

(13)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 771/90

Transfer Application No: ---

DATE OF DECISION:

28-10-89

P.V.Athawale & 33 Ors.

Petitioner

Mr.C.M.Jha

Advocates for the Petitioner

Versus

Union of India & 16 Ors.

Respondent

Mr.N.K.Srinivasan for R.No.1 and 2

Advocates for the Respondent

Mr.S.Y.Gupte for R.No. No.3 to 8

Mr.G.S.Walia for R.No.9 to 15

CORAM :

The Hon'ble Shri B.S.Hegde, Member(J)

The Hon'ble Shri M.R.Kolhatkar, Member(A)

1. To be referred to the Reporter or not ?

2. Whether it needs to be circulated to other Benches of the Tribunal ?

M.R.Kolhatkar

(M.R.KOLHATKAR)
M(A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(14)

O.A.771/90

P.V.Athawale & 33 Ors. . . Applicants

-versus-

Union of India & 16 Ors. . . Respondents

Coram: Hon'ble Shri B.S.Hegde, Member(J)

Hon'ble Shri M.R.Kolhatkar, Member(A)

Appearances:

1. Mr.C.M.Jha
Counsel for the
Applicants.
2. Mr.N.K.Srinivasan
counsel for
Respondents No.1 and 2.
3. Mr.S.Y.Gupte,
Counsel for
Respondents No.3 to 8.
4. Mr.G.S.Walia
Counsel for
Respondents No.9 to 15.

JUDGMENT:

(Per M.R.Kolhatkar, Member(A))

Date: 28-10-94

The application is on behalf of 34 Motormen of the Western Railway who have been working as motormen in Western Railway from different dates ranging from 1959 to 1982 vide Exhibit 'A'. Respondents No.1 and 2 are official respondents viz. General Manager, Western Railway, and Divisional Railway Manager, Western Railway, Bombay Central. Respondents No.3 and 4 are Senior Electrical Foreman selected and likely to be absorbed as motormen and Respondents No.5 to 17 are selected and absorbed as Motormen in the grade of Rs.550-700 (pre-revised). Applicants contend that respondents were originally in the higher scale of pay (Rs.700-900) and hence are drawing more pay than applicants though as motormen their length of service is short. Applicants had initially impugned the notification dated 3-7-82 on the subject/

"Filling up of vacancies of Motorman in scale of Rs.550-700(R) in Bombay Division" which states that in order to maintain the suburban services in Bombay, there is an urgent need to form a panel of 50 Motormen and therefore it has been decided that the following categories of railway employees would be eligible to apply for the vacancies of Motormen by selection. The categories (i) included, apart from Drivers and Shunters, (ii) employees possessing Diploma in Electrical/ Mechanical/Electronics Engineering, (iii) Employees working in Highly Skilled Grade II and in higher grades possessing ITI certificate (iv) in specified trades and Firemen Grade 'A' / Diesel Assistants and Assistant Drivers (Electrical). In terms of this notification selection took place vide memorandum dated 20-2-1985 at Ex. 'D' and some of the private respondents find a place in the list of selected candidates. The applicants feel aggrieved by the selection because according to them as a result of this selection the persons as motormen who are junior to them have become entitled to higher fixation of pay on the basis of the pay drawn by them in their previous grades. Applicants had represented that the running staff in grade Rs.550-750 are equated to the grade of Rs.700-900 by taking the element of 30% to that of stationary staff, therefore when the employees from the stationary cadre are posted to the running category, the element of 30% should be deducted from their pay and the pay in the running category should be fixed accordingly. They therefore represented that

either they should be given advantage of stepping up or alternatively the basic pay of the other categories of staff should be stepped down. The original prayer of the applicants was to cancel the whole selection of Motormen held on 20-2-1985 but as per Tribunal's order dated 20-11-1990 they were allowed to amend the application. So the prayers which we are required to consider in this O.A. are as below:

(a) Respondents No.1 and 2 be directed to remove the anomaly of pay by stepping up the applicant's pay to the level of respondents No.5 to 17(juniors);

(b) Respondents No.1 and 2 be restrained by an order of injunction not to appoint higher grade employees as motormen including respondents No.3 and 4.

2. At the stage of hearing it was pointed out to the applicants that their application suffers from the vice of multiplicity of reliefs. The counsel for the applicant therefore stated that he wishes to confine his prayers to the amended relief No.(b) referred to above at the minimum.

3. The applicants rest their case in the first instance on a proper interpretation of Rules of the Railway Establishment Manual. For this, we are required to consider provisions of Rule 209, 213(a), 216(d) and (g) of the Indian Railway Establishment Manual.

"209. Definitions:

(1) Promotion includes promotion from lower grade to a higher grade, from one class to another class and from one group to another group.

(2) 'Non-selection posts' are posts, grades or classes which have not been declared as 'selection posts';

(3) 'Selection posts' are posts, grades or classes to which promotions are made on the basis of selection.

213(a)

Selection posts shall be filled by a positive act of selection made with the help of selection boards from amongst the staff eligible for selection. The Railway servants considered shall ordinarily not be in grades lower than two grades below the post to which promotion is being made.

216. Procedure to be adopted by Selection Board :-

(d) Eligible staff upto four times the number of existing and anticipated vacancies plus 25% thereof for unforeseen vacancies will be called for written and/or viva voce tests. (Anticipated vacancies connote only those which are likely to arise due to normal wastage during the currency of the panel). If this number can be obtained in the grade immediately lower, there would be no need to go to the grades further lower down. If the requisite number of staff on this basis is not available in the grade next to the grade for which the selection is being held, the Administration could go to lower grades in order to make up four times the number required to be called up for selection but in no case can the eligibility be extended to staff in grades lower than the third. Persons employed against fortuitous

short-term or stop-gap promotions to the eligible grades made otherwise than in accordance with the regular approved method of promotion will not be eligible for consideration. It is desirable to hold written tests as part of a selection in respect of all initial selection grade posts in the different channels of promotion but in every case a viva voce test shall be held. If a written test is proposed to be held, advance intimation shall be given to all ~~eligible~~ candidates.

(e) ...

(f) ...

(g) For general posts, i.e. those outside the normal channel of promotion, for which candidates are called from different categories, the selection test is an open competitive test. The number of candidates to be called for written and/or viva voce tests will ordinarily be limited to the senior eligible staff to the extent of four times the number to be placed on the panel, the number to be called from each category being regulated by a quota to be prescribed by the railway."

4. According to the applicants it is only Drivers Gr. 'C' and Shunters in the lower grade who are entitled to be considered for selection as motormen. The action of the railway administration in considering other categories than drivers and shunters is patently wrong as they are not in the zone of consideration. Secondly some of them were drawing a higher salary than the applicants. The seniority goes by the pay scale and a person who draws the higher pay scale cannot be said to be a junior. It is thus only the junior drivers, shunters who are entitled

to be considered and selected for the post of motormen. For this proposition the applicant relies on the case of N.J.Pandya and Ors. v. Union of India & Ors. 1989(2)AISLJ(CAT) 192 which was a case decided by the Ahmedabad Bench of the CAT. This case interprets Rule 213(a) quoted above along with Rule 216 which deals with the determination of the number of eligible staff and is stated to lay down that promotion to the same grade is a contradiction in terms and there is no warrant for holding any instructions that equivalent grades can be regarded as being eligible for promotion in the same grade.

5. On this particular point the reply of the official respondents is that post of Motorman is a recruitment category to which appointments are made either by placing indent on the Railway Recruitment Board or by notification calling for applications from serving railway employees fulfilling the required qualifications. It is therefore denied that the appointment to the post of Motorman is a promotion from one grade to another higher grade as per normal channel of promotion and therefore it is denied that employees who were in higher scale of pay cannot be selected. Respondents No.3 and 4 have pointed out that it is not Rule 213(a) which is applicable in the present case but it is Rule 216(g) which applies which is already reproduced. In our view, it being an admitted position that Motorman is a category to which appointment is made partly by promotion and partly by direct recruitment there is nothing illegal in the railway

administration in issuing a notification calling applications from amongst specified categories of employees irrespective of whether they draw higher salary or not. So far as the selection in 1985 is concerned that selection did not directly affect the applicants. They were not among the persons who had applied and not selected. Selection of the staff for particular categories of post in accordance with the guidelines laid down in the Railway Establishment Manual is a management function and it is not open to the employees who have been already appointed by following another channel of appointment viz. promotion to question the action of the railway administration on the ground that in the process persons are selected who are junior but who draw higher grade of pay. The challenge being to the selection made by the railway administration in 1985, apart from being time barred and otherwise suffering from the vice of multiplicity of reliefs, is not tenable in the light of the rules.

6. The question, however, of the ratio laid down by the division bench of the Ahmedabad Bench of the C.A.T. in Pandya's case still needs to be gone into. Pandya's case was one of seniority and the question involved was whether the applicant Shri Pandya who was in the zone of selection holding a lower pay scale was entitled to be interpolated in the seniority list vis-a-vis other persons who were lower down in the grade and were stated to be outside the zone of

consideration. In Pandya's case, on consideration of Rule 213(a) and 216(d) the Tribunal held that if sufficient number of persons in the immediately lower grade were available, then the respondents ought ~~not to~~ have extended the zone of selection lower down. It would be thus seen that the facts calling ^{for} determination before the Tribunal related to promotion and in that question the Tribunal held that the promotion to the same grade is contradiction in terms. In this connection, we may also refer to the observations of the Tribunal in para 8 of their order. (These observations may be read keeping in view the fact that they appear to contain certain typographical errors and omissions which have crept in while printing)

"8. We are aware that there are occasions and cases in which it is dependable on persons either for reasons of administrative exigency or personal convenience through out for changes of categories and by which a same pay scale in another category is allowed. Not in a few cases may also be possible for persons made even for a post of a lower pay scale reasons of present convenience. The induction of such persons in posts of equal or lower pay scale in such categories is no doubt similarly allowed to rules governing in the seniority are different and are specific in terms of their being placed below the persons holding the same pay scale."

It would be thus seen that Pandya's case is not an authority in the case of selection of posts where persons from different grades are drawn for making selection and to which the

Rule 216(g) applies which we have already reproduced above. In our view, therefore,

Pandya's case does not help the applicant.

Counsel

~~7. x. 1990~~ for respondents No.2 and 3 also

brought to our notice the judgment of the Hon'ble Supreme Court in the case of Post Graduate Institute and Others vs. Dr.J.B.Dilawari and others, 1988(Supp)SCC 355 where it is laid down that "prescribing qualifications is the work of expert body and court would be slow to impose its opinion in the matter."

In our view this judgment does indicate that it is open to the respondents to lay down rules regarding selection of various posts including the post of motormen for which it is open to them to lay down the categories from which the selection for the posts of motormen can take place and the grievance of the applicants that higher grade employees may not be appointed as motormen has no merit.

8. Regarding the higher pay being drawn by some of the respondents it is stated by respondents No. 3 to 8 that the pay of the respondents who were already regular in their scale of previous posts on their appointment as motorman is rightly fixed according to the provisions of Rule 2017 of the Indian Railway Establishment Code, Vol. II. In case of officiating Railway servants, their pay was also accordingly correctly fixed under

Rule 2026 read with Rule 2027 of the same Code. The respondents deny the allegation that some of the respondents after joining as motorman were given only paper promotion in the parent department in the scale of Rs.700-900 without working for a single day.

What was actually done was the restructuring of cadres as a result of review of Group C and D cadres on Railways as a result of Railway Board's orders and this was given retrospective effect from 1-1-1984. As there was time lag between the date of issue of the orders of restructuring, the pay was fixed in the scale of upgraded post from 1-1-1984 and the eligible employees were paid arrears due accordingly from that date.

9. So far as prayer (a) is concerned counsel for respondents No. 9 to 15 brought to our notice copy of circular No. E/ELT/773/1 (M/Man)

dated 6-7-1989 on the subject of Fixation/
Stepping up of pay of Motorman Electrical
(Tr) Deptt. Bombay Division whose contents
are reproduced below :

"In terms of Railway Board's letter No. PC III-74/ROP-1/32 dated 4-9-74, the benefit of stepping up of pay is admissible provided the following conditions are fulfilled :

- a) Both the junior and senior employees should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre.
- (b) The un-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical; and
- c) the anomaly should be directly as a result of the application of the provisions of Rule 2018 (F.R.22C)R-II in the revised scale. "

The railway administration had rightly pointed out that the applicants do not fulfil the conditions for stepping up. On a perusal of the condition we are satisfied that merely because the applicants are getting a smaller pay packet they cannot invoke the provisions which are analogous to FR 22-C relating to stepping up. We, therefore, find no substance in the prayer (a) of the application.

Counsel for the applicants invited our attention to the fact that a reference was made by the Divisional Railway Manager Bombay Central vide their

letter dated 19-9-1980 at page 36 to the Zonal office and reply is still awaited. Although the official respondents were not able to tell us whether a reply has since been sent we notice from the contents of the letter that the position was already explained to the applicants. We, therefore, consider it immaterial whether the reply from the Zonal Office to the Divisional Office was sent or not.

ii. The next prayer is that because the staff other than Drivers and Shunters who have been recruited now, i.e. the respondents belonging to stationary category but on higher grade, therefore their salary should have been fixed by deducting element of 30%, being their running allowance from their basic pay. This is not permitted under the rules. The official respondents have enclosed in Annexure R-I Railway Board's instructions dated 24-4-1987 which indicate that inclusion of running allowance while determination of pay element in the revised scales of pay consequent on IVth Pay Commission is prescribed under the rules. Demand for reduction of 30% element doing while fixation of the pay is merely self serving and not supported by rules. Counsel for the applicants says that official respondents cannot rely on a post dated circular for the action taken by them in respect of a period prior to the date of issue of the order relating to IVth Pay Commission. The counsel for respondents No.9 to 15 however brought to our attention a copy of Railway Board's letter No. E(NG)1/78/PMI/305 of 15-6-79 which is

reproduced below:

"43. Running staff:-

The pay scales of running staff being low, such staff has very little chance to successfully compete in the departmental selections where seniority plays an important role and the running staff on account of their low pay scales get a very low position in seniority. The Railway Board have, after considering the said handicap, have decided that this disadvantage should be removed by adding to the pay scales of the running staff roughly 30% of the same (in lieu of running allowance) for the purpose of comparison with non-running categories for promotion/selections. The occasion for comparison normally arises in the following grades where equivalence of grades should be taken as below:

Actual scale	Scale of stationary categories to which to be treated as equivalent after adding 30%
Mail Guards (Superfast mail/ Exp.)	Rs.1400-2600
Passenger Guard	Rs.1350-2200
Goods Guard	Rs.1200-2040
Mail Drivers	Rs.1640-2900
Passenger Drivers	Rs.1600-2660
Goods Drivers	Rs.1350-2200
Shunter	Rs.1200-2040

From this it is clear that Railways rightly allowed inclusion of 30% running allowance as a pay element while determination of pay for staff drawn from stationary cadres even prior to the implementation of IVth Pay Commission.

12. On the general proposition that stepping up should be permitted to seniors vis-a-vis juniors on the broad principle of equal pay for equal work counsel for respondents No.3 and 4 invited our attention to the dicta of

Supreme Court in the case of State of A.P.
v. G. Sreenivasa Rao (1989) 2 SCC 290 vide
para 15:

"Equal pay for equal work" does not mean that all the members of a cadre must receive the same pay packet irrespective of their seniority, source of recruitment, educational qualifications and is various other incidents of service. When a single running pay scale is provided in a cadre the constitutional mandate of equal pay for equal work is satisfied. Ordinarily grant of higher pay to a junior would ex facie be arbitrary but if there are justifiable grounds in doing so the seniors cannot invoke the quality doctrine. To illustrate, when pay fixation is done under valid statutory rules/ executive instructions when persons recruited from different sources are given pay protection when promotee from lower cadre or a transferee from another cadre is given pay protection, when a senior is stopped at efficiency bar, when advance increments are given for experience/passing a test/acquiring higher qualifications or incentive for efficiency; are some of the eventualities when a junior may be drawing higher pay than his seniors without violating the mandate of equal pay for equal work. The differentia on these grounds would be based on intelligible criteria which has rational nexus with the object sought to be achieved. We do not therefore find any good ground to sustain the judgments of the High Court/Tribunal."

13. The counsel for respondents No.9 to 15 also pointed out that although the prayer regarding challenge to the selection process was withdrawn at the argument stage basically the applicant has really challenged the selection which he is not entitled to do. All other points are subsidiary thereto. He pointed out that the only ground on which the applicants are asking for some sort of pay fixation which according to them is ^{fair} that they have been recruited earlier as motormen. However, it is lost sight ^{of} that the fresh entrants drawn from the other categories are also fixed in the common grade of motormen. When they are given this grade their pay is fixed according to rules and if in the process of application of rules ^{of} some persons draw higher emoluments, no one can have a grievance.

14. We have considered all the arguments on merits without considering the grounds of limitation and plurality of reliefs and we are satisfied that there is no ^{substance} in the application. The O.A. is therefore dismissed with no order as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
Member(A)

B.S. Hegde

(B.S. HEGDE)
Member(J)