

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1684/2000
MA No.2083/2000

12

New Delhi this the 12th day of December, 2001.

HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Shri Mam Chand,
S/o late Shri Soran Singh,
Suboverseer Mistry (Work Mistry),
under Chief Administrative Officer (Constn.),
Northern Railway,
Kashmeri Gate, Delhi and
5 Others as per memo of parties -Applicants

(By Advocate Shri B.S. Mainee)

-Versus-

Union of India : through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Chief Administrative Officer (Constn.),
Northern Railway,
Kashmeri Gate,
Delhi. -Respondents

(By Advocate Shri R.L. Dhawan)

O R D E R (Oral)

By Mr. Shanker Raju, Member (J):

MA for joining together is allowed.

2. The applicants in this case have sought directions to the respondents to fix their salary in the grade of Rs.1400-2300 extending benefit of their earlier working as temporary status holders in the category of Suboverseer Mistry (SOM) w.e.f. 1.1.86 and the category of SOM was placed in the same grade alongwith fixation of their pay with all consequential benefits.

3. Briefly stated, the applicants are qualified Draftsmen having passed two years' certificate course have applied for the posts of SOM. Alongwith the applicants

(2)

13

diploma holders were also considered and no distinction had been made at that time. The applicants have been appointed as daily wages in the year 1983 on the same pay scale which was given to the diploma holders. After implementation of the Fourth Central Pay Commission's recommendations the applicants alongwith diploma holders have been placed in the pay scale of Rs.1200-2040 but in the year 1988 the pay scale of diploma holders has been enhanced to Rs.1320-2040 and to diploma holders it has been decreased to Rs.950-1500. OA-264/89 had been filed which was allowed with the direction to the respondents to place the applicants in the pay scale of Rs.1200-2040 seeking regularisation. Diploma holders SOMs filed OA-359/89 where directions have been issued for their regularisation. They have been regularised in the year 1994 and were placed in the pay scale of Rs.1400-2300. This decision has not been extended to the certificate holders which was challenged in OA-1419/94 which was allowed on 29.1.96 by directing the respondents to consider the applicants alongwith others for appointment as SOMs in the grade of Rs.1400-2300 against direct recruitment quota. In pursuance thereof selection was held and the applicants were selected for the posts of Mistry Works/SOM in the grade of Rs.1400-2300 by letter dated 6.3.97. The Railway Recruitment Board passed orders to appoint applicants w.e.f. 11.4.97 and 22.4.97 respectively. The pay scale of Rs.1400-2300 was allotted to SOMs w.e.f. 1.1.86. The respondents have not paid it either to the diploma or certificate holders on the ground of their non-regularisation. The benefit of earlier period for the purpose of fixation of pay to the applicants has not been accorded by the respondents. The applicants filed representations. Diploma holders being aggrieved by

non-accord of fixation of pay in the grade Rs.1400-2300- w.e.f. 1.1.86 approached this Tribunal in OA-1443/95, which was allowed on 26.10.99.

4. The learned counsel for the applicants contended by taking resort to the decision of the Tribunal in OA-1443/95 that the applicants are similarly circumstance and cannot be deprived for the fixation of pay and benefit of revised pay scale of Rs.1400-2300 w.e.f. 1.1.86 notionally and actually from the date of filing of the OA. It is also stated that the applicants are working as SOMs from their initial appointment and the proper pay scale of SOM was Rs.1400-2300. As they had been performing the duties and responsibilities of the Work Mistry, on the doctrine of equal pay for equal work they cannot be deprived of the pay scale. According to them before regularisation they were drawing Rs.1560/- in the pay scale of Rs.1200-2040 but the salary has been fixed without giving any benefit of fixation of pay as per Rules in the grade of Rs.1400-2300. The applicants have been working continuously with temporary status against regular vacancies, as such in view of the provisions of Rule 2005 of the IREM Volume-II having temporary status they are entitled to get the same pay scale as given to diploma holders. As the Fourth Central Pay Commission has recommended only one grade of SOM, i.e., Rs.1400-2300 the applicants are entitled to get the same pay scale for the purpose of their pay fixation.

5. On the other hand, the respondents in their reply have stated that earlier the applicants have filed OA-1419/94 for appointment as SOMs in the grade of

(4)

Rs.1400-2300 and thereafter filed OA-2047/97 seeking correct seniority as SOMs. As the applicants have prayed their placement in the grade of Rs.1400-2300 w.e.f. 1.1.86 which is a consequential benefit of regularisation as well as seniority and having failed to assail their grievance and their failure to pray for placement in the said grade in the earlier OAs, the present OA is barred by the doctrine of res judicata as well as constructive res judicata in view of the decision of the Apex Court in Commissioner of Income Tax v. T.P. Kumaran, SLJ 1996 (3) SC 101. It is also stated that the decision in OA-1443/95 would have no application in the case of the applicants as the Railway Board's circular dated 2.1.87 has no application on employees working in the construction unit. It is also stated that in pursuance of the directions of this Court the applicants have not been regularised but appointed as SOMs, as such they are not entitled for calculating the period of temporary status towards fixation of pay. The respondents have further taken a preliminary objection that the OA is barred by limitation and the cause of action is not continuing and recurring as the applicants are praying for their placement in the grade of Rs.1400-2300 w.e.f. 1.1.86 and having filed their representations only on 14.9.97 the OA is not maintainable in view of Section 21 of the Administrative Tribunals Act, 1985. It is further stated that on the basis of a decision of the Court no cause of action can arise for the purpose of limitation in view of the decision of the Apex Court in Bhoop Singh v. Union of India, ATR 1992 (2) SC 278. It is also stated that in view of the decision of the Full Bench in Yasim Khan's case two years certificate holders are not eligible for direct recruitment but for the directions of

(16)
(5)

this Court in OA-1419/94 the applicants have been considered and appointed. It is only those SOMs who are possessing diploma are placed in the grade of Rs.1400-2300 w.e.f. 1.1.86 and as the applicants are unqualified they are correctly placed in the pay scale of Rs.1200-2040. They have been appointed as Supervisors (Works) in the grade of Rs.1400-2300 in pursuance of the directions of this court. They have been accorded pay scale of Rs.1200-2040 in compliance of an order passed by the Tribunal on 1.6.94. Only open lines establishment are eligible to be placed in the grade of Rs.1400-2300. The applicants in the construction are not entitled for the same.

6. In the rejoinder, the learned counsel for the applicants stated that in view of Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987 while the previous petitions have been filed against reducing the pay scale as well as for regularisation and seniority where the consequential relief is promotion but fixation of their pay scale, which is a continuing and recurring cause of action in view of the decision of the Apex Court in M.R. Gupta v. Union of India, 1995 (5) SCALE 29 the claim of the applicants if raised for fixation of pay in the earlier OAs would have certainly amount to seeking plural remedies and as such as the grievance of pay scale has not been adjudicated and finally settled there shall not be any applicability of constructive res judicata in the case as well as the limitation. The applicants though claiming benefit of the judgement but yet in view of placement of SOMs in one grade w.e.f. 1.1.86 by the Fourth Central Pay

(6)

Commission the applicants are also entitled to be considered for the same in view of paragraph 2005 of IREM, Volume II.

7. We have carefully considered the rival contentions of the parties and perused the material on record. The preliminary objection of the respondents regarding constructive res judicata would have no application in the facts and circumstances of the present case. The applicants have earlier filed OAs before this Court against rejection of pay scale, seniority and regularisation where the present grievance of placement in the pay scale of Rs.1400-2300 cannot be raised as a consequential relief and would have been barred by the provisions of plural remedies contained in Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987. As such, as the claim of placement in the pay scale could not have been raised and had not been adjudicated upon, it cannot be observed that the applicants despite having opportunity, have not raised the same in the earlier OAs. As such the doctrine of constructive res judicata would have no application in the present circumstances.

8. As regards the limitation is concerned, after the decision in OA-1443/95 on 26.10.99 similarly circumstance SOMs have been accorded the benefit of pay scale w.e.f. 1.1.86 the applicants who are claiming benefit of this decision have filed representations and have come before this Court within the stipulated period of limitation. Apart from it, in the matter of placement in the pay scale the cause of action arises on every first day of the month and is a recurring cause of action and in view

(18)

of the decision of the Apex Court in M.R. Gupta's case (supra) the claim of the applicants cannot be treated as barred by limitation. The objection of the respondents cannot be upheld.

9. As regards the merits are concerned, the case of the applicants is on all fours covered by the decision of this Court in OA-1443/95 wherein after meticulously going into the right of placement in the pay scale of Rs.1400-2300 and placing reliance on Rule 2005 IREM *ibid*, where casual labours after being granted temporary status are entitled to the same rights and benefits as admissible to temporary status Railway servants, including the pay scale and keeping in view the Fourth Central Pay Commission's report where only one grade of SOM has been recommended, i.e., Rs.1400-2300 and the fact that the letter written by the Deputy Chief Engineer regarding carrying duties and responsibilities at par with the IOW Grade III as well as Board's circular dated 2.1.87 the applicants who have been previously equated with the SOM Diploma holders and in view of the recommendations of the Fourth Central Pay Commission as there is only one pay scale of Rs.1400-23000 the applicants cannot be deprived of their placement in the said pay scale of Rs.1400-23000. Admittedly they are performing the same work as done by the diploma holders right from their initial appointment. The delay in regularisation of the applicants cannot deprive and forfeit their service prior to that date. As per the provisions of para 2005 of IREM the applicants cannot be discriminated on the ground that they belong to construction division.

(8)

10. In this view of the matter and having regard to the reasons recorded above, we find that the claim of the applicants for being placed in the grade of Rs.1400-2300 is legally sustainable. The present OA is allowed with direction to the respondents to accord them benefit of revised pay scale of Rs.1400-2300 w.e.f. 1.1.86 notionally and actually from the date of filing of this OA, i.e., w.e.f. 1.9.2000 till today and onwards. The applicants are also entitled to corresponding benefit under the Fifth Central Pay Commission's report, which has been accepted by the Government. These directions shall be complied with by the respondents within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member(J)

'San.'

(Govindan S. Tampi)
Member(A)