

5

(3)

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.444 OF 1996  
Cuttack this the 21<sup>st</sup> day of February/2002

Damodar Prasad Rao

...

Applicant(s)

- VERSUS -


Union of India & Others


...

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? No

  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)

  
(S.A.T. RIZVI)  
MEMBER (ADMINISTRATIVE)

6

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.444 OF 1996  
Cuttack this the 21st day of February/2002

CORAM:

THE HON'BLE MR.S.A.T.RIZVI, MEMBER (ADMINISTRATIVE)  
AND  
THE HON'BLE MR.M.R. MOHANTY, MEMBER ( JUDICIAL )  
...

Damodar Prasad Rao, son of Late Damodar  
Sri Ramulu, Diesel Colony Qr. No.165/B, Bondamunda  
P.O. Bondamunda, District-Sundargarh

...

Applicant

By the Advocates

M/s.D.S.Mishra  
S.Behera

-VERSUS-

1. Union of India represented through the  
Secretary, Railway Board, Rail Bhawan,  
New Delhi
2. General Manager, South Eastern Railway,  
Garden Reach, Calcutta-43, West Bengal
3. Chief Personnel Officer, South Eastern Railway,  
Garden Reach, Calcutta-43, West Bengal
4. Divisional Railway Manager, South Eastern Railway,  
Chakradharpur, Dist-Singhbhum, Bihar
5. Senior Divisional Personnel Officer, South Eastern  
Railway, Chakradharpur Division, At/PO-Chakradharpur  
Dist-Singhbhum, Bihar

...

Respondents

By the Advocates

M/s.B.Pal  
S.K.Ojha  
P.C.Panda  
P.Das

-----  
ORDER

MR.S.A.T.RIZVI, MEMBER (ADMINISTRATIVE): While working as a  
Fireman Instructor<sup>r-or</sup> in the pay grade of Rs.330-560/-, the  
applicant was medically decategorised on 6.8.1982 and was  
subsequently appointed as Wagon Chaser in the pay grade of  
Rs.425-700/- with effect from the same date. By an order passed  
on 17.2.1988 (Annexure-1), the Respondents have provided  
that while the applicant was entitled for absorption in an

d

alternative job in the pay grade of Rs.425-700/-, he was being absorbed, however, in the lower pay grade of Rs.330-560/- after obtaining the approval of the competent authority (D.R.M.). This meant that while the applicant had been appointed against a post, viz., that of Wagon Chaser, which carried the pay scale of Rs.425-700/-, by applying certain rules covering the cases of medically decategorised personnel, he was allowed to draw salary in the lower grade of Rs.330-560/-.

2. Aggrieved by the aforesaid order dated 17.2.1988 the applicant approached this Tribunal in O.A.No.281/90, decided on 6th September, 1991. The Tribunal held that the applicant was definitely entitled to the pay scale of Rs.425-700/- with effect from 15.9.1982. The aforesaid decision was taken by relying on the principle of "Equal Pay for Equal Work". While the aforesaid order was complied with by the Respondents, the applicant was not placed by them in the pay grade of Rs.2000-3200/- in terms of the Government's decision on the 4th Central Pay Commission's recommendations. This matter was accordingly made subject matter of a Contempt Petition, being C.P.(Civil) No.56/94, filed by the applicant before this very Bench of the Tribunal. That Petition got decided on 1.11.1995. The Tribunal held that the relief of the applicant's placement in the revised scale of Rs.2000-3200/- was not acceded to in the order dated 6th September, 1991. The proceedings in the Contempt Petition were accordingly dropped.

Accordingly the applicant is before us in this Original Application seeking placement in the aforesaid pay grade

of Rs.2000-3200/-.

3. The learned counsel appearing on behalf of the Respondents has drawn our attention to the Rule position by submitting that a medically decategorised member of the Railway Staff can never be placed in a pay grade higher than the pay grade drawn by him at the time of his being decategorised. Accordingly the applicant could not be placed in a grade higher than his substantive grade in the post of Diesel Assistant, carrying the pay scale of Rs.290-350/-. No doubt the applicant had been put on adhoc promotion as a Fireman Instructor on an ex cadre post on 8.4.1990, but for purposes of working out his salary grade as a Wagon Chaser, reliance will have to be placed not on the pay grade of Rs.330 - 560/-, which he was drawing as a Fire Instructor, but instead, on the aforesaid pay grade of Rs.290-350/-, in accordance with Rules. The relevant rule lays down that the new pay grade will have to be worked out by adding 30% to both the minimum and the maximum limits of the pay grade of Rs.290-350/-. Thus, going by the rule position, the applicant, a medically decategorised staff member, could not be absorbed in a pay grade, the maximum of which would exceed Rs.455/-. He was, however, given the pay grade of Rs.330-560/- by downgrading ~~the~~ post from Rs.425-700/-. According to him, going strictly by the Rules, the applicant's absorption in the pay grade of Rs.330-560/- was incorrect, inasmuch as even this pay grade gave him more than what should have been given to him, strictly in accordance with rules. Despite the aforesaid position, in compliance of the Tribunal's

order dated 6.9.1991, the applicant has been given the pay grade of Rs.425-700/- and all the <sup>2 payments</sup> ~~appointments~~ involved have been made and he continues to work in the aforesaid pay grade of Rs.425-700/- (Pre Revised).

4. The learned counsel for the Respondents further submits that in terms of the 4th Central Pay Commission's recommendations, the applicant is entitled not to the <sup>pay</sup> higher/grade of Rs.2000-3200/-, but to the replacement scale of Rs.1400-2300/-. The relevant Paragraphs of the 4th Central Pay Commission's recommendations have been reproduced by the Respondents in the counter. We have perused the same and find that in-so-far as the posts of Loco Inspector/Foreman etc. are concerned, the recommendations made clearly indicated that the posts in the pay grades of Rs.425-700/- and Rs.425-700/- constituted deviations from the norm and these were to be discontinued. The Railway Board (Government)'s decision in respect of the aforesaid recommendation has been conveyed vide Ministry of Railway's letter dated 11/12.3.1991 (Annexure-10/D) and the same Ministry's letter dated 12.2.1992 (Annexure-10/A). Both these letters addressed to the General Manager, S.E. Railways clearly provide that the higher pay grade of Rs.2000-3200/- could not be given to those, like the present applicant, placed in the pay grade of Rs.425-700/- The said letters also lay down that those working in the pay grade of Rs.425-700/- in the posts, including the post held by the applicant, were entitled to be placed in the normal replacement <sup>2 scale, 2</sup> scale. The replacement, as per the 4th Central Pay Commission's recommendations, undoubtedly is Rs.1400-2300/-. In the circumstances, according to the learned

counsel, the applicant cannot be placed in the higher pay grade of Rs.2000-3200/-. The present Original Application therefore, according to him, deserves to be dismissed.

5. The learned counsel appearing on behalf of the applicant has thereupon proceeded to place reliance upon the decision rendered by this Bench of the Tribunal in an earlier case, viz., that of Shri Ram Singh, who had approached this Tribunal through O.A. No.234/94. The learned counsel's contention is that the aforesaid Shri Ram Singh was a similarly placed personnel and therefore, the present O.A. is fully covered by the decision given by the Tribunal in his case. We have called upon the record of the aforesaid O.A. and, after a perusal of the same, find that the aforesaid O.A. was not decided by this Tribunal on merits. The respondents had, in that case, on their own withdrawn the letter by which Shri Ram Singh had been placed in the pay grade of Rs.1400-2300/- in place of Rs.2000-3200/-. That letter is dated 22.10.1992.

Having withdrawn the aforesaid letter, the Respondents in that case proceeded to place Shri Ram Singh in the pay grade of Rs.2000-3200/- by their letter of 2/5th September, 1994. A perusal of the pleadings placed on record in the aforesaid O.A. (234/94) would at once show that the <sup>various</sup> posts held by Shri Ram Singh <sup>were for the most part</sup> ~~was~~ totally <sup>different</sup> ~~distinct~~ from the posts held by the present applicant. Shri Ram Singh though promoted as Wagon Chaser, continued to perform the duties of Detention Inspector all along from 2.4.1980 and had been placed as such in the pay grade of Rs.2000-3200/-.

He remained in that pay grade from 1.1.1986 to August,



1992, when suddenly the Railway Authorities stopped making payments in accordance with the aforesaid higher pay grade, without putting Shri Ram Singh to notice. Shri Singh was a member of the running staff throughout and had worked in positions, such as, 2nd Fireman, 1st Fireman, Diesel Assistant, Fireman Instructor and then as Detention Inspector from 2.4.1980 onwards. The Respondents in that case have stated that Wagon Chasers whose services were utilised as Loco Inspector (Detention) were also given the pay grade of Rs.2000-3200/- with effect from 1.1.1986. They have also stated therein that following the implementation of the 4th C.P.C.'s recommendations, Loco Supervisors working in the Pre-revised pay scales of Rs.700-900, 550-700/- and 425-700/- were all placed in a single ~~Bracket~~<sup>or</sup> (merged) pay scale of Rs.2000-3200/-, and this is how the applicant in that case was also placed in the pay scale of Rs.2000-3200/-.

6. On a careful consideration of the matter, we find that Shri Ram Singh was placed in the pay grade of Rs.2000-3200/- in the peculiar facts and circumstances of that case <sup>& without a basis in Railway Ministry's decisions relevant to the case &</sup> and that decision was made by the Respondents on their own without any direction from the Tribunal. The Tribunal disposed of that O.A. "as not pressed." In these circumstances the Tribunal is not bound by any judicial precedent and is free to consider and decide the present O.A. on its own merits. We have already seen that the decision taken by the Railway Administration (Ministry of Railways) on the recommendations made by the 4th C.P.C. clearly provides that the applicant <sup>& who has been</sup> ~~and those similarly placed~~ working in

the pre-revised scale of Rs.425-700/- were entitled only to the replacement scale of Rs.1400-2300/- and not to the higher pay grade of Rs.2000-3200/-.

7. In a catena of judgments the Apex Court has advised the Courts below and the Tribunals to desist from fixing pay scales in respect of various posts. This matter should be left, according to Apex Court, to be decided by the Expert Committees, viz., Pay Commissions <sup>and others</sup> working in tandem with the Central Government. In other words, it is now settled that the decisions taken by the Central Government on the recommendations of Expert Committees/Pay Commissions <sup>and others</sup> should not be interfered with, as a rule. The circumstances of the present Original Application are also such 'as' do not permit us to give any direction to the respondents <sup>at the highest level in Railways.</sup> contrary to the decision already taken by them. We, <sup>are</sup> therefore, content to hold that the respondents' pleas have considerable merit. The Original Application, accordingly fails and deserves to be dismissed.

8. In the light of the foregoing the O.A. is dismissed. There shall be no order as to costs.

(M.R. MOHANTY)  
MEMBER (JUDICIAL)

21/02/2002

(S.A.T. RIZVI)  
MEMBER (ADMINISTRATIVE)

B.K.SAHOO//