

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.N. 603 & 684 /93.

Date of Decision 21.2.92

Rajbali Ram Kishore & Ors. Petitioner

Shri G.D.Samant. Advocate for the Petitioner.

Versus

Union of India & Anr. Respondent

Shri S.C.Dhawan. Advocate for the Respondents.

Coram:

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

The Hon'ble Mr. P.P.Srivastava, Member(A).

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


(B.S. HEGDE)
MEMBER(J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

1. ORIGINAL APPLICATION NO. 603/1993

and

2. ORIGINAL APPLICATION NO. 684/1993.

21/11, this the ~~Twenty~~ day of February 1997.

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

1. ORIGINAL APPLICATION No. 603/93.

1. Rajbali Ram Kishore,
Hira Kumbhar Chawl,
Room No.14, C.S.T.Road,
Kurla,
Bombay - 70.
2. Arun Pandurang Bagul,
Sheetal Cooperative Hsg.
Society, IInd, F C/12,
Kulgaon, Dist: Thane.
3. Rajaram Hazari Lal Chidar,
Room No.14, 3rd Floor,
Parvati Apartment, Jimmi Baug,
Kolsewadi,
Kalyan (East), Dist. - Thane.
4. Vijay Damodar Bhima,
Devle, Post Lonavala,
Tal-Maval,
Dist. Pune.
5. Suresh Dhondoo Dasharath,
B.I.T.Chawl, No.6/60,
Saint Mary Road, Mazagaon,
Bombay - 400 010.
6. Mohan Bansi Lal Kushwaha,
Room No.3, Shewde Chawl,
New Jimmi Baug, Kolsewadi,
Kalyan (E),
Dist. Thane.
7. Kinkar Dattu Shinge,
Room No.5, Satpute Chawl,
Shivaji Nagar, Waldhuni,
Kalyan.
8. Chandrakant Kashiram Pandirkar,
31/224, Thakkar Bappa Colony,
S.G.Barve Marg, Chembur,
Bombay - 400 071.
9. Nivruti Punja Pagare,
171, A/Room No.5656,
Kanamwar Nagar, Vikhroli (E),
Bombay - 400 083.
10. M.B.Pol,
Shinde Chawl,
Sanjay Nagar, Room No.6,
Mumbra, Dist - Thane.
11. Pradeep Vasudeo Patil,
At Post - Mathane,
Tal. Palghar,
Dist - Thane.

12. Shivkumar Gokarn Prasad Tiwari,
Sukla Compound, Building No.B,
Room No.4, Ganeshwadi,
Kalyan (E), Dist. Thane. ... Applicants.

2. Original Application No.684/1993.

1. Sadashiv Hari Chandroo,
Raghu Mahtre Chawl,
Room No.2, J.S.Road,
Bhandar Alli,
Post/Dist.-Thane.

2. Vishnu Ramchandra Kirpekar,
'D' Silva Nagar,
Post - Nala,
Tal. Vasai, Dist - Thane.

3. Sakharam Thamaji Mokal,
Kannamwar Nagar No.2,
Gangadhar Co-operative Society
Ltd., Building No.179,
Room No.6286, First Floor,
Vikhroli (E),
Bombay - 400 083.

... Applicants.

(By Advocate Shri G.D.Samanth)

V/s.

1. Union of India through
The General Manager,
Central Railway,
Bombay G.P.O. - 400 001.

2. Divisional Railway Manager,
Central Railway,
BOMBAY G.P.O. - 400 001.

... Respondents in
OAs 603 & 684/93.

(By Advocate Shri S.C.Dhawan).

O R D E R

(Per Shri B.S.Hegde, Member(J))

The issue involved in both the O.As. are one and the same, therefore, they are disposed of simultaneously. In these OAs, the applicants are praying for a declaration that they are entitled to the benefit of scale Rs.1400-2300 w.e.f. 1.1.1986 on the basis of the recommendation of the IVth Pay Commission, accordingly their pay may be fixed in the said scale w.e.f. 1.1.1986.

2. The applicants have been appointed in the Railway Service during 1953 to 1982 and subsequently promoted to higher grade and lastly promoted as Electricians in the Grade Rs.380-560 (RS). The scale of

Electrician's Rs.380-560 has been allotted the grade Rs.1320-2040 (RP) from 1.1.1986 on the recommendation of the IVth Pay Commission. Whereas, the scale of Rs.380-560 was allotted to the Electrician on the basis of the IIIrd Pay Commission. The learned counsel for the applicant Shri G.D.Samant heavily relied upon the letter issued by the Respondents dt. 1.6.1984 which reads as follows :

"Arising from proposals made by the Staff Side in the Departmental Council (JCM), the Ministry of Railways have decided that a special pay of Rs.35/- p.m. may be granted to such of the Train Lighting Mistries who are either in independent charge or gangs or are supervising highly skilled workers."

Accordingly, the Railway Board issued a Circular dt. 10.8.1987 (Annexure 'E') on the basis of the IVth Pay Commission and para 1127 of their report, that the lowest supervisory level in all Departments should be in the scale of Rs.1400-2300 and have decided that Mistries in pre-revised scale of Rs.380-560 in the Mechanical, Electrical, S&T and Civil Engineering Departments, including permanent way Mistries, Bridge Mistries, Works Mistries and Mistries in open line Workshop should be allotted revised pay scale of Rs.1400-2300 w.e.f. 1.1.1986. Further contention of the counsel for the applicant is, prior to the IVth Pay Commission the scale of Electrician, as well as, Mistries was one and the same viz. Rs.380-560 and the IVth Pay Commission recommended conversion of that scale into Rs.1400-2300, that being so it is not open to the Respondent Department to discriminate between Mistries and Electricians on the ground that the Electricians are not holding the supervisory post. In support of their

contention, they relied upon the decision of the Bombay Bench in O.A. No.327/89 Vishnu Narhar Gorhe V/s. Divisional Railway Manager, C.R., Bombay V.T. decided on 15.6.1992 wherein the Tribunal after considering the rival contentions of the parties directed the Respondents to pay to the applicant the special pay of Rs.35/- w.e.f. 1.5.1984 stating that there is hardly any distinction between an Electrician and Mistry for the purpose of application of the above mentioned Railway Board's letter. The applicant in his capacity as an Electrician is supervising highly skilled workers. He also relies upon the decision of the Allahabad Bench of the Tribunal in O.A. No.1167/92 dt.14.9.1995 which is purely based on the decision of the Bombay Bench in seeking relief for grant of pay scale of Rs.1400-2300. On the other hand, the counsel for the Respondents Shri S.C.Dhawan denied various contentions of the applicants and also raised a preliminary objection in their reply stating that the applicants are not entitled to the benefit of the Judgment dt. 15.6.1992 in O.A. No.327/89, as a matter of course as the said judgment was delivered on the facts at that point of time cannot be treated as a declaratory one and the said judgment does not lay down any law which could be termed as a binding precedent. Secondly, the application filed by the applicants are hopelessly barred by time and is to be dismissed on that ground alone. So far as the Railway Board's letter is concerned, it only envisages special pay of Rs.35/- is sanctioned to such of the Train Lighting Mistris who are either incharge of Maintenance Gangs or supervise the highly skilled workers.

Mr

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The applicants in these O.As. are working as Electricians and not as Assistants, nor they are supervising highly skilled workers, therefore they are not eligible for any special pay. By the introduction of the IVth Pay Commission on 1.1.1986 the scale of Rs.1320-2040 have been allotted to the Electricians and not the scale of Rs.1400-3200. The scale of Rs.1400-3200 was allotted to Mistries by the IVth Pay Commission as the applicants are not Assistants are only Electricians, the question of granting the scale does not arise. Needless, to mention there is a policy decision on the recommendation of the IIIrd Pay Commission that the said scale of Rs.1320-2040 was granted to Electricians. During the course of hearing in O.A. 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 re-consideration, ~~as~~ 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 up to 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. It is further

submitted that no Electricians was paid speicial pay of Rs.35/- anywhere in the Country. Therefore, granting of pay scale of Rs.1400-3200 hardly arises.

3. In support of the contentions on behalf of the Respondents, the counsel has relied upon two decisions of the Apex Court viz. (1) Chief Commissioner of Income Tax v/s. V.K.Gururaj & Ors. (1996(1) SC SLJ 236) wherein the Apex Court has considered the very same matter and passed the following order :

"The Government in OM No.F7 (52) EIII/78 dt.5.5.1979 have stated that special grant of pay of Rs.35/- per month to the Upper Division Clerks in the non-secretariat administrative offices was provided. Out of the UDCs carrying the scale of Rs.330-560/- 10% of the posts were earmarked with special grant of Rs.35/- in the secretariat and other places and they were directed to handle cases of complex nature involving deep study and competence. For dealing with such cases certain officers have been promoted to that 10% posts specified among the UDCs in the secretariat as well as non-secretariat administrative officers. They were being paid @ Rs.35/- per month as compensation for discharge of special duties. The respondents were not actually discharging those duties but being UDCs they claimed special pay of Rs.35/-. However, it being a question of law and since the matter is of perennial problem applicable to several places. We are of the considered view that the failure to file an appeal in one case does not have the effect of following in all other cases. It is seen that payment of Rs.35/- per month to UDCs discharging special duties of onerous nature, is personal pay so long as they discharge the same. Therefore, other UDCs who do not perform the special duties, though seniors, do not ipso fact get the same pay on the parity of equal pay due to juniors getting higher pay."

Therefore, he submits that the facts of this case is fully covered by the decision of the Apex court and it is binding on all the Courts. It is true that the ratio laid down in the aforesaid decision of the Apex Court is fully binding and the facts of this case is similar to the facts referred to above, especially the present applicants who are not granted any special pay of Rs.35/- as per Railway Board's direction and it is not a disputable question of fact

that they are having any supervisory power over the highly skilled labourers. The Railway Board Circular would apply only to those who are having either independent charge of the gangs or Supervise highly skilled workers. On a perusal of the records, we are of the view that the applicants are neither having any independent charge, nor they [are] supervising the highly skilled labourers.

Therefore, the contention of the applicants that they should be granted the scale of Rs.1400-2300 does not [] have any merit. Secondly, he relied upon the decision of the Apex Court in Union of India & Ors. V/s. S.Yoganand & Ors. (Civil Appeal Nos.11486 & 11487/1996) decided on 30.8.1996 wherein the Apex Court has held [as follows]:

"This Court has repeatedly pointed out that the Courts or the Tribunals normally should not try to fix the pay scales of different categories of employees only on principle of equal pay for equal work. This aspect of the matter [] has been examined in detail in the case of State of M.P. & Ors. Vs. Pramod Bharasidya & Ors reported in (1993(1) SCC 539)."

In view of the ratio laid down by the Apex Court in respect of the decision of the Tribunal the same cannot hold the field. It is not for the Tribunal to fix the pay, on the other hand, it is for the competent authority to decide it. In the instant case, the applicants were not granted any special pay of Rs.35/- and they have based their claim purely on the basis of decision of the Bombay Bench. In this connection, needless to mention that the Judgment and orders of the Court does not give [] any cause of action and the cause of action should be reckoned from the actual date. Thereby the cause of action, if at all arisen, was only in the year 1986, the applicants have filed these OAs only in the year 1993, i.e. after a