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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 7497 of 2018**

1. South East Central Railway, Through the General Manager, South East Central Railway, Bilaspur (C.G.)
2. Chief Personal Officer, South East Central Railway, Personnel Department, Bilaspur, District Bilaspur (C.G.)
3. Sr. Divisional Personnel Officer, South East Central Railway, Bilaspur Division, District Bilaspur (C.G.)
4. Senior Divisional Commercial Manager, South East Central Railway, Bilaspur Division, District Bilaspur (C.G.)

---- Petitioners

Versus

- Smt. Swapna Chatterjee, W/o Jayant Kumar Chatterjee, aged about 43 years, posted as Office Superintendent, Commercial Department, Office of Sr. Divisional Commercial Manager, SECR, Bilaspur (C.G.)

---- Respondent

For Petitioners : Shri H.S. Ahluwalia, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**Hon'ble Shri Justice Parth Prateem Sahu****Order on Board****Per Ajay Kumar Tripathi, Chief Justice****28.11.2018**

1. Heard counsel for the Railways.
2. Private Respondent was the Applicant before the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting at Bilaspur (for short 'the Tribunal').

She was compelled to file an O.A. No.203/00605/2014 since the Railways who are Petitioners before this Court decided to reduce her basic pay from Rs.13,540/- to Rs.10,650/- without any notice or without any order being passed by the Competent Authority.

3. The following reliefs were prayed for:

“8(a) This Hon'ble Tribunal may kindly be pleased to call for the entire records concerning the action taken by the respondent authorities with respect to the reduction of pay of the applicant.

8(b) This Hon'ble Tribunal may kindly be pleased to quash and set aside the order dated 15.05.2014 (Annexure A-1) passed by respondent No.3.

8(c) This Hon'ble Tribunal may kindly be pleased to issue an appropriate direction directing the respondent authorities to restore the pay of the applicant to the basic pay of Rs.13540/- and grade pay of Rs.4200/- on the post of Office Superintendent.

8(d) This Hon'ble Tribunal may kindly be pleased to issue an appropriate direction directing the respondent authorities to make payment of the arrears of the difference of the salary entitled at basic of Rs.13540/- and the salary paid, with simple interest at the rate of 6% per annum, since December 2012, till the date of actual payment.

8(e) Any other relief (including the cost of the present proceedings) which this Hon'ble Tribunal deem just, fair and equitable in the circumstances of the case may be granted.”

4. The facts pleaded before the CAT was that the Applicant was appointed on the post of a Progress Woman in the Railway Electrification (RE) Department on a pay scale which was a Group D post on adhoc basis sometime in the year 1989. The Railway Electrification (RE) Department closed down and she came to be posted under the Construction Department on the same post. The suitability test was held by the Construction Department for appointment on the post of Junior Clerk. She participated and succeeded and was found fit for the said post. She was working on the post of Junior Clerk in the Construction

Department which was said to be on adhoc basis, though her lien was there in the Open Line Commercial Department.

5. In the Open Line Commercial Department an examination was conducted for permanent appointment on the post of Junior Clerk, the Applicant participated and succeeded and, therefore, came to be absorbed in the Commercial Department w.e.f. 22.10.1998. Despite a permanent absorption in the Commercial Department she was continued in the Construction Department.
6. Adhoc promotion on the post of Senior Clerk in the Construction Department came to be granted to her in the year 1999. Regular promotion was earned on the post of the Senior Clerk drawing a basic pay of Rs.5,500/- vide order dated 06.07.2007. This benefit was granted after she succeeded in the examination for regular promotion conducted by the Commercial Department in the year 2006.
7. The Applicant thereafter, was relieved for joining in the Commercial Department vide order dated 02.01.2008. This order was issued by the Senior Divisional Commercial Manager, Bilaspur. She was repatriated to the Commercial Department Open Line in the pay scale of Rs.4,500-7,000/- where she was given a salary of Rs.5,500/- and the relevant grade pay for a period of one month.
8. The basic pay of the Applicant came to be reduced without giving any show cause notice and without any order being passed. A representation was submitted which was allowed and the pay of the Applicant was restored to Rs.5,500/-. Even arrears came to be paid.
9. The Applicant further earned a promotion to the post of Office Superintendent in the Commercial Department vide order dated 22.10.2010 and after the implementation of the 6th Pay Commission recommendation she was granted

basic pay of Rs.13,540/- in the pay band of Rs.9,300-34,800/- with a grade pay of Rs.4,200/-.

10. Again the billing clerk unilaterally re-fixed the salary of the Applicant on the basic pay of Rs.10,650/- for the month of December 2012. She was compelled to submit a representation on 13.02.2013, but no order came to be passed. This forced her to file an O.A. No.203/00252/2014 which was disposed off vide order dated 08.04.2014 to consider the representation and pass a speaking order. The claim was rejected vide order dated 15.05.2014 and, therefore, the second O.A. application came to be filed assailing the said decision.

11. The Tribunal after having heard the parties had this to say in its order:

“8. The main grievance of the applicant is that the applicant was drawing the basic pay in Rs.5500/- in the Construction Organization and on returning back to the Commercial Department Open Line in the pay scale of Rs.4500-7000/- and the basic pay was reduced to Rs.4625/- without giving any notice, which was restored later. When the applicant was promoted on the post of Office Superintendent on 22.10.2010 and on implementation on 6th Pay Commission her basic pay was fixed as Rs.5500/-. The main grievance of the applicant is that the enhanced salary which the applicant was drawing in the Construction Divisions should have been protected when the applicant was returned back to parent department.”

“9. The applicant has placed reliance on the order dated 20.04.2017 passed by Principal Bench of this Tribunal in Original Application No.1422/2013 (Kusum Lata Nayar Vs. Chairman Railway Board and Others), whereby the Principal Bench after considering the case has held that on repatriation the earlier pay should be protected as personal pay to be adjusted against future increments.”

“10. The applicant has also relied upon common order dated 26.02.2015 passed by the Principal Bench of this Tribunal in Original Application Nos.472/2014 and 474/2014.”

“11. On the other hand, the respondents have stated that the applicant was sent to Construction Organization on adhoc basis and the lien was maintained in concerned department in Open Line

in Bilaspur Division. On repatriation the applicant was placed in the same position. Moreover it has been specifically submitted by the respondents that the applicant was sent to Construction Department on adhoc basis in the ex-cadre post and not on the regular basis.”

“12. It is pertinent to mention that the Construction Division is the extension of the cadre of posts in the Railway/Division which is clear from the letter No. E.1023/0/Pt.VIII dated 09.12.2011 addressed to Gms' all Indian Railways and others. According to which the Construction/Projects are treated as extension of the cadre of posts in the Railway/Division in the jurisdiction of which such projects are located and all their requirements are being taken care of by Open Line Administration. The said document has been submitted by the learned counsel for the applicant. Moreover, as per judgment passed by Principal Bench in O.A. No.1422/2013 is also similar and in the said case after considering the various judgments of Tribunal and Hon'ble Apex Court, the Principal Bench has held for the protection in the pay as personal pay which was drawn earlier to repatriation to the parent department. Moreover, the relevant fact in the present case is that the respondent-department has firstly placed the applicant in the basic pay of Rs.4625/- on repatriation. But later on the basic pay of Rs.5500/- was restored and even arrears were also paid to the applicant. The Principal Bench of this Tribunal in O.A. Nos. 472/2014 and 474/2014 has held that the person who holds lien in parent department on adhoc promotion to a higher grade, then on repatriation to parent department one's pay has to be protected and his adhoc officiation has to be reckoned for pay protection and other benefits. So, the instant case also fully covered by the law settled by Principal Bench of this Tribunal.”

12. With the factual position as well as legal position emerging from the order of the CAT, we do not see that any infirmity as such seems to be emerging from the order which requires judicial scrutiny in the writ application. The stand of the counsel for the Railways that since the private Respondent / the Applicant was on deputation and, therefore, she could not continue with the benefit of the pay scale seems to be misplaced, especially in terms of the finding given by the Tribunal in paragraph 12 of the impugned order. Not only this, similar benefit

has been extended to other persons, which were held to be valid by the Principal Bench at CAT, New Delhi based on decisions of the Hon'ble Apex Court. If the CAT based on judicial precedent has extended benefit it can not be said to be erroneous.

13. We are not inclined, therefore, to interfere with the order of the Tribunal dated 17.07.2018.
14. Writ application is dismissed.

Sd/-

(Ajay Kumar Tripathi)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge