COURT CASE
SLP MATTER

भारत सरकार **GOVERNMENT OF INDIA**
रेल मंत्रालय **MINISTRY OF RAILWAYS**
(रेलवे बोर्ड **RAILWAY BOARD)**

No.E(P&A)II/2019/PP-1 **New Delhi, dt 16.02.2022**

The General Managers (P),
All Indian Railways/PUs except SECR.

Sub:-Sharing of information regarding favourable judgement.

Ref: CA No.1053 of 2022 arising out of SLP (C) No. 19475/2019) in the matter of SECR & Ors Vs Smt. Swapna Chatterjee.

*****

Please find enclosed herewith a copy of judgement dt. 04.02.2022 of Hon'ble Supreme Court of India in CA No.1053 of 2022 arising out of SLP (C) No. 19475/2019) in the matter of SECR & Ors Vs Smt. Swapna Chatterjee which has been disposed of in favour of Railway Administration. The Hon'ble Supreme Court has ruled as under:

> ***".... the respondent is not entitled to pay protection on the basis of her pay, when she had worked in the Construction Department. Her working period in the construction Department will be treated as a period spent on deputation and accordingly, the provisions and rules would apply."***

It is advised that the aforementioned order dt. 04.02.2022 of Hon'ble Supreme Court of India may please be brought out to the notice of all the concerned including the official of divisions with instructions to ensure its effective utilisation while contesting the cases involving identical issue.

DA: As above.

PL Issue
16/02/22

(Dr. Kamlesh Kumar Goyal)
Dy., Director,PC-V,
Railway Board
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5th Floor, Room No.511-A

रेल मंत्रालय
Ministry of Railways
Railway Board
आर्डर के साथ जारी
Issue with Enclosure
हस्ताक्षर
जारी की तारीख
Date of Issue

Copy to: PFAs, All Indian Railways/PUs except SECR.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1053 OF 2022
(arising out of @SLP (C) No(s). 19475/2019)

SOUTH EAST CENTRAL RAILWAY & ORS. APPELLANT(S)

VERSUS

SWAPNA CHATTERJEE RESPONDENT(S)

O R D E R

Leave granted.

The respondent-Swapna Chatterjee initially joined the appellant-South East Central Railway as a 'Progress Woman' in Railway Electrification Department, a Group 'D' post on 30th January 1989. She was regularized in Group 'D' on 12th July 1995. After she cleared the departmental suitability test on 22nd September 1995, she was promoted as a Junior Clerk on *ad hoc* basis in the Construction Department. While working at the post of Junior Clerk on an *ad hoc* basis, she participated in a selection examination for the post of Junior Clerk, which she cleared. Accordingly, she was given posting on a regular basis in the Commercial Department on 22nd October 1998 and was absorbed in the Commercial Department at the post of Junior Clerk. However, even after the appointment and absorption in the said department, the respondent continued to work in the Construction Department.

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Anita Malhotra
Date: 2022.02.08
16:32:15 IST
Reason:

Thereafter, the respondent was promoted as senior clerk on an *ad hoc* basis in the Construction Department on 19th June 1999. Subsequently on 06th July 2007, the respondent was granted promotion to the post of senior clerk in her parent department *viz.*, the Commercial Department. On 02nd January 2008, the respondent was repatriated from the Construction Department to the Commercial Department. On repatriation, she received a pay of Rs. 5,500/- (Rupees Five Thousand and Five Hundred Only) which was reduced to Rs. 4,625/- (Rupees Four Thousand Six Hundred and Twenty Five Only) from the very next month. The respondent had made a representation dated 24th June 2009, which was accepted. Her pay was restored to Rs. 5,500/- (Rupees Five Thousand and Five Hundred Only) and even arrears were paid to her. The respondent was promoted to the post of Office Superintendent, Commercial Department on 22nd October 2010. Her pay scale was revised on implementation of the 6th Central Pay Commission. The respondent was, thereupon, drawing a salary of Rs. 13,540/- (Rupees Thirteen Thousand Five Hundred and Forty Only) per month. However, in November 2012, the pay was refixed and reduced to Rs. 10,560/- (Rupees Ten Thousand Five Hundred and Sixty Only). On 13th February 2013, the respondent submitted a representation for restoration and upward revision of pay.

The respondent had, thereupon, filed O.A. No. 252/2014 before the Central Administrative Tribunal, Jabalpur, which application was disposed of at the admission stage with directions to decide the representation of the respondent. On 15th May 2014, the

representation of the respondent was rejected. Thereafter, the respondent filed Original Application No. 203/00605/2014 before Central Administrative Tribunal, Jabalpur challenging the order dated 15th May 2014. This application was allowed *vide* order dated 17th July, 2018 primarily on the ground that the respondent would be entitled to pay protection after repatriation from the Construction Department to the parent department, i.e. the Commercial Department. The writ petition filed by the appellants before the High Court, Chhattisgarh assailing the tribunal's order has been dismissed *vide* the impugned order dated 28th November 2018, agreeing with the views expressed by the tribunal.

In our opinion this issue is covered in favour of the appellants in terms of the decision of this Court in *Union of India and Others* v. *Shri Bhanwar Lal Mundan.*[1] This was a case relating to a railway worker who had been sent on deputation to the Construction Organization and on the basis of the pay scale as paid in the Construction Organization, a plea of pay protection was raised and accepted by the High Court which had confirmed the view expressed by the Central Administrative Tribunal, Jodhpur Bench. This Court examined the earlier judgment in *Badri Prasad and Others* v. *Union of India and Others*[2] and held that the directions given in this case were issued in the special fact situation, and did not pertain to a situation wherein a government servant is repatriated to the parent department and on the basis of pay in the

1 (2013) 12 SCC 433.
2 (2005) 11 SCC 304.

deputation organization/department cannot raise a claim for pay protection and consequent fixation of pay in the parent department.

To record the aforesaid ratio, this Court had relied on decisions in *Puranjit Singh* v. *Union Territory of Chandigarh and others,*[3] wherein it has been held that the deputationist cannot claim promotion in the parent department on the basis of officiation on a higher post in the borrower organization. Reference was also made to *State of Punjab and others* v. *Inder Singh*[4] wherein this Court has explained the concept of 'deputation' and the right of a deputationist. In that context, this Court has observed that on expiry of the period of deputation the employee has to come back to the parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the recruitment rules.

Moreover the situation in the present case is governed by Circular No. F(E)II/89/FR-1/1 dated 12.12.1991, wherein in paragraph III and IV it is stipulated:-

> *"III. For the purpose of this rule, the appointment shall not be deemed to involve the assumption of duties and responsibilities or greater importance if the post to which it is made is on the same scale of pay as the post, other than a tenure post, which the railway servant holds on a regular basis at the time of his promotion or appointment or on a scale of pay identical therewith.*
>
> *IV. Notwithstanding anything contained in this rule, where a railway servant holding an ex-cadre post is*

3 1994 Suppl (3) SCC 471
4 (1977) 8 SCC 372

promoted or appointed regularly to a post in his cadre, his pay in the cadre post will be fixed only with reference to his presumptive pay in the cadre post which he would have held but for his holding any ex-cadre post outside the ordinary line of service by virtue of which he becomes eligible for such promotion or appointment."

The respondent has not challenged the validity of the aforesaid circular.

Learned counsel for the respondent during the course of hearing has stated that the respondent may not be entitled to pay protection, but her pay fixation is not correct.

In view of the said grievance raised by the respondent, we direct the appellants to furnish complete details relating to pay fixation of the respondent within a period of eight weeks from today. The respondent, if aggrieved and has objection, would be entitled to make a representation to the appellants regarding pay fixation, which would be given due consideration and the decision/opinion communicated. However, we clarify that the respondent is not entitled to pay protection on the basis of her pay, when she had worked in the Construction Department. Her working period in the Construction Department will be treated as a period spent on deputation and accordingly, the provisions and rules would apply.

We also make it clear that the appellants will not be entitled to recover any amount from the respondent in case any excess amount has been paid for the period before November, 2012. In fact, the

appellants did not make any recovery on the ground that excess payment had been made, *vide* the salary paid prior to November 2012.

Recording the aforesaid, we allow the present appeal and set aside the impugned order passed by the High Court affirming the order passed by the tribunal. The O.A. will be treated as disposed of in the aforesaid terms and directions.

There would be no order as to costs.

All pending applications stand disposed of.

.....J.

[SANJIV KHANNA]

.....J.

[BELA M. TRIVEDI]

NEW DELHI
FEBRUARY 04, 2022

ITEM NO.34 Court 15 (Video Conferencing) SECTION IV-C

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 19475/2019

(Arising out of impugned final judgment and order dated 28-11-2018 in WPC No. 7497/2018 passed by the High Court of Chhattisgarh at Bilaspur)

SOUTH EAST CENTRAL RAILWAY & ORS. Petitioner(s)

VERSUS

SWAPNA CHATTERJEE Respondent(s)

Date : 04-02-2022 This petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Petitioner(s) Ms. Madhvi Divan,ASG
Ms. Durga Dutt, Adv.
Mr. Shibashish Mishra, Adv.
Ms. Vaishali Verma, Adv.
Mr. Ayush Puri, Adv.
Mr. Amrish Kumar, AOR

For Respondent(s) Mr. Pradeep Misra, AOR
Mr. Daleep Dhyani, Adv.
Mr. Suraj Singh, Adv.
Mr. Bhuwan Chandra, Adv.
Mr. Manoj Kr Sharma, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the Signed Order.

All pending applications stand disposed of.

(SONIA BHASIN)
COURT MASTER (SH)

(DIPTI KHURANA)
COURT MASTER (NSH)

[Signed Order is placed on the file]