

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

O.A. No. 1375 of 1994.

Date of Decision: 19/7/96.

G.N. Salwan

Petitioner

Shri B.S.Thingore

Advocate for the Petitioner.

v/s.

Union of India & Anr.

Respondents

Shri V.S. Masurkar

Advocate for the Respondents.

CORAM :

The Hon'ble Mr. 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)
MEMBER (A)

abp.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

O.A. No.1375 of 1994.

Friday the 19th day of July, 1996.

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

G.N. Salwan, working as Dy.C.E.E.(O)
(now retired) in the Office of DPRE,
Central Railway - Dadar.

... Applicant.

By Advocate Shri B.S.Thingore.

v/s.

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

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

By Advocate Shri V.S.Masurkar
Addl. Central Government Standing Counsel.

O R D E R

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

The applicant was working in the year 1972-1973 in the substantive scale of Rs. 450-575 (AS) as Chief Traction Foreman and working as adhoc A.E.E. from 16/9/71. He was promoted on officiating basis to the post of A.E.E. from 9/2/72 and confirmed in this post on 5/1/79. The case of the applicant is regarding re-fixation of pay in terms of Railway Board Order dated 19/8/1980 on the subject "revision of scale of pay of Chief Traction Foreman and Traction Foreman (OHE) at Exhibit-A read with subsequent letter dated 16/9/88 at Exhibit-A 2. In the letter dated 19/8/1980, the Railway Board had communicated the decision of revision in the scale of Pay of Chief Traction Foreman and the Traction Foreman who were in the authorised scale of Rs. 450-575 and Rs. 375-475 to be placed in the scale of Rs. 840-1040 and Rs. 700-900. The second scale mentioned in the order dated 19/8/1980 is not material for this case. Subsequent letter dated 16/9/1988 states that the above mentioned revised scales should be granted retrospectively viz. with effect from 1/1/73. It is the contention of the applicant that in terms of these orders of the Railway Board, two of his colleagues namely

Shri C.L.Taxali and Shri Veeranna Hubly were given revised pay scales with retrospective effect but he has been denied the benefit.

2. In this connection, my attention was invited to the correspondence dated 28/8/1990 at Exhibit A-3 and correspondence dated 23/4/92 at Exhibit A-4 regarding Shri Taxali. However, the applicant has only referred to the case of Veeranna Hubly and, the data relating to Shri Hubly are not enclosed and cannot be relied upon.

3. So far as Shri Taxali is concerned, the pay fixation for the material period is as below:-

Pay fixed in Grade Rs.650-1200

on 2/1/73 Rs. 1000/-

Pay raised 1/1/74 Rs. 1040/-

Pay raised 1/1/75 Rs. 1080/-

Pay raised 1/1/76 Rs. 1120/-

Pay raised 1/1/77 Rs. 1160/-

4. This letter also gives the justification for the above pay fixation in following terms in paragraph 1 and 2:-

" The 4th PC Rules are similar to the 3rd PC Rules in one respect, in that the fixation in each case has to be done both in the substantive and officiating grades. Till the recent amendment of orders prescribing that a person is deemed to be confirmed holder of a post after regularly working in it for 2 years termed Probationary period (subject to the proviso that probation is not extended), the position was that an employee had to be confirmed in each grade as and when permanent vacancies available except that anyone who has officiated regularly for more than 3 years shall be on a par with a permanent incumbent.

The Officer was promoted in 1972 and had not completed 3 years on 1/1/73. As per Gazetted List published each year in July, he had not been confirmed in class-II, until 1/1/73 or even later. Therefore his substantive post is in grade Rs. 450-575 equated to Rs. 700-900 earlier, and to Rs. 840-1040 under Board's Rules 1973 which is a reproduction of FR 31, whenever the substantive pay exceeds the officiating pay, the latter shall be refixed under FR 22(a) (i). The refixation is in order."

5. It is mentioned in the above paragraphs that the

official namely Shri Taxali was promoted in 1972 and had not completed 3 years as on 1/1/73.

6. So far as the applicant is concerned, the case of the applicant for fixation in class-II has however been rejected vide Annexure-A-7 letter dated 6th Dec, 93 which states as below:-

"As regards, your fixation in Class-II from 01.01.1973 it is stated that you were already absorbed in Group 'B' prior to 01.01.1973 the question of revision of pay does not arise."

7. Thus it is on the ground that the applicant was absorbed in Group 'B' prior to 1/1/73 that the case of the fixation of pay of the applicant in class-II was rejected.

8. The relief claimed by the applicant therefore is to refix his pay from 1/1/73 in Scale of C.T.F. Rs. 840-1040 as is done in the case of Shri C.L.Taxali.

9. According to the applicant, the ground given for the rejection of his pay fixation in class-II applies to Shri Taxali as well since Shri Taxali is promoted as A.E.E. prior to 1973. He therefore alleges discrimination and seeks the relief.

10. It appears from the written statement of the respondents that the matter was under process and in this connection, there is enclosed letter dated 21/11/95 at Exhibit-R-1 from Sr.DAO, BB to the DRM in which it is intimated that earlier, the departmental office i.e. the AO had agreed to the proposal on par with Shri Taxali, since the absorption of applicant in class-II service as on 1/1/73 was not informed. After the correct position regarding his absorption in class-II since 1/1/73 was intimated, the concurrence earlier given was withdrawn. In the written statement, the fact that the pay fixation in class-II has been done in respect of Shri Taxali as per the enclosures to the OA has not been denied.

11. At the argument stage, the counsel for the

respondent has opposed the claim on two additional grounds namely that the OA is barred by limitation because the relief is claimed in terms of circular issued in August, 1980 and secondly that there is no sufficient material adduced by the applicant for this Tribunal to issue any mandamus. In particular, he has stated that none of the copies of the representations made by the applicant has been filed, and no comparative statement showing how the discrimination has been exercised against the applicant *vis-a-vis* similarly situated employees *viz.* Taxali or Hubly has been filed.

12. I have considered the matter, so far as the plea of limitation is concerned, the same does not appeal to me because it is not disputed that the circular dated 1980 was amended by circular dated 1988 giving retrospective effect to pay-fixation with effect from 1/1/73. It is also not disputed that the pay fixation cases were under process in the years 1990 to 1993 and the applicant has mainly challenged the communication dated 6/12/93 in regard to Pay fixation and the OA was filed on 5/12/94. The OA is, therefore, well within limitation.

13. It is true that the applicant has failed to adduced adequate details. The plea of the applicant's counsel that he has got all the representations made by him in his possession and they were not filed only in the interest of avoiding the OA being made too bulky is too flimsy to be accepted. All the same, I am concerned to see whether any discrimination has been practised *vis-a-vis* a similarly placed employee so far as the applicant is concerned. From the letter dated 28/6/93 at Exhibit-A-6 to OA, it is seen that the applicant was promoted to class-II service as A.E.E. on adhoc basis from 16/9/71. In the case of Shri Taxali, the Officer was promoted as A.E.E. in 1972 and the reason for giving the benefit of fixation of pay to him has been mentioned that he has not been confirmed in class-II in 1973 and has not completed 3 years by that time. The

same is the case with the applicant, he had been promoted on adhoc basis as A.E.E. on 16/9/71 but he had not completed 3 years as on 1/1/73. The pay of the applicant has been fixed in scale of Rs.840-1040 on 1/1/73 at Rs.880/-.

In the case of Shri Taxali, the pay has been fixed in the scale as on 2/1/73 at Rs.960/-. This, ofcourse, has been done by giving him the benefit of the appropriate increment. But the material on record does show that there is no difference between the case of Shri Taxali and the applicant, so far as ^{As concerned} their pay fixation in class-II from 1973. If that is so, then the applicant has been unjustly denied the same. This is a clear case of discrimination and, therefore, I am of the view that the applicant is entitled to succeed.

O R D E R

OA is allowed. Respondents are directed to review and refix the pay of the applicant from 1/1/73 in the scale Rs.840 - 1040 as has been done in the case of Shri Taxali and also refix thereafter in subsequent higher grades of Class-II and Sr. Scale and Dy.C.E.E. and selection grade in terms of Railway Board's letters dated 19/8/80 and 16/9/88. The arrears arising out of such revision of pay and all consequential benefits to the applicant may also be given. In the facts and circumstances of the case, I am not inclined to grant interest. OA is disposed of in above terms with no orders as to costs.

M.R.Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A)

abp.