

242

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

ORIGINAL APPLICATION NO. 248/2004

Date of Order: 23-3-2010

**Hon'ble Mr. Justice Syed Md. Mahfooz Alam, Judicial Member
Hon'ble Mr. V.K. Kapoor, Administrative Member.**

1. Bhanu Prakash, S/o Shri Kashi Ram, aged 46 years,
2. AbdualAli Qureshi , S/o Shri Rahim Bux aged 52 years.
Both applicants junior clerks in the office of the Diesel Foreman, North Western Railway,
3. Sarnam Singh, S/o Shri Mangal aged 45 years, Junior Clerk in the office of the Divisional Mechanical Engineer, Disesl Shed, North Western Railway, Abu Road, District Sirohi.

All Applicants residents of Railway colony, Abu Road, District Sirohi.

: Applicants.

Rep. By Mr. Vijay Mehta : Counsel for the applicants.

Versus

1. Union of India, through the General Manager, North Western Railway, Jaipur.
2. The Divisional Railway Manager, North Western Railway, Ajmer.

: Respondents.

Rep. By Mr. Salil Trivedi : Counsel for the respondents.

ORDER

Per Mr. V.K. Kapoor, Administrative Member.

Sri Bhanuprakash and other two have filed the present O.A

against orders of Divisional Railway Manager, Ajmer (Respondent no.2) dated 3-4/1999 (Annex. A-1) and 07-6-1999 (Annex.A-2.). The applicant has sought the reliefs that are as follows:-

"The applicants pray that the impugned order Ann A-1 and Ann. A-2 may kindly be quashed and the respondents may kindly be directed to give pay scale Rs. 3050-4590 to the applicants from the date of their promotion/appointment on the post of junior clerk and to make fixation accordingly. Interest at the rate of 12% may also be awarded to the applicant on the due amount. Any other order, as deemed fit, giving relief to the applicant may also be passed. Costs may also be awarded to the applicants."

2. The factual matrix of present case is that the applicants were appointed as junior clerks (group D employees) in pay scale of Rs.825-

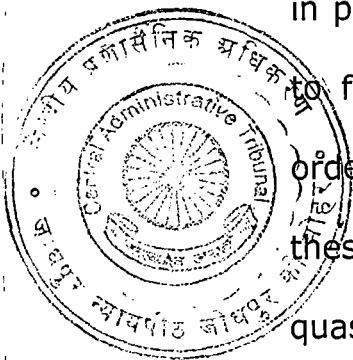
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1200. With introduction of 5th Pay Commission, their scale was accepted as Rs.2750-4400 (Ann.A-1,A-2). Applicants 1, 2 submitted applications for junior clerks' posts, gave memorandum vide Ann.A-3; after examination, applicants 1, 2 were declared successful vide order dt 02.12.1997 (Ann.A-4); applicants 1, 2 were promoted to the post of junior clerk (scale Rs.2750-4400) vide order dt 13.7.1998 (Ann.A-5). The applicant 3 being a diesel mechanic in 'C' grade, was appointed on junior clerk post in pay scale of Rs.825-1200 vide order dt 26.3.1997 (Ann.A-6). With introduction of 5 Pay Commission, applicants' pay scale was said to be revised as Rs.3050-4590 by orders dt 10.5.1998 (Ann.A-11). The applicants gave representations to respondent 2 for new pay scales which were rejected vide order dt 30.4.1999 (Ann.A-1) & subsequent orders issued on 07.6.1999 (Ann.A-2). Applicants challenged these orders in Tribunal in O.A.68/2000. The Tribunal directed respondents as per order dt 21.02.2002 to verify the facts/ details of issuance of such orders and whether the pay scales were revised to Rs. 3050—4590 (Ann.A-7 to Ann.A-13). As respondents did not comply with order dt 21.02.2002, a contempt petition 40/2002 was filed; it was clarified by respondents that there was no junior clerk in pay scale of Rs.2750-4400. The Tribunal gave liberty to applicants to file fresh O.A and agitate the matter again, if need arises; vide order dt 13.9.2004 (Ann.A-16). The applicants have prayed to declare these orders Ann.A-1, A-2 being arbitrary & discriminatory illegal and quashed the same. They have also requested to give pay scale of Rs.3050-4590 to applicants (Junior Clerks).

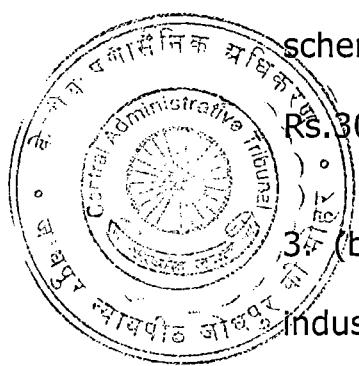
3. (a) The respondents in reply have submitted that the applicants have claimed pay scale of Rs.3050-4590 as junior clerk. Applicants have also raised the matter in Industrial Tribunal cum Labour Court,

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Jaipur GIT 48/2000; the Industrial Court in reference has observed that junior clerks are not entitled to get pay scale of Rs.3050-4590 (as per Award dt 28.8.2002 Ann.R-1). The award being final, is hit by a principle of resjudicata. It is averred that respondent 2 issued a notification for promotion from Group D employees to the post of Junior non-metric Clerk in pay scale of Rs.825-1200 vide notification dt 28.7.1995 (Ann.A-3). The selection from Group D employees was conducted for junior clerks' posts in pay scale of Rs.825-1200 as per para 188 of IREM (Vol. I). The post of junior clerk in pay scale of Rs.825-1200 was revised to Rs. 2750-4400 as per 5th Pay Commission's recommendations; the clerks' scale of Rs.950-1400/Rs.950-1500 was revised to Rs. 3050-4590, applicants as junior clerk are not entitled to Rs.3050-4590 scale. The post of lower Group D, Group C, junior clerks of grade Rs.825-1200 (new scale of Rs.2750-4400) are eligible to undergo selection process and to be promoted in grade of Rs.950-1500 of clerk. The cadre of junior clerk (pay scale Rs.2750-4400) is separate from that of ministerial staff. The Railway Board has revised the pay scales of junior clerks from Rs.825-1200 to Rs.2750-4400 in 5th Pay Commission. The junior clerks working in pay scale of Rs.2750-4400 are to be promoted on the vacancies of restructuring scheme on the basis of modified selection process in pay scale of Rs.3050-4590. The respondents have requested to reject present O.A.

34.(b) In rejoinder, applicants have denied the fact of raising an industrial dispute (Ann.R-1); applicants are not bound by Ann.R-1. It was decided in PNM meeting held in 2004 that junior clerks in the scale of Rs.2750-4400 would be given promotion on Rs.3050-4590 (Ann.A-18). All junior clerks are in pay scale of Rs.3050-4590; these junior clerks are not known as non-metric clerks.



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3 (c) In additional reply the respondents have clarified that the applicants were admittedly working as junior/non metric clerks in pay scale of Rs.825-1200; which was revised to Rs.2750-4400 (Ann.R-2); they were not working in the scale of pay of Rs.950-1500. Thus the applicants are not entitled for the pay scale of Rs.3050-4590. The respondents conducted selection vide notification dt 08.8.2006 under 66 2/3% matriculate group D staff ranker quota for 15 posts. An eligibility list was published in which applicants 3, 1 were placed at Sl.3, 5. A provisional panel dt 09.5.2007 was issued; applicant 2 is placed at Sl.8; he was promoted as clerk in the scale of Rs.3050-4590 (Ann.R-6). Applicant 3 Shri Sarnam Singh could not find place in this panel selection being unsuccessful. Likewise, selection for clerk scale Rs.3050-4590 under 33 1/3% quota from group D staff ranker quota was conducted wherein 23 employees were found successful, but applicants 1, 3 were not successful in the written test.

4(a). Learned counsel for the applicants in arguments has stated that they were working as non-metric junior clerks in pay scale of Rs.825-1200. As per Railway Board's circular, there was redistribution of staff; the posts (other than accounts) were redistributed vide letter dt.



10.5.1998. The test for non-metric clerks was conducted, they were promoted as junior clerks vide Ann.A-4, A-5 to A-10; in promoted list Ann.A-5, applicant (1) is at Sl.11. The applicants moved to Tribunal in O.A.68/2000, vide order dt 21.02.2002, some directions were given.

The applicants moved in C.P.40/2002 & M.A.99/2004 (in O.A.68/2000) was filed. The matter was decided; applicants were given liberty to file fresh O.A, they referred to letter dt 02.12.1997 (Ann.A-4). The post of junior clerk was upgraded on 01.11.2002 in pay scale of Rs.950-1500/ Rs.3050-4590 given to non-metric staff. Vide letter dt 30.4.1999

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(Ann.A-11) some posts were redistributed, the scale of Rs.3050-4590 was provided for junior clerks. Applicants have prayed that their plea be accepted and they be given scale of Rs.3050-4590. The applicants have placed reliance on citation of apex Court, namely 2009 LAB 1C 731 & 2009 LAB 1C 735, besides rulings of Rajasthan High Court (Jaipur Bench) 2008 (2) WLC 300, 2002 (1) RLD 770 & 2005 (9) RDD 4042 (Raj). The citation in OA 226/2008, CAT Jodhpur bench, order dt 09 Sept,2009 is also quoted in applicants' defense.

4(b) Learned counsel for respondents in arguments has spoken about non-metric clerk, who were later promoted as junior clerks vide order dt 02.12.1997 onwards (Ann.A-4 to A-10). As per Rly Board's circular, there was redistribution of staff; letter dt 10.5.1998 is referred to regarding redistribution of staff, some new posts were created. The respondents have referred to revised pay rules, 1997 vide order dt 16.10.1997 by which equivalent position was indicated (Ann.R-2). The revised scale of junior clerks Rs.825-1200 comes out as Rs.2750-4400. The clerks' scales Rs.950-1400 & Rs.950-1500 were merged, revised scale Rs.3050-4590 was created. In O.A.68/2000, applicants' names find place at Sl.9 to 11; some directions were given; applicants were denied the desired pay scales. The applicants filed contempt petition; they were given liberty to file new O.A. Para 188 of IREM Vol.I is for scale Rs.825-1200 for junior clerks and para 174 of IREM Vol.I is for promotion. The posts in scale of junior clerks were not upgraded; vide Railway Board's letter dt 10.5.1998 (Ann.A-11), the instructions & classification of posts are given. As per respondents, junior clerks are not eligible for revised scale of Rs.3050-4590.

5. The present case pertains to that of non-metric clerks' terms as group D employees. A circular was issued by respdt 2 on 28.5.1995 by

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which group D employees asked to apply for posts of junior clerks in pay scale of Rs.825-1200 (Ann.A-3). Applicants 1,2 applied for junior clerks' posts for which examination was conducted, these applicants were declared successful vide order dt 02.12.1997 (Ann.A-4). The applicant 3 was diesel mechanic in C grade, appointed on junior clerk's post in scale of Rs.825-1200 vide order dt 26.3.1997 (Ann.A-6). The applicants 1, 2 after passing examination were declared successful vide order dt 02.12.1997 (Ann.A-5); applicant 1 name finds place at Sl.11, the name of applicant 3 finds mention in order dt 26.3.1997 (Ann.A-6). The staff D promoted to the posts of junior clerks are referred as Ann.A-3 to A-10. Para 188 of IREM (Vol.I) speaks about promotions on the post of junior clerks in the pay scale of Rs.825-1200. As per circular of Railway Board dt 10.5.1998, some posts were re-categorised & some posts were re-distributed. The applicants have termed equivalence of scale of junior clerks Rs.825-1200 to be revised as Rs.3050-4590 as per recommendations of 5th Pay Commission. But orders of respondent 2 dt 30.4.1999 are that the pay scale of junior clerks would be Rs.825-1200 as per para 188 of IREM (Vol.I) and its equivalence in 5th Pay Commission is termed as Rs.2750-4400 (Ann.A-1). Similarly, a circular dt 07.6.1999 was issued by respondent 2 by which pay of non-metric junior clerk was treated as Rs.2750-4400 (Ann. A-2). A perusal of Railway Services (Revised Pay) Rules, 1997 dt 16.10.1997 First Schedule-reveals that the equivalence of old scale of Rs.825-1200 comes out to be Rs.2750-4400 (at Sl.4). There are two other scales of Rs.950-1400 & Rs.950-1500; both these scales were merged as revised scale is Rs.3050-4590 (at Sl.5).

6. The applicant has taken recourse to order of WR dt 10.7.2001 in which cook gr.II Scale Rs.2750-4400 is revised to Rs. 3050-4590 and



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cook gr.I Rs.3050-4590 to 3200-4900. This is apparent that scales of pay for cook are on higher side as compared to those of junior clerk to be Rs.2750-4400, the respondents are quite clear and specific on this point as per their dictum vide Ann.A-1 & Ann.A-2. Applicants have quoted para 7 of the reply of respdts on 18.8.2008, wherein it is mentioned that the HQ office Churchgate vide letter dt 01.11.2002 has upgraded post of non-metric clerk as clerk in pay scale Rs.950-1500/ Rs.3050-4590 but no such order is presented. This points out to the anxiety on the part of respondents to lessen the disputed matters and avoid grey zones; but it is quite specific that junior clerks' scale Rs.825-1200 & clerks' scale of Rs.950-1400/Rs.950-1500 are treated differently; both these scales cannot be equated. The scales of non-metric/junior clerks Rs.825-1200 were revised to Rs.2750-4400; clerks' scales of Rs.950-1400/ Rs.950-1500 were revised to Rs.3050-4590; both these old & revised scales are quite different. On query from Tribunal, applicants could not produce details about high school/metric pass qualifications; they expressed their inability in this regard.

7. The respondents have submitted a copy of order/award passed by the Central Govt. Industrial Tribunal cum Labour Court, Jaipur filed by President, Technical Employees Association of Railways against the Divisional Railway Manager (WR) Ajmer (respondent 2 in present case). This matter pertains to pay scale of junior clerks Rs.825-1200/ Rs.2750-4400 who have requested to equate them on scale of Rs.950-1400/Rs.950-1500/Rs.3050-4590. In this award dt 28.8.2002, request of junior clerks for parity with other clerks' scale Rs.3050-4590 was rejected, it was clearly specified that the junior clerks were not entitled to scale of Rs.3050-4590. In labour court's case, the subject matter is same; cause of action pertains to giving junior clerks' the scale of

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Rs.2750-4400 to scale of clerks Rs.3050-4590; though applicant is different. As subject matter & cause of action of this award of Central Industrial Court is same as in the present O.A, the applicants are supposed to respect this award that squarely applies in present context. This is pertinent to mention that lower group D/group C junior clerks in grade Rs.825-1200/Rs.2750-4400 are eligible to undergo the selection process on being found eligible to be promoted in the grade of Rs.950-1500 of office clerk. Thus, the cadre of junior clerks (scale Rs.2750-4400) is separate to the cadre of ministerial staff; the order issued by respondent 2 is quite specific (Ann.R-3). Applicants have raised this matter before Tribunal in O.A.68/2000 some directions were given & clarifications sought vide order dt 21.02.2002. Later, C.P.40/2002 and M.A.99/2004 were filed by applicants, wherein it was found that the matter be examined on merits; the applicants were given liberty and further opportunity to file fresh O.A. if they deemed fit. These junior clerks working in pay scale of Rs.2750-4400 shall be promoted against the vacancies of restructuring scheme on the basis of modified selection process in pay scale of Rs.3050-4590.

8. In view of Railway Board's circular dt 03.2.1997, an employee who intends to be promoted from group D to Group C post as clerk is required to pass type test in 03 chances within a period of 02 years. The railway board's circular dt 04.4.1997 gave an extra opportunity for appearing in the type test to those incumbents who were appointed in railways in group C category only; the present case is not for granting relaxation in the educational qualifications. The Railway Board's circular dt 04.7.2007 is not applicable as applicants have failed in all three chances given to them to pass the test. The High Court in DB Civil Writ Petition 5208/2003 decided on 04.7.2004 was different to

lessons

some extent being that of compassionate appointment. The competent authority rightly decided the matter as per Ann.A-1.

9. The applicants were admittedly working as Junior/NM clerk in the pay scale of Rs.825-1200, revised to Rs.2750-4400 (Ann. R-2), they were not working in the scale of Rs.950-1400 or Rs.950-1500 (revised scale Rs.3050-4590). As per para 170 (b) of IREM, the respondents conducted selection for clerk in scale Rs.3050-4590 under 66 2/3% matriculate group D staff ranker quota vide notification dt 08.8.2006 for selection of 15 posts; eligibility list dt 06.11.2006 was published, names of applicant 3 & 1 were placed at Sl.3 & 5 for appearing in written examination. Both these applicants appeared in written test; in provisional panel dt 09.5.2007, applicant 1 is placed at Sl.8, applicant 3 could not find place in panel being unsuccessful. The applicant 1 was promoted as clerk in scale of Rs.3050-4590 posted at Abu Road vide order dt 08.6.2007 (Ann.A-6). In selection, conducted for clerks' scale under 33 1/3% quota from group D staff ranker, 23 employees were found successful but applicant 1,3 could not succeed in written test.

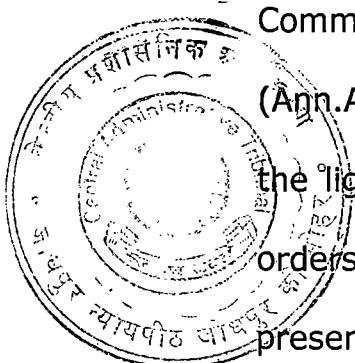
10. The applicant has quoted citation of apex court UOI vs. Satya Brata Chowdhary & Ors. 2009 LAB I.C.731 in which discrimination in giving benefit of 5th Pay Commission to time keepers & clerical staff is highlighted. This dictum is not applicable in the present case as pay scales of junior clerks and clerks are specified clearly. The claimants having not passed matriculation cannot be denied promotion, in citation of apex court in *UOI & anr. Vs G. Rajanna & Ors, 2009 LAB 1C 735*. This case law would not be applicable as junior/non-metric clerks were fixed in the scale of Rs.825-1200; whereas other clerks were given scale Rs.950-1400/1500 in old scales. No case of discrimination is made out amongst clerks & junior/non-metric clerks as their pay



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scales were defined distinctly. The applicant has quoted citation of Raj. High Court (Jaipur Bench) *Narendra Singh vs. State of Rajasthan & ors.*: 2008 (2) WLC (Raj) 30 that speaks of department not giving same relief to other similarly situated persons. But in the present context, the scales to clerks and junior clerks/non-metric clerks were given as per earlier prescribed norms. As per applicants, relief showed be given to the similarly situated persons, even if they did not file petition as quoted in *Dr. Kedar Nath Soni vs. State of Rajasthan (Jaipur Bench)* in SB Cr. Misc. Petition 480 of 2000 decided on 19 Mar, 2002. There is no question of discrimination in the present context as the pay scales to junior/non-metric clerks are given on differently and there is no question of different footing as narrated in *Hansraj vs. State of Rajasthan & Ors.* 2005 (9) RDD 4042 (Raj) in SB Civil Writ Petition 463 of 1998, decided on 11.08.2005. The citation in OA 226/2008 of CAT, Jodhpur bench, order dt 09 Sept, 2009 is not applicable here as present case does not relate to retrenchment.

11. Thus, it is apparent that the pay scale of junior clerk/non-metric clerk was Rs.825-1200 revised to Rs.2750-4400 as per 5th Pay Commission recommendations; rightly notified vide order 30.4.1999 (Ann.A-1) and specifically clarified in order dt 07.6.1999 (Ann.A-2). In the light of these deliberations, no interference is called for in these orders Ann.A-1 & Ann. A-2 issued by the respondents. Accordingly, present O.A is hereby dismissed with no order as to costs.



V.K. Kapoor
[V.K. Kapoor]
Administrative Member

Jsv.

S.M. Alam
[Justice S.M.M. Alam]
Judicial Member

दिनांक 17/11/15 के आदेशानुसार
मेरी अपरिश्लेषित दिनांक 10/11/16
को धारा-~~15~~ 14 का कानून किए गए।

अनुभाग अधिकारी
केन्द्रीय प्रशासनिक अधिकारी
जोधपुर न्यायालय, राजस्थान

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