the project alone, was carried forward till 1992, when he, through examination, qualified and became entitled to the post and salary of I.O.W-II. In 1992, there is no problem because he had made the grade and was in the right pay scale of I.O.W-II.

8. Learned counsel for the Railways Sri Anil Singh, submits that the Tribunal was wrong in granting a pay protection. We agree.

9. Sri M.P. Dixit, learned counsel appearing on behalf of the employee submits that the Tribunal did not err inasmuch as somewhat on similar ground is the case of **Bhadei Rai Vs. Union of India and Ors.** since reported in **2005(11) SCC 298**; wherein noticing similar circumstances the Apex Court has clearly stated that the employee in such situation would be entitled to pay protection. We have perused the judgment.

10. In our view, it is clearly distinguishable there. As noted in paragraph 10, the employee had been, on that pay scale for over 20 years. This special fact, persuaded the court to grant a pay protection to save him from humiliation on being

reverted to his parent cadre after 20 years of higher pay.

11. Here, the case is different, he was at the higher pay fully knowing that it was *ad hoc* and limited to Railway Electrification Project. He was there only for four years when he came back.

12. Thus, the facts are different. He cannot claim the benefit. It was given to another who had served at the higher pay for over 20 years, but, then Mr. Dixit points out to the writ petition itself, wherein Railways themselves have annexed a Circular contemplating an identical situation. This was issued in the year 1966. Earlier, the provision was that a person, who was working in an ex-cadre post, receiving higher pay in the ex-cadre post, when he came back to his original cadre, he continued with the higher pay. In 1973, this was changed and it was held that whenever a person is brought back to his substantive cadre, his pay and perquisites could be restored to that of his substantive post. Thereby, there may be reduction in pay, but then this very circular proceeded for contingencies, where notwithstanding the change in the policy, people continued to enjoy higher pay on being reverted to their parent cadre. It was specifically provided that dues of pay which was not due to the employee be treated as his personal pay and when



next increment or promotion becomes due and payable, be adjusted as against him.

13. In our view, the situation is identical. It must receive identical treatment. No recovery can be made because the employee was not at fault. The Officers unconsciously made a mistake. We, therefore, while upholding the order of the Tribunal, modifying it inasmuch as the dues between the pay scale of I.O.W-III - I.O.W-II, as received by the employee in between 1988 – 1992, would be recoverable as against increments, which he would receive. It would not be a case of either reversal or demotion in any manner. The status of employee would be maintained during the relevant period as I.O.W-II.

14. With this modification, this writ petition stands disposed of.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajeev/A.F.R

U			
---	--	--	--