

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/38/2015

HYDERABAD, this the 3rd day of February, 2021



Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

K. Ravi, S/o. Krishnaiah,
Aged about 46 years,
Safaiwala,
O/o. SMR/O/NDD, SC Railways,
Vijayawada, Krishna District.

...Applicant

(By Advocate : Smt R. Manjula for Sri P. Krishna Reddy)

Vs.

1. Union of India rep. by
The Chairman, Railway Board,
Railway Bhavan, New Delhi.
2. The General Manager,
South Central Railway, Rail Nilayam,
Secunderabad.
3. The Divisional Railway, Manager (P),
South Central Railways, Vijayawada.
4. The Senior Divisional Commercial Manager,
South Central Railways,
Vijayawada.

...Respondents

(By Advocate : Sri B. Pavan Kumar for Sri D. Madhava Reddy,
SC for Rlys.)

ORAL ORDER
(Hon'ble Mr. B.V. Sudhakar, Admn. Member)

Through Video Conferencing:



2. The OA is filed challenging the impugned order dt. 03.01.2014 wherein the request of the applicant for stepping up of pay of the applicant on par with his junior is not acceded to. He seeks a direction to the respondents to fix his pay on par with his juniors, with all consequential benefits from the date his juniors are regularly absorbed and to pay arrears of salary, including seniority.

3. Brief facts of the case are that the applicant worked as contract cleaner under different contractors from 1982 to 1990, engaged by the respondents' organisation. A screening test was conducted to absorb the contract cleaners by the respondents and the name of the junior Sri Ch. Swamiji appeared in the selection list released on 12.12.2000, but not that of the applicant. Hence, OA 401/2002 was filed wherein it was directed on 20.3.2003 to consider the case of the applicant for regular absorption in a Group D post as per his turn, with consequential benefits on par with his juniors, who were regularly absorbed. Respondents challenged the order in WP No.19762/2003, which was dismissed on 29.10.2003. Thereafter, applicant was appointed vide order dt.8.11.2005 with a delay of 2 years. Applicant submitted several representations to grant consequential benefits on par with his junior Sri Ch.Swamiji, but of no avail and hence, OA No.1212/2013 was filed, which was disposed on 4.10.2013 directing disposal of the pending representations. Respondents, in compliance, issued

the order dated 3.1.2014 rejecting the representations for step up of pay.

Hence, the instant OA.



4. The contentions of the applicant are that he is eligible to get the benefits on par with his junior Sri Swamiji. The order of the Tribunal, as confirmed by the Hon'ble High Court, has been implemented with a delay of 2 years resulting in lesser pay.

5. Respondents in the reply statement, state that the seniority list of 120 contract cleaners was issued by them, based on the number of days of engagement. Applicant was listed at Sl. 115 (Annexure R-1) in the list. A screening test was held to fill up 32 vacant posts of cleaners and the applicant was not selected and hence, OA 401/2002 was filed, which was disposed on 20.03.2003 and the same on being challenged in WP No.19762/2003, the WP got dismissed on 29.10.2003. Thereafter, applicant was called for medical examination and was found unfit for Cey-One (C-1), which is medical standard for the post of Cleaner in Commercial Department, but fit for C-2 vide medical certificate dt.05/21.07.2005 and hence, was offered the Group D post in the pay scale of Rs.2050 – 3200 and the applicant accepted the offer and joined the said post on 13.11.2005. There was no intentional delay in offering the appointment. After 6 years, applicant submitted representation seeking step up of his pay on par with his junior Sri Swamiji, who figured in the seniority list at Sl. No. 117. Aggrieved, applicant filed OA 1212/2013 wherein it was directed to dispose of the representations. Accordingly, the representation was

disposed rejecting the request for stepping up of the pay of the applicant on par with the junior, as per rules.

6. Heard both the counsel and perused the pleadings on record.



7. I. The dispute is about non grant of consequential benefits on par with the junior of the applicant Sri Swamiji. In this regard, the relief sought by the applicant is as follows:

“.. to declare the action of the respondents in passing the impugned order in proceedings No. B/P.407/ICatg./Contract Cleaners/Vol.4 (Pilot) dated 03.01.2014 as illegal, arbitrary and without jurisdiction and set aside the same and further direct the respondents to fix the pay on par with his juniors with all consequential benefits from the date his juniors are regularly absorbed and to pay arrears of salary including seniority...”

II. The order of the Tribunal in OA 401/2002 dated 20.3.2003 is as follows.

“6. It is also pointed out by the learned counsel for the applicant that in the circular instructions dated 29.11.99 issued by the office of the Divisional Railway Manager (Personnel) Vijayawada, copy of which is at Annexure-6, it is shown that there are 32 vacancies of cleaners to be filled up on conducting the screening test. He further submitted that out of the said vacancies 25 vacancies have been filled up as per the list enclosed as Annexure -2 dated 12.12.2000 and 7 vacancies are available.

7. Having regard to the above facts, I find it necessary to give a direction to the respondents to consider the case of the applicant for regular absorption in a Group D post as per his turn and to give him all consequential benefits from the date on which his juniors are regularly absorbed. The respondents shall comply with these directions within a period of 3 months from the date of receipt of a copy of this order.”

III. The challenge to the order of the Tribunal in WP No. 19762/2003 was dismissed on 29.10.2003. Therefore, the order of the Tribunal has attained finality. However, respondents absorbed the applicant on 13.11.2005 with a delay of 2 years and hence, there was a difference in the pay of the applicant and that of his junior Sri Swamiji, who was absorbed on 15.12. 2000. The reason given by the respondents is that Sri



Swamiji was found medically fit in C-1 category and was offered the post of Cleaner, whereas applicant was found fit in C-2 category and hence, he was offered the post of Safaiwal instead of Cleaner. The junior was absorbed in the Mechanical Department as Cleaner and applicant as Safaiwala in the Operating Department. Therefore, the departments, cadres, posts and the date of appointment/ absorption being different, the question of stepping up the pay of the applicant on par with his junior Sri Swamiji would not arise. None of the juniors to the applicant have been absorbed in the Operating Department prior to the applicant.

IV. However, respondents have not touched the core aspect of the issue, which is to absorb the applicant in Group D cadre as per his turn on par with his junior, in compliance with the direction of the order of the Tribunal in OA 401/2002. The junior in the seniority list is undoubtedly Sri Swamiji. Respondents have explained that Sri Swamiji, who was fit for C-1 category was offered Cleaner post and the applicant being fit for C-2 was appointed as Safaiwala. Hon'ble High Court dismissed the Writ Petition No.19762/2003 on 29.10.2003 and hence, the pay and allowances of the applicant on a notional basis have to be fixed from 29.10.2003. By not doing so, respondents have not respected the order of the High Court and that of the Tribunal. Any order of the Court, right or wrong, has to be implemented unless it is stayed by the superior judicial forum, as observed by the Hon'ble Apex Court in **Director of Education, Uttaranchal & Ors.**

v. Ved Prakash Joshi & Ors, (2005) 6 SCC 98, as under:

The court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or

order..... Right or wrong the order has to be obeyed. Flouting an order of the court would render the party liable for contempt.
(Emphasis supplied)

Referring to the above case, the Apex Court has stated in its judgment in *Bihar Finance Service House Construction Coop. Society Ltd. v. Gautam Goswami & Ors*, (2008) 5 SCC 339,



“32. While exercising the said jurisdiction this Court does not intend to reopen the issues which could have been raised in the original proceeding nor shall it embark upon other questions including the plea of equities which could fall for consideration only in the original proceedings. **The court is not concerned with as to whether the original order was right or wrong.** The court must not take a different view or traverse beyond the same. **It cannot ordinarily give an additional direction or delete a direction issued.** In short, it will not do anything which would amount to exercise of its review jurisdiction.”

Respondents have not submitted any order in regard to stay of the order of the Hon’ble High Court referred to. In the absence of a stay, respondents not fixing the pay of the applicant on a notional basis from 29.10.2003 but fixing it w.e.f. 13.11.2005 is not in consonance with the order of the Tribunal in OA 401/2002 dated 20.3.2003 and upheld by the Hon’ble High Court on 29.10.2003. The question of delay in offering the Safaiwala post may be unintentional, but the respondents must bear in mind that the orders of the courts have to be implemented from the date they attain finality.

V. In regard to stepping up pay of the applicant with reference with the Junior Sri Swamiji, the same cannot be acceded to as the post, cadre, and the department of the junior are different and hence not permitted under the rules.

VI. In view of the above circumstances, respondents are directed to consider fixing the pay of the applicant on a notional basis w.e.f. 29.10.2003 in the post of Safaiwala and grant the consequential benefits

thereof. Applicant would not be entitled for any arrears of pay in view of the re-fixation of pay as ordered. The time granted to implement the judgment is 3 months from the date of receipt of this order.



VII. With the above direction the OA is disposed with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/evr/