

CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.

Original Application No.504 of 1991.

Today, the ^{6th} day of February, 1995.

HON'BLE MR. JUSTICE B.C. SAKSENA, VICE-CHAIRMAN.

1. R.K. Gupta.
2. R.R.Singh
3. Gurnam Singh
4. B.K. Saxena
5. K. Srivastava
6. A.K. Chaubey.
7. S.K. Pathak.
8. V.P. Pandey.

All working
as Train
Examiners
(TXRs) under
A.M.E.(C.D.O.)
N.Rly.,
Lucknow.

9. S.T.Hasan,
working as Train Examiner,
Under C.D.C./N.Rly.,
Faizabad.

..... Applicants

BY ADVOCATE SHRI AJMAL KHAN.

VERSUS

- 1.The Union of India,
through Secretary,
Ministry of Railways,
New Delhi.
- 2.The Chairman,
Railway Board,
Rail Bhawan,
New Delhi.
3. The Divisional Rly.Manager,
Northern Railway,
Hazratganj,
Divisional Office,
Lucknow.
4. The General Manager,
Baroda House,
Northern Railway,
New Delhi.

..... Respondents.

ADVOCATE MAYA SINHA.

ORDER ~~(G-1)~~ *22*

JUSTICE B.C. SAKSENA, VICE-CHAIRMAN.

The applicants who were working as Train Examiners (TXRs) have filed this petition under section 19 of the Administrative Tribunals Act for a direction to be issued to the respondents to place them in higher scale than those of their subordinates as contained in Annexure-A. Annexure-A is a copy of the representation given by the TXRs of the Northern Railway, Lucknow Division, to the Chairman, Railway Board. Through the said representation a claim was made that the pay scale of the TXRs be raised to Rs.1600-2660. The said claim is made on the basis that TXRs supervise the work of Master Craftsmen. The Master Craftsmen have been placed in the same pay scale of Rs.1400-2300 in which pay scale the applicants were working at the time the O.A. was filed. It has been averred in the petition that ^{promotion as} Master Craftsmen, to the extent of 10% of the Fitter Grade-I posts, ^{is made} ~~are promoted~~ _{for} on the basis of the seniority. It has further been indicated that initially the posts of Fitter Grade-III, is filled by promotion of Khallasi Helpers. Thereafter they are promoted to Grade-II and Grade-I. The further averment in the O.A. is that the post of Master Craftsmen was a terminal grade of Rs.425-640 having no avenue of promotion. On the basis of the recommendation of the Fourth Central Pay Commission the avenue of channel of promotion was revised and Master Craftsmen along with Fitter Grade-I ^{post} and Mistries were made eligible for promotion to the _{of}

TXR through departmental selection procedure and empanelment. The selected candidates are sent for TXRs Training Course and after successful completion of the training they are required to pass prescribed examination. The grievance, therefore, is that Mistries and Master Craftsmen were belonging to a lower grade and have been given the grade of Rs.1400-2300/- after the Fourth Central Pay Commission, equivalent to TXRs.

2. In the Counter Affidavit it has been indicated that the petitioners 1 to 5 and 8 to 9 were recruited and appointed to the post of TXRs in the grade of Rs.425-700/-(RPS) and at present they are working as TXRs in the grade of Rs.1600-2660/-. The applicants 6 & 7 were initially recruited in Class IV category. They were promoted to the post of TXRs against promotion quota and they are presently working in the grade of Rs.1400-2300/-. The further stand of the respondents in the counter affidavit is that the grade of Rs.425-700 and Rs.455-700/- were merged by the Fourth Central Pay Commission, 1986 into a new pay scale of Rs.1400-2300/-(RPS). It is alleged that the applicants were in the grade of Rs.425-700/- prior to Fourth Central Pay Commission and they should have been given the benefit of the higher grade. The Fourth Central Pay Commission, it is stated, had recommended 4 grades : (1) Rs.1400-2300/- (2) Rs.1600-2660/- (3) Rs.2000-3200/- and (4) Rs.2375-3500/- and these grades have been sanctioned in the cadre of TXRs. The representation, alleged to have been made by the applicants, have been denied. In the rejoinder affidavit the averments made in the O.A. have been reiterated.

3. I have heard the learned counsel for the applicant. Learned counsel for the respondents was not present nor had sought adjournment. The learned counsel for the applicant, on the basis of the aforesaid facts, submitted that the unequals have been made equals and, therefore, there is violation of Article 14 of the Constitution. He submitted that in view of the fact that as the applicant TXRs supervise the work of Master Craftsmen, placing the persons of the said categories in one pay scale of Rs.1400-2300/- results in unequals being treated as equals. In support of this submission the learned counsel for the applicant has relied upon a decision rendered by the Bangalore Bench of the Tribunal dated 27-7-89 in A. Christopher and Others Vs. Chief Engineer, Southern Railway, Madras. The applicants before the Bangalore Bench were Permanent Way Inspectors(PWIs). The post of Permanent Way Inspectors, Grade-III, were given the pay scale of Rs.1400-2300/- under the Railway Service, in Revised Pay Scale which came into effect from 1-1-1986, on acceptance of the recommendation of the Fourth Central Pay Commission. The grievance of the applicants therein was that under the revised pay scale, the P.W.Is., Mistries and Direct Track Maintenance Mistries, who were earlier in the pay scale of Rs.380-560/- have been brought under the revised pay scale of Rs.1400-2300/-. There also the allegation was that the P.W.Is are supervisory grade posts and supervise the work of Direct Track Maintenance Mistries (DTMS) and Permanent Way Mistries (P.W.Ms.). After analysing the pleadings in the said case the Bench found that the allegation of the applicants being in supervisory cadre, has not been disputed. It was held that :-

"It is a blatant anomaly, that the higher supervisory post and all feeder posts thereto, should carry the same pay scale, as this negates the very basis for determination of pay scale."

It was also held :-

"It is also antithetical to the basic concept, of promotion from feeder to the supervisory post, which by its very character and designation, carries the nature of duties and responsibilities of a higher order and more onerous than that of the feeder posts."

The Bench, therefore, declared:-

"equation of the 'supervisory' post of PWI with those of PWM, DTMM, etc. (which are in feeder channel to it) for the purpose of fixation of pay scale, with effect from 1-1-1986 is ex facie, inequitable and anomalous."

The competent authority was, therefore, directed to re-evaluate the nature of duties and responsibilities involved in the post of P.W.I. objectively and to revise its pay scale with effect from 1-1-86 in the light of the observations made in the judgment.

4. Before the Bangalore Bench, on behalf of the respondents, the decisions of the Hon'ble Supreme Court in the case of Umesh Chandra Gupta and others Vs. O.N.G.C. and Others 1989 (S.C.) 29 and State of U.P. and Others Vs. J.P. Chaurasia & Others 1989 (S.C.) 19, were cited. The Division Bench held that the said decisions have no direct bearing to the facts of the case before them. A perusal of the judgment of the Bangalore Bench also shows that one of the material pleas which

prevailed with the Bench was that the P.W.Is had been given higher pay at all times earlier than the other two cadres on the basis that they were more qualified as per the revised rules of appointment and they held the supervisory posts over the D.T.M.Ms and P.W.Ms. The decision of the Bangalore Bench has thus proceeded on its own facts and pleadings therein.

5. No doubt, in the case in hand also the applicants have made a categorical averment that the applicants TXRs supervise the work of Master Craftsmen and Mistries. As noted herein above, the applicants' own case is that the post of Master Craftsmen was carrying a terminal grade in the pay scale of Rs.425-640/- having no avenue of promotion. The channel of promotion was changed as far as the Master Craftsmen are concerned and they have been given an avenue and channel of promotion along with Fitter Grade-I and Mistries, to the post of TXRs.

6. From the pleadings in this O.A. it is not clear whether the Master Craftsmen and Mistries have been placed in the grade of Rs.1400-2300/- in view of the revised avenue of promotion ^{or} on being promoted to the post of TXRs ~~and~~ are given the pay scale of Rs.1400-2300/-. The relevant facts, ^{have not been overruled nor bel} ~~on~~ the Fourth Central Pay Commission report, ^{has} ~~has not~~ been annexed. In the absence of the said report it is not possible to adjudicate on the reasons for the anomaly which the applicants alleged to have created. In the O.A., in paragraph 21, it has been indicated that Master

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Craftsmen have been placed in the same pay scale as that of TXRs. In the C.A. the said allegations have been baldly denied.

7. From the pleadings the situation that emerges is that prior to Fourth Central Pay Commission the pay scale of Master Craftsmen were in a lower grade of Rs.425-640/- whereas the applicants TXRs were in the pay scale of Rs.425-700/-. The Fourth Central Pay Commission, it appears, has placed both the categories of posts in the scale of Rs.1400-2300/-.

8. On the basis of these facts the applicants invoke the principle of 'equal pay for equal work'. Strictly speaking, the said principle will not be applicable in the present case as the applicants' claim is that since they supervise the work of Master Craftsmen they may be placed in the higher scale of pay. It is fairly well settled that whether the work is equal and whether the employees in question are similar, are administrative matters and to be decided by Government and policy makers. It is not the function of the Court to pronounce on such matters. The Hon'ble Supreme Court in the case of State of U.P. and Others Vs. J.P. Chaurasia and Others, had made the following observations :-

" The equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts.....
The Court should not try to tinker

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with such equivalence unless it is shown that it was made with extraneous consideration."

9. In a recent decision in Union of India Vs. Tej Ram Bombhate, the Apex Court observed:-

"it is a policy matter involving financial burden. No Court or Tribunal should compel the Government to change its policy involving expenditure."

A similar view was taken in the case reported in 1988 (7) A.T.C. In a later decision in Union of India Vs. Madras Civil Audits and Accounts Association, the Hon'ble Supreme Court also struck the same note of caution.

10. It would further be useful to extract some observations made by the Hon'ble Supreme Court in a still later decision reported in (1994) 17 A.T.C. 121 Shyam Babu Verma & Others Vs. Union of India & Others:-

"The nature of work may be more or less the same but scale of pay may vary, based on academic qualification or experience which justifies the classification. The principle of 'equal pay for equal work' should not be applied in a mechanical or casual manner. Classification made by a body of experts after full study and analysis of work should not be

disturbed except for strong reasons which indicate the classification made to be unreasonable. Inequality of the men in different groups excludes applicability of the principle of 'equal pay for equal work' to them."

The Apex Court, in a further later decision, reported in 1994 (27) A.T.C. 524 State of West Bengal and Others Vs. Hari Narayan Bhowel & Others had occasion to refer to various earlier decisions including the decision in the case of State of U.P. and Others Vs. J.P. Chaurasia and Others and Shyam Babu Verma (Supra). It also referred to its decision in Delhi Veterinary Association Vs. Union of India (S.C.) 1221 and extracted the following observations made therein:-

" The degree of skill, strain of work, experience involved, training required, responsibility undertaken,, mental and physical requirements, disagreeableness of the task, hazard attendant on work and fatigue involved are, according to the Third Pay Commission, some of the relevant factors which should be taken into consideration in fixing pay scales. The method of recruitment, the level at which the initial recruitment is made in the hierarchy of service or cadre, minimum educational and technical qualification prescribed for the post, the nature of dealings with the public, avenues of promotion available and horizontal and vertical relativity with other jobs in the same service or outside are also relevant factors."

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In the decision, in State of West Bengal Vs. Hari Narayan Bhowel (Supra) it was also observed :-

"The Court should not take upon itself the responsibility of fixation of scales of pay, especially when the different scales of pay have been fixed by Pay Commission or Pay Revision Committees, having persons as members who can be held to be experts in the field and after examining all the relevant material. It need not be emphasised that in the process undertaken by the Court, an anomaly in different services may be introduced, of which the Court may not be conscious, in the absence of all the relevant materials being before it. Till the claimants satisfy on material produced, that they have not been treated as equals within the parameters of Article 14, Court should be reluctant to issue any writ or direction to treat them equal, particularly when a body of experts has found them to be equal."

11. In the case in hand, the Fourth Central Pay Commission, which is an expert body, had granted parity in the pay scale of Master Craftsmen and TXRs. ^{as per the allegations in the OA. Bel} On the basis of material on record, keeping in view the above observations of the Hon'ble Supreme

Court, it is not possible for this Tribunal to grant a higher pay scale as prayed for.

12. From the pleadings in this case it is apparent that the question of providing avenue of promotion to Master Craftsmen was considered by the Fourth Central Pay Commission and it also recommended the respective scale of pay for the 2 categories of posts. The observation of the Hon'ble Supreme Court in State of U.P. Vs. J.P. Chaurasia (Supra) ^{is} ~~has~~ ^{been} thus clearly attracted. It would not be within the ^{provisions} ~~provisions~~ of this Tribunal to prescribe a scale of pay as prayed for. The application is without merit. The same is dismissed. The dismissal of this application will not stand in the way of the applicants raising their grievance before the Fifth Central Pay Commission.

B. Saksena
16/2/95
VICE-CHAIRMAN.

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