

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO. 794/1996

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New Delhi this the 1st day of February, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI R. K. AHOOJA, MEMBER (A)

1. Surender Kumar Gaur S/O Jagdish Prasad,  
R/O 398-B, Arya Nagar, Rly. Colony,  
Ghaziabad (UP).
2. R.N.Malik S/O Ranpat Malik  
R/O E-120 B, Railway Colony,  
Pnepat.
3. Shiv Dutt Sharma S/O D.S.Sharma  
R/O Rly. Colony,  
Ramnagar.
4. Sudesh Kr. Sharma S/O Y.D.Sharma  
R/O Aligarh.
5. Pramod Kr. Sharma S/O Bhagwan Sharma,  
R/O 392-C, Rly. Quarters,  
Punjab Lane, Ghaziabad.
6. Prem Pal Singh S/O Gulshagar Singh,  
R/O 10/A-2, Railway Colony,  
Wazirpur, Delhi.
7. Gyan Chand S/O Nand Lal,  
R/O Gumti Road,  
Shahbad Markanda,  
Haryana.
8. D.K.Chowdhary S/O Ram Murat Chowdhary,  
R/O Railway Colony, Udampur.
9. V.K.Soni S/O Gian Chand Soni,  
R/O B-143-I, Rly. Colony,  
Ambala.
10. Khyali Singh Rawat S/O K.S.Rawat,  
R/O Rly. Colony, Dayabasti,  
Delhi.
11. Rakesh Kumar S/O Mohan Lal,  
R/O Anand Gali,  
Shahbad Markanda, Haryana.
12. M.K.Batra S/O Lekh Raj Batra,  
R/O 230/7, Moh. Satya Nagar,  
Shahbad Markanda, Haryana.
13. R.S.Ujlayan S/O Ram Saran,  
R/O 10-A1, Rly. Colony,  
Wazirpur, Delhi.

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14. Rajinder Kumar S/O Hari Ram,  
R/O C/O SDAV Public School,  
K.No.36, Mathura Nagar,  
Near Police Line,  
Ambala City (Haryana).

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15. A.B.Joshi S/O G.B.Joshi,  
R/O 392-B, Railway Colony,  
Ghaziabad (UP).

... Applicants

( By Shri B.S. Mainee with Ms. Meenu Mainee, Adv. )

-Versus-

1. Union of India through  
Secretary, Ministry of Railways,  
Rail Bhawan, New Delhi.

2. General Manager,  
Northern Railway, Baroda House,  
New Delhi.

3. Chief Administrative Officer,  
Northern Railway,  
Kashmiri Gate,  
Delhi.

... Respondents

( By Shri P.M. Ahlawat, Advocate )

O R D E R (ORAL)

Shri R. K. Ahooja, AM :

Applicants, 15 in number, claim that they were initially appointed as Work Mistries/SOMs on casual basis and were also thereafter granted temporary status with effect from 1.10.1986. They further state that they were placed in the pay scale of Rs.1320-2040. On the basis of the recommendations of the 4th Central Pay Commission, grades I and II of Sub Overseer Mistries were merged into a single grade of Rs.1400-2300 w.e.f. 1.1.1986. They submit that on the basis of the decision of this Tribunal in O.A. No.359/89 of Jodhpur Bench, the respondents had formulated a scheme and thereafter regularised the applicants in the pay scale of Rs.1400-2300. However, the applicants were neither given the benefit of their

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upgraded pay scale w.e.f. 1.10.1986 nor the actual pay being drawn by them at the time of their regularisation was protected. They have now come before the Tribunal seeking a direction <sup>to</sup> ~~that~~ the respondents ~~be directed~~ to fix their pay in the pay scale of Rs.1400-2300 w.e.f. 1.10.1986 and to protect the pay they were drawing at the time of regularisation in 1994.

2. The respondents in their reply have stated that the applicants were granted the pay scale of Rs.1320-2040 because they were not discharging supervisory duties. They also submit that applicant Nos.1 to 6 and 8, 10 and 13 were never appointed as Sub Overseer Mistries and were actually appointed as Mason Mistries. The respondents also state that the applicants were all appointed in the project and not in the open line. They further submit that the Jodhpur Bench in O.A. No.359/89 has already examined this issue and decided that such persons were only entitled to the pay scale of Rs.1320-2040.

3. We have heard the counsel. Shri Mainee, the learned counsel appearing for applicants relies on the orders of this Tribunal in O.A. No.1443/95 - Manoj Kumar Srivastava & Ors. v. Union of India & Ors. decided on 26.10.1999 by the Principal Bench of the Tribunal. In that case also the applicants were initially engaged on casual basis as Highly Skilled Technical Mistries. They were also given the pay scale of Rs.1200-2040 and they had made a prayer that they should be granted the pay scale of Rs.1400-2300.

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The Tribunal after examining the merits of the case, decided that the applicants were entitled to the pay scale of Rs.1400-2300 and that their pay was to be fixed accordingly. However, considering the time frame in which the applicants had approached the Tribunal, the Tribunal decided that they were entitled to monetary benefits on the basis of such re-fixation only from the date they had filed the aforesaid O.A.

4. We have carefully gone through the aforesaid judgments. We find that the Jodhpur Bench of the Tribunal in the earlier O.A. No.359/89 had also gone into this question, though the present applicants were not before the Tribunal in that O.A. The Jodhpur Bench had concluded that since there was no evidence to prove that the applicants were working on the post of SOMs, the direction sought from by them that they should be granted the pay scale of Rs.1400-2300 could not be issued.

5. We find from a perusal of the order of this Tribunal in O.A. No.1443/95 that the earlier judgment of the Jodhpur Bench in O.A. No.359/89 was not brought to the notice of the Principal Bench. In the present case, the claim of the applicants that they were appointed as SOMs and were assigned supervisory duties has been denied by the respondents. The learned counsel for the respondents has also pointed out that the Project Chief Administrative Officer was also not competent to appoint the applicants as SOMs in the pay scale of Rs.1400-2300. We also find that in the certificates issued by the Northern Railway

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which have been annexed by the applicants with their rejoinder the pay scale of some of the applicants before us has been shown to be Rs.1320-2040. We find, in terms of the orders passed by the Tribunal in O.A. No.359/89 that there is no evidence before us on the basis of which we ~~can~~ conclude that the applicants were discharging supervisory duties and, therefore, ~~were~~ entitled to the pay scale of Rs.1400-2300. In view of this position, we are inclined to follow the orders of this Tribunal in O.A. No.359/89.

6. There is, however, another aspect of the matter on which we feel that the applicants are on a firmer ground. It is claimed by the applicants and not denied by the respondents that the applicants were drawing the pay of Rs.1560/- at the time of their regularisation in 1994. The respondents submit that in accordance with the directions given by the Jodhpur Bench and the scheme formulated by them, they have protected the said pay by treating the difference of the minimum of the pay scale and the actual pay drawn as personal pay to be absorbed in future increments. We find no rationale in this method followed by the respondents. If the applicants were granted the regular pay scale right from 1.10.1986 and have been granted increments in that pay scale till 1994, when, without a break, their services were regularised, they were entitled to carry the benefit of the increments already earned by them. If it were otherwise, the additional increments that the applicants would have earned in the lower pay scale of Rs.1320-2040 would not be available to them for the next four years.

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7. Shri Mainee further submits that in such an event if the applicants were treated to be in the lower pay scale and in 1994 given the higher pay scale of Rs.1400-2300, then under FR 22-C they were also entitled to the benefit of one additional increment. We find <sup>no</sup> merit in this argument. The grant of additional increment under FR 22-C is available only when there is a case of promotion from a lower scale to a higher scale. In the present case, what we have is the regularisation of the applicants and the pay fixation with reference to an earlier pay scale being drawn by them.

8. In the result, the O.A. is partly allowed. <sup>upon regularization the</sup> The respondents are directed to fix the pay of the applicants in the pay scale of Rs.1400-2300 by way of initial fixation at a stage not lower than Rs.1560/- as was being drawn by the applicants in the lower scale of Rs.1320-2040. Applicants will, however, be entitled to the monetary benefits on the basis of this re-fixation only from the date of filing of this O.A. There shall, however, be no order as to costs.

( Ashok Agarwal )  
Chairman

( R. K. Ahooja )  
Member (A)

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