

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

**Original Application No. 622 of 2004
Alongwith
Original Application No. 611 of 2004**

day, this the 23rd day of August, 2007

Hon'ble Mr. K.S. Menon, Member Administrative

O.A. No. 622 of 2004

Mangla Roy S/o Kalp Nath Operator Under Section Engineer (P. Way) Chandauli Majhwar.

Applicant

By Advocate Sri Sajnu Ram

Versus

1. Union of India Through General Manager, East Central Railway, Hajipur.
2. Senior Divisional Personnel Officer, East Central Railway, Mughalsarai.
3. Assistant Engineer (II), East Central Railway, Mughalsarai.

Respondents

By Advocate Sri K.P. Singh

O.A. No. 611 of 2004

1. Sukil S/o Sri Bikoo.
2. Hanuman S/o Sri Sawaroo.
3. Ram Ji S/o Sri Jhinguri.

All applicants are working and designated as semi skilled Fitter, discharging duties of Skilled Fitter Under Section Engineer/P Way Chandauli Nagar.

Applicants

By Advocate Sri Sajnu Ram

Versus

1. Union of India Through General Manager, East Central Railway, Hajipur.

2. Senior Divisional Engineer (Cordination) East Central Railway, Mughalsarai.
3. Divisional Railway Manager East Central Railway, Mughal Sarai.

Respondents

By Advocate Sri K.P. Singh.

ORDER

By K.S. Menon, Member (A)

Learned counsel for the parties mentioned that both the above mentioned cases have common reliefs and grounds so they may be decided by a common order. Accordingly, these Original Applications are decided by a common order.

O.A. No. 622 of 2004

2. The applicant in this O.A. has prayed for quashing the Order dated 08.06.2004 by which applicant's representation dated 05.08.2003 was decided and his plea to fix his basic pay in the pay scale of Rs.3050-4590/- was rejected. The applicant has also prayed to direct the respondents to give him salary in the pay scale of Rs. 3050-4590/- with consequential benefits.

3. The factual matrix of the matter is that while working as Gangman, the applicant and others were called to appear in the trade test held in 1992 for the post of Semi Skilled Fitter Grade II in the pay scale of Rs.950-1500/-, in which five persons were selected including the applicant. Thereafter, the applicant and others were posted as Semi Skilled Fitter on 01.05.1992 under Permanent Way Inspector, Eastern Railway, Karmnasa and they were given the pay scale of Rs.950-1500/-. The applicant contends that the word Semi-Skilled Fitter was wrongly mentioned as the scale in which they were appointed belongs to Skilled Fitter grade. It is stated that the applicant has been continuously working in the aforesaid scale of Rs.950-1500/-. However, on 24.07.2001, the pay of other Semi-Skilled Fitter promoted along with the applicant, was reduced and they filed an Original Application No. 1432 of 2001, which was partly allowed

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by this Tribunal on 05.08.2003 and the Order dated 24.07.2001 was quashed but liberty was given to the respondents to pass any Order, if necessary, after complying with the Principles of Natural Justice. It is stated that the applicant and others were continuously working in the pay scale of Rs.950-1500/-, which after Vth Pay Commission was fixed in the scale of Rs.3050-75-4590/- with effect from 01.01.1996. In this regard the applicant has also annexed the pay slip of April 2004. However, surprisingly on 03/06-05-2004, the respondent No.2 issued a show cause notice to the applicant, asking him to reply within 15 days, as to why his pay scale should not be reduced to the pay scale of Rs.2650-4000. Thereafter the applicant gave a reply to the Show Cause Notice on 11.05.2004. However, ignoring the facts submitted by the applicant, the respondent No.2 has issued another Order dated 08.06.2004 reducing the pay scale of the applicant in the pay scale of Rs.2650-4000. Hence, the applicant has filed the present O.A.

O.A. NO. 611 of 2004

4. The applicants in this O.A. have prayed for quashing the Orders dated 11.02.2004, by which the applicants' representation dated 31.12.2003 was decided and their plea to fix basic pay in scale of Rs.3050-4590/- was rejected and that the pay fixed in the scale of Rs.2650-4000 was correct. The applicants have also prayed the respondents be directed to pay salary and allowances in the scale of Rs.3050-4590/- will all consequential benefits.

5. The applicants were working as Gangman and were called for a trade test in 1992 and alongwith two others including Sri Mangla Roy whose O.A. No. 622 of 2004 is linked with this O.A., as Semi Skilled Fitter Grade II under Permanent Way Inspector Karmnasa in the Scale of Rs.950-1500. The applicants contend that the scale of Rs.950-1500/- pertains to Skilled Fitter Grade I and the word Semi Skilled Fitter Grade II was wrongly mentioned. Besides there is no post called Semi Skilled Fitter Grade II. The applicants had been working continuously in the aforesaid scale of Rs.950-1500/- ever since passing the trade test on 01.05.1992



and were being paid salary and allowances accordingly. This scale was converted to the scale of Rs.3050-75-4590 in accordance with the Vth Pay Commissions recommendations w.e.f. 01.01.1996 and they received their salary in the above scale upto their pay for June 2001. Respondents reduced their pay scale of Rs.950-1500 to Rs.800-1150/- vide their Order No. 633 dated 24.07.2001 (Annexure-10 in O.A. No.611 of 2004). The applicants then filed an O.A. No.1432 of 2001 in this Tribunal. The Tribunal quashed the impugned order No.633 dated 24.07.2001 vide Judgment dated 05.08.2003 directing the respondents to comply with Principles of Natural Justice and give a show cause notice to the applicants before passing any order. Respondents were directed to specify as to why Shri Mangla Roy was treated in a different manner. In pursuance of the above order, the respondents issued a show cause notice dated 09.12.2003 to the applicants, to which the applicants replied on 31.12.2003 raising several points. The applicants contend that without considering these points, respondents passed an Order dated 11.02.2004 justifying their earlier order No. 633 dated 24.07.2001 by which the scale of pay of the applicants were reduced. Being aggrieved by the above Order, the applicants filed the present O.A.

6. The grounds on which the impugned orders are being challenged in both the Original Applications are as under: -

- [i] The applicants after passing the trade test and qualifying, were empanelled and promoted in the scale of Rs.950-1500/- and posted by respondent No.4 vide Office Order No. 8 dated 01.05.1992.
- [ii] Applicants were working continuously for more than 12 years in the scale of Rs.950-1500 and in the revised scale of Rs.3050-4590/- since 01.01.1996 and were confirmed.
- [iii] Respondents reduced the pay scale of the applicants to Rs.800-1150/- and fixed their pay in the above scale w.e.f. 01.05.1992 and in the revised scale of Rs.2650-4000 w.e.f. 01.01.1996 on the grounds that though the designation given was Semi Skilled

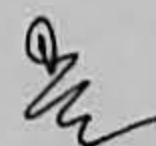
Fitter Grade II, scale was inadvertently given as R.950-1500/-, which is a Skilled Fitter grade.

- [iv] The Order dated 08.06.2004 reducing the pay scale (in O.A. No.622 of 2004) and the Order dated 11.02.2004 (in O.A. 611 of 2004), which is in the form of final Order, were passed without issue of show cause notice/without giving an opportunity of being heard, hence is discriminatory, illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India.

In view of the above, the reliefs sought in both the Original Applications are inter-alia to quash the impugned Orders dated 08.06.2004 in O.A. 622 of 2004 and Order dated 11.02.2004 in O.A. No.611 of 2004 and restore the pay of the applicants to the scale drawn by them continuously prior to the reduction Order viz. Rs.3050-4590/- with consequential benefits.

7. Shri K.P. Singh, Counsel for the respondents submitted that the applicants in both Original Applications i.e. Shri Mangala Rai in O.A. No. 622 of 2004 and S/Shri Sukil, Hanuman and Ram Ji in O.A. No. 611 of 2004 were trade tested by the then Assistant Engineer (II) Mughalsarai as Semi Skilled and not as Skilled Category as is evident from results of the trade test dated 10.03.1992 at annexure A-2 of the O.A.622 of 2004 and 16.02.1992 at annexure A-1 of the Counter Affidavit filed in O.A. No. 611 of 2004. Besides promotion to skilled category is held through a trade test and a prescribed selection procedure, which was not so in the case of the applicants who were only trade tested. On passing the trade test, all the applicants worked as Semi Skilled Fitter under Permanent Way Inspector, Eastern Railway, Karmnasa vide Assistant Engineer (II) Mughalsarai E-00No.8 of 1992 dated 01.05.1992 in the scale of Rs.950-1500 (RS) instead of Rs.800-1150 (RS) which is the scale of Semi Skilled Fitter. All the applicants have been drawing salary in the higher scale since 01.05.1992 because of the inadvertent error.

8. Shri K.P. Singh contends that the error committed in reflecting the wrong scale in E.OO No.8 of 1992 was rectified by



Senior Divisional Personnel Officer, Eastern Railway, Mughalsarai vide his letter dated 08.06.2004 in the light of this Tribunal's Judgment/Order dated 05.08.2003 in O.A. No. 1432 of 2001 after giving show cause notices dated 03.05.2004 and 06.05.2004. Respondents' counsel countering the applicants' arguments in paragraph 4.14 of the O.A. that the reduction in pay scale amounted to a penalty under Rule 6 of Disciplinary and Appeal Rules, and since no inquiry was conducted or opportunity was given of being heard, the said action of the respondents is illegal and unconstitutional, states that the reduction in pay scale was made as a rectification of a genuine mistake committed and not by way of a punishment besides show cause notices were issued, as mentioned above, hence Disciplinary and Appeal Rules are not attracted. They have thus, submitted that the O.A. is liable to be dismissed.

9. Heard, both the counsels and perused the pleadings on record.

10. Perusal of annexure A-2 shows that it was specifically stated in the trade test result that it was for the post of Semi Skilled Fitter (Chinese Tamper) in the scale of Rs.950-1500. All the applicants in both these Original Applications were declared passed and accordingly posted as Semi Skilled Fitter (Rail Grinding Chinese Tamper) in the scale of Rs.950-1500 (RP) by the competent authority under PW/Karmnasa vide Order dated 01.05.1992. Admittedly, all the applicants were drawing their pay as per the fixation done by the respondents themselves in the pay scale of Rs.950-1500/-, after the 5th Pay Commission, the scale Rs.950-1500/- was revised to Rs.3050-4590/- and their pay was fixed accordingly in the revised scale. It is not the case of the respondents that the said scale was given to the applicants due to the connivance of the applicants with some officials or at their instance. On the contrary, respondents' whole case is that applicants had been given the scale wrongly by their own officers. The question that arises is that even if the pay was fixed in a higher scale inadvertently warranting a reduction in the pay scale,



such a reduction cannot be done without a show cause notice to the applicants and giving them an opportunity to submit their representation and taking this into consideration before passing a reasoned and speaking order. Perusal of the pleadings shows that the respondents in O.A. No. 622 of 2004 issued two letters to the applicants dated 03.05.2004 and 06.05.2004 (Annexure A-6 and A-7) informing him of the inadvertent mistake and their proposal to reduce the pay scale accordingly, to that applicable to a Semi-Skilled Fitter. The applicant was given two weeks to submit his representation. The applicant in compliance submitted his representation dated 11.05.2004. This representation was duly considered by the respondents and the order dated 08.06.2004 was issued (Annexure A-I). In the connected O.A. No. 611 of 2004, the respondents issued a show cause notice dated 09.12.2003 by which the applicants were informed about the inadvertent wrong fixation of scale and the proposal to reduce it to the applicable scale of Rs.800-1150/-. The applicants represented against this vide their representation dated 31.12.2003, which was duly considered by the respondents and in compliance of with the directions of this Tribunal in O.A. No. 1432 of 2001, Order was issued on 11.02.2004 justifying and confirming the reduction in pay scale (Annexure A-3).

11. In view of the above, there appears to be no merit in the averments made by the applicants. Respondents have issued show cause notices and the impugned orders have been passed after considering the representation of the applicants, which is in compliance of this Tribunal's Order dated 05.08.2003 in O.A. 1432 of 2001. Hence, the contention of the applicants is rejected on this count.

12. Shri Sajnu Ram, the learned counsel for the applicants has drawn my attention to the following settled case law: -

{1} AIR 1970 SC 1302 M/s Mahabir Prasad Santosh Kumar Vs. State of U.P. and others.

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{ii} AIR 1969 SC 1297 State of Gujarat Vs. Patel Raghav Natha and others.

The facts and circumstances in the above case laws are different from the present cases, therefore, same are not applicable.

13. I am in agreement that the applicants have had no hand in the wrong fixation of pay/pay scale and hence are not at fault and should not be penalized. This argument would however be relevant if the respondents had ordered any recovery consequent upon the revision of the pay/pay scale vide the impugned orders. This does not appear to be so in this case, hence not much weightage can be given to this argument of the applicants.

14. Admittedly, the respondents wrongly fixed the pay scale in respect of the applicants in the scale of Rs.950-1500/- meant for skilled fitter category when it should rightly have been in the scale of Rs.800-1150/- meant for semi skilled category to which the applicants were promoted on passing the trade test. They have, therefore, rightly carried out the rectification vide their Orders dated 08.06.2004 in O.A. No. 622 of 2004 and Order dated 11.02.2004 in O.A. No. 611 of 2004, albeit after a period of more than a decade. The applicants have however been enjoying the higher pay wrongly fixed from 01.05.1992 onwards.

15. In view of the above, I am not inclined to interfere with the rectification Order issued on 08.06.2004 in O.A. No. 622 of 2004 and Order dated 11.02.2004 in O.A. No. 611 of 2004. The respondents are, however, directed not to recover excess payments made to the applicants in both Original Applications, as a result of wrong fixation of pay/pay scales till the date of the respective ^{rectification} orders issued in both the Original Applications.

16. The O.A. is disposed of with the above directions. No order as to costs.

[Signature]
Member (A) 23/2/07

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