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IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

O.A. No. 167 OF 1989
TAX NOX

DATE OF DECISION 23-7-1993

Veeramuthu Keshvan, **Petitioner**

Mr. Y.V.Shah, **Advocate for the Petitioner(s)**

Versus

Union of India & Ors. **Respondents**

Mr. N.S.Shevde, **Advocate for the Respondent(s)**

CORAM :

The Hon'ble Mr. R.C.Bhatt, Judicial Member.

The Hon'ble Mr. M.R.Kolhatkar, Admn. Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Veeramuthu Keshvan,
G.M.C. Permanent Way Inspector
Western Railway,
Dholka, Dist: Ahmedabad.

..... Applicant.

(Advocate: Mr.Y.V.Shah)

Versus.

1. Union of India,
through the General Manager,
Western Railway,
Churchgate, Bombay.

2. Divisional Engineer,
Western Railway,
Bhavnagar.

3. C. Permanent Way Inspector,
(Open Line),
Western Railway,
Dholka.

..... Respondents.

(Advocate: Mr. N.S.Shevde)

J U D G M E N T

O.A.No. 167 OF 1989

Date: 23-7-1993.

Per: Hon'ble Mr. R.C.Bhatt, Judicial Member.

Heard Mr. Y.V.Shah, learned advocate for the applicant and Mr. N.S.Shevde, learned advocate for the respondents.

2. This application under section 19 of the Administrative Tribunals Act, 1985, is filed by the applicant seeking the relief that the respondents be directed to fix his pay in the scale of Rs. 950-1500 on par with his juniors and to pay him arrears and other consequential benefits. The case of the applicant as pleaded in the application is that he was initially recruited with effect from 6th February, 1979 as P.W.Mate by the P.W.I(C) Vatwa, that he was thereafter retrenched

on the ground of being surplus, that he along with others had challenged the retrenchment order of the respondents before the Hon'ble Supreme Court of India in which they succeeded and ultimately the applicant was reinstated as P.W.Mate. It is the case of the applicant that, thereafter, he was transferred to PWI(C) Dwarka with effect from 26th September, 1983 and then with effect from 31st January, 1985, he was transferred to the respondent No.3, i.e., P.W.I (Open Line), Western Railway, Dholka. It is alleged by the applicant that on transfer, the respondent No.3 continued to pay him in the scale of P.W.Mate, but after some time discontinued the pay scale 225-308(R) revised pay scale Rs. 950-1500 while his juniors namely, Tersingh Manji and Tangraj Kannan, who were similarly situated, are continued the higher pay scale of Rs. 250-308(R). It is the case of the applicant that inspite of his several repeated request to respondent No.2, the applicant has not been ^{all conferred} continued ⁱⁿ that higher pay scale which amounts to discrimination and which is arbitrary and violative of Articles 14 & 16 of the Constitution of India. The applicant served registered notice through his learned advocate on 22nd December, 1986 requesting / to grant him higher pay scale and proforma fixation of pay followed by another notice dated 1st December, 1988 but the respondents did ^{not heed} ^{not} pay any hint to it.

3. Reading the application as a whole, it is clear that the applicant wants his pay fixation or pay as P.W.Mate on par with his ^{two} juniors namely, Tersingh Manji and Tangraj Kannan at the scale of Rs.950-1500. The respondents filed reply contending that the applicant was engaged by Executive Engineer (Construction) Jamnagar and temporary status was granted to him in scale Rs. 225-308 under P.W.I.(C) Vatva. It is contended that as per the judgment of the Hon'ble Supreme Court, the persons, born on the geographical area of the division,

they are to be absorbed on that division ~~as~~ ^{more} against 40% vacancies, which ~~is~~ to be kept reserved for VOP labour. It is contended that the applicant's name was not appearing in the seniority list prepared by construction organisation Jamnagar for Bhavnagar division and as he was rendered surplus in construction organisation at Vatva and Dwarka, he was directed on this division to work under CPWI, Dwarka, against the track renewal work etc. The applicant, is S.C. person and to wipe out the deficiency, he was called for screening for his regularisation of service as Gangman in scale Rs. 775-1025(RP) vide Annexure R dated 5th September, 1987 and he was placed on the panel and was appointed provisionally as Gangman in that scale. It is contended by the respondents that the

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initial recruitment grade of gangman is to be given to the person only after his regularisation in service and after screening. The respondents have produced at Annexure R-1 the letter of the Railway Board that no recruitment/appointment can be done in any promotional channel.

4. The respondents have further contended that as the applicant was working in scale of Rs. 225-308/ 950-1500 (RP) on daily wages in the scale rate earlier to his regularisation, his claim for continuing him as Mate is not tenable. ^{as} So far ^{as} the case of Tengraj Kannan is concerned, the respondents have contended that his correct pay scale is Rs. 775-1025 as Gangman, that he was screened vide Annexure R-2 dated 29th October, 1987 and posted as Gangman under Chief Permanent Way Inspector Dholka on this Division, the copy of which is produced at Annexure R-3 and his pay fixation is made in scale Rs. 775-1025 vide Ann. R-4. So far ^{as} another employee Tersingh Manji, referred to by the applicant is concerned it is contended that he is VOP labour, engaged as Gangmate in construction department in scale Rs.225-308/ 950-1500 on ELA basis and rendered surplus and was directed on this division still continuing as ELA basis as Mate because he is not screened and regularised. It is contended that the said employee would be called ^{as} for screening in turned for his absorption as Gangman in scale Rs. 775-1025(RPS). Thus, according to the

respondents, there is no discrimination between the applicant and the other two employees apart from the facts that the claim of the applicant is not just.

6. At the time of hearing on 16th March, 1993, this Tribunal had directed the respondents to produce the relevant documents to show the position of Tersingh Manji as to when he was appointed as Gangman and on which scale and what is his position now and what was the scale and the respondents were also directed to produce the details about the position of another employee Tersingh Manji at present to show whether he is working as Mate at present and what is his scale and what is his position at present. Mr. N.S. Shevde for the respondents filed the documents R-5 and R-6 with the additional reply to show the correct position of these two employees, their scale etc. and has also produced the service sheet of the applicant.

7. We have heard the learned advocates at length and we have perused the documents on record. The relief sought in para-7 by the applicant is to direct the respondents to fix his pay in scale of Rs. 950-1500 on par with his juniors and to pay him arrears and other consequential benefits. The case of the applicant as pleaded in para-6 of the application is that after he was transferred to the respondent No. 1 with effect from 31st January, 1985, the respondent No. 3 continued to pay the scale of P.W. Mate but thereafter,

discontinued the pay scale of Mate while his juniors who were similarly situated namely, Tersingh Manji and ^{Manji} Tangraj Kannan were continued ⁱⁿ the higher pay scale and, therefore, according to the applicant, it amounts ⁱⁿ ~~the~~ discrimination which is arbitrary and violative of Articles 14 & 16 of the Constitution of India. In order of know the exact position of these two other employees named by the applicant in his application, we directed the respondents to produce the documents to show us when ~~these~~ persons were appointed as Gangman and on which scale and what is their position ⁱⁿ at present. In response to our direction, the respondents have produced the documents at Ann. R-5 & R-6 and also the service sheet of the applicant along with additional statement. The documents Ann. R-5 dated 29th April, 1993, which is a memorandum regarding the fixation of pay of Tersingh Manji, shows that on verification of his service sheet, he was a Gangman, that he was granted a temporary status with effect from 1st January, 1985 in scale Rs. 225-308 vide order dated 15th December, 1985. He was screened in Bhavnagar Para Division in SC/ST quota and was posted as Gangman in scale Rs. 775-1025(RP) vide order dated 29th October, 1990 and 10th November, 1990 and he resumed his duty as Gangman under CPWI Dholka on 21st November, 1990 and hence his pay was revised and refixed as Gangman. The details are given in that

document from 1.1.85 to 1.1.93 about the existing position and the revised position. The learned advocate for the respondents submits that on verification of the service sheet of this employee it was noticed that some error was committed in fixing his pay on his absorption as Gangman by subordinate officer and therefore by this document Annexure R-5, the pay was revised as a Gangman in the scale of Rs. 775-1025. His pay was fixed in old scale 200-250 from 1.1.85 as a Gangman and the recovery for over payment is also to be made from his salary. So far the other employee Tangraj Kannan is concerned, the respondents have also produced the document Ann. R-6 which is also the memorandum dated 29th April, 1993 regarding fixation in revised pay scale. It shows that this employee was screened in Bhavnagar division in SC/ST quota and posted as Gangman in the scale of Rs. 775-1025 vide order dated 24th November 1988 and he resumed his duty as a Gangman under CPWI Dholka. There was error in fixation of pay on his absorption as a Gangman by the subordinate officers and on verification of his service sheet this mistake was found out and hence this memorandum Ann. R-6 is made revising the pay fixation of the said employee and his pay as on 1st March, 1993 is Rs. 885 in the pay scale of a Gangman. Therefore, though the respondents were paying the higher salary to these two employees as alleged by the applicant, the respondents have

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corrected the pay scale by these two documents and they are put in the scale of a Gangman with retrospective effect as mentioned in those documents and their pay scale is that of a Gangman. Therefore, there can not be now any grievance of the applicant about discrimination and arbitrary action of the respondents. The learned advocate of the applicant submitted that the respondents have prepared these two memorandum Ann. R-5 & R-6 by reducing the pay scale of the said two employees to defeat the claim of the applicant. We are concerned with the point agitated by the applicant as to whether there is any discrimination or arbitrary action on the part of respondents in paying higher salary to the two employees named by the applicant and whether there is infringement of Articles 14 & 16 of the Constitution of India, The documents R-5 & R-6 show that these employees are not paid higher scale than the applicant and there is no substance in the submission of the applicant that these two persons are paid higher salary. These two employees' revised scale is that of Gangman, therefore, applicant can not get the relief prayed for.

re 7. The learned advocate for the applicant submitted that the respondents have contended in their reply that Tersingh Manji was engaged as Gang Mate in Construction department in the scale of Rs. 225-308/ 950-1500 on ELA basis and rendered surplus and he was still continuing on ELA basis as Mate. The learned advocate for the applicant submitted that this employee was junior, still he was given the scale 225-308 though

he is not screened. He submitted that if the said employee was paid scale of Mate as contended by the respondents, they should pay the scale of Mate to the applicant, who was also working in that capacity. He submitted that the additional reply is filed by the lower authority which is a Senior Divisional Personnel Officer and Ann. R-5 & R-6 are the orders of the Assistant Engineer. We do not find any substance in the legal as submission that these orders should not be considered as / the same are passed by the Assistant Engineer. The refixation of the salary of these two employees is made on the basis of the service sheet and we rely on it and we find that now there can not be any grievance of the applicant that these two employees are paid higher scale.

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8. We have also examined the service sheet of the applicant. The service sheet shows that he worked as Mate as per the order dated 25th October, 1985 and he was granted temporary status with effect from 1st January 1985 and was appointed as substitute Gangman on 22nd November, 1985 in the scale of Rs. 200-250 and he was absorbed as Gangman on 5th September, 1987 vide Ann. R their name is at Sr.No. 27. The learned advocate for the respondents submitted that when the applicant is regularised as Gangman, his pay fixation is to be made and he has to be paid for / that post. The applicant worked as substitute Gangman from 22nd November, 1985 onwards which is shown in the first column of the service sheet of the applicant. He submitted that

it is not the contention of the applicant in O.A that
and that
he worked as Mate in open line, he should be given
salary of Mate.

19. The learned advocate for the applicant submitted that the applicant was getting scale Rs.225-308 as per his appointment order shown in the service sheet dated 25th October, 1985 on open line which was reduced to scale of Rs. 200-250 by order dated 25th November, 1985. He submitted that no order of reversion from Mate was made and it is not explained why the scale is reduced. The learned advocate for the applicant submitted that the applicant should be given the same scale upto 29th April, 1993 which his juniors were getting. We do not find any substance in this submission because first of all the applicant has not stated in the application that he is reverted from Mate to Gangman and that the reversion is bad in law. Secondly, there is no question of stepping up and the rules of stepping up do not apply. This is not a case of promotion but it is the case of absorption. The service sheet shows the position of the applicant as a Gangman vide order dated 22nd November, 1985 and he has worked as a Gangman as per the service sheet and therefore, he can not say that he was a Mate. The learned advocate for the respondents submitted that has failed to prove that apart from the fact the applicant / the two employees named by him are his juniors and there is anomaly in

pay fixation, there is no allegation on this point in the petition. He rightly submitted that the said two employees when absorbed as Gangman were given same scale as that of applicant but it was through oversight that the PWI did not fix the pay and continued to pay scale of Mate to these two persons which was corrected by the memorandum Ann.R-5 & R-6 and the revised ^{is} position/also shown from 1st January, 1985. The learned advocate for the applicant submitted that the respondents had given unequal treatment to the applicant. We do not agree with this submission because document R-5 & R-6 give complete answer to the grievance of the applicant. The service sheet of the applicant shows his position as a Gangman as per order dated 22nd November, 1985. The other two employees are given the scale of Gangman as per the two documents R-5 & R-6 with retrospective effect. We therefore, find no substance in any of the grievances of the applicant that he is given unequal treatment or that the two employees named by him in the application are paid higher scale. We hold that there is no discrimination by the respondent No.3 and there is no violation of Articles 14 & 16 of the Constitution of India. We therefore, dismiss this application.

O R D E R

Application is dismissed with no order as to costs.

M.R.Kolhatkar
(M.R.Kolhatkar)
Member(A)

R.C.Bhatt
(R.C.Bhatt)
Member(J)