
(2005) 01 AHC CK 0013
In the Allahabad High Court
Case No : Writ Petition No. 44 (S/B) of 2005

Union of India (UOI) and Others

APPELLANT

Vs

Lalsa Prasad and Another

RESPONDENT

Date of Decision : 12-01-2005

Acts Referred:

Citation : (2005) 6 AWC 6361

Hon'ble Judges : Pradeep Kant, J;N.K. Mehrotra, J

Bench : Division Bench

Advocate : Anil Srivastava, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Kant and N.K. Mehrotra, JJ.—Heard Shri Anil Srivastava, learned Counsel for the Petitioners and the counsel for the opposite party.

2. This petition has been filed by the Union of India challenging the order passed by the Central Administrative Tribunal dated 23.9.2004 by means of which the Tribunal has directed the Petitioners to protect the pay of the Respondent and to fix the basic pay at the stage on what he was drawing on substantive basis before his request for transfer w.e.f. 8.11.1994 and for making the payment of arrears and other consequential benefits.

3. The Respondent who was promoted as Pump Engine Driver Grade II on 1.1.1986 applied for his transfer on his personal request. Since transfer in intermediate grade was not permissible, he was informed that his request for Delhi Division to Lucknow Division would be considered if he accepts lower grade Rs. 950-1,400 on bottom seniority. The Respondent agreed that he may be given seniority at the bottom level with the condition that his pay last drawn at Rs. 1,350 be protected. Thereafter, the Respondent was transferred from Delhi Division to Lucknow Division, but his pay was not protected. Feeling aggrieved, he preferred an original application before the Tribunal wherein contest was put in by the Respondent's counsel by relying on paragraph 604 of the Indian

Railway Establishment Manual Vol-I and asserting that the provision of protection of pay has been introduced for the first time by the aforesaid rule w.e.f. 24.2.1995 and the said rule being prospective in nature would not be available to the Respondent. On the other hand, the Respondent taking shelter of the provision of paragraph 312 of the Indian Railway Establishment Manual Vol.-I wherein no such procedure or provision for deduction of pay has been provided. The only requirement for applying such a transfer was that such a transferee would be placed at the bottom of the seniority list.

4. Paragraph 312 of the Indian Railway Establishment Manual deals with the transfer on request which reads as under:

312. Transfer on request.-The seniority of railway servants transferred at their own request from one railway to another should be allotted below that of the existing confirmed, temporary and officiating railway servants in the relevant grade in the promotion group in the new establishment irrespective of the date of confirmation or length of officiating or temporary service of the transferred railway servants.

Note.-(i) This applies also to cases of transfer on request from one cadre/division to another cadre/division on the same railway. (Rly. Bd. No. E (NG) 1-85 SR 6/14 of 21.1.1986).

(ii) The expression "relevant grade" applies to grade where there is an element of direct recruitment. Transfers on request from Railway employees working in such grades may be accepted in such grades. No such transfers should be allowed in the intermediate grades in which all the posts are filled entirely by promotion of staff from the lower grade(s) and there is no element of direct recruitment.

5. Whereas paragraph 604 of the aforesaid Manual reads as under:

604. In case of transfers from one railway department to another including transfer from a Government department, following general principles should be observed:

(a) Transfer from a higher to a lower post:

(i) Temporary employees.-In such cases the benefit of completed years of service in the higher post may be given for purposes of advance increments in the lower post to which railway servant is appointed, provided, of course, that does not exceed the pay drawn in the higher post at the time of transfer. In case the appointment to the lower post involves appointment to a regular cadre with immediate or future prospects of absorption as a permanent railway servant, care should be taken to see that grant of advance increments does not come into conflict with the pay fixed for other railway servants in the cadre. In such cases, normally, it may be preferable to fix the pay at the minimum of the time-scale, and to grant, subject to the approval of the Railway Board, a personal pay equal to the appropriate number of increments instead of fixing the pay at a higher

stage in the time-scale, the personal pay being absorbed in future increments.

(ii) Permanent Government servants.-In the case of permanent Government servants officiating in higher post and transferred to officiate in railway posts which are lower than the previous officiating posts, the previous officiating service in the higher post should be allowed to count for increments.

(b) Transfer of temporary Government servants from one post to another equivalent post.-In such cases, temporary Government servants may be given the advantage of completed years of service in the former posts for higher fixation of pay in the latter, provided that there is a reasonable prospect for the former posts to continue for a longer period and that the Government servant concerned would have continued to hold that post. In this case also, if the transfer is to a regular post in which chances of immediate or ultimate confirmation exist, it may be necessary in the interest of service of other railway servants to grant personal pay instead of a higher start. This personal pay will be absorbed in future increments.

6. The aforesaid provision of paragraph 312 only curtails the seniority of the railway servant transferred on his own request from one railway to another as against the already working staff in that division or railways with no further restrictions or curtailment of the salary or pay protection.

7. Paragraph 604 of the Manual deal with case of temporary employees or permanent Government servants who were working on a higher post but in an officiating capacity and are transferred to lower post and also that of the temporary Government servant from one post to another equivalent post. The Respondent did not fall in any of the categories of the Government servant which have been defined in paragraph 604. The argument of the learned Counsel for the Petitioner that in the Railways, this practice has been followed since long, is of no avail in determining the controversy which is to be decided as per the rules prevalent. The Respondent was working as a permanent railway servant substantively on the higher post and he had made a request for transfer to a lower post that too not in an officiating capacity. Therefore, the principles governing the fixation of pay in the matter of officiating appointees would not hold good in a case where the Government servant has been transferred in a substantive capacity.

8. Since under the aforesaid Manual, there was neither any provision for reducing the pay nor for giving the benefit of pay protection, it cannot be presumed by the Petitioners that in the absence of any such specific provision of the pay protection under the Rules, the Railway servant who has been transferred on his own request, would not be entitled to pay protection, rather unless there is a provision allowing such curtailment or reduction of pay a Government servant/railway servant is entitled to have the benefit of pay protection even if the Rules are silent in that regard.

9. The amended paragraph 604 appears to have been introduced for clarifying

the position that in the matter of substantive appointee being transferred on request, his pay should be protected. The introduction of the said provision with respect to the substantive appointees in the year 1995 would not mean that prior to the insertion of the said provision, the Railway servants who were transferred on request, would not be given the benefit of pay protection nor it can be presumed that this provision would mean that prior to the incorporation of the said provision, reduction in the pay was permissible. A specific rule which has been inserted by means of the amendment vide notification dated 24.2.1995, only clarifies and gives a specific provision for pay protection which cannot in any way be read to the prejudice of the right of the Railway servant, in case he was transferred on his own request prior to the enforcement of the aforesaid rule.

10. We, therefore, hold that the view taken by the Tribunal does not suffer from any illegality nor it runs contrary to the rules as were applicable from time to time.

11. In view of the above, the writ petition is dismissed.