

(25)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No.
T.A. No. 463/87

198

DATE OF DECISION 6-1-1991

M.G.Chhatre Petitioner

- Advocate for the Petitioner(s)

Versus

General Manager, Central Railway & Respondent

4 ors.


- Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice U.C.Srivastava, Vice-Chairman

The Hon'ble Mr. M.Y.Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(U.C.SRIVASTAVA)

(91)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Tr.463/87

M.G.Chhatre,
6-A, Railway Karmachari Society,
Near New Dijayapur Naka Police Station,
Nehru Nagar,
Vijapur Road,
Solapur - 413 004.

.. Applicant

vs.

1. General Manager,
Central Railway,
Bombay.
2. Chairman
Railway Board,,
New Delhi,
3. Deputy Chief Engineer(E.W.)
Central Railway,
Manmad.
4. Financial Adviser &
Chief Accounts Officer,
Central Railway,
Bombay.

5. Union of India

.. Respondents

Coram: Hon'ble Shri Justice U.C.Srivastava, Vice-Chairman
Hon'ble Shri M.Y.Priolkar, Member(A)

JUDGMENT:

Date: 6-6-1991.

(Per U.C.Srivastava, Vice-Chairman)

The grant of special pay of Rs.150/-
to the applicant and its subsequent withdrawal after
payment and consequential deprivation from higher
grade, realisation of amount paid, rejection of prayer
at higher level before and after retirement made the
applicant to file a writ petition before the Bombay
High Court which after admission by operation of law
was transferred to this Tribunal for adjudication.

2. The applicant, a Diploma holder in
Mechanical And Electrical Engineering from Pune
Engineering College was appointed as Filter Operator
in 1945 and was posted at Sholapur of Central Railway,
was promoted to the post of Chargeman B grade in the

..2/-

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Production Control organisation of the Central Engineering Workshop, Manmad in the year 1962 and with effect from 24-10-1964 was promoted as Assistant Foreman Flash Butt Welding Plant, Chalisgaon (F.B.W.P) and thereafter was promoted as Foreman in the Permanent Way Conditioning Depot at Kalyan on 3-6-1971 in the grade of Rs.450-575. The designation was changed as Welding Shop Superintendent (W.S.S.) and was given pay in the grade of Rs.450 - 575 plus a special pay of Rs.150/- per month (withdrawal of which is subject matter of the constant dispute) and this scale was revised to the grade of Rs.840-40-1040 with effect from 1-1-1973. The applicant till his retirement on 30-4-1980 worked in the capacity of Welding Shop Superintendent (W.S.S.). According to the respondents this promotion post was held by the applicant on ad hoc basis.

3. The F.B.W.P. Chalisgaon and P.W.C.D Kalyan were and are parts of the Central Engineering Workshop at Manmad and under direct administrative control of General Manager, Central Railway. The Deputy Chief Engineer, Central Railway, Manmad is head of Central Engineering Workshop and as such was also head of the Permanent Way Conditioning Depot Plant at Kalyan and Depot/Plant at Chalisgaon and Lonavala all of which are attached to Central Engineering Workshop at Manmad. All these are separately registered as Factories under the Factories Act and had a licence under the said Act. The Permanent Way Conditioning Depot at Kalyan employs about 118 employees while at the Flash Butt Welding Plant at Chalisgaon about 58 employees were employed, at concrete Depot Lonavala

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which is said to be under control of Divisional Railway Manager(W) Bombay 123 employees were working and the strength at Manmad workshop is 110 employees. According to the respondents Kalyan and Chalisgaon Depot/Plant are units under the Control of Deputy Chief Engineer, Engineering Workshop, Manmad. The Permanent Way Conditioning Depot, Kalyan consists of number of shops(as defined by Railway Labour Tribunal)

- (i) Rail Welding Shop - Welding of Rails by Flash Butt Welding process
- (ii) Chairing Shop - Adazing and boarding of wooden sleepers for A.C.B Plates etc.
- (iii) M.S.Tank Shop - Manufacture of steel tanks to suit railway requirements.
- (iv) Reconditioning Shop - Reconditioning of Paint and crossings etc.

Regarding work done in these shops it will be useful to to refer to the observation made by the Railway Labour Tribunal(Miabhoy Award) which will be referred to subsequently -

"From the evidence it appears that a workshop consists of number of shops and the work done in each shop is a different kind called Trade. Each shop is divided into a number of sections. The organisational set up of a workshop is as follows :-
Either a Foreman 'A' or a Foreman 'B' is in overall charge of a shop. In some of these shops where a Foreman 'A' is in charge of a shop he has one or more Foreman 'B' to assist him. A chargeman of any of the three categories A, B & C is an independent charge of section. A chargeman ordinarily has one or more Maistries under the overall supervision of a Chargeman." This from the

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Thus from the above it appears that whilst a Foreman is in overall in charge of a shop a Chargeman is in charge of section of a shop.

4. The applicant's case is denied of right to him on the ground that P.W.C.D. Kalyan was not an Engineering Workshop which denial came into existence few months after clear and categorical admission and action on its base. This assertion that all over India F.B.W.P were and are recognised as Engineering Workshop and that in the State of Maharashtra and at Central Railway the plant at Chalisgaon was recognised as Engineering Workshop have not been specifically denied and challenged. This assertion has been made with particular reference to four persons working at Chalisgaon plant who were given the advantage denied to the applicant. So is the case with his assertion that plant at Kalyan is also recognised as Engineering workshop and receives benefit denied to him. There is no denial of the fact that the Andhra Pradesh High Court in its judgment, on which the applicant has been relying even before departmental authorities for redressal of his grievance, held that F.B.W. plants are Engineering shops.

5. *Flush Butt welding* From about the year 1965-66 an incentive scheme was introduced in Mnmad workshop. ~~Wkz~~ As some dispute arose ~~the~~ a reference was made to the Railway Labour Tribunal known as Miabhoy Award of 1969 in respect of those Foreman 'A' & 'B' of the workshop. The issues which are referred to the Railway Labour Tribunal in respect of Foreman 'A' and 'B' of Workshops were:

(a) The existence of incentive scheme in the workshops due to which a Chargeman 'A' loses financially on being promoted as Foreman 'B'

(b) the work done by the Foreman 'A' and 'B'

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in the workshops was comparable to that of shop superintendent and Assistant Shop Superintendents in the Production Units and who were already enjoying the benefit.

Miabhoy gave his report on 18th August, 1978. In view of the report the applicant was found to be eligible to the grade of Rs.450-575 for certain period during which ^{he} has served as Foreman. This was from 1-8-1970 to 3-6-1971. After this award in view of the ~~xxxx~~ Board's decision conveyed vide letter No. PC-72/PLT-69/2 dated 12-5-73 ~~which was~~ the General Manager of the Central Railway issued a letter dtd. 25th May, 1973 a copy which has been annexed as Annexure 'A' to the application which reads as follows:-

"The permanent way conditioning depot at Kalyan, Flash Butt Welding Plant C.S.N. and concrete Depot LNL are treated as Engineering Workshops and therefore Foreman grade Rs.450-575 and Asstt. Foreman Grade Rs.335-485 (AS) attached to these units will be eligible for the following benefits as sanctioned in Board's letter No. PC-72/RLT-69/2 dated 12-5-73.

Foreman Gr. Rs.450-575 (AS) SUP LNL PWCD KTE	Redesignated on shop Supdt. and special pay of Rs.150/- P.M. with effect from 1-8-1972.
Asstt. Foreman Gr. Rs.335-485 (AS) PSWP CAN	Upgraded to the scale of Rs.450-575 (AS) and redesignated as Asstt. Shop Supdt. The pay of the incumbent of the upgraded post should be fixed proforma from 1-8-70 under Rule 2018-B (FR-22-C) R II and arrears shall be paid from 1-8-72 only."

Thus the Railway Board and the General Manager accepted that the Permanent Way Conditioning Depot at Kalyan, Flash Butt Welding Plant Chalisgaon and concrete Depot at Lonavala were identical workshops and the grade mentioned there were applied. The said letter further stated that the applicant is eligible for grade Rs.450-575 + Rs.150 special pay with effect from 1-8-1972. The benefit of the special pay was given to the applicant from 1-6-1973 till 30th

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June, 1974. Thereafter this benefit was stopped and later on it appears that the amount which was given to the applicant was also recovered from him. From the record as also from the pleadings of the party it is obvious and clear that this was due to the fact that there had arisen dispute between the Deputy Chief Engineer(Electrical) Manmad and Financial Adviser and C.A.O., Central Railway as to the date from which Ex. 'A' would be given effect to. This is obvious from the letter of the F.A. & CAO dated 22-6-1974 a copy of which has been annexed to the application as Annexure 'C'. Although it was only the dispute it appears that a different turn was taken to the controversy and the respondent No.4 denied the attitude of PWC Depot Kalyan Engineering Department that is why this action was taken. There is nothing on the record which will indicate that the Railway Board which accepted Miabhoy Award which thus got legal status and issued a particular direction in pursuance of which GM issued the letter referred to above ever withdrew its decision. Obviously once a right was conferred or given it could not have been withdrawn without consulting the person concerned with it. From the respondents pleadings, the respondents have relied upon the subsequent decision of the Railway Board or the Railway Ministry on this point but they did not like to act upon the representation of the applicant and accepted what has already been done. Merely because the action which was taken was rectified by the manner rejecting the representation of the applicant, the same was not substitute for withdrawing the right accepted/recognised and implemented which could have been withdrawn only in a particular manner.

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In the meantime the grade of Rs.450-750 plus Rs.150/- as Special Pay which was given to Shop Superintendent was revised to Rs.840-1040 and the same was granted to the other persons including those who were working in Carriage and Wagon Shop etc. This grade was revised as a result of report of IIIrd Pay Commission and was given to those only who were earlier granted special pay of Rs.150/-. Now the grievance of the applicant is that he was entitled to Rs.150/- and has been deprived of the same and in case the said grade would have implemented he would have been given the benefit to which he was entitled and would have got Rs.14,187.90 more and in addition to that he would have also got additional pensionary benefit as also loss of Rs.2,950.20 as death-cum-retirement gratuity and Rs.332.10 as leave salary.

6. On behalf of the respondents it has been contended that the applicant was working in a depot and the benefit of the new grade was admissible to those who were working in workshop. As far as Flash Butt Welding Plants are concerned the same has been recognised as Engineering Workshop in the country and the grade of Rs.840-1040 has been given to those who were working as such in those plants and were similarly placed. According to the applicant Permanent Way Conditioning Depot was engineering workshop and the same was essential and inseparable part of workshop. He was earlier working in a workshop ^{and} as has been stated earlier services in the so called Depot and or workshops are transferable as has been done. It is only the Kalyan Plant in India which was rather derecognised as an engineering workshop although it was recognised before controversy and has now been again recognised. According to applicant this is discrimination in as much as the four persons viz. C.K. Radhakrishnan, V.S.Sutar, Syed Omer Ali and Lotan Hari Wagh were working as Assistant Shop Superintendent in the Flash Butt Welding Plant at Chalisgaon have been given the benefit.

7. "Workshop" means any premises (including the precincts thereof) wherein any industrial process is carried on. "Manufacturing process" means any process for - (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or (ii) pumping oil, water, sewage or any other substance; or (iii) generating, transforming or transmitting power; or (iv) composing types of printing, printing by letter press, lithography, photogravure or other similar process or bookbinding; or (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or (vi) preserving or storing any article in cold storage. Under Section 2(m) of Factories Act, 1948, Factory is defined as (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on. Section 4 of the Factories Act confers power to declare different departments to be separate factories or two or more factories to be a single factory and every such factory can be registered as a separate factory. Thus every workshop is a factory and every factory can include even more than one workshop. Notwithstanding the fact that the Kalyan Depot (a word so used) may be unit of the big workshop or factory unit or plant of Kalyan is part and parcel of Manmad and manufacturing process or the

industrial process is carried on there. The manufacturing work is going on in the Manmad workshop as well as unit of Kalyan. The Kalyan unit is obviously a workshop as it is registered as factory, as a workshop. Without a workshop there cannot be factory and workshop is undoubtedly a factory.

8. It seems that is why Kalyan workshop was accepted as factory by the Railway Board and General Manager and the Ministry also accepting the position gave benefit to the applicant treating the Kalyan plant a workshop and a separate workshop or factory. Once this acceptance was made by the Railway Board and General Manager the benefit was given to the applicant the government is bound to act upon it and could legally retrace back its steps and that too in the manner as it has been done. If no the principles of promissory estoppel as such but the principle analogous to it in such circumstances would come into play. Even otherwise its acceptance could not have been withdrawn at this stage and that too in a manner without giving an opportunity to the applicant and without considering the legal position and the effect of award which got sanctity even under the industrial law. Subsequently the Kalyan Depot has also now been accepted as engineering workshop. Benefit of the same was given to some employees in that plant and the applicant's contention that one who is working in his place is getting that benefit has not been refuted. The action of the respondents in withdrawing the same in such a manner was obviously arbitrary and discriminatory and violated article 14 of the Constitution of India and cannot be sustained. No decision given by higher authority can be recalled and withdrawn by subordinate authority without prior sanction and subsequent ratification if any cannot take place of prior permission or decision.
9. The respondents have drawn the attention of Tribunal towards question of limitation. This plea was taken

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at the time of filing of writ petition and a presumption can be drawn that the question of limitation was considered and the same was overruled. Even otherwise the facts of this case shows that the applicant has been agitating the matter ever since the withdrawal of special pay of Rs.150/- It was decided till the dispute settled salary was fixed at 700-900. It was also with reference to A.P.High Court judgment referred to above. This was communicated to the applicant vide reply of the Deputy General Manager, Central Railway dtd. 7-1-1977. On 1-3-1978 the DCE addressed a letter to Chief Engineer in Bombay in which he has mentioned that there was a dispute between Chief Personnel Officer and the F.A & CAO of the Central Railway in this behalf. When the Deputy Chief Engineer gave a reply to the applicant on 1-3-1978 when he communicated that injustice was done to him and that the applicant was accepting the grade of Rs.700-900 and the deduction made in respect of the special pay of Rs.150/- under protest. The Additional Chief Personnel Officer vide his letter dated.11-6-1978 sought the intervention of the Chairman, Railway Board in this behalf. The applicant stated that a reply was received from respondent No.2 contained in letter dated 7-12-1978 to the effect that the claim could not be entertained. He states that he learnt about the same on 23-4-1981. When he addressed a communication on 21-4-1981 to the Chief Personnel Officer by letter dated 23-4-1981 addressed by the Chief Personnel Officer to the effect that

the Chairman Railway Board has turned down to consider the applicant in the grade of Rs.840-1040. The writ petition was filed in the year 1982 after certain other proceedings. Thus the plaint shows that the applicant was continuously agitating the matter and approaching the authorities to consider the reliefs. He has to work as even one of his arms was amputated and he suffered serious injuries because of accident and remained in hospital as indoor patient and therefore remained under treatment as outdoor patient. These facts are enough to condone the delay if any.

10. In view of what has been stated above the application deserves to be allowed. The respondents are directed to give effect to the order at Ex.A/B and grant the benefit of special pay of Rs.150/- from a period of 1-8-1972 till such period when the revised scales which were declared on 1-1-1973 came into force and further directed to grant the benefit of the grade of Rs.840-1040 till the date of his retirement, and thereafter pension on the basis of the last salary drawn in the scale of Rs.840-1040. There will be no order as to costs.



(M.Y. PRIOLKAR)
Member(A)



(U.C. SRIVASTAVA)
Vice-Chairman