

**CENGTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA NO. 236/2004

WEDNESDAY THIS THE 1st DAY OF NOVEMBER 2006

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER**

Surendra D Naik S/o Dodkuji
Progress Man, Office of the
Deputy Chief Engineer (Electrical)
Railway Electrification, Reservation Office Building
Ernakulam Junction Railway Station,
Ernakulam.
Permanent Address C/o Vaman Rao, Khobragade
Circle No. 17/XXIII, Lashkari Bagh,
Nagpur-17 (Maharashtra)

Applicants

By Advocate Mr. TC Govindaswamy

Vs.

- 1 Union of India represented by the
General Manager, Central Organisation of
Railway Electrification (Core)
Allahabad.
- 2 The Chief Project Manager,
Railway Electrification,
Visakhapatnam.
- 3 The Chief Project Manager,
Railway Electrification,
Egmore, Chennai-8

Respondents.

By Advocate Mr. Sunil Jose, ACGSC

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant in this OA is working as a Progressman under the Deputy chief Electrical Engineer Railway Electrification, Ernakulam Junction on the pay scale of Rs 4000-6000 and is aggrieved by the denial of the pay scale of Rs 4500-7000 granted to many other Progressmen including the applicant's juniors.

2 The facts in brief are that the applicant was initially engaged as a casual Progressman on the basis of his Diploma in Civil Engineering qualification with effect from 28.10.1985 after a due process of selection. On completion of one year the applicant was granted temporary status in the scale of pay of Rs 950-1500. Thereafter a decision was taken to grant the scale of pay of Rs 1320-2040 to casual labour with Diploma and the above decision was allegedly implemented only for some Progressmen and some others were only granted a scale of pay of Rs 1200-1800. The applicant was granted only the scale of Rs 1200-1800 with effect from 1.7.1988. Some persons approached the CAT Hyderabad Bench in OA Nos 290/94, 543/97, 1504/97, 1638/97 etc and OA 290/94 was allowed, declaring that Progressmen were entitled to the scale of Rs 1320-2040 from the date they completed 180 days of casual service. A review application was filed by the respondents which was disposed of by the Annexure A1 order without any modification and it

was implemented as regards the applicants therein. The OAs 543,1604 and 1638 of 1997 were also decided directing the respondents to consider the representations to be submitted to the General Manager by the applicants therein.. By Annexure A-3 order, the respondents granted the benefit of the scale of pay of Rs 1320-2040 to the applicants therein. Aggrieved by the discriminatory treatment the applicant preferred several representations to the respondents but was informed by the A-5 letter dated 23.8.2000 that court directions are to be implemented in respect of the applicants only and not in general. Therefore he again approached the Tribunal in OA 1746/2000 and the Hyderabad bench set aside the Annexure A-5 letter and directed the respondents to consider the representation in accordance with the rules and in the light of the observations of the Hon'ble Supreme Court in M.R. Gupta's case. The respondents have on consideration of his case rejected the representation of the applicant in the impugned order and hence this OA. According to the applicant one Sri Govind Poddar who is identically situated as the applicant having joined the Railway on 5.1.97 in the scale of pay of Rs 950-1500 was granted the scale of Rs 1200-1800 but was fixed in the scale of 1320-2040/4500-7000 from the day he completed six months service. The applicant has contended that no reason is stated as to why the applicant is to be treated differently from Shri Govind Poddar and why the benefit of the decision of the Hyderabad Bench is refused to the applicant.

3 The following reliefs have been sought:

- (a) Call for the records leading to the issue of Annexure A7 and quash the same
- (b) Declare that the applicant is entitled to be granted the scale of pay of Rs 1320- 2040/4500-7000 on par with the applicants -Progressmen in Annexures A1&A2 and direct further to grant the same with all consequential benefits from the date from which the applicant completed six months of continuous service.
- © 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.

4 The respondents have filed a reply statement denying the averments and allegations. It is submitted that the applicant was initially engaged by the Railway Electrification Project/Nagpur as a Casual Progressman (Group-C) on daily rated basis on 28.10.85 and was given temporary status with effect from 2.10.1986 in the scale of Rs 950-1500. He was also promoted to the scale of Rs 1200-1800 on ad hoc basis from 1.07.1988. As per the provisions of the IREM Vol II, the Project casual staff though they acquired temporary status will not be brought on the regular establishment of the Railways unless they are selected through a regular selection process. Further Railway Board decided vide letter No E(NG)II/97/RC-3/4 dated 9/04/97 that the regularization of casual labour working in Gr.C scale would be done as follows:-

- (i) All casual labour/ substitutes in Gr C scales whether they are Diploma holders or have other qualifications, may be given a chance to appear in examinations conducted by Railway Recruitment Board or the Railway for posts as per their suitability and qualification without any age bar.
- (ii) Notwithstanding (i) above, such of the casual labour in Gr C scales as are presently entitled for absorption as skilled artisans against 25% of the promotion quota may continue to be considered for absorption as such.

(iii) Notwithstanding (i) and (ii) above, all casual labour may continue to be considered for absorption in Gr D on the basis of the number of days put in as casual labour in respective units.

5 In view of the instructions (iii) above the applicant was screened and empanelled on 10/9/97 for regularization in Gr. D category of Electrical Department of Central Railway/Nagpur and he was allowed to continue in the Railway Electrification Project in Gr.C against work charged post, his substantive status being Gr.D in open line of Central Railway Nagpur Division. The Board also clarified that the Junior Progress man and Progressmen in the Production Control Organisation have been prescribed the scale of Rs 1200-1800/- and 1320-2040 respectively and they will get advancement from the post of Gr.III scale of Rs 950-1500 only. Therefore the applicant who was initially engaged as casual Progressman in scale of Rs 950-1500 was promoted as Progressman on ad hoc basis in the Railway Electrification Project and further adhoc promotions are not possible since his substantive position is in Gr. D in the open line.

6 As regards the averments of the applicant that he is similarly placed as the applicants in OA 290/94, the respondents have submitted they were initially engaged as casual Technical Mates and were screened and empanelled for Gr. C posts. and hence their substantive status is not identical with that of the applicant. The applicant was engaged by the Railway Electrification Nagpur Project whereas the applicants in the other OAs belonged to the

Vijayawada Project and when the applicants of other OAs submitted their representations, the applicant was not at all a staff of the Vijayawada Project and hence he cannot raise the plea of hostile discrimination. Further it is alleged that he was promoted to the scale of Rs 1200-1800 in the Nagpur Project and he worked there as such till his transfer without any protest. Now as an afterthought he is filing this OA. The earlier OA SR 3211/99 was not admitted by the Hyderabad Bench and after reporting in Railway Project Visakhapatnam again he had filed OA 1746/2000 before the Hyderabad Bench which has only directed consideration of his representation which has now been rejected, and challenged in this OA. Further the applicant and three other employees have been relieved from Visakhapatnam Project on 11.12.2001 to Chennai and reported to duty there on 24.1.2002, from there they were posted to work at the office of the Dy Chief Engineer Tripunithura and he is presently working at Ernakulam. In view of the above facts the respondents have submitted that there has been no injustice or overlooking of seniority as averred by the applicant.

7 We heard Sri T.C.G.Swamy, the learned counsel for the applicant and Sri Sunil Jose, the learned ACGSC for the respondents. The question raised by the applicant is that he has been subjected to hostile discrimination when he is identically situated as the applicants in OA 290/94 decided by the Hyderabad Bench. The judgement is not available with us but on a reading of the judgement in RA 3/95 filed by the respondents in that OA it is seen

that the applicants in that OA were also similarly situated casual Technical Mates an analogous post to Progressman and the direction was given to grant the higher scale of 1320-2040 on the ground that the Technical Mates on other Railway Electrification Projects were given the benefit of the higher scale. The respondents had then also taken the contention that it was a mistake done in some quarters and the mistake cannot be perpetuated, but the Tribunal had brushed aside this contention and dismissed the review petition. In the reply statement filed herein, the respondents have contended that the applicant was empanelled as Gr.D and hence he could not be given the higher scale and therefore the applicant is not on par with the applicants in OA 290/94 as his substantive status is different from theirs, they having been empanelled as Gr. C whereas the applicant was empanelled as Gr.D. The applicant has denied that he joined in a Gr D post and even if he had been empanelled as a Gr.D, he was repatriated to the second respondent's organization as there was no post to accommodate him and he has been continuing in the Electrification projects only at different places in Group-C posts. There is no record produced of the applicants in OA 290/94 having been empaneelled in Gr. C posts. Even if so, the fact that the applicant was empanelled as Gr. D in the Open line should not make a difference to his right to be paid in the appropriate scale in the Gr.C post in the Project where he is working commensurate with his qualification. It has to be understood that he is not seeking regularization in the Gr. C post to which he is not entitled to as long

as his lien is in the open line. This position has been made clear by the Hon'ble Supreme Court in Inder Pal Yadav & others vs UOI (1995(2) SCC 648) in the following manner.

"Provisional or adhoc promotion granted to the petitioners regularized in substantive posts of Khalasi open line in Gr D category while continuing to serve in various projects of Railway Administration would not vest in them a right either to continue in the Project or to resist reversion back to the cadre or to enjoy higher promotion. It was further held that since petitioners had passed trade tests to achieve promotional level in a particular on their reposting to the parent cadre, they should be entitled to the same pay as their contemporaries unless the post held by the contemporary employees is by selection."

8 However this judgement need not bind the respondents in the consideration of the claim of the applicant for a higher pay on par with his contemporaries while he was working in the project. Therefore the plea of the respondents that the applicant is not similarly situated as the applicant s in OA290/94 for the reasons mentioned above is not convincing and is rejected,

9 The respondents have also raised the plea of limitation stating that the applicant had kept quiet for long and there has been no discrimination as he had left the Visakhapatnam Project by the time the orders in the other OAs filed by his contemporaries were implemented. Whereas this argument may exonerate the Administration at the Project level, it cannot be advanced at the level of the 1st respondent whose duty is to see that orders are implemented in all the subordinate offices of the Railway Division on a uniform basis. The pleadings reveal that the applicant has been

shifting from one Project to another and the cause of action had actually arisen when he was working in the Nagpur Project when he was granted the scale of Rs. 1200-1800 whereas certain others were granted the scale of Rs. 1320-2040. The respondents say that he did not protest at that time or later when he was empanelled but submitted a representation only in 2000. It is true that there is some delay on the part of the applicant but it is not correct to contend that he was keeping quiet. It is seen that the OAs granting the higher scales were finally implemented in the year 1997 by which time the applicant had been shifted to the Vijayawada Project from Nagpur. The applicant approached the CAT Hyderabd Bench in OA SR 3211/99 but it was not admitted and the delay was not condoned. On 11.7.2000, he submitted another representation and when it was rejected he approached the Hyderabad Bench again in OA 1746/2000 which was allowed directing consideration of his representation. This judgement though it has been relied upon by the respondents did not consider the prayer of the applicant on merits but had delved into the past history of his case and had come to the same conclusions as above based on the ratio of the Supreme Court's observation in M.R. Gupta Vs. Union of India (AIR 1996 SC 669) extracted below:

"The Tribunal misdirected itself when it treated the appellant's claim as one time action meaning thereby that it was not a continuous wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each

payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of the employee is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the the equity of redemption is extinguished. It is settled that the right of redemption is of this kind'

It was therefore considered that the applicant had not got a fair deal at the hands of the respondents and also that the dismissal of his application in 1999 by the Tribunal was not in order. It was in the above spirit of law that the respondents were directed to consider his representation. But the impugned order passed by the Chief Railway Electrification Project Visakhapatnam has not taken into account these factual situations which existed at the time of denial of his request for parity with his juniors who had approached the Tribunal and been granted the benefits, Perhaps as the applicant's real cause of action arose in the Nagpur Project, the second respondent was handicapped in appreciating the situation properly.

10 It is borne out by the record that orders had been differently implemented in the various projects and all those who had approached the Tribunal had secured favourable orders. The applicant has also pointed out that one Sri Govind Poddar who was working along with him and who has now been transferred to Ernakulam division had also been granted the higher scale though he was also empanelled as Gr. D in the open line. The respondents have not touched upon this aspect at all in their reply. There is also no averment on their part that the applicant's services were

unsatisfactory or that he was not a diploma holder.

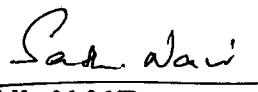
11 In the conspectus of facts as set out above, we are of the considered opinion that the applicant's case has not been properly appreciated or looked into from the point of view of discrimination and the principle of equity in service jurisprudence demands that he is similarly treated as those identically situated .In the circumstances, that the issue has been alive since 1997 and that it was remitted back to the respondents for consideration more than once, we think it would be futile to again ask a higher authority to reconsider the matter which would only delay the matter further. Hence we quash Annexure A-7 and direct the first respondent to grant the higher pay scale of Rs. 1320-2040/4500-7000 to the applicant on par with the applicants in OA Nos. 290/94 and OA 543/97 with all consequential benefits from the date to be computed on the same basis as laid down in the above orders.

12 OA is allowed. No costs.

Dated 1 11 2006



DR. K.B.S. RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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