

Central Administrative Tribunal

Principal Bench, New Delhi



O.A. No.1910/2020
M.A. No.2463/2020

Friday, this the 27th day of November, 2020

Through video conferencing

**Hon'ble Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A. K. Bishnoi, Member (A)**

1. Archana Kaul, Sr. Section Officer/Accounts, Gr 'B'
Aged about 49 years
D/o late Sh. O.N. Kaul
R/o C-18-A, Railway Colony
Lajpat Nagar, Delhi.
2. Puja Makhija, Assistant Financial Advisor, Gr 'B'
Aged about 47 years
W/o Sh. Jitender Makhija
r/o H.No. 307, Divya Jyoti Apartments
Sec-19, Rohini, Delhi.
3. Virender, Sr. Section Office/Accounts, Gr 'B'
Aged about 41 years
S/o Sh. Om Prakash
R/o NU-100C, Pitampura
Delhi – 110034.
4. Chander Bhag, Sr. Section Officer/ Accounts, Gr 'B'
Aged about 46 years
W/o Sh. Rakesh Kumar
R/o H.No. 150, 1st Floor, Sec 17
Faridabad, Haryana.
5. Rahul Verma, Sr. Section Officer/Accounts, Gr 'B'
Aged about 36 years
S/o late Sh. Vinod Kumar Verma
R/o 21/3, Shakti Nagar, Delhi.

.....
(Mr. M K Bhardwaj, Advocate)

..Applicants

Versus



1. The Railway Board
Through its Secretary
Rail Bhawan, New Delhi.
2. The General Manager
Northern Railway
Baroda House, New Delhi.
3. The General Manager (Accounts)
Northern Railway
Baroda House, New Delhi.
4. The Dy. CAO/General
Northern Railway, Baroda House
New Delhi.

..Respondents
(Mr. Krishan Kant Sharma, Advocate)

ORDER (ORAL)

Justice L. Narasimha Reddy:

M.A. No.2463/2020

M.A. seeking joining together in a single petition is allowed.

O.A. No.1910/2020

The applicants were working as Assistants in the Railways. When the recommendations of the 6th Central Pay Commission (CPC) were implemented, they opted to be governed by the new pay structure from 01.01.2006. According to CCS (Revised Pay) Rules, their pay structure was revised. They were promoted as Section Officers (SO) between 2009-2014. Initially, they approached the Tribunal by filing OA No.



3395/2015 complaining that their pay structure was not properly fixed. That O.A. was allowed on 07.11.2017. Aggrieved by that, the respondents filed W.P. (C) No. 9397/2018. The W.P. was allowed and the order in the said O.A. was set aside and it was remanded. Thereafter, the Tribunal passed an order on 27.08.2019 directing the respondents to take into account, the judgment passed by the Hon'ble High Court of Uttarakhand at Nainital in W.P. (C) No. 410 (SB)/2014 and to pass fresh orders. In compliance with the same, the respondents passed a detailed order dated 16.03.2020. It was mentioned that

(a) The order passed by the Hon'ble High Court of Uttarakhand was not in respect of employees of Railways.

(b) O.M. dated 28.09.2018 is only in the context of drawing comparison between direct recruits on the one hand and promotees on the other, and that there is no element of direct recruit for the post of SO.

The said order is challenged in this O.A.

2. The applicants contend that the respondents committed an error in fixing the pay scale at the minimum of the Pay Band, i.e., Rs.9300-34800 with Grade pay of Rs.4800/-, whereas they are entitled to be placed at a higher level.



3. We heard Mr. M.K. Bhardwaj, learned counsel for applicants and Mr. Krishan Kant Sharma, learned counsel for respondents at length, through video conferencing.

4. It is rather unfortunate that persons, holding the position of SO and who are, in the course of their duties, expected to handle some important issues, have advanced such baseless and irresponsible contentions. The pay bands are already fixed by the competent authority on the recommendations of 6th CPC. To avoid any subjectivity, the CCS (Revised Pay) Rules, are framed and on that part, the Railways have also adopted their guidelines.

5. The pay band for the post of SO, under the 6th CPC is Rs.9300-34800 with Grade Pay of Rs. 4800/- The applicants were promoted as SOs when the CCS (Revised Pay) Rules, came into force. The manner in which the pay of the applicants was fixed after promotion in the post of SO, is reflected in the communication dated 28.12.2011 and the relevant portion reads:

Consequent upon the Clarification by Railway Board vide its letter No. E (P&A)1-99/SP-1/Gen-2 dated 12.06.2001 and No. E (P&A)1-2010-SP-1/Gen1-2 dated 26.07.2010, the Qualification pay/Special Allowance on passing Appendix IIIA (IREM Examination) may be taken into consideration for fixation of pay on promotion to higher grade. Subsequently, the pay of the employees who has been promoted vide SOO No. NG-001 dated 01.01.2009 w/e/f/ 01.01.2009 i.e. after 01.01.2006 is being refixed in the following manner by taking Spl Pay of Rs. 160/-



(applicable for First Year) into account from the date of their promotion i.e. from 01.01.2009:

| Fixation on Promotion to SO's Grade i.e. PB-II/Grade Pay Rs. 4800/- | | | | |
|--|--------------------------------|---------------------------------|-----------------|-------------------------------|
| Existing Pay(Excluding Grade Pay) in PB-II as on 01.01.2009 | | | 11620 | |
| Existing Grade Pay (as on 01.01.2009) | | | 4200 | |
| Existing Pay (Scale Pay + Grade Pay) | | | 15820 | |
| Allowed One Notional Increment on Promotion to Next Higher Grade as on 01.01.2009 (i.e. 3% of Existing Pay of lower grade (Scale Pay + Grade Pay)) | | | 480 | |
| Add: Special Allowance/Qualification Pay of Rs. 160/- (allowed on passing of Appendix-III A (IREM Exam) | | | 160 | |
| Pay (Excluding Grade Pay) in PB-II as on 01.01.2009 after allowing Notional increment on Promotion and Qualification Pay | | | 12260 | |
| Grade Pay on Promotion to SO's Grade | | | 4800 | |
| Pay Fixed (Pay + Grade Pay) | | | 17060 | |
| Next date of increment | Annual increment Amount (@ 3%) | Pay after Annual Increment (Rs) | Grade pay (Rs.) | Total (Pay + Grade Pay) (Rs.) |
| Annual increment due & Allowed on 01.07.2009 | 520 | 12780 | 4800 | 17580 |
| Annual increment due & Allowed on 01.07.2010 | 530 | 13310 | 4800 | 18110 |
| Annual increment due & Allowed on 01.07.2011 | 550 | 13860 | 4800 | 18660 |
| NEXT DATE OF ANNUAL INCREMENT WILL BE 01.07.2012 | | | | |

6. The applicants are not able to point out any defect in the table extracted above. They are simply stating that their pay must be fixed at Rs. 18150/-. The only basis mentioned therefor is a tentative exercise, said to have been undertaken by an Agency in the Railways and submitted to the Railway Board for its consideration.

7. Heavy reliance is placed upon the O.M.dated 28.09.2018 That O.M. dealt with cases where there existed the facility of direct recruitment on the one hand and promotion on the other hand. The mandate under the O.M. was that a promote cannot be made to draw salary, which is less than that of a direct recruit, appointed after 01.01.2006. The relevant portion reads as under:

“8. Accordingly, the President is pleased to decide that in respect of those posts where entry pay for direct recruits appointed on or after 1.1.2006, as per Section II of part A of the First Schedule of CCS(RP) Rules, 2008, becomes applicable by virtue of the provision of the element of direct recruitment in the relevant recruitment rules, the pay of Central government employees who were appointed to such posts prior to 1.1.2006 and whose pay, as fixed in the revised pay structure under Rule 7 thereof as on 1.1.2006 turns out to be lower than the prescribed entry pay for direct recruits of that post, shall not be less than such entry pay w.e.f. 1.1.2006. Likewise, the pay of Central Government employees who were appointed to such posts by way of promotion on or after 1.1.2006 and whose pay, as fixed under Rule 13 of CCS (RP) Rules, 2008, happens to be lower than the said entry pay, shall also not be less than such entry pay from the date of their promotion taking place on or after 1.1.2006.”

8. In the instant case, there does not exist any element of direct recruitment for the post of SO. In Para 5.1 of the impugned order, the respondents categorically stated that, However, the applicants keep on insisting that the principle contained in O.M. dated 28.09.2018, be applied in their case.



9. We do not find any merit in the OA. It is accordingly dismissed. There shall be no order as to costs.



(A. K. Bishnoi) (Justice L. Narasimha Reddy)
Member (A) Chairman

November 27, 2020
/sunil/ns/sd