

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**



OA No. 2009/2018

New Delhi, this the 2nd day of March, 2020

**HON'BLE MRS. JUSTICE VIJAY LAKSHMI, MEMBER (J)
HON'BLE MR. PRADEEP KUMAR, MEMBER (A)**

Shri Kishore Kumar Vishwakarma
S/o Shri Bishwa Nath
Ex-Tower Wagon Driver
Northern Railway
New Delhi
H. N. 45, New Friends Colony, Banna Road,
Tundla Firojabad.

... Applicants

(By Advocate: : Ms. Meenu Mainee)

Versus

1. Secretary
Railway Board,
Rail Bhawan,
New Delhi
2. General Manager
Northern Railway
Baroda House, New Delhi
3. Divisional Railway Manager
Northern Railway
State Entry Road, New Delhi
4. Division Railway Manager
Northern Central Railway
Allahabad

... Respondents

(By Advocate: Sh. Shailendra Tiwary)

ORDER (ORAL)

BY HON'BLE MR. PRADEEP KUMAR, MEMBER (A):

1. The applicant herein had been working as a Tower Wagon Driver in the respondent railway. He has preferred this OA before the Principal Bench seeking payment at par with Goods Train Drivers on grounds of parity and since this was allowed earlier in similar cases by Tribunal.

2. An OA No. 321/2001 seeking similar relief, was also preferred by some other Tower Wagon Driver before the Calcutta Bench of this Tribunal. The Calcutta Bench allowed the OA vide order dated 18.01.2002. Thereafter, another OA No. 1059/2001 on same grievance, was also allowed by Calcutta Bench on 07.08.2002.

However, the respondent railway in these OAs, preferred a Writ Petition No. 322/2003 before the Hon'ble High Court of Calcutta and this was pending adjudication.

3. At that stage, another OA No. 1699/2000 filed before the Principal Bench by some other similarly placed Tower Wagon Drivers was allowed on 27.01.2003 subject to final orders by the Hon'ble High Court of Calcutta (Para 2 Supra). Thereafter, these orders were complied with by the respondents (presently Allahabad Division of N. C. Railway which was under N. Railway at that time) vide their order issued on 19.09.2003.

4. The applicant herein has since retired from service. However, he was not granted the benefit at that point of time (Para 3 Supra). The applicant fairly mentioned that he was not granted those benefits at that point of time since he was undergoing certain punishments. Now since the period of punishment was over, his request for grant of same benefit, needs to be allowed and especially so since his juniors are being paid higher pension as a result of the orders in Para 3 above. His



representations in this regard have not elicited a positive response. Feeling aggrieved, he has preferred this OA.

5. The respondents brought out that in due course, the Hon'ble High Court of Calcutta upheld the orders by Calcutta Bench (Para 2 Supra). Feeling aggrieved, the respondent railway preferred SLP No. 365/2007 before the Hon'ble Apex Court wherein the Hon'ble Apex Court decided the same on 08.07.2010 and directed that the respondents shall consider and take a decision. Following order was passed by the Hon'ble Apex Court:-

“During the course of the arguments this was also brought to our notice that most of the respondents in the present appeal have already retired from service and their exist no justification or effecting any recoveries from their salaries as they have already worked and received their salaries as granted by the Union of India.

For the reasons afore stated, we find no legal infirmity in the judgments of the Tribunal and the High Court while dismissing the appeal we make it clear that this judgment will not affect the right of the Union of India to pass an appropriate order in relation to the pay scale applicable to any class of its employees including the respondents afresh and in accordance with law. We do hope that if such an order is passed it will be upon proper application in mind and after taking into consideration appropriate material and/or data.”

5.1 In compliance, the Ministry of Railway have passed an order dated 15.11.2010 bringing out that there is vast difference in the duties, responsibility and the educational qualification of Tower Wagon Drivers vis-à-vis that of Goods Train Drivers. Accordingly, Tower Wagon Drivers cannot be considered for payment equal to the pay scale applicable to Goods Drivers. However, in respect of such employees who had already superannuated, it was decided to retain the benefit already granted and no recoveries were made. The operative part of this order reads as under:-



“2. Keeping in view the specific observation of Hon’ble Supreme Court regarding the position of the respondents involved in this case, it has been decided to comply with as a special case. Further, in compliance of the above observations of the Hon’ble Supreme Court the issue regarding grant of pay parity to Tower Wagon Drivers with Goods Train Drivers has been considered by the Competent Authority and it has been observed as under:

xxx

xxx

xxx”

3. From the above position, it is clear that in terms of appointment, recruitment, qualifications, nature of duties and level of responsibilities and also training period, TWDs are not comparable with Goods Drivers.

4. Further, the Hon’ble Supreme Court, in their judgements on various occasions, have held that unless there is wholesome and complete identity between the two categories, there lies no case for pay parity amongst them.

5. In view of the above observations, the competent authority have decided that Tower Wagon Drivers are not entitled for grant of pay scale of Rs. 5000-8000 at par with that of Goods Drivers and they shall continue to be in the scale of Rs, 4000-6000 and Rs. 4500-7000.

6. In this context, the applicant in the instant OA is seeking same benefit on the plea that the benefits were not given to him at that point of time only due to punishment whereas these were given to his juniors who retired and are drawing higher pension. Had he been given the same, he would have been allowed to retain the same in line with others.

6.1 Since there has been a delay of 777 days in filing this OA, the applicant also preferred the MA No. 2268/2018 seeking condonation of delay.

7. Matter has been heard. Learned counsel Ms. Meenu Maine represents the applicant and learned Sh. Shailendra Tiwary represents the respondents.



8. For the reasons stated in the application, delay is condoned and the MA stands allowed.

9. As regards the merit of the case in respect of payment to the Tower Wagon Driver at par with Goods Train Driver, is already decided by the Hon'ble Apex Court wherein orders by the CAT, Calcutta Bench and the Hon'ble High Court of Calcutta were not upheld and instead Ministry of Railways were directed to pass orders.

Those orders have since been passed on 15.11.2020 and parity between Tower Wagon Driver and Goods Driver has been denied (Para 5.1 Supra) and it was held that Tower Wagon Drivers are not entitled for grant of pay at par with that of Goods Drivers.

10. In view of forgoing, the issue has already been decided on merit. The order dated 15.11.2010 has not been challenged.

Accordingly, there is no merit in contention of applicant for releasing higher payment simply on the ground of parity with his juniors or similarly placed other Tower Wagon Drivers who were given higher pension at that time and were allowed to retain it. Such retention was in the circumstances that benefit was already given when decision by the Hon'ble Apex Court was awaited and by the time decision of the Hon'ble Apex Court was received, they had already retired. Hon'ble Apex Court also noted it in their judgment (Para 5 supra).

The applicant was not extended those benefits as he was undergoing punishment at that time. Those benefits cannot be extended now as they were not due in the first place.

Accordingly, OA is dismissed being devoid of merit. No costs.

(Pradeep Kumar)
Member (A)

(Justice Vijay Lakshmi)
Member (J)



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