

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.Nos.385 to 407, 457 to 459 & 539 of 1991

Date of decision: 30-9-1992.

Between

UNION OF INDIA rep. by
Divisional Railway Manager,
South Central Railway,
Vijayawada.

: APPLICANT in all the OAs.

Vs.

K.Bhavanarayana	:	1st Respondent in OA 385/91
Ch.Saheb	:	-do- in OA 386/91
S.Krishnaiah	:	-do- in OA 387/91
D.Narappa Reddy	:	-do- in OA 388/91
P.Venkateswara Rao	:	-do- in OA 389/91
D.Kameshwara Rao	:	-do- in OA 390/91
T.Suvarnamma	:	-do- in OA 391/91
C.Saraswathi	:	-do- in OA 392/91
K.Koteswara Rao	:	-do- in OA 393/91
J.B.Paul	:	-do- in OA 394/91
P.Subrahmanyam	:	-do- in OA 395/91
P.Venkateswarlu	:	-do- in OA 396/91
K.V.Hanumantha Rao	:	-do- in OA 397/91
K.Venkata Reddy	:	-do- in OA 398/91
B.Shankara Rao	:	-do- in OA 399/91
M.Asheervadam	:	-do- in OA 400/91

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18/8/92

L.Nanchara Rao	:	1st Respondent in OA 401/91
M.Mohd.	:	-do- in OA 402/91
N.Satyanarayana	:	-do- in OA 403/91
Ch.Bapanaiah	:	-do- in OA 404/91
P.S.N.Murthy	:	-do- in OA 405/91
P.R.Ramanamurthy	:	-do- in OA 406/91
N.Saubhagyavathi	:	-do- in OA 407/91
O.Kameshwaran	:	-do- in OA 457/91
K.Srinivasa Rao	:	-do- in OA 458/91
K.Ram Mohan	:	-do- in OA 459/91
M.V. Sastry	:	-do- in OA 539/91

PRESIDING OFFICER,
Labour Court, Guntur

: 2nd Respondent in all the OAs.

APPEARANCE

For the applicant
in all the OAs

: Sri N.R.Devaraj, SC for Rlys.

For the 1st Respondent in
OA 385/91

: Sri G.Ramachandra Rao, Advocate

For the 1st Respondent in
all other OAs

: Sri P.Phalguna Rao, Advocate

CORAM

The Hon'ble Sri Justice V.Neeladri Rao, Vice-Chairman

The Hon'ble Sri P.T.Thiruvengadam, Member (Admn.)

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(61)

OA Nos.385 to 407, 457 to 459 & 539 of 1991

Date of decision: 30-9-93.

J U D G E M E N T

(As per Hon'ble Sri Justice V.Neeladri Rao, Vice-Chairman)

Heard Sri N.R.Devaraj, learned standing counsel for the Railways for the applicant and Sri G.Ramachandra Rao and Sri P.Phalguna Rao, learned counsel for the respondents.

2. The applicant in all these O.As. is same. Respondents No.1 in all these OAs joined service as Commercial Clerks in the erstwhile MSM Railway. MSM Rly. had become later part of Southern Railway and a major part of it is now part of South Central Railway. R-1 in all these OAs worked in Vijayawada Division of South Central Railway.

3. As the point which falls for consideration in all these OAs is same, it is convenient to dispose them by a common judgment.

4. The R-1 in all these OAs and many others joined as Commercial Clerks. In 1947 therevised payscales on the basisof the R_a commendations of the I Pay Commission had come into effect and then the payscales of Commercial Clerks and Assistant Station Masters were:

<u>Commercial Clerks</u> (in Rs.)	<u>ASMs/SMs</u> (in Rs.)
60-150	64-170
150-185	100-185
150-225	150-225
200-300	200-300
260-350	260-350
	300-400
	350-500

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5. In MSM Railway, till it formed part of Southern Railway in 1949, there was no direct recruitment of ASMs. The Commercial Clerks in the lowest grade were being taken as ASMs on being qualified in the written test and after having necessary training. Even after MSM Rly. formed part of Southern Railway, there was no direct recruitment of ASMs till 1-4-1956 in that part of Southern Railway which earlier formed part of MSM Rly. R-1 in all these OAs and many others in the lowest grade of Commercial Clerks had gone as ASMs prior to 1-4-1956. It may be noted that by the time they had gone as ASMs, the scale of pay of ASMs was slightly higher than the scale of pay of Commercial Clerks and the scales in the next four higher grades of Commercial Clerks and ASMs as per the revised payscales of 1947 were identical.

6. There was a new deal in the Railways which was given effect to from 1-4-1956. By 1-4-1956, 90% of the posts in the category of Commercial Clerk were in the lowest grade. It is stated that by the new deal, 25% out of those 90% were upgraded, and hence 150 Commercial Clerks in Vijayawada Division got promotion to the immediate higher scale of Rs.100-185. The grievance of the ASMs in Vijayawada Division was that they were taken as ASMs because of their seniority and also merit, and when they continued in the scale of Rs.64-170 their juniors who continued to be Commercial Clerks, were promoted to the higher grade with a scale of Rs.100-185 and thus it was a raw-deal for them.

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7. In 1960, the payscales were again revised on the basis of the recommendations of the II Pay Commission and they were as under for the Commercial Clerks and Assistant Station Masters/Station Masters:

<u>Commercial Clerks</u> (in Rs.)	<u>ASMs/SMs</u> (in Rs.)
110-200	130-200
150-240	150-280
205-280	250-380
250-380	335-425
335-425	370-475
370-475	450-575
450-575	

8. It is manifest from the above, that the second ^{scale} scale from the lowest ~~scale~~ with regard to Commercial Clerks was higher than the lowest scale of ASMs even after 1960. Thus, when the ASMs/SMs found that their payscale was found to be less than the payscale of their juniors in the category of Commercial Clerks, twelve of them filed WP 1153/63 on the file of Andhra Pradesh High Court praying for:

(i) treating them as Commercial Clerks and to fix their scales of pay without detriment to seniority of scale of pay among Commercial Clerks' scale, notwithstanding their promotion as ASMs and SMs with all past benefits;

(ii) reverting them to the post of Commercial Clerks in which post they have a lien without detriment to their seniority, scale and pay with all past benefits;

(iii) extending the benefits of the next below rule to them with all past benefits; and

(iv) giving them the benefits of 'D' Circular No.377 of April 1962.

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9. The above Writ Petition in regard to the reliefs (ii) to (iv) referred to above was dismissed. The said Writ Petition in regard to the relief (i) referred to above was ordered as under as per judgment dated 6-2-1968:

"In the result, therefore, the Writ Petition is allowed and directions will issue to fix the pay of the petitioners in their present cadre so as not to be less than they pay they would have drawn if they had been in the cadres of CCs from which they were promoted to be effective from the date of the implementation of the 'New Deal'. The petitioners will get their costs."

10. The Writ Appeal No.266/68 against judgment dated 6-2-68 in WP 1153/63 was dismissed, on 13-12-68. The SLPA filed against the same was dismissed. Then the Railway Board issued letter No.E(P&A)11-70-SPC/PA/3 dated 28-5-1970 directing the concerned authority to implement the judgment in regard to the 12 petitioners in WP 1153/63. When that benefit was not extended to the similarly circumstanced ASMs/SMs, 448 Railway employees of that category filed Writ Petition No.3298/70 praying for similar relief. WP 3636/70, 4047/70, 4724/70 and some other Writ Petitions were also filed by similarly situated employees and all of them were allowed with relief similar to the relief granted in WP 1153/63. The 12 Writ Appeals thereon i.e. WA 497/71 and others against the judgments in the above Writ Petitions were dismissed on 31-12-1971 at the time of admission. The SLPs 213 to 224/72 and other SLPs against the same were dismissed on 22-11-1972. Then the arrears were calculated till 31-3-73. It is stated for the R-1 employees that those arrears were paid to some of those employees.

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11. Thereafter the Railway Board issued letter No.E(P&A)II-70 CPC PA.3 dated 20-2-1975 informing the concerned authorities that the proforma promotion should not be given to more than one against a single actual promotion. It is also further stated therein that over payments made due to wrong interpretation of the order should be recovered.

12. Then 235 ASMs/SMs filed WP 1923/75 challenging the Board's letter dated 20-2-1975. The same was allowed on 12-12-1975. WA 108/76 against the same was dismissed on 14-12-1976. SLP 429/77 against the same had come up for consideration alongwith the judgment of the Madras High Court wherein it was held that the ASMs/SMs cannot claim parity with those who continued in the category of Commercial Clerks. The Supreme Court as per judgment dated 4-4-1979 (reported in AIR 1980 SC 959 - 1 / UOI & ors. Vs. E.S.Soundara Rajan, etc.) affirmed the view of the Madras High Court and had not accepted the view of the Andhra Pradesh High Court. But the Supreme Court had not set aside the decision of the A.P.High Court and instead observed as under:

"We, therefore, uphold the law as contained for by the Union of India, but decline to interfere with the cash results and emoluments that the employees/respondents have been held entitled to under the decision of the Andhra Pradesh High Court and the Madras High Court."

✓ Six months time was given for implementation of the directions given by the High Courts concerned. Thereupon the Railway Board issued letter No.E(P&A)II 70/CPC/PA3 dated 20-9-80 directing the concerned authorities to fix the pay, and pay the consequential

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arrears to the parties before the Supreme Court in accordance with the Railway Board's order dated 28-5-1970.

13. It is stated for the applicant that the pay of the ASMs/SMs who are parties to the SLPs before the Supreme Court was fixed on the basis of the pay of the Commercial Clerks who were juniors to the respective ASMs/SMs, before they were appointed as ASMs/SMs and then it was noticed that at the time of calculation of arrears upto 31-3-1973, the pay of some of such ASMs/SMs was fixed on the basis of the pay of the Commercial Clerks who were junior to them and who had later volunteered and got selected as Commercial Inspectors and hence steps were taken for re-fixation of the pay in regard to those employees also and for recovery of the excess amounts paid.

14. When such excess amount was withheld from the terminal benefits of R-1 in these OAs, they filed CMPs 25/86 and 40 other CMPs under Section 33-C(2) of the Industrial Disputes Act in the Labour Court at Guntur. Therein the contention for the Railways that those petitioners were not entitled for pay equal to the pay of Sri S.V. Rama Rao who was junior to the above petitioners in the category of Commercial Clerks and who later on volunteered and got selected as Commercial Inspector was rejected as per the judgment dated 21-12-1987. On the basis of the said judgment, the petitioners were paid the amounts withheld from their terminal benefits.

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15. R-1 in these OAs are the petitioners in the CMPs 25/86 and 40 other CMPs. They filed CMP 3/89 to 29/89 in the Labour Court, Guntur, praying for payment of all arrears on re-fixation of pay from 31-3-1973 till the dates of their respective retirements and for a direction for revision of the pension and for payment of the differences in pension from the dates of retirement and also the difference in terminal benefits. The learned Presiding Officer of the Labour Court passed the following order which is similar in all these CMPs:

"In the result the petition is allowed directing the respondent to fix the payscales of the petitioner as envisaged in Board's letter dated 28-5-1970 and as per the Board's letter dated 20-9-1980 which was marked as Ex.C4 and compute the arrears and pay the same to the petitioner together with interest at 5% per annum from 11-7-1979 within three months from the date of this order."

They are assailed in these OAs.

16. Sri N.R.Devaraj, learned Standing Counsel for the applicant urged that the pay of all those ASMs/SMs who are parties to the earlier writ proceedings was rightly fixed by the concerned authorities by taking into consideration the pay of the Commercial Clerk who was junior to the respective ASM/SM before they were selected to those posts and the arrears on that basis were paid and accordingly no amount is payable on the basis of re-fixation referred to above, the same will be paid to the concerned employees.

17. Sri G.Ramachandra Rao, the learned counsel who led the arguments on behalf of the ASMs/SMs urged that if these employees were not selected as ASMs/SMs they too would have the opportunity of volunteering to the post of Commercial Inspectors and in view of their merits they could have got themselves selected

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as Commercial Inspectors and hence their pay was refixed by taking into consideration the pay of Commercial Clerk who was junior and who was later on selected as Commercial Inspector. Further, when the pay was refixed and the arrears by 31-3-1973 were calculated on that basis and when the Supreme Court ultimately held that the cash benefits as per the judgment of A.P. High Court had to be given, it is not now open to the Railways to urge that those employees are entitled to on the basis of the pay of Commercial Clerks only. The next contention for ASMs/SMs is that the judgment of the Labour Court in CPM 25/86 and Batch operates as resjudicata and hence they have to be paid in accordance with the judgment therein for the remaining period also.

18. The following pleas were also raised for the ASMs/SMs that is, R-1 in these OAs:

(i) This Tribunal has no jurisdiction to decide the legality and validity of the orders passed by the Labour Court, Guntur.

(ii) These applications are not maintainable as the applicant in these OAs is not aggrieved person under Section 19 of the Administrative Tribunals Act for the reliefs claimed in the CMPs were not challenged and only six months time was sought for making the payments.

(iii) These applications are not maintainable at the instance of the Divisional Personnel Officer, South Central Railway, Vijayawada, in as much as he is not the respondent before the Labour Court, Guntur.

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19. We will first advert to the challenge in regard to the jurisdiction of this Tribunal to consider the legality or otherwise of the order of the Labour Court.

20. Section 7(1) of the Industrial Disputes Act (ID Act) lays down that the appropriate Government may by notification in the Official Gazette constitute one or more Labour Courts for adjudication of industrial disputes relating to any matter specified in II Schedule and for performing such other functions as may be assigned to them under the Industrial Disputes Act. Section 2(a) of the I.D. Act states that the appropriate government in regard to the Central Government employees and Railways and others referred in 2(A)(i) is the Central Government. Thus, in relation to the industrial disputes of Railway employees, it is the Central Government which had to constitute the Labour Court. Instead of constituting a separate Labour Court, the Central Government is conferring powers under Section 7(A) of the I.D. Act on the Presiding Officer of the Labour Court appointed by the State Government. Unless such power is conferred, the Presiding Officer of Labour Court constituted by the State Government is not empowered to adjudicate the industrial disputes in relation to the Railway employees, Central Government employees and other employees referred to in Section 2(A)(i). Such powers were conferred upon Presiding Officer of the Labour Court at Guntur. The CMPs 3 to 29/89 and even the earlier Batch of CMPs 25/86 and others filed by the Railway employees were dealt with by the said Court.

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21. Section 19(1) of Administrative Tribunals Act says that a person aggrieved by any order pertaining to any matter within the jurisdiction of this Administrative Tribunal may make an application to the Tribunal for the redressal of his grievances (emphasis is supplied). Explanation (a) to the Section 19(1) is relevant and it reads as under:

"Explanation: (a) For the purpose of this Section 'order' means an order made by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation (or society) owned or controlled by the Government; or "

(b)

The impugned orders in these OAs are the orders passed by the Labour Court (constituted by the Central Government in regard to the powers exercised by the Labour Court pertaining to industrial disputes of the Central Government employees, railways, etc.

22. Though the Labour Court was constituted by the Central Government, it cannot be stated that it is under the control of the Government of India. But it is still within the territory of India. Hence, it is necessary to consider as to whether the Labour Court comes within the ambit of the 'authority' referred to in explanation (a).

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23. 'Authority' is not defined either in A.T.Act or in the General Clauses Act, 1897. One of the meanings given to the word 'authority' in the 'Shorter Oxford English Dictionary on Historical Principles' is - Power or right to enforce obedience; moral or legal supremacy; the right to command, or give an ultimate decision. Thus even a forum which discharges judicial functions can be held as 'authority'.

24. Sri G.Ramachandra Rao, the learned counsel urged that only an authority exercising executive functions comes within the purview of authority referred to in Section 19(1) explanation and authority exercising judicial functions does not come within the scope of authority referred to under Section 19.

25. Then it is necessary to consider as to whether one who exercises the judicial functions does not constitute authority as contemplated in the Explanation (a) to Section 19(1) of A.T.Act. Article 124(7) of the Constitution of India restrains any person who is holding office as Judge of the Supreme Court from pleading or acting in any court or any 'authority' within the territory of India. Authority is not defined in the Constitution. Can it then be said that one who holds the office as Judge of the Supreme Court can plead or act before Labour Court? Article 124(7) refers to the pleading and acting as an advocate. Pleading and acting will arise only before a court or a forum which exercises the judicial functions. When if a

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forum which exercises the judicial functions cannot be held as authority, then it will defeat the very purpose of Article 124(7) in regard to various forums other than the Court. As such the contention for the employees that a forum which exercises judicial functions cannot be held as an authority, cannot be countenanced.

25. The Administrative Tribunals are constituted by the Parliament in exercise of the powers under Article 323(A) of the Constitution of India. Article 323(A)(1) which is relevant reads as under:

"323-A: Administrative Tribunals - (1) Parliament may, by law, provide for the adjudication or trial by administrative tribunal of disputes and ~~complaints~~ with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government."

~~The~~ Authority is referred to in Article 323(A) and also in Explanation (a) to Section 19(1) of the A.T. Act. Can it be stated that the authority referred to in Article 323(A) has to be read differently from the word 'Authority' referred to under Article 124(7) of Constitution of India? The intendment of Article 124(7) is that a person who held the post of Supreme Court Judge should not act and plead before any court or authority. Hence the word 'authority' had to be given the wider meaning for considering Article 124(7). The Administrative Tribunals are constituted as the ~~ex~~clusive forums for deciding in

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regard to the service matters, recruitment, etc. of the Government employees referred to in A.T. Act other than the employees referred to in Section 2. Section 14 of the A.T. Act states that save as otherwise expressly provided in the said Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before the notified date, by all courts in relation to recruitment and matters concerning recruitment, and all service matters concerning employees referred to in Section 14. It thus indicates that exclusive jurisdiction in regard to recruitment and matters concerning recruitment and all service matters in regard to the employees of the concerned services is conferred upon the Central Administrative Tribunals. Article 226(1) reads as under:

"Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority including in appropriate cases, and Government, within those territories directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them for the enforcement of any of the rights conferred by Part III and for any other purpose."

The powers under Section 14 were conferred on the Tribunal by virtue of Article 323(A)(2)(b). Article 323(A)(3) states that the provisions of such Article shall have effect notwithstanding anything in any other provision of the Constitution or in any other law for time being in force.

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26. Before A.T.Act had come into force, the High Courts exercised powers under Article 226 even in regard to service matters of the employees coming within the purview of Section 14 ~~(2)~~ & ~~(3)~~. Section 14 makes it clear that this Tribunal is empowered to exercise all the powers exercisable immediately before constitution of the Central Administrative Tribunal, by all courts except Supreme Court. It follows that this Tribunal has power and authority exercisable by High Court under Article 226 of the Constitution of India, in relation to the matters referred to in Section 14 of A.T.Act. If such wide powers were conferred upon the Tribunal and when the intentment of the constitution of the Administrative Tribunal is to have a separate forum for adjudication of the service matters and recruitment and matters concerning recruitments of the employees referred in Section 14, we feel that it is not proper to read the word 'authority' as an authority exercising executive powers only, when it is clear from Article 124(7) and even Article 323(A) of the Constitution of India, that authority includes a forum exercising judicial functions.

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27. So, we feel that 'authority' referred to in explanation(a) in Section 19 includes an authority exercising judicial functions.

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28. It was next contended by Sri G. Ramachandra Rao that this Tribunal is not having power of superintendence over the Labour Court and it is only the High Court which is having the power of superintendence under Article 227 over the Tribunals within the respective jurisdiction, the Central Administrative Tribunal cannot exercise the power under Article 226. It is true that this Tribunal is not having power of superintendence over the Labour Courts or Industrial Tribunals. But the right to exercise power under Article 226 does not depend upon the power of superintendence that can be exercised under Article 227. The Income-Tax Tribunals are constituted by the Central Government and the High Court is not having superintendence over those Tribunals. But the High Court is having power to issue any direction or writ to the Income-tax Tribunal also. Further, the various authorities which exercise the appeal or the original powers are not Tribunals and they do not come within the purview of Article 227. High Court has the power to issue a writ to a person also. Hence, merely because High Court is not having superintendence over various appellate or original authorities, can it be stated that the High Court is not having power to issue writ or direction to such authorities? Article 226 clearly states that the power under Article 226 can be exercised for issual of writ or direction to any person or authority and Government also. The High Court is not having the power of superintendence over the Government or

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the authority other than the Court or Tribunal or person. Hence it follows that the right to exercise power under Article 226 does not depend upon the right of superintendence which can be exercised over courts and tribunals by the High Court under Art.227. Thus, even though this Tribunal is not having superintendence over the Labour Court, still it can exercise power under Art.226 by virtue of Sec.14 of A.T.Act read with Art.323(A)(2)(b) and (3) of the Constitution of India. In AIR 1989 SC 1185 (UOI V. Parma Nanda) it was held that this Tribunal is having powers of the High Court under Art.226 in so far as they are exercisable in relation to service matters for which the Tribunal is having jurisdiction (vide para 15 at page 1189).

29. So, we hold that the 'authority' referred to in explanation (a) to Sec.19(1) of A.T.Act includes a forum which exercises judicial functions, and thus includes Labour Court. The Administrative Tribunals can exercise power under Art.226 against orders of the Labour Courts even though this Tribunal is not having power of superintendence under Art.227 over the Labour Court. The impugned order is admittedly in regard to the service matter of a railway employee. It is an order passed by the Labour Court (Central) and as we held that the Labour Court is an authority coming within the purview of 'other authority' referred to in Explanation (a) to Section 19(1) of the A.T.Act, any person aggrieved against the said order can challenge it under Section 19 of the A.T.Act in this Tribunal. As such the contention for the ASMs and SMs that this Tribunal has no power to adjudge the legality or otherwise of an order passed by the Labour Court in regard to service matter of the Railway employees or any other employee referred to in Sections 14(2) and 14(3) of the A.T. Act is not tenable.

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30. It is evident from the pleadings in the CMP 3/89 and others that the petitioners therein claimed various reliefs by contending that their pay should be fixed on par with the pay of Shri S.V.Rama Rao who was their junior as Commercial Clerk and who was later selected as Commercial Inspector. But in the counters filed in those CMPs, it is specifically stated that the petitioners therein are entitled to only the pay on par with the pay of the Commercial Clerks who were juniors to SMs and ASMs before they were appointed as ASMs. It is further stated in the counters in those CMPs that the amount admissible but not as claimed by the petitioners vide Annexures would be paid and six months time was prayed for the same. So the contention for the 1st respondent employees that the Railway administration admitted the claims of these ASMs/SMs has to be rejected. The question as to whether in fact the applicant herein is aggrieved will be considered later.

31. The respondentx in CMPs 3/89 to 29/89 is referred to as the Divisional Railway Manager, South Central Railway, Vijayawada. In thise O.As., the applicant is referred to as the Union of India represented by the Divisional Railway Manager, South Central Railway, Vijayawada. Hence it cannot be stated that the applicant as referred to in these OAs is different from the respondent in the relevant CMPs. While in the CMPs, the respondent is merely described as Divisional Railway Manager (DRM for that) in the OAs the applicant is referred to as Union of

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India represented by DRM, S.C. Railway, Vijayawada. At best, it has to be stated that the applicant is properly described in O.As. while the respondent in CMPs is not properly described. But in the OAs in giving the particulars of the applicant, the name of the then Divisional Personnel Officer, S.C. Rly., Vijayawada was given. It is also stated therein that he was authorised by the DRM, Vijayawada to file these OAs. The learned counsel for the 1st respondent employees had not drawn our attention to any of the procedural rules under A.T. Act to show that there is a defect in filing these OAs when they were filed by an authorised person. It has to be noted that it is not contended for the 1st respondent employees that the Divisional Personnel Officer who filed these OAs in the name of Union of India represented by the DRM, was not authorised to file them. Hence it cannot be stated that these OAs were filed by an officer who is not authorised to file them and in substance it has to be stated that these OAs were filed by the respondent referred to in the CMP 3/89 and batch. Thus, the contention contra is not tenable.

32. The impugned order which is similar in all these OAs has to be again read for consideration in regard to the merits and it is as under:-

"In the result the petition is allowed directing the respondent to fix the pay of the petitioner as envisaged in Board's letter dt. 28-5-1970 and as per the Board's letter dt. 20-9-1980 which was marked as Ex.C4, and compute the arrears and pay the same to the petitioner together with interest at 5% per annum from 11-7-1979 within three months from the date of this order."

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It is manifest from the above order passed by the learned Presiding Officer, Labour Court, Guntur that the pay of the petitioners had to be fixed in accordance with the Railway Board's letters dated 28-5-1970 and 20-9-1980. Para 3 of the letter dated 20-9-1980 is relevant and it is as follows:-

"In view of the above, the fixation of pay and the payment of consequent arrears to the petitioners and appellants before the Supreme Court should be done in accordance with the original orders of the Board dt. 28-5-1970 as amended, without taking into account the revised clarification issued on 20-2-1975. Action may be taken accordingly and the position advised to the Board."

Thus, it states that the fixation of pay should be in accordance with the Railway Board's letter dated 28-5-1970. The body of the letter dated 28-5-1970 has to be read and it is as under:-

"(1) The 12 employees concerned may be given the benefit of pay fixation and payment of arrears in the ASM/SM scale with effect from 1-4-1956 on the basis of the pay they would have got had they continued to remain as Commercial Clerks rather than changed over to the ASM/SM's cadre.

(2) They may also be granted promotions to higher posts in the commercial Clerks' cadre from the dates (After 1-4-56) any of their juniors were promoted to such higher scale posts from time to time till any of their juniors finally demit service, if these promotions are more favourable to them.

(3) For promotion to Selection posts, a selection should now be conducted and if the individual is selected his name should be interpolated in the appropriate panel and he should be given due promotions with retrospective effect and paid arrears due. If he fails in the selection, he loses all claim for such benefits."

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33. It is to be noted that the letter dated 28-5-1970 was issued by the Railway Board for implementing the judgment dated 6-2-1968 in W.P.No.1153/63 which is as under:

"In the result, therefore, the writ petition is allowed and directions will issue to fix the pay of the petitioners in their present cadre so as not to be less than their pay they would have drawn if they had been in the cadres of CCs from which they were promoted, to be effective from the date of the implementation of the 'new deal'. The petitioners will get their costs."

34. So by reading the judgment dated 6-2-1968 in the Writ Petition No.1153/63 along with the letter dated 28-5-1970, it has to be stated that the pay of the concerned ASMs/SMs in their cadres should be fixed on par with the juniors in the cadre of commercial clerks, if the pay of the latter is higher. But there was no reference to the pay scale of Commercial Inspector either in the judgment dated 6-2-68 in WP 1153/63 or in the Railway Board's letter dated 28-5-1970. In fact, the revised scales as per the recommendations of the first pay commission and the 2nd pay commission in regard to the Commercial Clerks and ASMs/SMs alone were referred to in judgment in WP 1153/63. Even for holding that the seniors who had gone as ASMs got less pay than the juniors who continued as Commercial Clerks, the pay of such of those employees who continued as Commercial Clerks alone were referred to. The pay of Shri K.B. Krishna Swamy, Chief Goods Clerk, Guntur and the pay of S/Sri D.Chakravarthy and M.Narsimha Rao, Y.V.Satyanarayana, Commercial Clerks were referred to. The pay of Shri S.V.Rama Rao who originally joined as Commercial Clerk and who was selected as Commercial Inspector in 1959 was not referred to in the judgment

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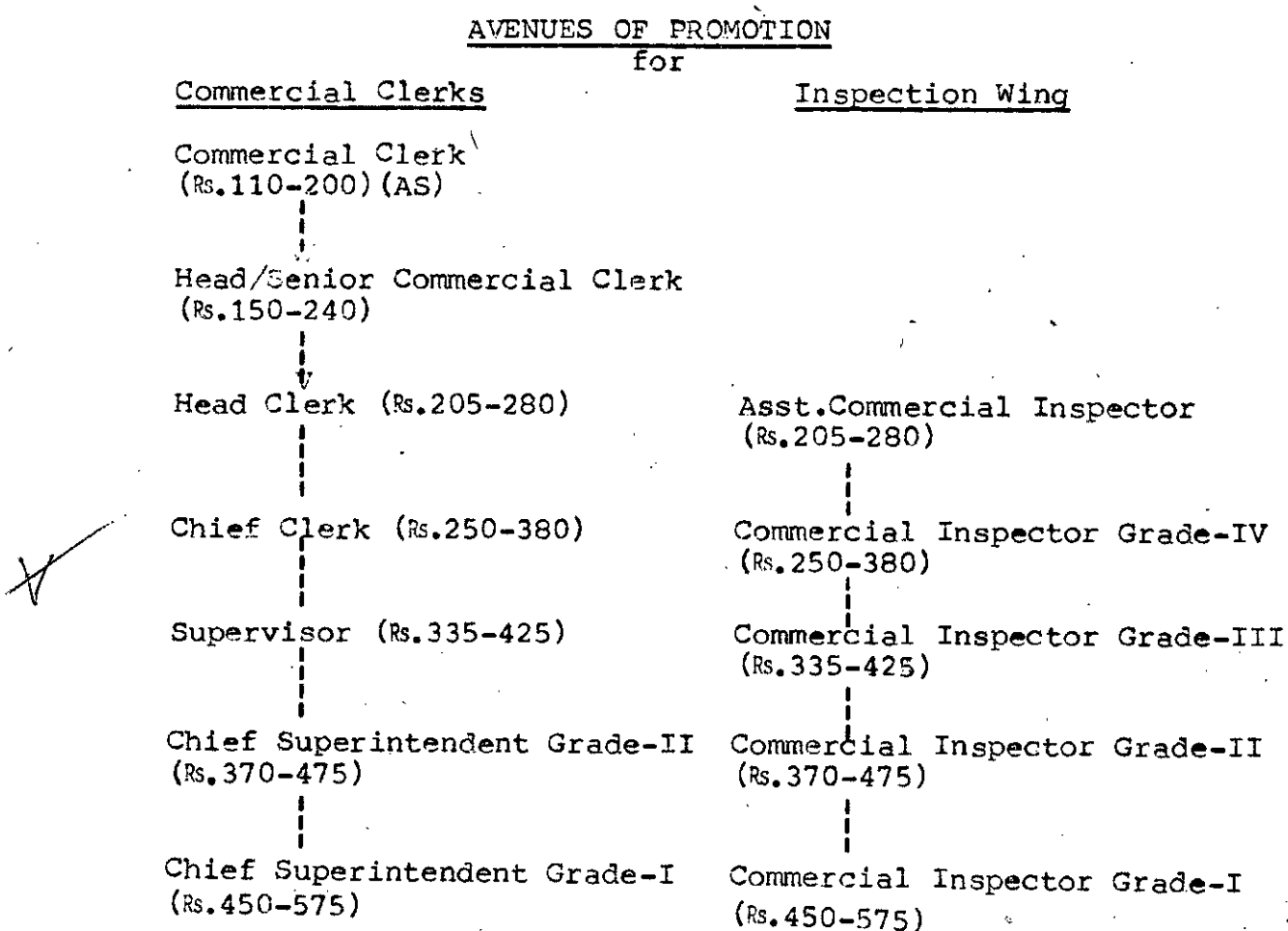
in the W.P.No.1153/63. Even the relief claimed in the said writ petition shows that they claimed parity with the pay of the Commercial Clerks who were juniors to them by the time they were selected as ASMs. It may be noted that even prior to 1-4-56, Commercial Clerks in the second grade volunteered for the posts of Commercial Inspectors, and the Commercial Inspectors were having the payscale which was equivalent to the payscale of the Commercial Clerks in the 3rd grade from the bottom (lowest). But even then, it was not prayed in the WP 1153/63 that the ASMs should be given the pay which is equivalent to the pay of their erstwhile junior in the cadre of Commercial Clerks when the latter was selected as Commercial Inspector. The very basis for the claim in WP 1153/63 is disparity which had arisen when 150 Commercial Clerks in the lowest grade got promotion to the next immediate scale. Even prior to 1-4-56 such of the erstwhile juniors in the cadre of Commercial Clerks on being selected as Commercial Inspectors were drawing more than the pay of Senior Commercial Clerks than those who were appointed as ASMs. The petitioners in WP 1153/63 did not claim that when once their erstwhile junior who ^{was} selected as Commercial Inspector was getting pay in the payscale higher to the payscale of ASMs/SMs, they too should be given the pay in the payscale of ~~ASM~~ such Commercial Inspector. Anyhow, that disparity in the pay is not due to the 'new deal' Anyhow, ~~as already referred to~~, there is not even a whisper about the payscale of the Commercial Inspector or comparison with the pay or payscale of the Commercial Inspector either in the judgment dated 6-2-1968 in WP 1153/63 or the judgment in

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WP 3298/70 or in the Writ Petition No.1925/75 or W.A. No.108/76 or even in the judgment of the Supreme Court in AIR 1980 SC 959. Hence, when the impugned order merely refers to the Railway Board's letters dated 28-5-1970 and 20-9-1980, it has to be held that as per the impugned orders, the pay of the various petitioners in the CMPs 3/89 and batch, has to be fixed on par with the pay of the erstwhile junior of the petitioners in the cadre of Commercial Clerks, when they continued to be in the cadre of Commercial Clerks, even after promotion and it cannot be on par with the pay of such Commercial Clerks who were selected as Commercial Inspectors prior to the merger of the cadre of Commercial Clerks with that of the Inspection Wing in 1968.

35. The avenues of promotions in the categories of Commercial Clerk and that of Inspection Wing prior to the merger in 1968, were as under:



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The avenue of promotion in the category of Commercial Clerk was different from the avenue of promotion in the Inspection Wing, prior to 1968. Before that merger, there was a provision whereby the Head Clerks from the Commercial section were permitted to volunteer for selection to the post of Inspector Gr.IV and on being selected the Head Clerk in the Commercial Wing was appointed as Commercial Inspector Gr.IV. But merely because there was a provision for lateral promotion of selection from the volunteers, the regular promotion from the category of Head Clerk cannot be held to be ^{to} the post of Commercial Inspector Gr.IV. Hence, in view of the impugned orders, it cannot be stated that the learned Presiding Officer upheld the plea of the petitioners in the CMP 3/89 and batch that their pay has to be fixed with that of Sri S.V. Rama Rao who was selected as Commercial Inspector in 1959, even though he was junior to the petitioners therein in the cadre of Commercial Clerks.

36. When the learned Presiding Officer allowed the CMPs in terms ~~of~~ as referred to, it only means that the difference in pay on re-fixation as per the judgment of the A.P.High Court in W.P. 1153/63, if not paid, has to be paid.

✓ 37. The petitioners in CMP 3/89 and batch have not preferred any O.A. challenging the impugned order. The learned Presiding Officer had not stated that for

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ascertaining the arrears, the pay of the petitioners therein has to be fixed as per the judgment in CMP 25/86 and batch. It is not clear from the impugned order as to whether the plea of resjudicata was raised or not. Anyhow, when the petitioners in CMP 13/89 and batch are not applicants herein, it is not open to them to raise the plea of resjudicata. Hence, we do not want to advert to the same for disposal of these O.As.

38. It has to be noted that the scope of Section 33(C)(2) of the I.D. Act is limited. In an application under Section 33-C(2) the court has to ascertain the amount payable in pursuance of any order of the court/tribunal/authority, or the amount due in accordance with any rule. For ascertaining of the amount due, it is open to the Labour Court for disposal of Section 33(C)(2) petition to interpret relevant order or the rule. But in such an application it is not open for an employee to claim that he is entitled to a particular amount dehors the rule or the order. The High Court of Andhra Pradesh decided in WP 1153/63 as to how the pay of these employees has to be re-fixed. For ascertaining as to whether the pay is properly refixed in accordance with the above judgment, it is open to the Labour Court for consideration of a petition under Section 33-C(2) as to how the pay has to be refixed. It means that it can rely upon only guidelines given in the judgment for consideration as to

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whether re-fixation done by the concerned authority is in accordance with that judgment. It is not open to that Court to lay down any other guidelines for re-fixation of the pay in accordance with the judgment of the High Court. When it is clear from the judgment in WP 1153/63 that re-fixation of pay was not claimed on the basis of the pay of the erstwhile junior as Commercial Clerk who was later on selected as Commercial Inspector, it is not open to those employees to contend in a proceeding under Sec.33-C(2) of I.D.Act that they are entitled to pay on par with the pay of the erstwhile junior of the Commercial Clerk who was later on selected as Commercial Inspector, when that pay was higher than their pay. If in fact, the judgment of the A.P.High Court in W.P. 1153/63 and the subsequent relevant judgments were not there, these employees would not have prayed for re-fixation of pay, by merely filing a petition under Section 33-C(2) of I.D.Act. So the question as to whether all or any of these employees would have been selected as Commercial Inspectors if they continued as Commercial Clerks, is not a matter for consideration in a proceeding under Section 33-C(2) of the I.D.Act and hence there is no need to advert to it for disposal of these OAs.

39. Hence, it has to be held that as per the impugned orders in these O.As., the pay of the petitioners in the CMPs 3/89 to 29/89 has to be fixed on par with the pay of their erstwhile juniors in the category of Commercial Clerks, at every stage of promotion of the juniors who continued in the

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category of Commercial Clerks and not of those who were later selected as Commercial Inspectors, if their pay happens to be higher than the pay of the petitioners. If that difference from 1-1-1956 till the date of their retirement is not yet paid, the same has to be paid within three months from the date of this order. If the re-fixed pay in regard to any of these petitioners in the CMPs 3/89 to 29/89 is less than the pay which has to be fixed as per this order, re-fixation in accordance with this order has to be done within six months from the date of this order and within a month thereof the difference in pay and also in the pension has to be paid. These O.As. are ordered accordingly.

No costs.

P. J. Thiruvengadam
(P.T. Thiruvengadam)
Member/Admn.

V. Neeladri Rao
(V. Neeladri Rao)
Vice-Chairman

Dated: 30th September, 1993.

mhb/

8/3/10/93
Deputy Registrar(J)

To

1. The Divisional Railway Manager,
Union of India, S.C.Rly, vijauawada.
2. Copy to Mr.N.R.Devraj, SC for Rlys, CAT.Hyd.
3. One copy to Mr.G.Ramachandra Rao, Advocate, CAT.Hyd.
4. One copy to Mr.P.Phalguna Rao, Advocate, CAT.Hyd.
5. One spare copy.
6. One copy to Library, CAT.Hyd.
7. One copy to Deputy Registrar(J) CAT.Hyd.
8. Copy to All Benches and Reporters as per standard list of CAT.Hyd.
9. One copy to the Presiding officer, Labour Cant, Guntur.
pvm.

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