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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 243 198 6
T.A. No.

DATE OF DECISION 13th March 1987

Shri P.P. Mehdiratta & Others Petitioner

Shri Balwant Singh Bindra Advocate for the Petitioner(s)

Versus

Union of India Respondent

Miss Rachna Joshi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Ch Ramakrishna Rao, Member (J)

The Hon'ble Mr. P. Srinivasan, Member (A)

Order delivered by Hon'ble Shri P. Srinivasan, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *To be referred*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *—*

J U D G E M E N T

This is a joint application by four applicants. All the four applicants are currently working as Progressman in the Production Control Organisation (PCO) in the Signals and Telecommunications Workshop, Northern Railway, Ghaziabad. The Third Pay Commission (hereafter referred to as the Pay Commission) which went into the pay structure of the employees of the Government of India (including Railways) recommended revised pay scales in place of the existing ones. Government accepted these recommendations and gave effect to them from 1.1.1973. The revised scale of pay approved for the applicants in this manner was Rs.330-480 with effect from 1.3.1973. According to the applicants they should have been put on the revised scale of Rs.380-560 with effect from 1.4.1974. Hence this application.

2. Though the claim of the applicants relates to fixation of their pay from as far back as 1.4.1974, the matter has been the subject of correspondence between the authorities of the Northern Railway and the Railway Board (Board for short) right upto 1986. In fact the Board once even granted their claim in a letter dated 31.5.1984 but retracted from that position. Soon thereafter, by letter dated 26.7.1984 (Annexure R-1 to the respondents reply). On further representation from three of the four applicants dated 6.9.1985, the Board asked for a thorough examination of the issue in their letter dated 23.10.1984. The result of the thorough examination that followed was reported to the Board in a letter dated 6.3.1985 from the Additional Chief Personnel Officer of Northern Railway. In this letter the concurrence of various authorities of the Northern Railway to the granting of the claim of the applicants was conveyed, but certain issues arising therefrom were also highlighted. When the present application was filed on 9.4.1986, the Board had not given its reply which it did only on 28.8.1986 negating the applicants' claim. Therefore this application filed

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on 9.4.1986 is within the period of limitation with reference to the Board's negative reply dated 26.7.1984 or the applicants' representation dated 6.9.1985.

3. It is necessary to set out the facts giving rise to this application in some detail.

4. All the four applicants were working as artisans on the shop-floor of the Ghaziabad Workshop of the Signals and Telecommunications Department (S&T) of the Northern Railway till they were shifted to the Production Control Organization (PCO) within the same workshop. The first applicant was shifted on 30.5.1958 as Material Chaser, the second and third on 16.12.1967 and the fourth on 15.4.1968, as Progress Chasers. They were borne on the pay scale of Rs.110-180 as shop floor artisans and continued to be on the same scale after being posted in PCO.

5. As mentioned earlier, the revised pay scales in respect of various posts recommended by the Pay Commission came into force with effect from 1.1.1973. Each of the pay scales existing prior to this date - known as the Authorised scale or AS - was replaced by a corresponding revised or replacement scale (RS) recommended by the Pay Commission. The RS corresponding to the AS of Rs.110-180 was Rs.260-400. The applicants were, therefore, placed on the RS of Rs.260-400 ^{from 1.1.1973}. However, in the table of AS and the corresponding Revised or Replacement Scales in respect of the S&T Department of the Railways set out in the report of the Pay Commission (the table for short), the scale of pay in which the applicants were working prior to 1.1.1973, i.e., Rs.110-180 did not appear as one of the AS. The lowest AS listed therein was Rs.150-240 against the post of Progressman.

6. Matters were complicated further by the Board's letter dated

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26.2.1973 in which it was decided "that the scale of pay of Rs.130-212 (AS) should be allotted to the Progressman in the S&T and Engineering Workshop in scale of Rs.110-180 (AS) with effect from 1st March 1973". This scale of Rs.130-212 also did not figure in the aforesaid Table as one of the authorised scales in the S&T Department, and further as we have already noticed, the applicants had been designated only as Material Chasers or Progress Chasers earlier and there was no post designated ^{as} Progressman in the Ghaziabad Workshop. Anyway having fixed the AS of Progressman in the S&T and Engineering Workshops at Rs.130-212 from 1.3.1973, the authorities fitted the applicants into the corresponding RS of Rs.330-480 from that date. The applicants then represented that the AS for their posts should be taken as Rs.150-240 (since that was the lowest AS mentioned in the Table) instead of Rs.130-212 and that they should be fitted in the corresponding RS of Rs.380-560.

7. Pausing here briefly ~~xxx~~ and reverting to the Table, the Pay Commission classified Progressmen into two categories in respect of both of whom the AS was the same i.e., Rs.150-240. The first category was described as "those progressman who are required to supervise highly skilled workmen as a general rule or wherever promotion to the grade of Progressman is made from Highly Skilled Grade II Workers". The second category was, simply, "Progressmen other than those mentioned above". In respect of the first category of Progressmen, the Pay Commission recommended a RS of Rs.380-560 and for the second category ^{as} ~~of~~ Rs.330-480.

8. The applicants' claim to be allotted the AS of Rs.150-240 and the corresponding RS of Rs.380-560 seems to have been examined by the Railway authorities in the light of the criteria applied by the Pay Commission in the Table to divide Progressmen into two categories as explained in the previous paragraph. The Chief Signal and Telecommunications Engineer (CSTE) Northern Railway under whom the Ghaziabad Workshop functioned recorded a certificate that

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although the technical work of Workmen in Signals Workshop is supervised by the concerned Chargemen, the Progressmen also supervise the work of Workmen in various shops from progress point of view" (Annexure R-IV to the reply of the Respondents). A copy of this certificate is not on record but in a DO letter dated 31.5.1984 to the Additional Chief Personnel Officer, Northern Railway, this is what the Additional Director of the Board, New Delhi, wrote: "In view of the clear certificate recorded by your CSTE that the progressmen supervise the work of Grade I artisan, in the various shops from the progress point of view, they would be eligible for replacement scale of Rs.380-560 with effect from 1.1.1973. Action may be taken immediately to ensure that fixation in scale of Rs.380-560 for these employees is carried out immediately". The FA and CAO, Northern Railway also concurred with this proposal on 31.5.1984 (See Annexure R-IV to the reply of the respondents, top of page 2 thereof).

9. Unfortunately for the applicants, the matter did not end there. The Board promptly cancelled its order conveyed in the aforesaid letter of 31.5.1984 by a subsequent DO dated 26.7.1984 (Annexure R-I to the respondents reply) - the writer of the letter and the addressee being the same as before - in the following words. "In view of the fact that it has now been reported to the Board that these posts were only in the authorised scale of Rs.130-212 on 1.3.1973, the question of granting them the grade Rs.150-240 (AS) and allotting the equivalent replacement scale of Rs.380-560 (RS) does not arise. The question of replacement of posts in scale Rs.380-560 (RS) arose only where the higher Authorised Scale Rs.150-240 is already in existence in terms of schedule notified under letter No.PCIII/73/Schedule/60 dated 2.2.75. The appropriate replacement scale for Rs.130-212 is only Rs.330-480, as notified in this Ministry's letter No.PCIII/73/Schedule/31 dated 31.7.74."

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10. The applicants once again represented to the Board that the AS applicable to them should be Rs.150-240 with effect from 1.4.1974. The Board in its letter dated 23.10.1984, referred the matter to the Northern Railway authorities and "desired that issues may be gone into thoroughly with FA and CAO and the final report sent to the Board by 15.11.1984". The subject at the head of the letter reads "allotment of Pay Scale Rs.380-560 to Progressmen S&T Workshop NR Ghaziabad". The Additional Chief Personnel Officer, N. Railway (Addl CPO) sent a detailed reply to this by his letter dated 6.3.1985 in which he "advised that the justification for upgradation of four posts of Progressmen of the Signals Workshop, Ghaziabad, from 130-212 (AS) to Rs.150-240 (AS) with effect from 1.4.1974 was sent to Finance which has been concurred. As per the Railway Board's letter No.PC/III/73/Schedule/60 dated 22.2.1975 the grade of Rs.380-560 (RS) was to be given to those progressmen who are required to supervise highly skilled workman. This grade is equivalent to Rs.150-240 (AS)...". Then he went on to refer to the certificate recorded by the CSTE (we have touched on this earlier in this order), Board's letter of 1.5.1984 (probably a mistake for 31.5.1984) approving the up-^{of}grading the RS of Progressmen to Rs.380-560 and stated that "the supervision part of the Progressmen's work can be counted" from 1.4.1974. After receiving the Board's letter of 26.7.1984 cancelling the approval to RS of Rs.380-560 given earlier, the CSTE had again moved the proposal "to upgrade these four posts of Progressmen with effect from 1.4.1974 to the grade of Rs.150-240(AS).. The Finance has concurred the CSTE's proposal on 18.2.1985". After pointing out the effect of this proposal on the relative seniority of the applicants and their "erstwhile seniors", the Addl. CPO requested the Board "to decide the matter and communicate the decision arrived at in the matter....". As already indicated, the Board finally negatived the proposal in their letter dated

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28.8.1986 (Annexure R-V to the respondents' reply) issued after the present application was filed in the followed words:-

"The Department of Railways have considered the matter carefully and regret that upgradation of four posts of Progressmen in S&T Workshop, Ghaziabad in the scale of Rs.330-480 (RS) to scale of Rs.380-560 (RS) has not been agreed to".

11. Shri B.S. Bindra, learned counsel for the applicants contended that the action of the respondents in rejecting the claim of the applicants by their letter dated 28.8.1986 during the pendency of this application was illegal and in clear violation of Section 19(4) of the Administrative Tribunals Act, 1985 (The Act). According to Shri Bindra, the applicants had been discriminated against and their ignorance exploited by the respondents even prior to the implementation of the Pay Commission's report. The applicants had been designated as Material Chasers or Progress Chasers and had been continued in the old scale of Rs.110-180. It was only when the Railway Board issued the letter dated 26.2.1973 describing them as Progressmen and allotting the scale of Rs.130-212 (AS) to them did the applicants realise that the post held by them was a higher post than that of an artisan and that they had wrongly been held down in the scale of Rs.110-180 even after being appointed to the said higher post. Not content with this, even after this mistake had apparently been noticed by the Board, the applicants were still not allotted the correct authorised scale applicable to Progressmen which was Rs.150-240 as seen from the Table set out in the Pay Commission's report. The criterion set out by the Pay Commission for awarding the revised or replacement scale of Rs.380-560 to Progressmen was also fulfilled in the case of the applicants as per the Certificate of the CSTE who was the overall head of the Signals and Telecommunications Department in which the applicants were working. What was more, the Financial Adviser to the Northern Railway (FA & CAO) and the Addl. CPO

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had supported the proposal to allow the scale of Rs.380-560 (RS) to the applicants from 1.4.1974. The Board itself had accepted the certificate of the CSTE and passed order on 31.5.1974 allowing the scale of Rs.380-560 (RS) even from 1.1.1973. The subsequent action of the Railway Board in retracting from this decision and refusing to allow the scale of Rs.150-240 (AS) and the corresponding RS of Rs.380-560 from 1.4.1974 overruling the recommendations of the lower authorities was arbitrary and deserved to be struck down.

12. Miss Rachna Joshi, learned counsel appearing for the Respondents - Railways sought to refute the contention of Shri Bindra. In matters of fixation of pay scales and allotting authorised and replacement scales the Board was the final authority. The views of the CSTE or other authorities of the Northern Railway were not conclusive. The earlier decision of the Board in its letter dated 31.5.1984 granting the replacement scale of Rs.380-560 for the applicants with effect from 1.1.1973 was a mistake. The Board realised later that the applicants had been allotted the authorised scale of Rs.130-212 from 1.3.1973 and not the AS of Rs.150-240. Once this mistake was noticed the Board had every right to cancel its earlier decision. A fresh thorough examination of the matter was ordered and after considering the views of the Addl CPO and other authorities of the Northern Railway, the Railway Board finally decided that the proper replacement scale applicable to the applicants was Rs.330-480 from 1.3.1973 and not Rs.380-560. In addition to the fact that they were not on the AS of Rs.150-240 neither of the two alternative criteria for allowing the RS of Rs.380-560 set out in the Pay Commission's report was fulfilled by the applicants. They were not supervising highly skilled workmen, since Chargemen were doing this. Nor were they promoted from posts of Highly Skilled Grade II Workers.

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Therefore, the applicants contention that they should have been put on the scale of Rs.380-560 (RS) from 1.4.1974 had no merit. Further the applicants were only holding excadre posts of Progressmen in the Ghaziabad Workshop and were, therefore, not eligible to be placed on Rs.380-560 (RS).

13. We have considered the rival contentions carefully. The issue required to be determined in this is this: Did the Railway Board act arbitrarily in rejecting the claim of the applicants to be put on the authorised scale of Rs.150-240 and the equivalent replacement scale of Rs.380-560 with effect from 1.4.1974 after having once accepted the said claim? What should be the pay scale attached to a particular post is certainly the right of the administration to determine taking into account the nature of the work to be performed, pay scales attached to similar posts elsewhere and a host of other factors. Normally, we should not interfere with this function of administration unless an element of mala fide or arbitrariness is alleged and established conclusively. Mala fides has not been specifically alleged in this application nor did learned counsel for the applicants base his case on mala fides.

14. Was the decision of the respondents in this case arbitrary? To answer this question we must go over the facts again. The applicants were not designated as Progressmen before the Railway Board's letter dated 26.2.1973 in which they were so described and allotted the Scale of Rs.130-212 (AS). The Table in the Pay Commissions report contained no scale like Rs.130-212 (AS) for Progressmen in the(S&T) department. The Pay Commission derives its information from the Railway Board only. It cannot now be disputed that the applicants were actually working as Progressmen though called Progress or Material Chasets. In the Board's letter of 26.2.1973 and in all the subsequent correspondence the applicants have been referred to as Progressmen

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On what basis then did the Railway Board finally fix them in the scale of Rs.130-212 (AS) and the RS of Rs.330-480? Why did it earlier on 31.5.1984 agree to grant them the replacement scale of Rs.380-560 corresponding the Authorised scale of Rs.150-240? The reason given in that letter is that the CSTE had certified that the applicants were supervising the work of highly skilled workmen from the progress point of view answering one of two alternative requirements laid down by the Pay Commission for applying the revised scale of Rs.380-560. A nother reason not stated in that letter could be that the authorised scale for the post of Progressman in S&T Department furnished by the Board to Pay Commission was Rs.150-240 and not Rs.130-212. There seems to be something in Shri Bindra's contention that whether by pure oversight or otherwise, the applicants were not treated as Progressmen prior to 1.1.1973 as they should have been and as a result were not allowed pay and allowances of that post for, without any change in the nature of their duties they were suddenly described as Progressmen in the Board's letter of 26.2.1983 albeit on a totally new scale (AS) of Rs.130-212. That is probably why the Board wanted the matter to be examined afresh and after obtaining the certificate of the CSTE allowed the applicants the replacement scale of Rs.380-560 in their letter of 6.5.1984. The records show that the FA and CAO had also agreed to this.

15. What happened after the Board's letter of 6.5.1984 for it to change the decision in its subsequent letter of 26.7.1984 and to stand by this reversal thereafter? Nothing was forthcoming by way of a reason except that the Board was the supreme authority whose decision was final. Along with the respondents' reply a Table of Authorised and Revised or Replacement scales of the Mechanical department is reproduced in which one of the posts is that of Junior Progressman with an AS of Rs.130-212. Shri Bindra, in our opinion, rightly objected to this being taken as the basis for fixing the AS of the applicants who were working in another department (the S&T Department). The reason which weighed when the Board earlier accepted the proposal for fixing

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the applicants in the scale of Rs.380-560 was still there when the decision was reversed viz. the certificate of the CSTE: the CSTE in fact persisted with the proposal after the rejection by the Board's letter of 26.7.1984 and the FA and CAB also confirmed his support to it. We are unable to agree with the contention advanced on behalf of the respondents that the applicants were not supervising highly skilled workmen. The certificate of the CSTE to the contrary cannot be brushed aside, particularly after it was first accepted by the Board itself.

16. All in all, we are convinced that the sudden volte face performed by the Board in its letter of 26.7.1984 after agreeing to grant the revised scale of Rs.380-560 in the earlier letter of 6.5.1984 was arbitrary and unsupported by any relevant consideration. To say that the AS approved in respect of the applicants was only Rs.130-280 was to beg the question because the whole issue turned upon what the AS should be in the first instance and the RS would follow automatically thereafter. We feel that the fixation of the AS in the first instance at Rs.130-212 was without any basis after the Board itself had informed the Pay Commission that the AS for a Progressman in the S&T department was Rs.150-240 and there was no AS like Rs.130-212 in that department according to the Table set out in the Pay Commission report. On the other hand, the scale of Rs.150-240 (AS) had everything to recommend itself for application to the case of the applicants.

17. It is not relevant for the present purpose as to whether the posts of Progressmen held by the applicants were excadre posts. We are concerned with what should have been the AS of the post and the equivalent RS. The nature of the posts or the tenure of the holders over the posts have nothing to do with the determination of the issue arising in this application.

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18. For the reasons set out above we direct the respondents to refix the scale (RS) of the applicants with effect from 1.4.1974 at Rs.380-560. The applicants will be entitled to arrears of pay and allowances from 1.4.1974 consequent upon this.

19. Shri Bindra pleaded that costs should be awarded to the applicants as well as interest on arrears payable to them. We feel that this plea cannot be accepted. Problems of pay fixation are complicated and errors of judgment are inevitable.

20. In the result the application is allowed as indicated above. Parties to bear their own costs.

Chandrabhushan
MEMBER (J) 13.3.87

P. S. Bindra
MEMBER (A) 13/3/87

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