

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No. 617/2000

FRIDAY, THIS THE 16th DAY OF AUGUST, 2002.

C O R A M

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V. SACHIDANANDAN, JUDICIAL MEMBER

N.G.Santhosh S/o N.G.Nair
Progressman(Diploma Holder)
Office of the Deputy Chief Electrical Engineer,
Railway Electrification
Trichur
residing at Pazheri House
Chevayoor, Post Pulikkal
Malappuram District.

Applicant

By Advocate Mr. T.C. Govindaswamy

Vs.

1. Union of India represented by
the Secretary to the Government of India,
Ministry of Railways,
Rail Bhavan, New Delhi
2. The General Manager^①
Central Organisation of
Railway Electrification,
Allahabad.
3. The Chief Project Manager,
Railway Electrification,
Egmore,
Chennai-8
4. The Deputy Electric Chief Engineer,
Railway Electrification
Trichur.

Respondents.

By Advocate Smt. Sumathi Dandapani

The Applicatin having been heard on 9.7.2002 this Tribunal
delivered the following on 16.8.2002.

ORDER

HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant aggrieved by A-5 letter dated 5.6.98 issued
by the 3rd respondent filed this O.A. seeking the following
reliefs:

(a) Call for the records leading to the issue of
Annexure A-5 and quash the same.

(b) Declare that the applicant is entitled to a
similar treatment on par with the applicants in
Annexure A1 and Annexure A2 and that the applicant is



entitled to the scale of pay of Rs.1320-2040/4500-7000 from the date he was treated as temporary with all consequential benefits arising therefrom.

(c) Award costs of and incidental to this application.

(d) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

2. According to the averments of the applicant in the O.A. he was working as adhoc Progressman (Diploma Holder) under the Deputy Chief Electrical Engineer, Railway Electrification, Thrissur in the scale of Rs.1200-1800/4000-6000 at the time of filing of this O.A. Applicant claimed that he had the required minimum educational qualification of Diploma in Electrical Engineering, was appointed as Casual Labourer Progressman against regular requirement on 19.10.1988 after a due process of selection and on completion of one year he was granted temporary status in the scale of pay of Rs.950-1500 and one year thereafter he was granted the scale of pay of Rs.1200-1800. He was initially appointed under the Chief Project Manager, Railway Electrification, Nagpur and thereafter during 1992 was transferred to work under the Chief Project Manager, Railway Electrification at Bilaspur. In 1995 he was transferred to work under the Chief Project Manager, Railway Electrification, Egmore, Madras under whom he continued. Applicant claimed that Diploma Holders in the Railway Electrification Organisation were being paid the scale of Rs.1320-2040 as against the scale of pay of Rs.950-1500/1200-1800 which was being paid to him and some others. A group of Diploma holder Progressmen approached the Hyderabad Bench of this Tribunal in O.A. 290/94 inter alia praying for a declaration that they were entitled to the scale of pay of Rs.1320-2040 from the date they were granted temporary status. That O.A. was allowed by order dated



2.11.94. The Review Application No.3/95 filed against the aforesaid order was finally dismissed by A-1 order dated 30.1.96. Further O.A. 543/97, 1504/97, 1638/97 etc. were filed before the Hyderabad Bench of the Tribunal by similarly situated persons. By A-2 order dated 28.4.97 applicants in O.A.543/97 were permitted to make a representation to the General Manager, Railway Electrification, Allahabad who was directed to dispose of the same. All the 15 applicants in O.A. 543/97 were granted the benefits of the scale of pay of Rs.1320-2040 by A-3 memorandum dated 30.9.97 issued by the Chief Project Manager (Railway Electrification) Vijayawada. Similarly the benefit of the said scale was given to applicants in O.A. 1504/97 and 1638/97 also where representations were directed to be disposed off. However, the applicant who was in the meanwhile working under the Chief Project Manager, Railway Electrification, Madras, Egmore was alone singled out for a differential treatment. In the result, the applicant was the only Diploma holding Progressman who was not granted the scale of pay of Rs.1320-2040/4500-7000. Applicant submitted A-4 representation dated 4.11.97 followed by a further representation dated 5.1.98. His case was rejected by A-5 letter dated 5.6.98. Aggrieved by A-5 he made further representations to which he was informed that there was proposal to extend the benefit to the applicant also and accordingly he received A-6 letter dated 28.8.98. Applicant claimed that his case was again recommended by the 3rd respondent. However, the benefit of A-1, A-2, etc. was not extended to him. Therefore he submitted a representation dated 18.2.99 which was forwarded by A-7 letter dated 24.2.99. A-8 representation dated 23.3.99 was also sent to the third respondent which was forwarded by the 3rd respondent. Claiming that he was the only Progressman



holding a Diploma not granted the scale of Rs.1320-2040/4500-7000 and as a result he was subjected to substantial prejudice, irreparable damages and recurring monthly losses and assailing A-5 to the extent it denied him the benefit of scale of Rs.1320-2040 as highly arbitrary, discriminatory, contrary to law and hence violative of the guarantees enshrined under Article 14 and 16 of the Constitution of India, he filed this OA seeking the above reliefs.

3. Respondents filed reply statement resisting the claim of the applicant. According to them the averment of the applicant that Diploma Holder Progressmen in various units of Railway Electrification organisation were paid the scale of Rs.1320-2040 as against the scale of Rs.950-1200/1200-1800 which was paid to the applicant and some others was not true for the reason that in a similar claim before the Mumbai Circuit Bench at Nagpur in O.A.271/98, the Tribunal directed the respondents to refer the case to Railway Board for decision. Accordingly General Manager (P) Central Organisation Railway Electrification, Allahabad referred the matter to Railway Board seeking clarification on the issue. The Railway Board vide R-1 dated 15.12.99 replied that the applicants in O.A. 271/98 may be dealt it in terms of Railway Boards R2 letter dated 20.12.85 dealing with fixation of pay for casual labourers engaged in Skilled categories and that they were entitled to regularisation of there services in the category of Technician Grade-III in the scale of Rs.950-1500/3050-4500. According to the Railway Board's letter dated 20.12.85 where Casual Labourers are engaged in skilled categories the relevant scale for purpose of determining their wages in terms the extant instructions as stated in para 1 of the said letter would be that applicable



to skilled artizan in Rs.260-400. Thus on attaining Temporary status in terms of extant orders the project Casual Labourers engaged in skilled categories who have completed 180 days of continuous service, consolidated wages would mean the minimum of wage of Rs.260 plus DA thereon in scale Rs.260-400/-.Accordingly Shri N.G.Santhosh had been granted monthly rated Casual Labourer pay of Rs.950 plus DA with effect from 17.4.89 and subsequently Temporary status w.e.f. 14.10.89 in scale Rs.950-1500 as per extant orders. It was submitted that the O.A. 290/94 before the Hyderabad Bench of the Tribunal had been considered by the Mumbai Bench of the Tribunal in O.A.271/98. It was further submitted that by R-3 letter dated 9.4.97 the applicant was regularised in Group-D category. The question of regularisation of casual labourers working in Group-C scales was considered by the Railway Board and it was decided that the regularisation of casual labourers working in Group-C scales would be done as per R-3 letter dated 9.4.97. As the applicant could not avail the opportunity for regularisation in Group-C category outlined by R-3 letter, Nagpur Division of Central Railway had screened and regularised him in Group-D category in scale Rs.2550-3200 w.e.f. 10.9.97 vide R-4 letter dated 10.9.97. The applicant was at Sl. No.4. The same had been communicated to him by R-5 letter dated 18.5.98. The applicant had been regularised in Group-D and he was already in adhoc in Grade Rs.4000-6000. Further adhoc in grade 4500-7000 was not admissible under extant rules. Applicant's representation to the General Manager, Central Organisation Railway Electrification, Allahabad was considered by the General Manager and disposed of stating that the order of the Hyderabad Bench of the Tribunal was for the Parties in the OA and could not apply to those who were not parties to the O.A.



4. Heard learned counsel for the parties.

5. The learned counsel for the applicant after taking us through the factual aspects as brought out in the O.A. submitted that the Diploma Holder Progressmen working under the second respondent form a common class and almost all such Diploma Holding Progressmen had since been granted the benefit of the scale of Rs.1320-2040 from the date they were treated as temporary. The denial of the said scale of pay to the applicant alone on the ground that he had not approached the Court of law was highly arbitrary, discriminatory contrary to law and hence, violative of the Constitutional guarantees. He submitted that for the applicants covered by O.A. 543/97 and other similar cases, respondents on their own extended the benefits of the scale of Rs.1320-2040 even though there was no declaration by this Tribunal. The impugned order Annexure A5 denied the benefit to the applicant alone for the reason that he had not approached this Tribunal. The said reason was arbitrary, discriminatory and contrary to law and unconstitutional. Respondents could not create a classification from among a common class as one who approached the Court of law and as one who did not approach the court of law. Hence, A5 was unconstitutional and illegal.

6. Learned counsel for the respondents reiterated the points brought out in the reply statement. She submitted that the Nagpur Bench of this Tribunal had considered a similar claim in O.A. 271/98 had only directed the Railway Board to consider the claim.

A handwritten signature in black ink, appearing to be a stylized 'M' or 'N' followed by a horizontal line and a small flourish.

7. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have perused the documents brought on record.

8. The applicant is mainly claiming the benefit of the scale of Rs.1320-2040/4500-7000 on the ground that he has been singled out for being continued in the scale of Rs.1200-1800/4000-6000 and all the others had been given the scale of Rs.1320-2040/4500-7000. From the reply statement we find that it is not so. We find that some other casual labourers had approached the Nagpur Bench of this Tribunal with a similar claim in OA No.271/98. According to the respondents Nagpur Bench of the Tribunal in OA 271/98 had considered the OA 291/94 before the Hyderabad Bench of this Tribunal. They cited the following portion of the order in OA No.271/98.

We are of the view that respondents should place the full facts before Railway Board and obtain comprehensive instructions from them and thereafter dispose of applicants aforesaid representations within a time bound period in the light of those instructions. In our view a reference by respondents to Railway Board is necessary because the question of pay scale for such casual labour skilled Artisans is not confined to one Railway alone and even within a particular Railway it would affect different projects such as Railway Electrification Project, G.C. Projects, etc. Railway Boards may themselves have issued some instructions in this regard particularly in the light of the recent recommendations of the 5th pay commission which also needs to be seen before the OA is disposed of on merits.

Accordingly this O.A. is disposed of with a direction to dispose of applicants representations after following the procedure indicated above in accordance with rules and instructions within a period of six months from the date of receipt of a copy of this order. Thereafter if any grievance still survives, it will be open to applicants to approach the Tribunal through appropriate original proceedings in accordance with law, if so advised.

The OA is disposed of in accordance with para 8 above. No costs.



9. Thus we find the position that emerges is that the applicant is relying on A-1 and A-2 order of this Tribunal and A-3 Memorandum dated 30.9.97 issued by the respondents for the applicants covered by A2 order for his claim and the respondents rely on the order of the Nagpur Bench of this Tribunal in O.A. No. 271/98 to justify their respective stands. On considering A1 order dated 30.1.96 we find that it is an order dismissing the Review Application No. 3 of 1995 in O.A. No. 290 of 1994. On a reading of the said order we find that in OA 290/94 the applicants who were initially engaged as Casual Labourer Technical Mates in the Railway Electrification Project, Vijayawada on completion of 180 days of service were given minimum wage in the scale of Rs. 950-1500 with certain other allowances like DA and the same was subsequently raised to Rs. 1200-1800. Their prayer in that OA was for grant of pay in the scale of Rs. 1320-2040 on completion of 180 days of Casual Service. This prayer was allowed by this Tribunal since similarly situated casual labourer Technical Mates under the Chief Project Manager, Railway Electrification, Bhopal-fourth respondent therein-had been given the said scale. We further find from A-1 that the respondents had sought review of the order in O.A. 290/94 bringing to the notice of the Tribunal para 2007 of Indian Railway Establishment Manual. We find that the said para 2007 is based on Railway Board's letters No. E(NG)II/CL/83 dated 11.5.73 and E(NG)II/84/CL/58 dated 20.12.85. After recording the rival pleadings and submissions of the counsel for the parties this Tribunal in A-1 order held as follows:

"7. There is no doubt that as per extant instructions "casual labour on completing 100 days will be entitled to wages minimum on the scale of pay plus D.A. and certain other allowances. There is also no doubt that an attaining temporary status a railway employee is entitled to the relevant scale of pay from the instructions aforestated the relevant



scale of pay of a skilled Grade-III Artisan is Rs. 950-1500. Having been said that, I must note that all those factors cannot be said to have not been known to the authorities concerned in the Railway Electrification, Bhopal. If a higher scale of pay was given to the casual labour technical mates in Bhopal it was on account of the fact that they were Diploma holders having requisite skill and knowledge of their profession. Looking at the decision from that point of view, if the Tribunal came to the conclusion that the applicants in the O.A. who are also Diploma holders with experience are entitled to similar benefit, I cannot come to the conclusion that the said judgment suffers any such error as would call for a review. It is obvious that the Tribunal followed the principle of equity in allowing the O.A. Equity is a well established and accepted principle of justice, particularly in service jurisprudence, similarly situated employees do expect similar remuneration / privileges.

10. We find from the above that it is only on the principle of equity, OA 290/94 was allowed and not on the basis is of any Rule or order. As against the above, order of the Nagpur Bench of the Tribunal in O.A. No. 271/98 had been relied on by the respondents. From the portion of the order extracted by the respondents in the reply statement, reproduced earlier by us, we find that this Tribunal left the matter to be decided by the respondents in consultation with the Railway Board. Thus the position is that for the Diploma holder Technical Mates of Bhopal, Chief Project Manager, Railway Electrification, Bhopal had given the grade of Rs. 1320-2040 on attainment of temporary status. CPM(RE) B2A extended the same benefit to the applicants in O.A.543/97 and other OAs. The Hyderabad Bench of this Tribunal took the view on the principles of equity to extend the benefits in O.A 290/94 and dismissed RA 3/1995 whereas Nagpur Bench did not follow the said order. Whenever a claim is made on the plea of discrimination under Article 14 of the Constitution, it is necessary for the claimant to establish that he has a legal right for the said claim. It is now well settled judicially that a Government servant is entitled to the benefits as provided for in the service conditions. Respondents have quoted the Railway Board's letter dated



20.10.85 in the reply statement. Applicant had not placed any material to establish that letter dated 20.12.85 had been superseded or modified. The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be invoked or enforced in a negative manner. The applicant has not produced any material to show that the Hyderabad Bench had declared that the pay scale of Progressmen as Rs. 1320-2040. In fact the applicant had only relied on the order of this Tribunal dismissing the RA. The order in OA 290/94 was not placed before us to see whether any dictum was laid down by the Hyderabad Bench of this Tribunal. We also respectfully agree with what is held by the Nagpur Bench of this Tribunal in O.A. 271/98 for the reasons stated therein.

11. In the light of the above, we do not find any reason to interfere in A-5 impugned letter dated 5.6.98 and hold that the applicant is not entitled for the reliefs sought for.

12. Accordingly, we dismiss this Original Application with no order as to costs.

Dated the 16th August, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER

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G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

A P P E N D I X

Applicant's Annexures:

1. A-1: A true copy of the Judgement in R.A No.3 of 1995 in O.A.No.290 of 94 dated 30.1.96 passed by this Hon'ble Tribunal.
2. A-2: A true copy of the order in O.A.No.543/97 dated 28.4.97 passed by this Hon'ble Tribunal.
3. A-3: A true copy of the Memorandum bearing No.E.252/VVRE/3113/O.A.543/97 dated 30.9.97 issued by the Chief Project Manager, (Railway Electrification), Vijayawada.
4. A-4: A true copy of the representation dated 4.11.97 submitted by the applicant to the 2nd respondent.
5. A-5: A true copy of the letter No.ETR/252/RE/8120 of 5.6.98 issued by the 3rd respondent.
6. A-6: A true copy of the letter dated 28.8.98 issued by the 2nd respondent.
7. A-7: A true copy of the representation dated 23.3.99 addressed to the 3rd respondent and along with its forwarding letter dated 23.3.99.

Respondents' Annexures:

1. R-1: True copy of Railway Board's letter No.E(NG) II/99/RC-3/SE/8 dated 15.12.99 issued to the General Manager (P), CORE, Allahabad.
2. R-2: True copy of Railway Board's letter No.E(NG)II/84/CL/58 dated 20.12.1985.
3. R-3: True copy of Railway Board's letter No.E(NG)/II/97/RC-314 dated 9.4.97.
4. R-4: True copy of Railway letter No.NGP/P.201/G/CL/Elect. dated 10.9.97 by Divisional Railway Manager (P), Nagpur to General Manager (P) CCRE, Allahabad and others.
5. R-5: True copy of communications vide Office Order No.48/RE/98 dated 18.5.98 of the Chief Personnel Manager, Railway Electrification, Madras to the applicant.

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22.8.02