

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 455/90

this the 12th day of January 1999

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Bawaja, Member (A)

1. N.B.Rane
2. B.T.Patil
3. L.N.Lokhande
4. V.V.Padme
5. M.P.Nikale
6. G.D.Saitwal
7. T.H.Cauthmal
8. S.T.More

All are working as Electrician
in the Train Lighting Department,
Central Railway, Bhusawal.

By Advocate Shri D.V.Gangal

... Applicants

V/S.

Union of India through

1. The General Manager,
Central Railway,
Bombay V.T.
2. The Divisional Railway Manager,
Central Railway, Bhusawal.

By Advocate Shri S.C.Dhawan

... Respondents

ORDER

(Per: Shri D.S. Bawaja, Member (A))

This OA. has been filed jointly by
8 applicants who are working as Electricians
in Train Lighting, Bhusawal Division of Central
Railway. They have/promoted as Electricians
during the period from 1974 to 1984 on the various
dates as brought out in details at Annexure-'A' to
the OA. As per Railway Board's order dated 1.6.1984

Train Lighting Mistries ~~Electricians~~ who are utilized either Incharge of Maintenance gangs or ^{to} supervise the Highly skilled workers have been granted a special pay of Rs.35/- per month. It is the case of the applicants that though they are designated as Electricians but they are performing the same duties ^{that} as of the Mistries and therefore entitled for the benefit of special pay as allowed as per Railway Board's letter dated 1.6.1984. The applicants contend that Northern Railway had implemented this Circular of the Railway Board and the Electricians in Train Lighting had been allowed special pay of Rs.35/-p.m. It is further stated that the Electricians are designated as Mistries in all other Railways except ~~Central~~ Railway. Subsequently to Railway Board order dated 1.6.1984, Railway Board vide letter dated 6.7.1987 in pursuance of recommendations of 4th Pay Commission granted scale of Rs.1400-2300 to all the Mistries who were drawing special pay of Rs.35/-. The Electricians who were also in the same scale of Rs.380-560 as that of the Mistries were allowed replacement ^{of} ~~of~~ Rs.1320-2040 since they were not drawing special pay of Rs.35/-. The applicants, therefore, submit that they were further aggrieved for being placed in a lower scale than that of Mistry due to non grant ^{of} the benefit of Railway Board Circular dated 1.6.1984. The applicants have stated that they started representing ~~since~~ 2.7.1986 to various authorities at Divisional Railway and Railway Board level through repeated representations.

In support of their case, the applicants have referred to a letter dated 3.10.1988 written by Senior Divisional Electrical Engineer, Bhusawal wherein it is stated that the Electricians in Train Lighting are performing the same duties of Supervising the skilled staff as that of ~~Electrical~~ Mistries in other department of Electrical department and other department. In the same letter the change of designation of Electrician to that of Mistry was also suggested. Not getting any response to their representations, the applicants have filed the present OA. on 8.3.1990.

2. Subsequent to filing of the OA., the representation of the applicants was rejected by the Railway Board as per letter dated 13.11.1990 which was conveyed through the letter dated 11.12.1990 by Central Railway. Through the amendment application, the applicants have brought additional material on record along with documentary evidence that the applicants have been performing independent duties and as a Supervisor/supervising the work of unskilled and skilled staff.

3. Based on the above ~~background~~, the applicants have claim^{ed} the following reliefs :- (a) to hold and declare that the applicants are entitled for grant of special pay of Rs.35/- w.e.f. 1.5.1984 and pay scale of Rs.1400-2300 from 1.1.1986. (b) to designate the applicants as Electrical Mistries. (c) to set aside the Railway Board letter dated 19.11.1990 being illegal and ultra vires. (d) to hold and declare that the applicants were entitled to be promoted as Chargeman Grade 'A' and Chargeman Grade 'B' ^{to} and thereafter/higher promotions.

4. The applicants have advanced the following grounds in support of their reliefs.

(a) By designating the applicants as Electricians though performing the same duties as that of Mistries, they have been deprived the benefit of special pay of Rs.35/- from 1.5.1984 and thereafter the scale of Rs.1400-2300 from 1.1.1986. This action of the respondents is discriminatory and violative of Articles 14 & 16 of the Constitution of India. (b) The applicants are entitled for "Equal Pay for Equal Work" as they are performing the same duties as that of Electrical Mistries, and denial of equal pay the respondents have acted arbitrarily.

5. The respondents have opposed the application. The respondents initially filed a short written statement opposing the application, firstly, it is barred by limitation and secondly, the copy of the letter dated 1.6.1984 of Railway Board brought on record has been manipulated by adding additional words and therefore the applicants have not come with clean hands. Subsequently, the respondents have filed detailed written statement after the applicants regretted for bringing on the record copy of letter dated 1.6.1984 which was not correctly typed. The respondents have submitted that though the Northern Railway had initially implemented the Railway Board's order dated 1.6.1984 by granting special pay to Electricians in Train Lighting but subsequently it was withdrawn as advised by letter dated 5.2.1986 as the Electricians were not eligible for the same.

6. The respondents contend that the applicants are designated as Electricians and not holding independent charge of gangs and therefore not performing the same duties as that of Electrical Mistries. The respondents refute the documentary evidence brought on record by the applicants through an amendment application to establish that the applicants as Electricians are working in the supervisory capacity. The respondents submit that mere placing the applicants ^{name of the} at the first serial number in the Muster-roll does not imply that they are independently supervising the work of gangs. The respondents have further contended that in view of the repeated representations made by the applicants and keeping in view the observations made by Senior Divisional Electrical Engineer, a reference was made by Railway Board to consider the case of Electricians for redesignation as Mistry and granting of special pay. However, the same was rejected by the ~~Railway Board~~ as per letters dated 30.6.1988/brought on record. The respondents, therefore, plead that in view of the facts and circumstances of the case brought ~~out~~ in written statement, the applicants have no case and the OA. deserves to be dismissed.

7. Though the applicants have not filed any rejoinder reply to the written statement but through several M.Ps. additional documents and pleadings have been brought on record. Through M.P.No. 663/95 the applicants have brought on record the documentary evidence to show that Electricians are in supervisory cadre. Through

M.P.NO. 607/97 the applicants have brought out that similar issue with regard to grant of special pay to Electricians of Bombay V.T.

Division was raised through OA.NO. 327/89 and OA.NO.388/89 and these OAs. have been decided as per order dated 15.6.1992 through separate orders on the same date allowing the benefit of special pay to the Electricians.

It is pleaded that since the applicants are similarly placed, they are entitled for the same benefit as allowed in these two OAs.

The applicants have stated that the Allahabad Bench has also allowed the same relief through order dated 14.9.1995 in OA.NO. 1167/92. The applicants have further brought out that as per /22.

Railway Board's letter dated 21.1.1997, the proposal of Central Railway for grant of special pay to the Electricians was accepted as the applicants fulfil all the three conditions laid down in this letter for allowing the scale of Rs.1400-2300.

In view of this also the applicants are entitled for the reliefs prayed for.

8. The respondents have filed reply to all the M.Ps. of the applicants. The respondents have submitted that the contention of the applicant that Central Railway had accepted the claim of the applicants as the Railway is not competent to decide the said issue though the reference was made to the Railway Board on the representations being made by the applicants but the Railway Board turned down the proposal as per order dated 30.11.1990 which was conveyed to the applicants. As regards the orders of the Tribunal

cited by the applicants, the respondents contend that the decision of this Bench is based mainly on the plea of applicants that Northern Railway had implemented the Railway Board letter dated 1.6.1984 in respect of Electricians in the Train Lighting branch. The judgement of Allahabad Bench is based on the order of this Bench. Since as brought out earlier, the Northern Railway had withdrawn the implementation of the order dated 1.6.1984 subsequently as the Electricians were not entitled for the benefit, therefore, these orders cannot be taken as laying down any precedence. The respondents have further submitted that in terms of Railway Board letter dated 21/22.1.1997 a committee was set up and based on the recommendations of the committee, the Railway Board issued an order allowing the scale of Rs.1400-2300 to the Electricians from the date of issue of Railway Board letter as per letter dated 1.6.1984 brought on record. At the same time, the Electricians have been designated as Supervisors and the avenue of promotion has also been laid down as directed by the Railway Board letter dated 21/22.1.1997. It is further averred that all the applicants have since retired during the period from 1993 to January, 1997 and therefore are not entitled for the benefit of Railway Board Circular dated 21/22.1.1997.

9. We have heard the arguments of Shri D.V.Gangal, learned counsel for the applicant and Shri S.C.Dhawan, learned counsel for the respondents and the material brought on record have been carefully gone through.

10. From the averments made by either side, it is noted that as per Railway Board's letter dated 21/22.1.1997 decision had been taken to grant the scale of Rs.1400-2300 to the category of Electrician of Train Lighting at par with the Mistries who had been allotted the scale of Rs.1400-2300 as per the recommendations of 4th Pay Commission in view of the fact that they were drawing special pay of Rs.35/-.. It is further noted from this letter that Railway Board has laid down certain conditions which are required to be fulfilled before allowing the scale to the category of Electrician. For this purpose, it has been directed to set up a committee of junior administrative grade officers to determine whether the conditions laid down are fulfilled. The respondents have brought out that based on the recommendations of the committee set up, the Electricians have been allowed the scale of Rs.1400-2300 effective from 22.1.1997, i.e. the date of issue of Railway Board's letter dated 21/22.1.1997 as per order dated 18.6.1997. It is further stated that the post of Electrician has been designated as Supervisor and the avenue of promotion has been also revised as per the direction of Railway Board. Copy of this letter has been brought on record. The respondents contend that all the applicants have retired before the implementation of Railway Board's

instructions from 22.1.1997 and therefore the benefit will not be available to the applicants. The respondents have further submitted that Railway Board's decision as per letter dated 21/22.1.1997 had been taken after an agreement with the staff side through recognised unions in the ~~Departmental Counsel/Joint Consultative meeting~~ Machinery and the same is binding on all the staff who were members of the unions. It is the view of the respondents that since the decision has now been taken by the Railway Board on the issue which was pending, the applicants cannot claim the retrospective benefit of special pay of Rs.35/- and the scale of Rs.1400-2300 thereafter. This argument of the respondents have been advanced during the oral submissions and no such averments have been advanced in the written reply or in the reply to the Misc. Application. The learned counsel for the applicant strongly reacted to the submissions of respondents. He argued that the decision taken by the Railway Board with the recognised unions do not prevent the individual to challenge the orders of the Railway Board if he is aggrieved by the same for seeking judicial interference. He further stated that the applicants are claiming relief from 1.5.1984 as per the earlier order of the Railway Board and therefore their case is not covered by the orders dated 21/22.1.1997. We do not intend to go into the rival contentions of the applicants and the respondents on this issue, as in our opinion, keeping in view the facts and circumstances of the case, there is no merit in the claim of the applicants as per the various other considerations deliberated subsequently.

11. It is admitted fact that the applicants are designated as Electricians in the Train Lighting section. The main ground of the applicants is that though they are designated as Electricians, they are working ~~as~~ as Supervisors, supervising the work of gangs which includes all categories of skilled staff and therefore they are performing duties at par with that of the Mistries, Train Lighting as envisaged in Railway Board's letter dated 1.6.1984. To support this contention, the applicants through Misc. Application have brought on record documentary evidence by way of the copies of the Muster-sheets, the Railway Glossary(Electrical Engg) in Hindi where Electrician is indicated as "Bijli Mistry" and the copies of the diary indicating the work done by them. The applicants have also stated that the Electricians on Northern Railway had been allowed special pay of Rs.35/- treating them at par with the Mistry. The applicants have also placed heavy reliance on the letter dated 3.10.1988 of Senior Divisional Electrical Engineer, Bhusawal which has been brought on record wherein it is stated that the Electricians are performing duties at par with that of Mistries and therefore their case should be considered for grant of special pay and it is also recommended that the designation should be changed to that of Mistry. It is also the defence of the applicants that similar issue has been also decided through OA.Nos.327/89 and 388/89 as per orders dated 15.6.1992 of this Bench where special pay of Rs.35/- has been allowed to the applicants. The applicants submit that they are similarly placed and therefore entitled to get the same benefit. The applicants have also placed reliance on the judgement of Allahabad Bench in OA.NO. 1167/92 decided on 14.9.1995.

12. Keeping in view the above contentions of the applicants, we will go into the merits of the relief prayed for. On going through the orders relied upon as detailed in Para 11 above, it is noted that order in OA.No.388/89 had been passed based on what had been held in OA.NO. 327/89. The decision in OA.NO.1169/92 of Allahabad Bench is also based on the OA.NO. 327/89. We have therefore carefully gone through the order dated 15.6.1992 in OA.NO. 327/89. The respondents have submitted that the decision in this OA. is mainly/on the fact brought out by the applicants that the Electricians ^{on Northern Railway} who were similarly placed as the applicants/had been allowed the benefit of special pay of Rs.35/-. However, this benefit allowed by the Northern Railway had been subsequently withdrawn and this fact could not be brought to the notice of the Bench by the respondents. In view of this, the respondents plead that the order in OA.NO.327/89 does not lay down a law and cannot be cited as a precedent. The counsel for the respondents brought to our notice the order of this Bench dated 21.2.1997 in OA.NO.603/93 and OA.NO.684/93 wherein the same issue had been deliberated and the claim of the applicants for grant of special pay of Rs.35/- to the category of Electrician had been dismissed. We have gone through the order dated 21.2.1997. It is observed that the Bench in this order had taken note of the decision in OA.NO.327/89 but differed with the same keeping in view the law laid down by the Hon'ble Supreme Court ~~on~~ the following consideration :-

"... During the course of hearing in OA.NO.327/89 it was brought to the notice of the Tribunal that pursuant to the letter of the Railway Board, Northern Railway had implemented the Railway Board's Circular and allowed the special pay to the Train Lighting Mistries. However, on reconsideration, Northern Railway cancelled their letter dt. 5.2.1985 and withdrew the concession granted earlier. The letter of withdrawal was not brought to the notice of the Tribunal, therefore, the Tribunal was perforced to pass the order dt.15.6.1992 overlooking the withdrawal order passed by the Northern Railway in this behalf. It is true that pursuant to order of the Tribunal dt.15.6.1992 one Shri V.N.Gorhe and Shri S.R.Shinde were given the special pay of Rs.35/- only upto 31.12.1995 thereafter in view of the recommendation of the IVth Pay Commission the benefit was not granted thereafter. Since the applicants have based their claim on the basis of the Bombay decision which itself was decided on the basis of incorrect facts, the question of treating it as a precedent for other people does not arise."

In the present OA. the applicants have made the same submission that the benefit of special pay had been allowed on the Northern Railway. However, the respondents have brought on record the copies of the letters issued by the Northern Railway withdrawing the benefit. After careful consideration of the facts and circumstances of the present OA., we are in respectful agreement with the observations of the Bench in the order dated 21.2.1997 with regard to the decision in OA.NO. 327/89.

13. The issue involved in the present OA. is the grant of special pay of Rs.35/- from 1.5.1985 and grant of scale of Rs.1400-2300 from 1.1.1986 in pursuance of the recommendations of IVth Pay Commission. The special pay had been allowed by the Railway Board as per letter dated 1.6.1984 to the Mistries of Train Lighting who were being utilised

either Incharge of Maintenance gangs or are supervising the Highly skilled workers.

The plea of the applicants is that though they are designated as Electrician but they are performing the duties as that of Mistries and therefore entitled to the benefit of special pay. On the other hand, the respondents have contested the claim and stated that the applicants are not performing the duties at par with that of Mistries. With this background, the issue involved is a policy decision. The Railway Board has laid down the grant of special pay as per order dated 1.6.1984 for the post of Mistries. Whether the Electricians are performing the duties similar to that of Mistries and entitled for special pay is a matter which can be considered and decided by the authorities who have laid down the payment of special pay to the post of Mistries. It is not for the Court or Tribunal to venture into this field and perform the function of going into the comparison of duties of the two posts and then come to the conclusion that both the posts are performing the same duties applicants are and therefore entitled for the same pay scale.

The Hon'ble Supreme Court through several judgements has cautioned Court/Tribunal to resist from going into issue of equality of the posts and the fitment of the pay scales etc. One of such judgement has already been noted to by the Bench in the order dated 21.2.1997 referred to above. Further to this, we will refer to the judgement of the Hon'ble Supreme Court in the case of Union of India and Mr. vs. P.V. Hariharan, 1997 SCC (L&S) 838. An extract from Para 5 is reproduced as under :-

"Before parting with this appeal, we feel impelled to make a few observations. Over the past few weeks, we have come across several matters decided by Administrative Tribunals on the question of pay scales. We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of "equal pay for equal work" is also being misunderstood and misapplied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales."

14. In another judgement the Hon'ble Supreme Court in the case of State of U.P. and Ors. vs. J.P. Chaurasia & Ors., 1989 (1) SCC 121 has made following observations :-

"The first question regarding entitlement to the pay scale admissible to Section Officers should not detain us longer. The answer to the question depends upon several factors. It does not just depend upon either the nature of work or volume of work done by Bench Secretaries. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. 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. If there is any such determination by a Commission or Committee, the court should normally accept it. The Court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration."

15. Keeping in view the observations of Hon'ble Supreme Court with regard to the scope of judicial interference in respect of grant of special pay and fitment in scale etc., we will examine the facts and circumstances of the present OA. The applicants have mainly relied upon in the OA. for claiming the relief that similar benefit of special pay as per Railway Board order dated 1.6.1984 has been allowed on Northern Railway. The applicants have also pleaded that in all other Railways the Electricians are equated to the Mistries while they have been discriminated on Central Railway. In fact, the applicants have also submitted that the benefit of special pay has been allowed on other divisions of Central Railway except the Bhusawal Division. As regards the implementation of the Northern Railway, we have already brought out above that the orders have been subsequently withdrawn. As regards the other contentions, the respondents have strongly refuted. The respondents have submitted that on none of the Divisions of Central Railway Electricians have been allowed special pay. The respondents have brought out that on Southern Railway the Electricians had been allowed the special pay, but subsequently the same has been withdrawn as not being admissible in terms of the instructions of the Railway Board. From these

averments, it is quite clear that the Electricians have not been allowed special pay wheresoever existing in the Train Lighting. In view of this, we do not find that there is any case of hostile discrimination in respect of Electricians of Bhusawal Division. As regards the claim of the applicants that they are performing the same duties as that of the Mistries, the applicants have brought on record documentary evidence to support their contention. The applicants have brought copies of Muster Sheets, diaries of the work done as well as Glossary of Technical Terms (Electrical Engineering). We have gone through these documents. The Tribunal cannot evaluate these documents and record the findings that the duties of Electricians are at par with that of Mistries as duty list of Mistries has not been brought on record. Apart from the duties of Mistries, it has to be kept in view whether the mode of selection for Mistries and that of Electricians is the same. The applicants have not brought out whether the mode of selection for the Mistries and Electricians is the same. As observed by the Hon'ble Supreme Court, the equation of posts which requires the job evaluation based on the responsibilities shouldered and the mode of selection is not a matter within the domain of the Tribunal. We therefore restrain ourselves to go into this aspect.

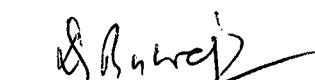
16. It is noted that the Central Railway had sent a proposal in 1987 proposing that the Electricians should be treated at par with the Mistries Train Lighting and allowed the special pay of Rs.35/- and the scale of Rs.1400-2300. However, the Railway Board rejected the proposal of the Central Railway as per order dated 30.6.1988 stating that this issue cannot be reopened in view of the recommendations

of the 4th Pay Commission having been implemented. However, subsequently on a further representation by a recognised union, reference was again made to the Railway Board and Railway Board again rejected the proposal of the Central Railway as per letter dated 19.11.1990 which was conveyed to the applicants and has been impugned ~~and forms~~ the basis for filing the present OA. It is further noted that the matter appears to have been pursued by the Unions at the Railway Board level and the Railway Board as per letter dated 20.5.1993 at page 133 of the paper-book had called for details from the Railways to consider the proposal of the recognised union for grant of scale of Rs.1400-2300 to the Electricians. Thereafter, finally the Railway Board ~~as~~ per order dated 21/22.1.97 had accepted the demand of the staff side raised in the ^(JCM) Departmental Counsel/Joint Consultative Machinery/meeting. From this, it is quite obvious that the Railway Board initially had not accepted that the Electricians are performing the same duties in the Train Lighting as that of Mistries. The matter was being ~~agitated~~ by the recognised unions at the Railway Boards level which led to a final decision as per the order dated 21/22.1.97. The Railway Board in this order has laid down ~~three~~ conditions which are to be satisfied for granting the pay scale of Rs.1400-2300 from the date of issue of this letter. The Railway Board had also directed to set up a committee of the Junior Administrative Officers to find out whether the ~~3~~ conditions laid down are met with. As indicated earlier, the recommendations of the committee have been accepted and orders have been issued on 18.6.1996 allowing the scale of Rs.1400-2300 to the Electricians.

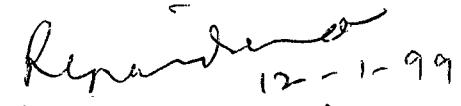
At the same time, the avenue of promotion for the post of Electricians designated as 'Supervisor' has been also laid down whereby the Electricians are to be promoted from Grade I Highly Skilled Fitter and not from Highly Skilled Gr.II as per the existing avenue of promotion. It is noted that the earlier decision of allowing the special pay from 1.6.1984 was also taken with the staff side in the JCM meeting and the present decision has also been taken from the staff side after due deliberation. Since as indicated earlier, the issue involved was determination of the equality of posts of Electricians with that of Mistries and was within the domain of the concerned authorities. Any decision has an all India implications on all the Railways as the category of Electrician exists in other Railways also. The controversy already stands settled with the letter of Railway Board dated 21/22.1.1997. It is our considered opinion that keeping in view the facts and circumstances of the case and observations made by their Lordships of Supreme Court in the case of Union of India vs. P.V.Hariharan (Supra), it does not call for any modification with the same and allowing the same benefit retrospectively to the applicants from 1.5.1984. The learned counsel of the applicants argued that the Junior Administrative grade Officers' Committee has come to the conclusion that the Electricians are performing the same duties as that of Mistries and therefore it establishes the contention of the applicants. In view of this, it is their plea that the applicants deserve to be allowed special pay from 1.6.1984. We are however not persuaded by this argument in view of

the fact that as is clear from order dated 18.6.1997 that while allowing the scale of Rs.1400-2300 and redesignating the Electricians as Supervisors, the avenue of promotion has been modified to be at par with that of Mistries whereby they have to be promoted only from the Highly Skilled Fitter Gr.I so that they can supervise their work. In case of the applicants, they were promoted from Grade II as Electricians.

17. In the light of the above discussion, we are unable to find merit in the relief prayed for by the applicants. The OA. therefore deserves to be dismissed and is accordingly dismissed. No orders as to costs.


(D.S.BAWEJ)

MEMBER (A)


12-1-99
(R.G.VAIDYANATHA)
VICE CHAIRMAN

mrj.