

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

D.A. NO.717 of 1995

Date of order 26-10-1999

1. R.N. Mukherjee,
2. Narayan Sah,
3. S.K.Dutta,
4. Basdeo Mandal,
5. U.K. Yadav,
6. U.P. Yadav,
7. M.M.K.Sinha,
8. S.K.Banerjee,
9. H.G.Nathaneal,
10. S.Tanti.

all are Rate Fixers Chargeman B,Planning
office,Eastern Railway workshop,Jamalpur.

-versus-

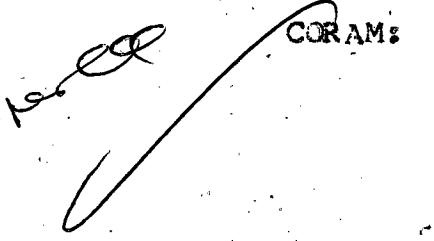
1. Union of India, through General Manager,Eastern
Railway, Fairlie place,Calcutta.
2. The Chief Personnel Officer,
3. Chief works Manager, Eastern Railway workshop,Jamalpur,
4. Workshop Personnel Officer, Eastern Railway workshop,
Jamalpur.

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Respondents

Counsel for the applicants..Shri R.K.Jha.

Counsel for the respondents..Shri Gautam Bose.


CORAM: Hon'ble Shri L.R.K.Prasad, Member (S)

Hon'ble Shri Lakshman Jha, Member (J)

ORDER

Hon'ble Shri L.R.K.Prasad, Member (A):-

The applicants have filed this O.A. In November, 1995. Subsequently certain amendments were made and the amended application was filed in May, 1998.

2. Through this application the applicants have sought following reliefs:-

(a) The respondents be directed to reimburse the arrears sanctioned under Annexure-A/2 amongst the applicants at the earliest.

(b) The respondents may be directed to give the applicants promotions and benefits under restructuring scheme as due and agreed to in Annexure-A/4.

3. The applicants (10 in number) were initially appointed during 1956 as Trade Apprentice. Subsequently, they were absorbed as Mistry Grade I. Thereafter they were promoted to officiate as Rate Fixers in the scale of Rs.150-240 in October, 1962 vide order at Annexure-A/1. On the basis of recommendation of Miyabhai/Tribunal Award, 1972, the posts of Mistry Rate Fixers were upgraded as Chargeman 'B'/Rate Fixer in the scale of Rs.1400-2300. The applicants have stated that in view of the aforesaid decision, they were promoted as Chargeman Grade 'B' under the above Tribunal Award and are still working in the P.C.O. Organisation at Jamalpur Railways workshop. It is alleged by the applicants that even though they are entitled for payment of arrears on account of their said promotion with effect from August, 1972, they have not been paid the arrears. It is also the allegation of the applicants that while benefits of restructuring scheme

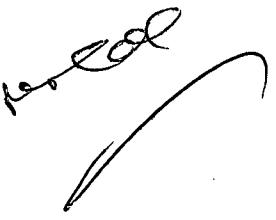
which came into force with effect from 1.1.1984 and another restructuring scheme ^{coming} into force with effect from 1.3.1993 have been extended to the technical supervisors but the same has been denied to the applicants on one pretext or another. On the other hand, the respondents have pointed out that the posts of Rate Fixers in the P.C.O. Organisation have been upgraded to Chargeman 'B' (Rate Fixer) in the scale of Rs.425-700 (RS) with effect from 24.10.1979 provisionally. In this regard the office order dated 1.10.1979 (Annexure R-1) was issued. Under the said order, the applicants were appointed provisionally to officiate as Chargeman 'B' (Rate Fixer) in the scale of Rs.425-700 (RS) on ad hoc basis with effect from 24.10.1979. It is also stated in the said order that officiating promotions have been ordered on ad hoc basis and this will not confer upon them any claim over the post to supersede their seniors and/or empanelled staff in future. It is further pointed out that arrears on account of refixation of pay due to above upgradation is admissible with effect from 1.1.1979. The Office order dated 1.7.1980 as at Annexure-R-2 states that the pay of the Rate Fixers in the enclosed fixation list in the scale of Rs.380-560 (RS) who hold independent charge of the Section where the posts of Rate Fixers in the scale of Rs.380-560 (RS) have been pin-pointed for upgradation as Chargeman 'B' are refixed in the scale of Rs.205-280 (AS)/425-700 (RS) for the period as indicated against each. The fixation was ordered under Rule 2018-B (FR.22-C). It is also made clear in the said order that the arrears as a result of the above refixation is admissible from 1.1.1979. Regarding the allegation of the applicants that they have been

Arrears

denied the benefits of restructuring scheme, the reply of the respondents is that the applicants could not be extended such benefits as they were not working at the relevant time as Chargeman 'B' on regular basis.

4. The respondents have stated that the persons working against the upgraded posts of Chargeman 'B' on ad hoc basis had been invited for selection to the post of Chargeman 'B'/Rate Fixer. After having declared suitable, they were absorbed as Chargeman 'B'/Rate Fixer on regular basis. The posts of Technical Supervisors under PCO Organisation were upgraded under the restructuring scheme with effect from 1.3.1993 and it was pin-pointed in the trades. Accordingly, the senior-most incumbents ~~of~~ some trades were promoted on the pin-pointed upgraded posts. It is further the submission of the respondents that the applicants were not given the benefits of restructuring as they were not due in their turn in the respective trades.

5. Being aggrieved by the action of the respondents in not granting them the benefits under restructuring scheme, the applicants made necessary representation to the respondents vide Annexure-A/3. It is also stated by the applicants that a meeting was held to discuss the issues. The meeting was held between Railway Officers and office-bearers of Railway Union on 18.3.1995. The applicants have drawn our attention to the following portion of the minutes of the meeting (Annexure-A/4) which is relevant to the issues raised in this O.A.:-


"CRMU said that in the year 1961 a number of Artisans were inducted in PCO Organisation as Mistries Gr.I as a separate group. Those who possessed the required qualifications were only taken after due training. In the year 1987 they were

promoted as Chargemen Gr.'B' (Rate Fixers) in scale Rs.1400-2300/-. This was done in view of the Miabhai/Tribunal Award-1972. ERMU said that further promotion to these chargemen should be given.

It was agreed that those staff should be given the benefit of restructuring with Accounts concurrence, according to the percentage prescribed for the Technical Supervisors. At present 13 such staff are working as Chargemen Gr.'B' (Rate Fixer). Out of the existing 13 staff, 12 (twelve) are retiring on superannuation by 1998, one staff retires on 2004. How he was inducted in this group should be examined in details. In case he did not come into this group originally along with other staff, his case should not be considered in this group. He should be considered into main PCD Organisation where other Rate Fixers are being dealt with as per para-1 above.

ERMU said that the arrears to the staff have not yet been paid. It was decided to examine this matter.*

6. The applicants have further stated that in view of the above, the applicants should be given the benefits of ~~restructuring~~ according to the percentage prescribed for Technical Supervisor. With reference to the statement made in para 4.8 and 4.9 the respondents have stated that the matter is still under ~~consideration~~ by the competent authority and the same will be disposed of as soon as a decision is taken in the matter. As this matter is pending since 1995, it would be appropriate that necessary decision is taken by the respondents as soon as possible within a specified time on the issues raised

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in the meeting between the Railway officers and the Union representatives held on 28.3.1995 (Annexure-A/4).
respondents

7. The have challenged this O.A. also on the ground of law of limitation as well as the fact that the applicants have not exhausted departmental remedies before approaching this Tribunal. These are the technical objections which have to be considered keeping in view the facts and circumstances of the case. The matter has been, accordingly, considered.

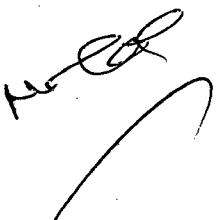
8. Through rejoinder the applicants have laid stress on the point that as they were promoted as Chargeman 'B' in the scale of Rs.425-700, their pay should be refixed in the said scale from 1.8.1972 on the basis of Miyabhai/Tribunal Awar, 1972. However, it is clear from the facts that the pay of the applicants have been adjusted in the scale from 1.1.1979. Therefore, the demand of the applicants/that they should be given arrears for the period 1.8.1972 to 31.12.1978 on the above ground. They have drawn our attention to Annexure-A/2 of the O.A. whereby certain calculations had been done containing information regarding estimated arrears for the period August, 1972 to December, 1978 in respect of upgradation of posts. However, it may be pointed out that no specific order was issued for granting arrears for the said period. In absence of any office order/decision, the arrears cannot be paid only on the ground of the fact that certain estimates had been prepared regarding the arrears for the period in question vide Annexure A/2.

9. The perusal of the order at Annexure R-1 clearly indicates that a few posts of Mistry Grade I (Rate Fixer) in the scale of Rs.380-560 (RS) in the PCO organisation at Jamalpur have been upgraded to Chargeman 'B'.

(Rate Fixer) in the scale of Rs.425-700 (Rs) with effect from 24.10.1979 provisionally. Certain officiating promotions were also made on ad hoc basis which include the names of the applicants. The said order (Annexure R-1) also makes it clear that such officiating promotion will not confer upon them any claim over the posts to supersede their seniors and/or empanelled staff in future.

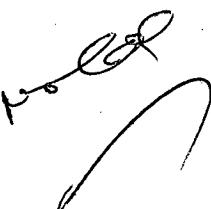
10. The respondents have pointed out that in 1980 the pay of Rate Fixer in the scale of Rs.380.560 (Rs) who held independent charge of the section where the posts of Rate Fixers have been pin-pointed for upgradation as Chargeman 'B', have been refixed in the scale of Rs.425-700 for the period as indicated against the applicants. The saif fixation has been made under Rule 2018-B (FR. 22-C). ~~in~~ The arrears as a result of refixation is only admissible from 1.1.1979 with clear stipulation that the applicants will draw the higher rate of pay as Chargeman 'B' till they are replaced by regular staff which is clear from office order dated 1.7.1980 as at Annexure-R-2. The order at Annexure R-2 also indicates the benefit of refixation of pay as is admissible to all staff on different dates as shown against them. As such, the applicants are not entitled to the benefits from 1.8.1972.

11. It may be pointed out that Annexure A/2 only indicates as to how much amount of arrears would become due to the applicants along with other staff during the period August, 1972 to December, 1978. This is an internal correspondence and no order has been passed by the competent authority for payment of arrears from 1.8.1972.


The contention of the applicants that they were working

as Chargeman 'B' on regular basis on 1.1.1984 has been denied by the respondents. In this regard our attention has been drawn to office order as at Annexure R-1 by which the applicants had been promoted to the upgraded post of Chargeman 'B' in the scale of Rs.425-700 (RS) with effect from 24.10.1979 on provisional and ad hoc basis. Therefore, the contention of the applicants that they were appointed on regular basis is not tenable in view of the order as at Annexure R-1. The respondents have stated that the applicants were working as Chargeman 'B' on ad hoc basis against ex cadre post. Their lien are being maintained in the parent cadre. Their turn for promotion under restructuring scheme in 1984 and 1993 did not become due at the time of implementation of the said restructuring scheme. The respondents have also clarified that their promotion would be considered in their parent cadre when they come within the zone of consideration for promotion to the higher grade. It has been further clarified that in the P.C.Ol Organisation the technical Supervisors were given upgradation under restructuring scheme with effect from 1.3.1993 as they had already got the benefit of upgradation in their respective trades in the parent cadre. As the applicants had not become due for upgradation in their respective cadre, they could not be given the benefits under restructuring scheme in the PCO (also).

12. It is noted from the office order dated 27.12.1987 (Annexure A/6) that the applicants had been found suitable and empanelled for promotion to the post of Chargeman 'B' in the scale of Rs.1400-2300.



13. The applicants have stated that on a representation on the issues involved, a meeting was held between the Railway Officers and Railway Union office-bearers on 28.3.1995. In the aforesaid meeting it was decided that staff in PCO should be given the benefits of restructuring according to the percentage prescribed for the Technical Supervisor. The applicants have further pointed out ~~when~~ that it was decided to give the benefits of restructuring, they should be given due promotion. The relevant portion of the minutes (Annexure-4) has already been reproduced at para 5 above. In reply to para 4.8 and 4.9 of the O.A. the respondents have stated that the matter is still under consideration by the competent authority and the same will be disposed of as soon as any decision is ~~received~~ from the said authority. However, they have pointed out that the applicants were not working as Chargeman 'B' on regular basis on 1.1.1984. In the aforesaid circumstances ~~the~~ the applicants were not entitled for benefits under restructuring scheme which came into force with effect from 1.1.1984. ~~However, if is not~~ ^{as} clear to us ~~why the applicants are~~ ^{not} entitled for the benefits under restructuring scheme, which came into force with effect from 1.3.1993. This matter requires to be looked into in detail further by the respondents with reference to relevant restructuring scheme for passing appropriate order. It is observed from the minutes of the meeting held on 18.3.1995 (Annexure-4) that it was decided to examine the matter relating to payment of arrears to the staff.

14. We have considered the entire matter in the light of submissions made by the parties and

materials on record. In view of the above analysis of the case, we dispose of this O.A. by issuing direction on the respondents to consider the prayers of the applicants in the light of observations made by us hereinabove specially para 6 and pass reasoned order in accordance with law within three months from the date of receipt of a copy of this order. With the aforesaid direction, the O.A. is disposed of with no order as to the costs.

L.Jha
26.10.99

(Lakshman Jha)
Member (J)

L.R.K.Prasad
26.10.99

(L.R.K.Prasad)
Member (A)

Mahto