

Central Administrative Tribunal Lucknow Bench Lucknow

Original Application No.580/2006

This, the 10th day of September, 2008

**HON'BLE MR. M. KANTHAIAH, MEMBER (JUDICIAL)
HON'BLE DR. A. K. MISHRA MEMBER (ADMINISTRATIVE)**

1. Pradeep Shukla, aged about 39 years, son of Shri Vishnu Chandra shukla, presently posted as Junior Engineer-II (Works), under the Senior Section Engineer (Works), Northern Railway, Charbagh, Lucknow.
2. Suneel Kumar Singh, aged about 41 years, son of Shri Mahendra Kumar Singh, presently posted as Junior Engineer II (Works), under the Senior Section Engineer (Works), Northern Railway, Banaras.
3. Ravindra Nath Chaturvedi, aged about 38 years, son of Shri s. N. Chaturvedi, presently posted as Junior Engineer-II (Works), under the Senior Section Engineer (Works), Northern Railway, Banaras.
4. Kamta Prasad Sharma, aged about 48 yers, sonj of late Ram Nohore, presently posted as Junior engineer-II (Works), under the Senior Section Engineer (Works), Northern Railway, Banara.

Applicants.

By Advocate: Sri S. P. Singh

Versus

1. Union of India through its Secretary, Ministry of Railways, Government of India, New Delhi.
2. Chairman Railway Board, New Delhi.
3. The General Manager, Northern Railway, Baroda House, New Delhi.
4. Divisional Railway Manager, Northern Railway, Lucknow Division, Lucknow.

Respondents.

By Advocate: Sri Arvind Kumar

Order

By Hon'ble Dr. A. K. Mishra, Member (Administrative):

The applicants, who are Diploma Holders in Civil Engineering, have filed this Application against the order of the competent authority refusing to grant the benefit of revised pay scale of Rs. 5000-8000 w.e.f. 1.1.96, the date when the revised pay scales became effective after



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the recommendations of the Vth Pay Commission were accepted by the Central Government.

2. The brief facts of the case and the respective contentions of the applicants and the respondents are summarized below:-

The applicants were appointed in the Grade of Rs. 1400-2300 as Sub Overseer Mistry/Supervisor (Works) (herein after to be called SOM) on the basis of the recommendations of the Railway Recruitment Board, Allahabad. As per the notice of employment dated 21.9.90, the minimum qualification prescribed was Diploma Holder in Civil Engineering for the post of SOM and all the applicants who fulfilled the prescribed educational qualification and found suitable were appointed as direct recruit candidates.

3. One of the recommendations of the Vth Pay Commission was that the initial payscale of Diploma Engineers in government needed improvement. They recommended the existing the payscale of Rs. 1600-2660 against the prevailing pay scale of Rs. 1400 -2300, The recommendations of the Pay Commission are contained in Paragraphs 50.23 and 50.24 of their Report. In the latter paragraph, they have said that ***"these pay scales will apply mutatis-mutandis for Diploma Engineers in different cadres depending upon the availability of specific existing pay scales. We have recommended specific pay structures for different engineering cadres."***

4. But unfortunately, the applicants, who were SOMs, were included in the First Schedule to Railway Services (Revised Pay Scale) Rules 1977 and were given the revised scale of pay of Rs. 4500-7000. S.No. 8 of the First Schedule to the Rules , related to two existing pay scales:

- (a) 1350-2200/-
- (b) 1400-2300/-

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Both of them were placed in the revised payscale of Rs. 4500-7000. Whereas, the Diploma Holders in the Technical Supervisor category in the cadre of Junior Engineer Grade II, who had also pre-revised payscale of Rs. 1400-2300 were placed in the revised payscale of Rs. 5000-8000. There were many others belonging to pre-revised payscales of Rs. 1400-2300 who were placed in the revised payscale of Rs. 5000-8000, simply because of the fortuitous ground that these categories were included in the second schedule relating to specified categories of staff and such employees though similarly placed in the pre-revised dispensation enjoyed a higher payscale post revision than the applicants.

5. Their grievance became all the more acute when others belonging to Master Crafts Man (MCM) cadre who had the same scale of Rs 1400-2300 but were working in a relatively lower position, and were originally given the revised payscale of Rs. 4500-7000 were allowed the revised pay scale of Rs. 5000-8000 vide Railway Board's order No. 264/48 dated 24.11.98 (Annexure A-2 of the counter affidavit) w.e.f. 1.1.1996. According to the applicants, this resulted in an invidious situation where employees who were working in subordinate positions, became senior to them payscale-wise. Further, it is alleged that MCM had less prescribed educational qualification, viz two years' ITI trade certificate, as against Diploma in Engineering prescribed for the applicants.

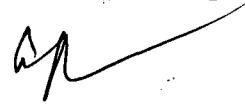
6. Subsequently, the Railway Board, after conducting a review of the cadres in Group 'C' and Group 'D' categories and in consultation with the staff representatives decided to upgrade the posts of Supervisors (SOMs) in the scale of Rs. 4500-7000 + Rs. 100/- special allowance en bloc to the post of Junior Engineer Grade II in the scale of Rs. 5000-8000 and merged these cadres by its order dated 9.10.2003. Accordingly, the Northern Railways through office order dated 8.11.2004



granted such upgradation in respect of the applicants w.e.f. 1.11.2003 under the cadre-restructuring scheme.

7. The applicants have been representing that both on the grounds of acceptance of the recommendations of the Vth Pay Commission relating to Diploma Holders in Engineering and on the ground that MCM belonging to comparatively Junior category had been given the higher pay scale of Rs. 5000-8000/- w.e.f 1.1.96, their claim for grant of this scale from 1.1.96 should have been favorably considered by the respondents. When they could not get any relief, they filed O.A. No. 247/2005 before this Tribunal, which directed the respondents to consider their representations and pass speaking and reasoned order. Pursuant to such a direction, the Respondent No. 4 passed a speaking order on 12.12.2005 rejecting the claim of the applicants on the ground that the pay scales had been fixed in the appropriate revised scale as per the Railway Service (Revised Pay Scale) Rule, 1977. Consequent on a review of the whole position and adoption of the decision to restructure Group 'C' and Group 'D' cadres, their posts were redesignated as Junior Engineer Grade II and they were given the higher pay scale of Rs. 5000-8000 from the date when the restructuring took effect. Therefore, there was no irregularity in the fixation of their pay in the revised scales.

8. The Counter Affidavit filed by the respondents reiterates almost the same grounds. It says that as per item No. 8 of the First Schedule of the (Revised Pay Scale) Rules, the applicants who were in the pre-revised scale of Rs. 1400-2300 were rightly fixed in the revised pay scale of Rs. 4500-7000 w.e.f. 1.1.96. The other Diploma Engineers, who were in the category of Junior Engineer Grade II found themselves in the Second Schedule of the Rules and were entitled to revised pay scale of Rs. 5000-8000 from 1.1.96. The applicants were given this higher scale only after the policy decision of Railway Board for restructuring Groups 'C' and 'D'



cadres took effect from 1.11.2003. It was submitted that the policy decisions relating to revision of payscale/upgradation in the cadre could not be challenged by the applicants and this position had been upheld by the Hon'ble Supreme Court in **Balco 2002 SCC (2) 333**. The counsel for the respondents also relied on the judgment of Hon'ble High Court in **State of U.P. versus J.P. Chauresiya reported in 1989 (1) SCC 121**, wherein, it was held that the payscale or its applicability in the cadre could not be examined unless shown malafide or against Rules. Similarly, the Hon'ble Supreme Court in the case of **Balco Employees Union Vs. Union of India & Others** took the view that the policy decisions could not be interfered with unless found contrary to Rules.

9. It has been brought out that the Central Government has accepted vide S.No. A of Part B of First Schedule of CCS (RP) Rules 1997, the policy recommendation of Vth Pay commission that the Diploma Engineers having Pre Revised Scale of Rs. 1400-2300 should be given the higher pre-revised scale of Rs. 1600-2660.

10. Paragraph 50.24 of their recommendation specifically mentions that these scales would apply mutatis mutandis to Diploma Engineers in different cadres of the government, depending on availability of specific existing pay scales. Since, such a policy recommendation has been accepted by the Central Government, the counsel for the applicants placed before us the judgment of Hon'ble Supreme Court in the case of **Purshottam Lal Vs. Union of India, reported in AIR 1973 SC 1088**. Relevant extracts of this judgment are reproduced below for better understanding of the present case:

"15. Mr. Dhebar contends that it was for the Government to accept the recommendations of the Pay Commission and while doing so to determine which categories of employees should be taken to have been included in the terms of reference. We are unable to appreciate this point. Either the Government has made reference in respect of all Government employees or it has not. But if it has made a reference in respect of all government employees and it accepts the

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recommendations it is bound to implement the recommendations in respect of all Government employees. If it does not implement the report regarding all Government employees, if it does not implement the report regarding some employees only it commits a breach of Arts 14 and 16 of the Constitution. This is what the Government has done as far as these petitioners are concerned.

16.

17. In the result, the petition is allowed and it is directed that the revised pay scales of the petitioners will have effect from July 1, 1959 in accordance with the recommendations of the Pay Commission. We further direct that the petitioners should be paid the amount payable to them as a consequence of the revision of the pay scales with effect from July 1959. The petitioners will have the costs of this petition."

11. From the interpretation given by the Hon'ble Supreme Court, it is clear that if a recommendation is accepted, not implementing it in respect of some employees would amount to violation of Articles 14 and 16 of the Constitution. Counsel for the applicants has very forcefully urged that the applicants now suffer hostile discrimination in as much as employees in erstwhile subordinate position, have been given the higher revised pay-scale of Rs. 5000-8000/- w.e.f 1.1.96 whereas, this higher scale has been made effective for them only from 1.11.2003. Moreover, employees such as Junior Engineers Grade II with similar qualifications, namely Diploma in Civil Engineering and doing similar nature of work, were given the higher scale from 1.1.96 whereas, the applicants have been deprived of this benefit and this amounts to another instance of discrimination which is violative of Articles 14 and 16 of the Constitution of India.

12. The applicants have also taken the plea that the Respondent No. 4 did not have the competence to decide a policy issue involving payscales; therefore, his rejection of the representations suffers from incompetence. The counsel for the respondents submits that the acceptance of the



recommendation of the Pay Commission relating to railway employees has to be seen from the Revised Pay Scale Rules, 1977 and not otherwise. The exact nature of acceptance has been reflected in the revised pay scale Rules. As a matter of fact, the diploma engineers have not been given the recommended scale of Rs. 1600-2660 which corresponds to the post-revised pay scale of Rs. 5500-9000/- not Rs. 5000-8000/- which relates to the pre-revised pay- scale of Rs. 1400-2300/- or even less in a few cases. So it is not correct to say that the recommendation of Pay Commission in this regard had been accepted by the Railway Board. On our query whether the MCM post was a subordinate position as compared to the SOM, the answer was in the affirmative. It was clarified in the supplementary affidavit that MCM was a feeder cadre to supervisor/ Mistry (SOM). MCM posts were manned by artisans with qualification of Class VIII pass and ITI certificates where as SOMs were diploma holders. As such, SOM was a promotional post for MCM.

13. However, it was contended that in view of the proposition of law enunciated by the Hon'ble Supreme Court in Union of India Vs Arun Jyoti Kundu and others 2007 (7) SCC 472 that the date of applicability of a replacement scale as per recommendation of the Pay commission could not be determined by the Tribunal. While accepting the contention of the respondents that the policy decisions relating to pay-scales and their fixations should not be interfered with, we find that the issue of discrimination including hostile discrimination particularly with reference to the cadre of MCM has not been dealt with in the impugned order.

14. From the discussions it is clear that MCMs who had inferior qualification and were is a subordinate position have been given the revised pay scale of Rs. 5000-8000/- from 1.1.96. This facility has been

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denied to the applicants who are diploma holders. The counsel for the respondents submitted during the course of argument that there was an Anomaly Committee which looked into specific cases of anomalies. The present claim of the applicants could be at best called an anomaly and might be placed before the Anomaly committee. There can be no two opinions that this is a blatant case of anomaly which needs to be examined by the Anomaly Committee.

14. We, therefore, direct that the claim of the applicants to have parity with MCM, in that the revised pay scales should be given to them w.e.f. 1.1.98, ^b may be placed before the Anomaly Committee and on the basis of their recommendation, the Respondent No. 1 should take appropriate decision preferably within 6 months from the date of receipt of the representation and a copy of this order. Needless to say that this matter brooks no delay as the recommendations of the next Pay Commission are now under implementation.

15. In the result, the O.A. is disposed of with the above observations with no order as to costs.


(Dr. A. K. Mishra)
Member (A)


(M. Kanthaiah)
Member (J)
10.9.08

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