

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 702/97

01.10

Date of Decision: .09.2001

Shri Thirunaukkarasu Natarajan & anr. Applicants

Shri K.B. Talreja.

Advocate for Applicants

Versus

Union of India & another

.. Respondents

Shri Suresh Kumar.

Advocate for Respondents

CORAM: HON'BLE SHRI S.L. JAIN. ... MEMBER (J)
HON'BLE SMT. SHANTA SHAstry. ... MEMBER (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library ✓

Shanta J
(SHANTA SHAstry)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 702/97
OCTOBER
THIS THE 05TH DAY OF SEPTEMBER, 2001

CORAM: SHRI S.L. JAIN. : MEMBER (J)
SMT. SHANTA SHAstry : MEMBER (A)

1. Thirunavukkarasu Natarajan,
JEE (TD)-Grade-II,
Under DEE (TD),
Kurla (C.Rly).
2. Navin Gyanchand Balwani,
JEE(TD)-Grade-II,
Under DEE (TD) Kurla, (C.Rly) .. Applicants

By Advocate Shri K.B. Talreja.

Versus

1. The Union of India,
Through the General manager,
Central Railway, Mumbai CST,
Mumbai-1.
2. The Divisional Railway Manager,
Central Railway, Mumbai CST,
Mumbai-1. .. Respondents

By Advocate Shri Suresh Kumar.

O R D E R

Smt. Shanta Shastry. Member (A)

The relief sought by the applicants in this case is to direct the respondents to fix the pay of the applicant correctly in the grade of Rs.1400-2300 (RPS) from the date of their appointment in the grade/post after fixing them correctly to award them the arrears of pay along with 18% interest.

2. The applicants are at present working as JEE with DEE (TD) Kurla, Central Railway. They were appointed as Assistant Operators after being duly selected.

3. An advertisement was given on behalf of the Railway Recruitment Board, Bombay vide Employment Notice No.5/91 issued on 21.12.91 for various posts including the post of Assistant Operator. It was mentioned in this advertisement that selected candidates would be paid a stipend of Rs.1400/- plus DA as per rules. The applicants had applied for this post of Assistant Operator. Thereafter, there was to be two years training anywhere in the Bombay division of Central Railway. They were selected and after having undergone the training the applicants were appointed as Assistant Operators vide orders dated 22.10.93. However, while so appointing they were given the stipend in the scale of Rs.1320 2040 (RPS). Thereafter, the applicants were assigned the grade of Rs.1400-2300 with effect from 14.2.96 and their basic pay was fixed at Rs.1480/-.

4. It is the contention of the applicants that in the advertisement issued in the employment news dated 21.12.91 inviting applications for the post of Assistant Operator, it was clearly stated therein that the selected candidates will be paid stipend at Rs.1400/plus DA as per rules and they would be required to undergo training for two years. Further, when the results were

declared, the grade shown against the post of Assistant Operator was Rs.1400 - 2300 (RPS), this was as on 06th October, 1992. The applicants were further subjected to medical examination. At that time also, the indication was that they would be appointed in the scale of Rs.1400-2300. However, to their utter shock, they were actually given the stipend of Rs.1320/- in the scale of Rs. 1320 - 2040. The applicant No.1 joined after training on 3.1.94 and the applicant No.2, who was appointed directly, on 3.12.93. Both the applicants made a joint representation on 21.11.94 followed by reminder dated 26.9.95 and advocates notice dated 28.8.95. It is the grievance of the applicants that their pay was not fixed in accordance with the rules and they have been put to monetary loss. The applicants have also stated that in fact applicant No.1 was already in the scale of Rs.1320-2040 and therefore, there was no need for him to apply for a post in the scale of Rs. 1320-2040. It is only because the advertisement clearly mentioned that they would be paid the scale of Rs.1400-2300 that they had applied and got selected. The applicants also approached the Labour Unions and had protracted correspondence with the respondents. According to them, they were finally assigned the grade of Rs.1400-2300 with effect from 14.2.96. Their basic pay was fixed at Rs.1480/-, whereas it should have been Rs.1560/-. There is thus, an anomaly of Rs.80/- in the

basic pay alone. The applicants, therefore, have prayed to set aside the wrong and fix the scale of Rs.1400-2300 from the date of their appointment.

5. The respondents submit that the pay scale of Assistant Operator is Rs.1320-2040. It was a sheer mistake that the wrong pay scale was shown in the advertisement No.5/91 issued on 21.12.91. The next promotional post from the grade of Assistant Operator is that of Chargeman "B" in the pay scale of Rs.1400-2300. The mistake was realised and the applicants were, therefore, given the scale of Rs.1320-2040 at the time of appointment. The applicants accepted the appointment. It was open to them not to accept the appointment. The respondents, further submit that in another OA 588/94 filed by one Shri V.N. Mayura Vs. Union of India & Ors. before this Tribunal, the same advocate as in the present case had filed the case, where he had claimed the scale of Rs.1320-2040 for the applicant therein. According to the respondents, the applicants were fixed in the correct pay scale. Even in the service register of the applicants, it is mentioned that they were appointed in the grade of Rs.1320-2040. Therefore, the applicants cannot claim the grade of Rs.1400-2300 merely on the strength of an error committed by the administration at one stage. The applicants had accepted the appointment in the scale of Rs.1320-2040. Later on the applicants appeared in the selection for the post of Chargeman "B" which is in the

grade of Rs.1400-2300. Through a written test held on 12.10.96 and viva voce held on 15.11.96, they had finally qualified for the post and were given the pay scale of Rs.1400-2300 by fixing their pay at Rs.1480/-. Had the applicants been entitled to the grade of Rs.1400-2300 in the post of Assistant Operator, then there was no reason for them to appear for the selection of Chargeman "B" which carries the pay scale of Rs.1400-2300 in the post of Assistant Operator.

6. The applicant tried to contend further that it was not only a case of wrong fixation of pay, but even violation of terms and conditions of recruitment as notified in the advertisement No.5/91. The training was to be for two years, but the applicants were not given any training and were directly appointed in the lower pay scale of Rs.1320-2040.

7. We tried to ascertain the facts from the applicants as well as from the respondents. The respondents submitted certain orders issued regarding channel of promotion in sub-station category of traction distribution. According to this, channel of promotion the post of Assistant Operator is filled by 100% direct recruitment, it is so in the scale of Rs.1320-2040. Thereafter, the post of sub-station operators/ sub-station Inspector/ Chargeman "B"/ Electrical Inspector is shown in the grade of Rs.1400-2300. From this tree, it is evident that the post of Assistant

Operator could not be in the scale of Rs.1400-2300. Further, the respondents have produced another document showing that the pay scale of Assistant Operator was in the grade of Rs.380-560 (RS). This grade of Rs.380-560 was replaced with the scale of Rs.1320-2040. The respondents have also produced the appointment orders of these two applicants as well as the entries in the service book of these two applicants. In the appointment order issued in the case of applicant No.2, the pay scale of Rs.1400-2300 has been struck off and replaced with Rs.1320-2040 (RPS). similarly against item No.1 relating to the stipend the figures of Rs.1400-2300 have been struck off. In the case of the first applicant also the scale of Rs.1400-2300 has been scored off and the scale of Rs.1320-2040 has been shown. In the service book, it is clearly brought out that the applicants were appointed as Assistant Operator at the fixed pay of Rs.1320/- in the scale of Rs.1320-2040. The pay was increased from 1320 to 1350 on 2.12.94. It was further increased to Rs.1380/- on 2.12.95. Further promoted as Chargeman "B" in the grade of Rs.1400-2300 vide order dated 13.2.96 and the pay was fixed at Rs.1440/- with effect from 9.2.96. Thus, it is evident that but for the initial error of mentioning the scale of Rs.1400-2300 in the advertisement the respondents have to the scale of Rs.1320-2040 for the post of Assistant Operator. The respondents have, therefore, justified their action and have prayed for the dismissal of the OA.

8. We have heard the learned counsel for the applicants as well as the respondents and have also perused the relevant documents including the service record of the applicants. There is no denial that in the original advertisement No.5/91 which was published in the employment news on 21.12.91 the pay scale shown for the post of Assistant Operator was Rs.1400-2300. It was also stated therein that the selected candidates would be paid stipend of Rs.1400/- plus DA and there would be two years training period. The same pay scale was repeated at the time of the result as well as at the time of medical examination. However, on realising the mistake, the respondents have corrected the pay scale and appointed the applicants in the scale of Rs.1320-2040. Nothing prevents the respondents from correcting the mistake. Fortunately, the mistake was corrected at the time of issuing the appointment order itself. This appointment order was accepted by the applicants and they also joined the service accordingly. The contention of the applicants that they were assigned scale of Rs.1400-2300 with effect from 14.2.96 after they had made representation and taken up the matter through the union, is not acceptable, because, the respondents have shown the service record, which clearly indicates that the applicants were promoted to the post of Chargeman "B" in the grade of Rs.1400-2300 and were therefore, granted the aforesaid pay scale and not because they were granted the scale of Rs.1400-2300 in

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the post of Assistant Operator. We are satisfied on perusal of the documents that the post of Assistant Operator was originally in the scale of Rs.380-560 which was replaced by the pay scale of Rs.1320-2040 after the recommendation of the IV Pay Commission. Further, the post of Chargeman "B" is the next promotion post for the post of Assistant Operator. Therefore, the post of Assistant Operator cannot have the same scale as that of the promotion post of Chargeman Grade-II. In view of this position, we do not find any merit in the OA and accordingly the OA is dismissed without any order as to costs.

Shanta J

(SMT. SHANTA SHAstry)
MEMBER (A)

S.L. Jain
(S.L. JAIN)
MEMBER (J)

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