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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 888/93  
Transfer Application No.

Date of Decision : 24.3.1995

Shri Brijbhushan D.Chowhan.

Petitioner

Shri H.A.Sawant.

Advocate for the  
Petitioners

Versus

Union of India & Anr.

Respondents

Shri N.K.Srinivasan.

Advocate for the  
respondents

C O R A M :

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

The Hon'ble Shri

(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)  
MEMBER(A).

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A. 888/93

Shri Brijbhushan D.Chowhan,  
20/4, Kusum Kunj, Dahanukar Wadi,  
Gokhale Road, Kandivili(W),  
Bombay - 400 067. .. Applicant

-versus-

1. Union of India

2. The General Manager,  
Western Railway HQ Office,  
Churchgate, Bombay-400021.

3. The Chief Works Manager,  
Western Railway Carriage  
Workshop, N.M.Joshi Marg,  
Lower Parel, Bombay-400013. .. Respondents

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

Appearances:

1. Shri H.A.Sawant  
Counsel for the  
Applicant.

2. Mr. N.K.Srinivasan  
Counsel for the  
respondents.

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

Date: 24-3-85

The applicant retired as Shop  
Superintendent, Parel Workshop, Western Railway  
on 31-8-1993. He worked in the Production  
Control Organisation Organisation from  
9-12-1981 to 5-8-1988. The case of the  
applicant is that Railways have not fixed  
his pay properly at the stage he was  
promoted from Chargeman Grade 'B' in the  
pay scale of Rs.425-700 to Chargeman 'A'  
in the pay scale of Rs.550-750 in terms of  
Office order dated 1-6-1985 at Annexure A-7.  
This annexure shows the applicant's

emoluments on 31-12-1983 as Rs.640/- in the pay scale of Rs.425-700 and on promotion to the post of Chargeman 'A' the emoluments are shown as Rs.675/- in the pay scale of Rs.550-750. Secondly, it is contended that because of the office note written by his superior at Annexure A-37 dated 1-6-1985, the applicant was retained in the Production Control Organisation in administrative interest and as such, he was entitled to 15% Special Pay in terms of Railway Board's circular dated 13-5-1991 at Annexure A-10, which states that "From the Board's letter dated 3-4-1991 above, it is clear that the Board's intention is not to exclude any category in PCO for getting 15% as special allowance." The applicant contends that he was not paid this Special Pay and even otherwise he lost incentive bonus because he did not work on the shop floor. The applicant has enclosed a statement at Annexure A-9 showing the loss in the basic pay suffered by him, as a result of wrong fixation of pay by the Railways on which 15% special pay is to be calculated.

2. The applicant also alleges discrimination between himself and Shri Jayantilal who belongs to the same cadre but a different trade who was similarly placed but who has got a higher pay fixation. He states that by their letter dated 5-8-91 the Railways have rejected his claim to compare his scale with Shri Jayantilal on the following ground:

"The case of pay of Shri Jayantilal S. Ex-JSS Fitter(G) of PCO/PL was protected as a special case and this case not be quoted as precedent in any other case."

3. The applicant also relied on the Full Bench Judgment in B.S.Wanjale & Ors. vs. Union of India & Ors. delivered on 31-3-1994, to which judgment, the present single bench was a party. That judgment was relating to applicability of Fundamental Rules, Rule 22 C to employees called 'Master Craftsmen' who were denied promotion to the post of Chargeman Grade-II. The judgment is reported at 1994(2)ATJ page 13 to 20.

4. The contention of the respondent is that the applicant did not carry out the promotion order as on 1-6-1985, that the pay fixation mentioned in Annexure A-7 was wrong and that a fresh order was issued on 8-11-1985 at Exhibit R-1 to the written statement of the respondents. This shows that the applicant was fixed at Rs.550/- in the pay scale of Rs.550-750. The Learned Counsel for the respondents produced the original service book of the applicant, from which it appears that the pay fixation shown in Annexure A-7 in the lower pay scale as Chargeman 'B' at Rs.640/- was wrongly mentioned and that the applicant was actually getting Rs.530/- as on the relevant date, namely, 31-12-1983; therefore, the pay fixation was correctly done at the lowest of the higher pay scale viz. Rs.550/- which was higher than the actual pay drawn by the applicant. It is also contended by the

respondents, with reference to the Service Book, that 15% of the basic pay was actually paid to the applicant as allowance, in terms of Railway Board's circular dated 3-4-1991 referred to by us.

5. So far as Jayantilal's case is concerned we directed the respondents to file a detailed affidavit which they did. According to the respondents Shri Jayantilal was promoted as Chargeman 'A' (Fitter) scale 550-750(RP) by order dated 20-2-82. He was drawing a pay of Rs.680/- in scale Rs.425-700 (R) as Chargeman 'B' in the Production Control organisation and on his promotion as Chargeman 'A' in the same organisation, his pay is fixed at Rs.725/- from 22-2-82 and he was getting pay of Rs.750/- per month from 1-2-83 after one annual increment in the normal course. Since Shri Jayantilal secured the promotion in Production Control Organisation as Chargeman 'A' Gr.550-750(R) prior to 31-12-83 he is allowed to draw his PCO pay as per his option as stipulated in para 2(v)(b) of Railway Board's letter No.E(NG)I-79-PMI-242(DC/JCM) dt. 13-9-84 a copy of which is annexed ~~herewith~~ as Ex.R-I In case of the applicant, promotion orders were issued only in the year 1985 as Chargeman 'A' In view of the Railway Board's orders referred above, the applicant was promoted in his Shop Floor position and transferred to Production Control organisation in the same grade.

6. We have seen the Railway Board's Circular dt. 13-9-84 referred to by the respondents. This circular on the subject of "Production Control Organisation(PCO) in Workshops - staffing pattern - streamlining of" states in para (v)(b) as below :

"(b) if any of the said staff have secured promotion in PCO on or before 31-12-1983 and their transfer to the shop floor will involve reversion to a lower grade than that in which they are presently working in PCO, they may be allowed to continue in PCO till such time they become due for regular promotion in their turn in the shop floor."

7. The applicant however states that this circular is not relevant. Alternatively he impugns the vires of the circular on the ground that it is contrary to other instructions of the Railway Board viz. their circular dated 4-5-1987 following on the recommendations of the Fourth Central Pay Commission which reads as below :

"subject:Recommendation of the Fourth Central Pay Commission - Decisions relating to fixation of pay on promotion/appointment from one post to another carrying duties and responsibilities of greater importance.

No. PCIV/86/Imp./36 dated 4-5-1987

O R D E R

In supersession of all the various existing orders, the President is pleased to decide that where a railway employee is promoted or appointed to another post carrying duties and responsibilities of greater importance than those attached to the post held by him, the provisions contained in

Rule 2018(FR 22-C) R.II shall apply without pay limits. Accordingly the extant orders laid down under this Ministry's orders No. ERB-1/78/12/1 dated 12.10.1978 and 29.5.1984, governing fixation of pay of promotions from Section Officer to Under Secretary/ Deputy Director and Under Secretary/ Deputy Director to Deputy Secretary/ Joint Director will stand superseded. These orders shall take effect from 1.1.1986."

8. We consider that the applicant's challenge to the Railway Board's circular dated 13.9.84 is an after thought and is not well grounded and reference to subsequent Railway Board circular is not relevant because what is in question is pay fixation to be done with reference to 31.12.83 i.e. prior to the implementation of IVth Pay recommendations. So far as the applicant's grievance that he was required to work in the Production Control Organisation in the interest of administration is concerned we notice that this matter has also been covered by Railway Board circular dated 13.9.84 referred to by the respondents which in para 7 provides as below:-

" In case after exercising option for the shop floor, the incumbents are not released for shop floor for administrative reasons but are retained in PCO, they will be deemed to have been transferred to the shop floor and as such will be eligible for the grant of special pay as at above namely @ 15%."

We are satisfied on the material on record that the applicant was in fact given the benefit of special pay of 15% for working in P.C.O.

9. Lastly, it appears to us that the case of B.S. Wanjale V/s. U.O.I. and Others, does not apply to the facts of the case because in that case the promotion of Master Craftsmen to a higher grade was disputed by the respondents. In this case, that is not the case. There is no dispute that the applicant was promoted from the post of Chargeman 'B' to Chargeman 'A'. The only dispute is whether the pay fixation was correctly done and whether by his retention in the Production Control Organisation instead of working in Shop Floor, he has suffered in any way, as compared with any other employee who is similarly situated.

10. We are inclined to accept the ~~clarifications~~ given by the respondents that there ~~has~~ been no discrimination as between the applicant and Jayantilal. The respondents have followed the Railway Board instructions dated 13.9.84 which, according to us, are perfectly legal and valid.

11. We, therefore, see no merit in the OA. which is liable to be dismissed and which we accordingly dismiss with no order as to costs.

*M.R. Kolhatkar*  
(M.R. Kolhatkar)  
Member (A)

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