

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

This is the 26th day of August 2021

ORIGINAL APPLICATION NO. 864 of 2011

**HON'BLE MRS. JUSTICE VIJAY LAKSHMI, MEMBER (J)
HON'BLE MR. TARUN SHRIDHAR, MEMBER (A)**

1. Ranjit Kumar Sharma son of Late Shri S.N. Sharma Resident of Village Bahadurpur, PO Deokali District Balia.
2. Hridai Narain Mishra son of late Shri Ram Nath Mishra, Resident of H. No. 316, Chatarbhujpur, PO Mughal Sarai, District Chandauli.
3. Ravi Shankar Singh son of Sri Gupteshwar Singh, Resident of Village Baajahan, PO Gauri, District Chandauli.

.....Applicants.

Advocates for the Applicant : Mr. B.N. Singh

VERSUS

1. Union of India through its General Manager, East Central Railway, Hazipur.
2. Divisional Railway Manager, East Central Railway, Mughalsarai.
3. Senior Divisional Personnel Officer, East Central Railway, Mughalsarai.

.....Respondents

Advocate for the Respondents : Shri Atul Kumar Shahi

ORDER

DELIVERED BY HON'BLE MR. TARUN SHRIDHAR, MEMBER (A)

The applicant No.1, who was appointed as a Constable in the pay scale of Rs.825-1200 in the Railway Protection Force during the year 1970, was decategorized in the year 1993 when he was found to be

medically unfit to perform the duties of Railway Protection Force. The medical fitness of the applicant was assessed by the Chief Medical Officer. Subsequent to his becoming medically unfit, the applicant No.1 was given alternative appointment on the post of Labour Mate, which is a Group 'D' post bearing scale of Rs.775-1025. Applicant No. 2 was appointed as Constable in 1976 and decategorized in 1995 to the post of Head Bearer in the pay scale of Rs.800-1150. Applicant No. 3 was appointed as Constable in 1989 and decategorized in 1995 to the post of Mark Man (in Parcel) in the pay scale of Rs.800-1150. The applicants are aggrieved that while they should have been appointed against the Group 'C' post which at that particular time carried a pay scale of Rs.950-1500, they have in fact been demoted and put to financial loss in the name of alternative employment. The issue has been agitated earlier in OA Nos. 173/07, 174/07 and 175/07. On 15.07.2008, the OAs were disposed of with a direction to the respondents to provide alternative employment to the applicants in Group 'C' with all consequential benefits of the post i.e. admissible pay scale and seniority from the date of their initial appointment. While in that order, the Tribunal appreciated that it may not always be possible to provide equivalent post, however, it is incumbent upon the respondents to protect the pay scale of the applicants and not place them in a position wherein the pay gets reduced. So specific direction was given to the respondents to take steps in accordance with law and to extend the same pay scale to the applicants as they were drawing as a Constable in RPF. Further it was also directed that arrears of pay on this account be also released within a period of three months from the date of receipt of a certified copy of this order. This order was

challenged by the respondents in the Hon'ble High Court and Hon'ble High Court finally decided the matter in the year 2009 dismissing these petitions relying upon the judgment of Hon'ble Supreme Court in Kunal Singh Vs. Union of India and others.

2. For the sake of greater clarity, the relevant portion of the OA seeking relief is reproduced below:-

- “(i) To issue a suitable order or direction to set aside the order dated 19.08.2009 passed by the respondent NO.2 (Annexure No. A-1).*
- (ii) To issue a suitable order or direction to the respondents to provide the alternative appointment in Group ‘C’ cadre and admissible pay scales.*
- (iii) To issue a suitable order or direction to the respondents to fix the seniority of the applicants since initial appointment and pay arrears, promotion and all consequential benefits.*
- (iv) to issue any other suitable order or direction as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.*
- (v) to award the cost of the application in favour of the applicant from the respondents”.*

3. The impugned order is a tabulation of the pay scale at various stages admissible to the applicants which shows that the applicant No.1 has been placed in the scale of Rs.825-1200 and his past pay fixed on 01.08.1993 as Rs.1100/- while he was drawing pay of Rs.1025/- on the same day as a RPF Constable, applicant No.2 has been placed in the scale of Rs.825-1200 and his past pay fixed on 09.02.1995 as 1070 while he was drawing pay of Rs. 1080 and applicant No.3 has been placed in the scale of 825-1200 and his past pay fixed on 19.01.1996 as Rs.960 while he was drawing pay of Rs.

950. While this tabulation does not throw much light on the issues flagged by the applicants, it does give the impression that even though their pay may have been fixed in a lower pay scale, however, on account of fixation of higher basic pay while being decategorized, the applicants have not been put to any financial disadvantage. The impugned order mentions that arrears on account of re-fixation are to be paid, and this tabulation goes on to certify that the order of the Tribunal to this effect has been complied with.

4. We have heard the learned counsel for the parties and also examined the documents on record. As mentioned earlier, the impugned order is merely a tabulated form giving a comparative structure of the pay already drawn by the applicants and pay, which, they will be drawing subsequent to its re-fixation in his new position. It does not, in any way, indicate whether in terms of clear direction of the Tribunal in OA Nos. 173/07, 174/07 and 175/07, the pay scale is identical to the scale, applicants were drawing as RPF Constable. Prima facie, it appears that they were initially absorbed in pay scale of Rs.800-1150, which has been revised to Rs.825-1200.

5. Learned counsel for the applicant vehemently argues that this fixation goes against the categorical directions given by the Tribunal in the aforesaid OAs and the effect of re-fixation of pay is reduction in the pay of the applicants, which has had a continuing adverse effect throughout their service career. He also points out that this order is also in violation of the principle laid down by the Hon'ble Supreme Court in

Kunal Singh Vs. Union of India case and would classify as discrimination against the persons with physical disability. The learned counsel for the applicants has also given his own tabulation as to how the pay of the applicants should have been fixed on their decategorization. He would further argue that consequent upon the revision of the pay scale of Group 'C' posts to Rs.950-1500, the applicants should have been fixed at this pay scale as all the posts in the scale of Rs.825-1200 (which was the pay scale of a RPF Constable) were classified as Group 'C' posts w.e.f. 11.10.1998. Since the applicant No.1 was given alternative appointment on 29.07.1993 and applicant No.2 was given alternative appointment on 9.2.1998 and applicant No. 3 was given alternative appointment on 19.01.1996, this appointment should have been in the pay scale of Rs.950-1500 instead of Rs.800-1150. He goes on to add that this is precisely what the Tribunal in OA No. OA Nos. 173/07, 174/07 and 175/07 had held, which was subsequently affirmed by the Hon'ble High Court.

6. Learned counsel for the respondents points out that contrary to the claim of the applicants, the pay scale of Rs.950-1500 was not enforced in case of the Constable of RPF. Hence, the applicants cannot lay a claim to the same pay scale.

7. In view of the specific averment made by the learned counsel for the respondents, we notice that the applicants in the OA have merely mentioned that the Ministry of Railways had issued instructions on 11.10.1988 that Group 'C' will carry the pay scale of Rs.950-1500/-. He

does not categorically mention anywhere that this instructions qua the pay scale of RPF Constable was also made applicable. In the impugned order/comparative table, we find that the pay scale for designation Constable is mentioned as Rs.825-1200 and this is also categorically stated by the learned counsel for the respondents orally as also by way of written argument submitted to us.

8. Therefore at this belated stage, we do not find any cause to interfere with the impugned order. However, we do appreciate that the applicants are nursing a grievance as the impugned order is beset with ambiguity and it is only a painstaking reading that could give one a slightly comprehensible picture. While it is admitted that on account of their acquiring physical disability, the applicants have been given alternative appointment and subsequent to the order passed by this Tribunal in OA No. OA Nos. 173/07, 174/07 and 175/07, they have been accorded the pay scale, which according to the respondents, was the scale they were drawing as a Constable of RPF, and further they have been paid arrears accordingly. We do direct the respondents to pass a clear order in this regard as to how they arrived at the calculation in the impugned order/table specifying by way of a reasoned and speaking order the pay scale held by the applicants at the time of their decategorization and subsequently re-fixation. Such an order be passed within a period of three months from the date of receipt of a certified copy of this order.

9. With the above direction, the O.A is disposed of. No order as to costs.

(TARUN SHRIDHAR)
Member (A)

(JUSTICE VIJAY LAKSHMI)
Member (J)

Manish/-