

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 127/89  
Transfer Application No.

Date of Decision : 7.6.95

S.D.Sundaresan & 2 ors.

Petitioner

Mr. M.S.Ramamurthi

Advocate for the  
Petitioners

Versus

U.O.I. & Ors.

Respondents

Mr. V.S.Masurkar

Advocate for the  
respondents

C O R A M :

The Hon'ble Shri Justice M.S.Deshpande, V.C.

The Hon'ble Shri P.P.Srivastava, M(A)

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?

V.C.

trk

(P)

IN THE CENTRAL ADMINISTRATIVE TIRBUNAL  
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6  
PRESCOT ROAD, BOMBAY 1

O.A.No. 127/89

1. Swamy Durai Sundaresan  
2. Arumugam Koothan  
3. Muthuswamy Koolan  
4. Vaidyalingam Irusamuthu ..Applicants

V/s

Union of India & 3 ors. ..Respondents

Coram: Hon.Shri Justice M.S.Deshpande, V.C.  
Hon.Shri P.P.Srivastava, Member(A)

Appearance:

Mr. M.S.Ramamurthy,  
Counsel for applicant  
Mr. V.S.Masurkar,  
Counsel for the respondents.

ORAL JUDGMENT:

DATED: 7.6.95

(Per: M.S.Deshpande, Vice Chairman)

By this application the applicants pray for the reliefs regarding regularisation and claim of pay scale of Rs.950-20-1050 in lieu of Rs.750-12-940 which is being paid to them. The other two reliefs regarding payment of H.R.A. and absorption are not being pressed as according to the Id. Counsel for the applicants the applicants grievances on these two aspects have been met.

2. The four applicants were engaged in the year 1981 as temporary Mates for supervising the work done by Khalasis and Rejas initially in the scale of Rs. 200-240. By the interim relief passed by the Gujarat High Corut in Special Civil Application No. 5268 of 1984 in Rajkumar Mottiyani & 23 ors. Vs. Union of India & Ors. they were directed to be given the scale of Rs.200-250. According to the applicants the post of

Mate is higher than that of Gangaman, but they were paid at the same rate as the Gangman were paid. From 1.1.86 the scale of pay of Khalasi, pursuant to the 4th pay commission, was revised to Rs.750-12-940 and that of Mate to Rs. 950-20-1050, but the applicants were continued to be paid the scale of Rs.750-12-940. The applicants were transferred to the Open Line from construction line and have been working there for more than 1½ years and they were also given temporary status. Some persons who were working as Mates were given a pay scale different from the one which was given to the Mates working in the Open Line and the Assistant Engineer, Gulbarga, vide his letter dated 21.9.88 addressed to the Deputy Chief Engineer, Pune, brought the anomaly to the notice of his superior by pointing out that those who had been transferred from Panvel and Lonavala were paid in the scale Rs.950-1050 while the others were being paid in the scale Rs.750-940 and there was thus discrimination in the emoluments paid to one of the sections of the employees. The applicants have, therefore, after making a representation on 12.12.88 (Annexure C) approached the Tribunal for the aforesaid reliefs.

3. The respondents contended that the main grievance of the applicants is that they were not being given higher scale of Rs.950-1050 but were paid in the scale Rs.750-940. The scale of Rs.750-940 corresponded to the initial scale of Rs.200-240 in which the applicants were recruited and since they have not made any grievance regarding initial stage Rs.200-240, the claim was barred by time. He urged that the post of Mate in Open Line is filled by promotion as the work involves safety aspect and working of the trains whereas the post of Mate in Construction Line is filled by direct recruitment and that does not involve safety aspect in working of the trains. With regard to the letter dated 12.12.88 it was contended that it was at the most a request by the Assistant Engineer to his superior and that would not give a right to the applicants to ask for the higher scales.

..3..

4. The applicant filed a rejoinder giving the particulars of work which they were doing in order to show that they were doing the work as in the Open Line substantially as that of the Mates who were transferred from Construction Line from Panvel, Lonavala to Gulbarga who are paid the scale of Rs.950-1050 and one Thangaraj Saraban who was at Sr.No.4 of the letter at Exhibit F was being given the higher pay scale.

5. Though the Ld. counsel for the applicants urged that the applicants were not being paid equal pay for equal work, we find that the O.A. does not make out that plea by giving necessary particulars regarding the duties performed by the applicants in contrast to the Mates working in the Open Line. All that can be culled from the O.A. as is apparent from clause (d) of para 4 is that the applicants were transferred to Open Line from Construction Line and they were working in the Open Line prior to the filing of the application and the applicants were not aware why they were transferred to open line ~~and hence came for a relief~~. Their juniors who were working in the construction line got more house rent. The Ld. Counsel for the applicant pointed out to us the pleading regarding the demand of equal pay for equal work in clause (i) para 4 of the O.A., but that para refers to only to the contents of the letter dated 12.12.8 sent to the Deputy Chief Engineer by the Assistant Engineer saying that there was a discrimination in the emoluments being paid to two sections of same class of employees. Even in the grounds raised in para 5 of the application there is no reference to the particulars which would go to make out a plea of equal pay for equal work. The most that can be culled from the pleading is that they were entitled ~~for~~ wages at the same rate as those employed as Mates in the Open Line for the period for which they had worked temporarily as Mates in the Open Line and nothing more. The plea which did not exist was sought to be substantiated by the averments in the rejoinder which was filed on 10.1.95. The Ld. counsel for the applicants drew our attention to the order sheet dated 10.1.95 by which time was granted to the respondents counsel for going through the rejoinder. It is true that no sur-rejoinder was filed <sup>were</sup> nor ~~that~~ any additional particulars furnished, Whatever has been stated in the

rejoinder cannot be a substitute for the original pleadings which has to be made only in the Original Application and not in the additional documents which the applicants seek to file. We are, therefore, clear that no case has been made out before us for equal pay for equal work and that the applicants would be entitled on that basis to urge that in view of the discriminatory treatment ~~meted~~ out to them they would be entitled to the protection of Articles 14 and 16 of the Constitution of India.

6. The fact that the applicants temporarily worked in the Consturction Line but were transferred to the Open Line for some periods had been admitted by the respondents in the written statement. Though the respondents have pleaded that the nature and duties in the Open Line and in the Construction Line are different that argument would not be available ~~for~~ the respondents for denying the wages to the applicants once they came to be transferred from the Construction Line to the Open Line and were called upon to do the same work which the Mates in the Open Line did. The Ld. counsel for the respondents referred us to Chapter 4 of the Indian Railway Workers Manual where the duties of Mates, Khalashis and Rejas have been stated. But the position which was pointed out to us does not go to show that the provisions made any distinction between the Mates working in the Open Line and those working on the Construction Line and that they would not ~~give~~ any assistance to the applicant.

7. Considering the admitted position that the applicants had worked as Mates in the Open Line ~~before~~ <sup>when</sup> they were transferred, and in view of their transfer the applicants would be entitled to the same wages, which the Mates in the Open Line got for ~~the~~ identical work <sup>which</sup> the applicants as well as the Mates in the Open Line did.

8. We make it clear that we are not called upon in this case to decide the question regarding the applicants' entitlement, if any, under Articles 14 and 16

16 of the Constitution of India which they are at liberty to agitate, if those grounds are available to them.

9. We therefore direct the respondents to pay to the applicants difference in wages at the same rate in the pay scale of Rs.950-10-1050 from the dates they were transferred from the Construction line to the Open Line until they are repatriated to the construction line, within four months from the date of receipt of a copy of this order. There would be no order as to costs.

  
(P.P. Srivastava)  
Member(A)

  
(M.S. Deshpande)  
Vice Chairman

trk