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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WRIT PETITION (CIVIL) No. 10137/2015**

Date of decision: 8th November, 2016

UNION OF INDIA AND ORS.

..... Petitioners

Through Mr. Himanshu Kaushik, Advocate for
Ms. Rashmi Malhotra, Advocate.

versus

DEENA NATH AND ANR.

..... Respondents

Through Mr. A.K. Trivedi & Mr. Ashok K. Vij,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

Union of India, through General Manager, Northern Railway, impugns order dated 18th May, 2015 whereby OA No. 4225/2013 filed by Deena Nath and Ram Garib, the respondents herein has been allowed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short) and the orders dated 27th January, 2012 and 5th May, 2010 reducing the salary of the respondents have been quashed. It has been also directed that the amounts recovered from the respondents would be paid back to the

respondents within one month without interest and thereafter with interest at the rate applicable to General Provident Fund.

2. The respondent Nos. 1 and 2 had joined Railways as casual staff on 12th June, 1981 and 2nd February, 1981 respectively. In 1983, they were posted to work as Blacksmiths a group C post. Subsequently, they were granted temporary status in the group C post in the pay scale of Rs.260-400 (revised to Rs.950-1500) in the PQRS department. In 1990-91, the petitioner decided to close the PQRS unit where the two respondents were employed. The respondents were re-deployed against group D posts on regular basis. As this had entailed a reduction of salary, the two respondents had filed OA No. 3074/1991, which was disposed of vide decision dated 9th September, 1993. The operative portion of the decision dated 9th September, 1993, reads :-

“That the applicants have appeared for the screening test for group ‘D’ post and have been regularised against these posts in the open line cannot adversely affect their position as group ‘C’ workers in the PQRS organization as.....

The application is, therefore, disposed of with a direction to the respondents that irrespective of the results of the Screening for Gangmen in the open line, the temporary status already achieved by the applicants in group ‘C’ post in the PQRS organisation shall not be disturbed. They shall be regularised against available

vacancies of Group 'C' also whenever their turn comes in accordance with their seniority, after any screening/test prescribed under the rules.”

3. As the petitioners had failed to implement the aforesaid directions, the two respondents had filed contempt petition No. 288/1996 in which notice was issued. Consequent thereto, the petitioners on 21st June, 1997 passed an order giving pay scale/grade of Rs.950-1500 under the revised pay scale. The relevant portion of the order dated 21st June, 1997 passed by the petitioners reads as under:-

“4. In compliance of the directives of the Hon’ble CAT/New Delhi, it has been decided to grant temporary status already achieved by them in group ‘C’ post in PQRS organisation, as a provisional measure, especially in view of the facts that the PQRS organisation has been closed. Accordingly, they should be utilized against the existing vacancies of fitters, Grade Rs.950-1500 (RPS). They will be regularised against available vacancies of Group ‘C’ whenever their turn comes in accordance with their seniority after holding the selection/trade test, as the case may be, under rules. Their pay may be allowed to continue which were drawing before joining Delhi Division. The arrears of difference of pay they would have drawn had they been continued in Grade of Rs.950-1500 be paid to them immediately.”

In view of the aforesaid order, the contempt proceedings were dropped vide order dated 7th July, 1997.

5. After the Fifth Pay Commission, the respondents pay scale was revised to Rs.3050-4590 vide order dated 30th November, 2000.

6. After about fourteen years, the petitioners passed an order dated 5th May, 2010 re-fixing the pay scale of the respondents with effect from 1st January, 1996 in the scale of Rs.2550-3200. The said order also records that the respondents were to refund the excess amount paid in the scale of Rs.3050-4590 and the same would be recovered by the petitioners. The respondents were also entitled to the benefit of financial upgradation under the Modified Assured Career Progress (MACP) Scheme. The amount due and payable on account of financial upgradation was to be adjusted towards the arrears. The respondents thereafter had filed OA No. 3779/2011 challenging the order dated 5th May, 2010, but during the pendency of the OA, the petitioners had passed another order dated 27th January, 2012 re-fixing the pay of the respondents. OA No. 3779/2011 was withdrawn with liberty to file a fresh OA against the order dated 27th January, 2012. This order dated 27th January, 2012 was challenged and has been set aside by the impugned order dated 18th May, 2015 passed in OA No. 4225/2013. It may be noted here that the order dated 27th January, 2012 had partly addressed the grievance of the respondents, to the extent that they were granted

financial upgradation in the grade pay of Rs.1900 and 2000 respectively under the MACP Scheme. However, the petitioners had not modified their direction for reduction of pay scale of the respondents with effect from 7th March, 1996, etc.

7. Before the Tribunal and before us, the petitioners have relied upon Circular No. RBE 160/1992 circulated vide letter dated 23rd September, 1992. We have examined the said circular, of which a typed copy (with missing words) has been placed on record by the petitioners. The circular states that surplus staff, re-deployed on lower posts, would be entitled to benefit of pay protection and the pay would be fixed at the stage equivalent to the pay drawn by the re-deployed staff before he was rendered surplus. Further, if no such stage was available in the scale of new post, the pay scale would be fixed at the stage next below and the difference would be treated as personal pay to be absorbed in future increments. The pay so fixed shall not exceed the maximum scale of the post in which the surplus staff had been absorbed. The contention of the petitioners is that the pay protection being personal and subject to absorption in the future increments, the respondents had been wrongly given the benefit of future increments. This had resulted in wrong pay fixation upon implementation of the fifth pay

Commission. Ergo, the respondents had been paid extra or surplus amount contrary to the aforesaid circular.

8. The Tribunal had examined the said contention, but rejected the same for the reason that in the present case the respondents' pay was fixed pursuant to the directions issued in the order dated 9th September, 1993 passed in OA No. 3074/1991. We have already quoted the relevant portion of the directions given in the order dated 9th September, 1993 in OA No. 3074/1991. We have also recorded that as the petitioners had initially failed to pass an order in terms of the direction given, the respondents had filed Contempt Petition No. 288/1996 and consequent thereto the petitioners had passed the order dated 21st June, 1997 fixing the pay scale of the respondents. We are inclined to accept the reasoning given by the Tribunal, which clearly holds and states that in the present case the pay fixation was in terms of the order dated 9th September, 1993 passed in OA No. 3074/1991. In case the petitioners had any grievance against the said order or felt that it was contrary to the Circular No RBE 160/1992, they should have challenged and questioned the said order. Instead, the petitioners had accepted the directions and passed the order dated 21st June, 1997 whereupon the contempt proceedings were dropped vide order dated 7th July, 1997.

9. In view of the aforesaid position, we do not find any merit in the present writ petition and the same is dismissed. No order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

NOVEMBER 08, 2016
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