

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

OA 1331/87

Date of decision: 13-1-93.

Om Prakash & Another

...Applicants

Versus

Union of India & Others

...Respondents

CORAM:

THE HON'BLE MR. JUSTICE V.S.MALIMATH, CHAIRMAN.  
THE HON'BLE MR. S.R.ADIGE, MEMBER(A).

For the applicants

...Shri H.L.Bajaj, proxy Counsel  
for Shri B.S.Mainee, Counsel

For the respondents

...Shri P.S.Mahendru, Counsel

JUDGMENT (ORAL)

(BY HON'BLE MR. JUSTICE V.S.MALIMATH, CHAIRMAN) :

The two petitioners in this case are holding the post of Assistant Mistry in the Stores Department of the Northern Railway in the Shakur Basti Stores Depot, Delhi. They are in the pay scale of Rs.330-480. It is their case that they are performing supervisory duties supervising the work of Artisans. The Artisans, it is stated, are in the higher scale of pay of Rs.380-560. Thus, it is pleaded that incongruous situation has arisen where officers supervising the work of Artisans are paid in the lower scale of pay than to that of Artisans. It was submitted that it is clearly arbitrary and violative of Article 14 of the Constitution. It is well settled that the principle that flows from Article 14 of the Constitution is that unequals cannot be given the same treatment. If they are unequals, treatment has to be meted out on an unequal basis. In the matter of pay scales also, the one who performs supervisory


functions has to be accorded higher pay or higher scale of pay than those performing inferior duties or functions. It is on that basis that the petitioners have pressed their claim for according higher scale of pay and at any rate not lower than the scale of pay attached to that of Artisans.

2. Records have been placed before us to show that the incongruous situation did impress the authorities resulting in the General Manager, Northern Railway making proposal for seeking permission for upgradation of the scales of pay of the petitioners. This is clear from Annexure A-4 dated 31-3-86, the letter written by the General-Manager to the Secretary, Railway Board. After a couple of reminders, the Railway Board ultimately replied as per Annexure R-I dated 26-8-87 placed alongwith the reply. Though paragraph 3 of the said reply states that it is not possible to accept the proposal of the General-Manager to upgrade two posts of Mistries in the scale of Rs.330-480 to Rs.380-560, paragraph 2 of the said communication makes it clear that it was not the case of Railway Board that upgradation is not called for. What the Railway Board has said in paragraph 2 is that in the meanwhile the recommendations of the Fourth Pay Commission have also become available which has recommended that such of the posts of Mistry which are in the pay scale of Rs.330-480 should be reviewed so that where incumbents perform supervisory duties, the posts should be placed in the scale of

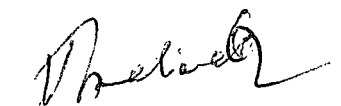
Rs.1400-2300. Thus, it is clear that the Railway Board has adverted to the recommendations of the Fourth Pay Commission which said that higher scale of Rs.1400-2300 should be accorded if the incumbents are performing supervisory duties and that at any rate they should be accorded the pay scale available to the Artisans. The clear effect of the communication of the Railway Board to the General-Manager is to call upon the General-Manager to apply his mind to the recommendations of the Fourth Pay Commission and to take a final decision thereon. In other words, no further approval of the Railway Board is called for and that the General-Manager is competent to take a final decision in the light of the recommendations of the Fourth Pay Commission. Though nearly five years has elapsed since then, the petitioners have not been informed about any action taken so far to improve the scale of pay in which they have continued for long number of years. We are satisfied on the facts before us that the petitioners appear to have a very good case for upgradation of their scale of pay. To what extent the upgradation should take place depends upon the evaluation to be made in the light of the recommendations of the Fourth Pay Commission. That <sup>is</sup> ~~the~~ the function of the General-Manager. As the General-Manager has not taken a decision as per the directions of the Railway Board contains in its letter dated 26-8-87 (Annexure R-I), we consider it appropriate to issue a mandamus directing him to take a decision in this behalf within a reasonable time. It is

not proper to allow the petitioners to remain in a lower scale of pay for unduly long time. The General-Manager had more than adequate time to take a final decision in this matter.

3. For the reasons stated above, this petition is allowed and respondent no.2, the General-Manager, Northern Railway, is hereby directed to take a decision in regard to the higher scales of pay to be accorded to the petitioners holding the posts of Assistant Mistries after considering the recommendations of the Fourth Pay Commission and in the light of the directions of the Railway Board contained in paragraph 2 of its letter dated 26-8-87 produced alongwith reply as Annexure R-I. The respondents shall comply with these directions within a period of three months from the date of receipt of the judgment. In the event of a decision being taken to accord a higher scale of pay to the petitioners, the benefit of the same shall be given and arrears paid to the petitioners with effect from the same date the benefits have been given to other employees on the basis of the recommendations of Fourth Pay Commission. No costs.

  
(S.R. ADIGE)  
MEMBER (A)

'PKK'  
140193.

  
(V.S. MALIMATH)  
CHAIRMAN