

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 1033/94

Date of Decision : 21-01-2000

Shri B. K. Sonawane Applicant.

Shri G.D.Samant Advocate for the
Applicant.

VERSUS

Union of India & Others, Respondents.

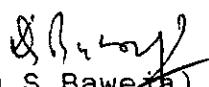
Shri S.C.Dhawan Advocate for the
Respondents.

CORAM :

The Hon'ble Shri D.S.Baweja, Member (A)

The Hon'ble Shri S.L. Jain, Member (J)

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other
Benches of the Tribunal ?
- (iii) Library


(D.S. Baweja)
Member (A)

mrj*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO. 1033/94

Dated this the 21st day of JANUARY 2000.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

Bajirao Kondiba Sonawane,
Assistant TSRT, Mankhurd,
under Senior Divisional Electrical
Engineer (Rolling Stock),
Central Railway, Kurla & Ors.

...Applicants

By Advocate Shri G.D.Samant

V/S.

1. Union of India
through General Manager,
Central Railway,
Bombay V.T.

2. Divisional Railway Manager,
Central Railway,
Bombay V.T.

3. Senior Divisional Electrical
Engineer, (Rolling Stock),
Central Railway,
Kurla Car Shed,
Kurla, Bombay.

...Respondents

By Advocate Shri S.C.Dhawan

O R D E R

{Per: Shri D.S.Baweja, Member (A)}

.....This OA. has been filed jointly by 19 applicants who are
working on the post of Assistant Suburban Rolling Stock Train
Examiner (ATSRT) in the scale of Rs.1320-2040 on Central

Railway. There are total 19 posts in the cadre. They are placed above Fitters and below Suburban Rolling Stock Train Examiner (TSRT)/Chargeman 'C'. The posts of ATSRT are filled from the post of Fitters after passing necessary Trade Test. The post of TSRT/Chargeman 'C' in the grade of Rs.1400-2300 is a selection post which as per the existing practice is filled from ATSRT. The grievance of the applicants is that they are not being considered for the post of TSRT/Chargeman 'C' as they have been wrongly placed in the grade of Rs.1320-2040 while implementing the recommendations of the 4th Pay Commission. It is further stated that Mistries of open line were given a Special pay of Rs.35/- before the receipt of 4th Pay recommendations and such of the Mistries who were drawing Special Pay of Rs.35/- have been recommended by the 4th Pay Commission to be placed in the Pay scale of Rs.1400-2300. However, though ATSRTs were also in the same grade as that of Mistries and performing the same duties but they were denied the special pay of Rs.35/- and accordingly denied the benefit of allotting the scale of Rs.1400-2300. It is also contended that ATSRTs are performing Supervisory duty as they have to supervise the work of Helpers, Fitters and even at times that of Master Craftsman (though he is in a higher grade of Rs.1400-2300). The Railway Board as per letter dated 2.7.1987 while accepting the recommendations of the 4th Pay Commission vide para 11.27 of the report has laid down that the lowest supervisory level in all departments will be in the scale of Rs.1400-2300 from 1.1.1986. However, the respondents have failed to extend this benefit to them inspite of the fact that they are

performing the duties which are supervisory in nature. The applicants represented their grievances through Respondent No. 3, i.e. Senior Divisional Electrical Engineer, Kurla Car Shed on 15.4.1994. Respondent No. 3 vide his letter dated 30.4.1994 based on their representation recommended to the higher authorities that the post of ATSRT should be treated equivalent to that of Mistries in the scale of Rs.1400-2300. The Respondent No. 3 also replied as per letter dated 7.9.1994 to the applicants with reference to their representation dated 15.4.1994. The applicants submit that they were hopeful that the proposal made by their controlling officer to the Headquarter will be accepted and their grievance will be redressed but no action was taken. Inspite of taking any action on their representation, a selection to the post of TSRT/Chargeman in the grade of Rs.1400-2300 was notified as per letter dated 29.7.1994. The list of eligible candidates enclosed with the list did not include any of the applicants. Feeling aggrieved by in-action on the part of the respondents to redress their grievance, the applicants have filed the present OA. on 15.9.1994 seeking the following reliefs :-(a) to direct the respondents to allot scale of Rs.1400-2300 to the applicants as equivalent to the posts of Mistries. (b) to direct the respondents to grant fixation of pay and consequential arrears of wages and allowances in the scale of Rs.1400-2300 from 1.1.1986. (c) to direct the respondents to consider the applicants for selection to the post of TSRTs/Chargeman in the scale of Rs.1400-2300. (d) to direct the respondents to interpolate the names of the applicants in the seniority list at the appropriate place.



2. The respondents have filed the written statement. At the outset, respondents have opposed the application stating that the same is not maintainable as it is barred by limitation since the applicants are challenging the recommendations of the 4th Pay Commission implemented from 1.1.1986. On merits, the respondents submit that the letter dated 30.4.1994 at Annexure-'A' cannot be relied upon by the applicants in support of their claim as this is an internal correspondents from the Field office to the Headquarters and does not imply that the recommendations made therein had been accepted by the competent authority. The applicants, i.e. ATSRTs were in the scale of Rs.380-560, i.e. the same scale as that of Grade I Fitters and Mistries before the 4th Pay Commission. The 4th Pay Commission allowed the scale of Rs.1400-2300 to all the Mistries who were working in the open line and drawing the special pay of Rs.35/-. Those of the Mistries who were not drawing special pay of Rs.35/- were allotted to the scale of Rs.1320-2040. Since ATSRTs were in the grade of Rs.380-560 and not drawing any special pay were given the replacement scale of Rs.1320-2040. In view of these facts, there is no administrative error in implementing the recommendations of the 4th Pay Commission. It is further stated that the post of TSRT/Chargeman in the grade of Rs.1400-2300 is a selection post and it is not to be filled only from ATSRT as alleged by the applicants. As regards the claim of the applicants that they are performing the duties of Supervisory nature which are the same as that of Mistries who have been allowed the scale of Rs.1400-2300, the respondents contend that the equation of posts and grades is a matter of policy and can be

decided only by the Railway Ministry. As regards the Notification dated 29.7.1994 for the selection to the post of TSRT/Chargeman in the grade of Rs.1400-2300, the respondents submit that the applicants were not in the zone of consideration as per seniority in the grade of Rs.1320-2040 and therefore their names are not included in the list of eligible candidates. The respondents also deny that any change in promotion policy and the channel of promotion has been done. In view of these submissions, the respondents plead that the applicants have no case and the OA. deserves to be dismissed.

3. The applicants have filed rejoinder reply controverting the submissions of the respondents and reaffirming their grounds taken in the OA. As regards the limitation, the applicants have stated that they are challenging the wrongful action of the respondents as admitted in Annesure-'A-2' of the OA. and it is not befitting on the part of the respondents to take a technical objection of limitation to deny the just and genuine claim of the applicant. It is further stated that the cause of action has arisen only when they had been denied the opportunity of being selected to the post of TSRT/Chargeman in the scale of Rs.1400-2300 as per Notification dated 29.7.1994 and therefore the OA. is filed.

4. We have heard Shri G.S.Samant, learned counsel for the applicants and Shri S.C.Dhawan, learned counsel for the respondents.

5. Before going into the merits of the reliefs prayed for, we will consider the issue of maintainability of OA. being barred by limitation. The respondents have brought out that the applicants are aggrieved by the implementation of the recommendations of the 4th Pay Commission w.e.f. 1.1.1986. It is further stated that the applicants were also aware of the scale of Rs.1320-2040 as back as in January,1988. The applicants, however, in the OA. have stated that the OA. filed is within limitation. In the rejoinder reply while replying to the plea of limitation taken by the respondents in the written statement, the applicants have stated that the just and genuine claim of the applicant cannot be denied on the technical plea of limitation. It is further contended by the applicants that the cause of action arose to them with the issue of Notification dated 29.7.1994 for selection to the post of TSRT/Chargeman in the grade of Rs.1400-2300 for which the names of applicants were not included in the list of eligible candidates. After careful consideration of the rival contentions, we are unable to accept the contention of the applicants and find merit in the plea of the respondents. The applicants have pleaded that they were denied the grant of special pay of Rs.35/- inspite of the fact that they were performing the same duties as the Electrical Mistries in Train Lighting. From the Railway Board letter brought on record with the rejoinder reply, it is noted that the special pay of Rs.35/-was granted as per the order dated 1.6.1984. In case the applicants claim that they were performing the same duties as by the Train Lighting Mistries, then the denial of

special pay of Rs.35/-as per order dated 1.6.1984 had given a cause of action to the applicants to agitate the matter. However, there is no averment to this effect that at any time they represented for non grant of special pay. Further cause of action arose, when the 4th Pay Commission recommendations were implemented and Electrical Mistries getting special pay of Rs.35/- were placed in the grade of Rs.1400-2300 while the applicants were allotted the scale of Rs.1320-2040 in replacement of Rs.380-560 grade in which they were placed before the 4th Pay Commission. We further note that some of the applicants were promoted as ATSRT in the scale of Rs.1320-2040 while working in the scale of Rs.1200-1800 as per the order dated 5.1.1988 Annexure-'B' to the OA. These applicants had appeared in the Trade Test knowing well that the scale of ATSRT is Rs.1320-2040. Further, for these applicants it was a case of promotion from the lower scale Grade II Fitter and therefore it is not understood why the applicants covered by the order dated 5.1.1988 are claiming allotment of scale of Rs.1400-2300 from 1.1.1986. From the documents brought on record and also clear from the averments made by the applicants, it is only in 1994 that the applicants made a representation about their grievance of not being allotting the scale of Rs.1400-2300. This means that till the filing of the present OA. for a period of 8 years from 1.1.1986 and almost 10 years from the date of issue of order for grant of special pay of Rs.35/-, the applicants have not explained the reasons for this delay. The applicants appear to have kept quiet

and accepted the scale of Rs.1320-2040 allotted to them. The applicants have neither explained the reasons for not representing the matter at any time nor made any application for condonation of delay. In view of these observations, we have no hesitation to subscribe to the plea of the respondents that the application is barred by limitation.

6. Coming to the merits, the main contention of the applicants is that they are performing the duties which are Supervisory in nature and at par with the Mistries who have been allowed the scale of Rs.1400-2300. The applicants just merely mentioning that their duties are equivalent to that of Mistries have not brought out any details except a copy of the representation dated 15.4.1994 at Annexure-'C' wherein some details of the duties performed by them have been brought out. The entire calim therefore hinges around the fact whether the duties performed by the applicants as Supervisory in nature and if so whether they are at par with that of other Supervisors, i.e Mistries who have been allotted the scale of Rs.1400-2300 as per the recommendations of the 4th Pay Commission. The evaluation of duties and pay scales is not an area within the domain of judicial review. It is for the department or expert bodies to determine the same. 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. The counsel for the respondents drew our attention to the

OA.NO.455/90 which has been decided by this Bench as per order dated 12.1.1999 wherein similar issue of claiming the pay scale of Rs.1400-2300 by the Electricians of Train Lighting from 1.1.1986 has been gone into. We note that the orders cited by the applicants in the rejoinder reply in case of OA.NO.327/89 and OA.NO.388/90 have been also gone into this order wherein one of us (D.S.Baweja) was a Member. We find that on the facts and circumstances of the case, the issue involved in the present case is the same as in OA.NO.455/90. The claim for scale of Rs.1400-2300 from 1.1.1986 was rejected. We are therefore of the considered opinion that the ratio of what is held in OA.NO.455/90 equally applies to the present OA. However, it is noted that in case of OA.NO.388/90, the Railway Board has taken a decision to consider the allotment of pay scale of Rs.1400-2300 to Train Lighting Electricians and for this purpose, a committee was set up to go into the duties performed by the Electricians and the channel of promotion. Based on the recommendations of the Committee, the Electricians have been allowed the scale from the date of issue of the Railway Board's order.

7. In the result of the above, the OA. stands dismissed both on account of being barred by limitation as well as being devoid of merits. However, the applicants are at liberty to make a representation to the Railway Board to consider their case for grant of scale of Rs.1400-2300 on the same lines as has been decided in respect of Electricians of the Train Lighting.

Railway Board may consider their representation accordingly. However, it is made clear that this will not give a cause of action to agitate the same claim as in the present OA. by filing a fresh OA. No order as to costs.

S.L.Jain
(S.L.JAIN)

● MEMBER (J)

D.S.Baweja
(D.S.BAWEJA)

● MEMBER (A)

mrj.