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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.Nos.433/93,318/94,
319/94 & 320/94.

Dt. of Decision : 14-11-95.

M.A. Mirajkar

.. Applicant in
OA.No.433/93.

M. Nagaraj

.. Applicant in
OA.No.318/94.

C.Rajendran

.. Applicant in
OA.No.319/94.

M.Ramudu

.. Applicant in
OA.No.320/94.

Vs

1. The Chairman, Railway Board,
New Delhi.
2. The General Manager,
SC Railway, Rail Nilayam,
Secunderabad.
3. The Divisional Railway Manager,
Hubli, Karnataka.

.. Respondents in
All the OAs.

Counsel for the Applicants : Mr. J.Ashok Kumar
in All the OAs.

Counsel for the Respondents : Mr. N.R.Devaraj, Sr.CGSC. in
OA.No. 433/93.

Mr. C.V.Malla Reddy, SC for Rlys.
in OA.Nos.318/94 & 320/94.

Mr. G.S.Sanghi, SC for Rlys.
in OA. 319/94.

CORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

O.A.Nos. 433/93, 318/94,
319/94 & 320/94.

Date: 14-11-1995.

J U D G M E N T

I as per Hon'ble Sri R.Rangarajan, Member(Administrative) I

Heard Sri J.Ashok Kumar, learned counsel for the applicants in all the OAs and Sri N.R.Devaraj, learned for respondents Counsel/in OA 433/93, Sri C.V.Malla Reddy, learned Standing Counsel for respondents in OA 319/94 and Sri G.S.Sanghi, learned Standing Counsel for respondents in OA 319/94.

2. The contentions in all these OAs are same^{and}/so also is the relief asked for. Hence all the 4 OAs are disposed common order.

3. All the 4 applicants in the 4 OAs were engaged as Casual Labour (Tailor) on daily rate basis @ Rs.6-10 ps. in HUBLI Division and all of them were brought on temporary status as Casual Labour (Tailor) in the pay scale of Rs.196-232 after they worked as Casual Labour on the daily wage rate for a period of 120 days. The details as to the date of joining as Casual Labour on daily wage rate, the date on which they were brought on temporary status and pay scale in respect of each applicant in all the OAs are given hereunder:

Sl. No.	OA No.	Date of engagement as Casual Labour (Tailor)	Date on which temp. status was given	Pay scale
1.	433/93	3-6-1978	3-10-1978	196-232
2.	318/94	16-11-1979	16-3-1980	196-232
3.	319/94	14-6-1978	14-10-1978	196-232
4.	320/94	16-7-1978	16-11-1978	196-232

(ul)

8. The contentions of the applicants is that as they were engaged in a skilled work as Tailor, they should have been paid in the pay scale of Rs.260-400 from the date they were brought under monthly scale of pay instead of paying them in the pay scale of Rs.196-232. The above contention was brought to the notice of the higher ups in the permanent negotiating Machinery meeting and R-2

revised and hence R-2 agreed to sanction ELR post in the grade of Rs.260-400 to Tailors/and that they were ^{from a prospective date} being brought on that scale viz. Rs.260-400 from 18.7.1984, the date on which they were trade tested for fitting them as Skilled Artisan Casual Labour (Tailor) on monthly rates of pay. It is also their plea that they ⁱⁿ qualified the trade test in the first attempt itself.

9. The applicants state that the Tailors engaged in Vijayawada, Hyderabad and Secunderabad Divisions were given the pay scale of Rs.260-400 immediately after completion of 120 days of service and their services as Skilled Artisan in those divisions were also regularised duly creating Tailor posts. Only in the case of the applicants who were engaged in Hubli Division as Casual Labour on daily wage rate and ^{subsequently} brought on temporary status on monthly rates of pay in the pay scale of Rs.196-232 were not considered for regularisation. Thereby they allege discrimination between similarly placed Tailors in Hubli Division compared to other divisions.

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6. It is also stated for the applicants that authorities in Hubli though the division had recommended for creation of posts for absorbing them regularly vide their note No.H/P.411/WI/Uniform dt. 10.11.1983 (Annexure-6), their cases were not considered by the administration. The representations in the above connection dt.18.6.92, 22.12.92, 23.4.93 (Annexures-13, 14 & 15 etc.) were not replied satisfactorily.

7. Aggrieved by the above, they filed the above OAs for a direction to the respondents herein to confirm and regularise their services with effect from the dates on which they were brought on monthly rates of pay viz. 3.10.1978, 16.3.80, 14.10.78 and 16.11.78 in case of applicants in OAs 433/93, 318/94, 319/94 and 320/94 respectively and for a further direction to the respondents to sanction the pay scale of Rs.260-400 from the above dates and not from the date of 18.7.1984 when they were granted the pay scale of Rs.260-400, with all consequential benefits such as salaries, seniority etc.

8. The respondents did not dispute the fact regarding their engagement as Casual Tailors and the dates on which they were brought on monthly rates of pay in the pay scale of Rs.196-232. They further submit that the applicants were brought on monthly scale of pay of Rs.260-400/950-1500 with effect from 18.7.1984 in respondents also state that the applicants consultation with organised Labour. They were performing the duties like "taking measurements periodically, maintenance of uniform cards, conversion of individual size uniforms and attending to repairs/alterations in stitched uniforms." The respondents by their statement

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seem to suggest that the
indicating the duties of applicants / applicants were per-
forming the duties in unskilled category and hence
they are not entitled to get the skilled category
from 1978/80 onwards till 18.7.84.
pay scale of Rs.260-400/ Because they have gained
their
experience as Tailors due to/working from 1978/80 to
1984 they were brought on the pay scale of Rs.260-400
from 18.7.1984 after they qualified in the trade test.

9. The next submission of the respondents is
that Hubli Division was having only one sanctioned
post of Tailor from 1975 onwards. Proposal for
creation of additional four (4) posts of Tailors in
the grade of Rs.260-400 was submitted to R-2 and the

with the Accounts department for sanction. As per
extant instructions, sanction of Railway Board is
necessary for creation of posts without matching surrender
of posts. As Hubli Division was not offering matching
surrender, it became necessary to approach the Board
for sanction of posts without matching surrender.
The respondents further submit that Railway Board
after careful consideration did not sanction ^{the} posts as requested
and instead vide their letter dt. 30.6.1992 advised
South Central Railway to engage Tailors on daily wages
and the possibility of surrendering the 4 casual labour
posts of Tailor may also be explored. In other divisions,
the posts of a Tailor were created by Railway themselves
in view of the fact that matching surrender was offered.

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10. In view of the above position submitted by the respondents, they pray for dismissal of this O.A.

11. The applicants have filed a rejoinder wherein they re-iterated their earlier stand and submit that the note submitted by the Divl. Railway Manager dt. 10.11.1983 bearing No.H/P.411/WI/Uniform amply justify the creation of posts and hence even if there is no matching surrender, the posts have to be created.

12. The first point to be considered in this OA is whether the ~~fx~~ award of pay scale of Rs.196-232 to the applicants when they were brought on monthly rates of pay during the period 1978/1980 is in order or not.

The respondents in their reply statement dt. 27.4.1995 have stated that the applicants were performing the duties like "taking measurements periodically, maintenance of uniform cards, conversion of individual sized uniforms and attending to repairs/alteration in stitched uniforms". The learned Standing Counsel for the ~~suk~~ respondents submit that the above said duty list does not warrant award of scale of Rs.260-400. The respondents have not categorically stated in their reply statement that the above duty list warrants only payment in the pay scale of Rs.196-232 i.e. unskilled category. In the absence of such averments and on mere submission at the time of hearing that the above duty list does not warrant payment in the skilled category



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cannot be taken on the face value. A perusal of duty list shows that the work involved may not be done by an unskilled labour as it involves the works viz. "taking measurements, maintenance of uniform cards, conversion of individual size uniforms and attending to repairs/alteration in stitched uniforms". At best, it may be said that the duties performed may be of semi-skilled category Tailors. In view of the fact in ^{other} Divisions the Tailors engaged as Casual Labour were given the grade of as can be seen from the OA, Rs.260-400, it has to be held that the duties performed by the applicants ~~herein~~ are also in the nature of skilled category, and hence they have to be given the same pay scale of Rs.260-400 as given in

Vijayawada.

The note dt. 10.11.1983 submitted to the DRM that clearly state the job is of skilled nature and it is proposed to create 4 posts of additional tailors in the grade of Rs.260-400 and absorb these casual tailors duly trade tested. From the note, it can be inferred that the casual tailors were performing the duties of skilled nature even from the start of their engagement and because of that, ~~justification was given for creation~~ of 4 additional posts of Tailors in the grade of Rs.260-400 to absorb the applicants after duly trade testing them. Even in the minutes recorded in the P.N.M. meeting vide proceedings dt. 30.12.1985 bearing No.P(L)694/VI/Union/58/Sub.9 (Annexure-9), the General Manager (R-2) did not say that the applicants were not doing the skilled nature of job from the date of their initial engagement.

and has merely stated in the minutes that the ...
in the pay scale of Rs. 250-400 cannot be revised from 1978
and hence he has agreed to sanction the post in the grade
of Rs. 250-400 from a prospective date viz. 18.7.1984. The

convince that casual labour had to be paid in the pay scale
of Rs. 250-400 but because of the time lag he was not able to

grant the scale from 1978 onwards by revising the Casual
labour sanction; but he had agreed to give that scale viz.
Rs. 250-400 prospectively from 18.7.1984 onwards when the

sanction for casual labour posts in the skilled category
were granted. This goes to prove that the nature of duties

performed by the applicants from 1978 till 18.7.1984 were
of the nature of skilled category and hence, it had to be
held that the applicants were entitled to the pay scale of
Rs. 250-400 right from the date of completion of 15 days of
service from the date of their initial engagement as fully
paid casual labourers.

10. In view of what is stated above, we are convinced that
the applicants are entitled to the pay scale of Rs. 250-400 in
the skilled grade from the date they had completed 15 days
of service on daily wage rates. The dates from which they are
entitled for the pay scale of Rs. 250-400 after 15 days had
already been indicated in a letter supra.

11. The applicants were engaged as casual labour (skilled)
way back in 1978 and they were promoted on monthly rates of pay
in the scale of Rs. 100-150 some time in late 1979 and early 1980.
They were also promoted in the pay scale of Rs. 250-400 from

1.1.84. Though the applicants were promoted to the monthly rates of pay, they
were not entitled to the award of scale of Rs. 250-400
from the date they were promoted on monthly rates of pay, they
were not entitled to the award of scale of Rs. 250-400 from 1.1.84
only. The Tribunal grant monetary benefits in respect of only
the period from 1.1.84 to 31.12.84 at the rate of Rs. 100 per month
plus interest at 12% per annum.

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R-2 had merely stated in the minutes that the ELR sanction in the pay scale of Rs.260-400 cannot be revised from 1978 and hence he had agreed to sanction ELR posts in the grade of Rs.260-400 from a prospective date viz. 18.7.1984. The statement of the General Manager proves that though he is convinced that casual tailors had to be paid in the pay scale of Rs.260-400 but because of the time lag he was not able to grant the scale from 1978 onwards by revising the Casual Labour sanction; but he had agreed to give that scale viz. Rs.260-400 prospectively from 18.7.1984 onwards when the ELR ~~sanction~~ ~~posts~~ ~~in the skilled category~~ was granted. This goes to prove that the nature of duties performed by the applicants from 1978 till 18.7.1984 were of the nature of skilled category and hence, it had to be held that the applicants were entitled to the pay scale of Rs.260-400 right from the date of completion of 120 days of service from the date of their initial engagement as daily rated casual labour tailors.

10. In view of what is stated above, we are convinced that the applicants are entitled to the pay scale of Rs.260-400 in the skilled grade from the date they had completed 120 days of service on daily wage rates. The dates from which they are entitled for the pay scale of Rs.260-400 after 120 days had already been indicated in para-3 supra.

11. The applicants were engaged as Casual Labour (Tailor) way back in 1978 and they were brought on monthly rates of pay in the scale of Rs.196-232 some time in late 1978 and early 1980. They were also brought in the pay scale of Rs.260-400 from 18.7.1984. Though, the applicants submit that they were regularly representing their cases for the award of scale of Rs.260-400 from the date they were brought on monthly rates of pay, they filed the OA 433/93 on 30.4.1993 and OAs 318 to 320/94 on 7.3.94 only. This Tribunal in granting applications monetary benefits in belated/ only

(67)

from one year prior to the date of filing of respective OAs when the case is one of continuing right.

12. Under the above circumstances, the pay of all the applicants has to be fixed in the pay-scale of Rs.260-400 notionally from the date they had completed 120 days of casual service after their initial engagement and their further pay fixation subsequently had to be done on that basis. In view of the practice adopted by this Tribunal to grant monetary benefits in the case of belated applications, the applicants are entitled for arrears on the basis of the above pay fixation from one year prior to the filing of respective OAs. In case of applicants in OAs 318 to 320/93 they are entitled for arrears from 7.2.1993 (the said OAs were filed on 7.3.94) and the applicant in Rs.260-400 from 30.3.1993 (this OA was filed on 30.4.93).

13. The second point for consideration in these OAs is whether the applicants have to be regularised forthwith in view of their long service as temporary casual labour skilled artisans as Tailors.

The respondents in their reply affidavit state that the Railway Board had turned down the justification for creation of 4 posts of Tailors to regularise the services of the applicants as no matching surrender of posts was offered by the division. The respondents went to the extent of saying that the Railway Board has advised the Railway to examine the possibility of surrender of 4 casual labour posts in which the applicants are engaged now.

We do not subscribe to the view that casual labour posts are to be surrendered, in view of the fact that the casual labour tailors are serving from 1978 onwards and this would go to show that there is work for tailors.

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However, the Tribunal cannot order for creation of posts just because the applicants prayed for the same. The only direction that can be given is to re-examine the possibility of creating posts and send a ^{fresh} proposal to the competent authority viz. Railway Board for creation of posts.

14. The applicants rely on the Judgment of the Supreme Court reported in [AIR 1988 SC 390 - Ram Kumar and Ors. vs. UOI and Ors.] to draw our attention that the continuous service for quite a long period needs to be regularised. The applicants submit that as they were working from 1978 onwards, they are entitled for the same relief as granted to the petitioners by the apex court in the above referred judgment. A perusal of the judgment would indicate that the applicants therein were casual labour Fitters in the Signal Department and they were not even brought on temporary status for a quite long time and because of that they were not getting the benefits as enshrined in para-2511 of IREM. In view of the above, the apex court had ordered Railway to bring them on temporary status to enjoy the privileges as enshrined in para-2511 of IREM and gave a further direction to consider the claims of each of the petitioners therein promptly and make appropriate orders for regularisation. The above referred supreme Court judgment does not state that the applicants therein should be regularised forthwith in view of their long service. They have asked the appropriate authorities to consider the claims of the petitioners therein for their regularisation.

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15. The petitioners in the above referred citation of Supreme Court were Casual Fitters in Signal & Telecommunication Department and that cadre being an organised one may have ample opportunities for creation of posts and regularisation of the petitioners therein. But, in the case of applicants herein who were engaged as Casual Tailors which cadre is not an organised one and also consists of only one permanent post at present. Hence, comparison of the applicants with that of the petitioners in the above referred judgment of apex court may not be appropriate. In any case, as we have given directions pay scale of Rs.260-400 right from the dates on which they had completed 120 days of service on daily wage rates as Casual Labour, the applicants will get the benefit of pay scale of Rs.260-400 and also the other benefits as per IREM. Following the judgment of the Apex court in the above said case, it is only necessary to direct the competent authority to consider the case of the applicants for regularisation after creation of necessary posts. For this, the Railway should approach the Railway Board once again with full facts so that the case for creation of posts may be re-considered by the Railway Board in the light of the ~~decision~~ justification to be stated now. The Railway Board should consider the case and issue suitable instructions expeditiously without delay.

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To

1. The Chairman, Railway Board,
New Delhi.
2. The General Manager, S.C. Ry.,
Railnilayam, Secunderabad.
3. The Divisional Railway Manager,
Hubli, Karnataka.
4. One copy to Mr. J. Ashok Kumar, Advocate,
H.No. 3-4-136/2/B, Narayanaguda, Hingampally, Hyderabad-27
5. One copy to Mr. N. R. Devraj, SC for Rlys, CAT. Hyd.
6. One copy to Mr. C. V. Malla Reddy, SC for Rlys, CAT. Hyd.
7. One copy to Mr. G. S. Sanghi, SC for Rlys, CAT. Hyd.
8. One copy to Library, CAT. Hyd.
9. One spare copy.

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16. In the result, the following directions are given:-

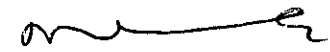
(i) The applicants in all the 4 OAs are entitled for fixation of their pay in the pay scale of Rs.260-400 notionally from the date on which they had completed 120 days of service on casual daily wage rates viz. 3.6.1978, 16.3.1980 in OAs 433/93, 318/93, 319/94 and 320/94 respectively.


(ii) On the basis of the their pay fixation in the pay scale of Rs.260-400 as directed in Clause (i) above, they are entitled for arrears

~~year~~
OAs viz. 30.4.1992 in case of applicant in OA 433/93 (this OA was filed on 30.4.1993); on 7.3.1993 in case of applicants in OAs 318/94, 319/94 & 320/94 (the said OAs were filed on 7.3.1994).

(iii) R-3 should make a detailed justification for creation of 4 posts of Tailors in the grade of Rs.260-400 for regularisation of applicants in accordance with the standing instructions and forward the same for consideration for creation of 4 posts of Tailors. Railway Board should decide the issue of creation of 4 posts of Tailors expeditiously without delay.

17. The OAs are ordered accordingly. No costs. //


(R. Rangarajan)
Member (Admn.)


(V. Neeladri)
Vice Chairman

th
Dated 14 Nov., 1995.

Grh.


Deputy Registrar

TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

VICE CHIEF JUSTICE

AND

THE HON'BLE MR.R.RANGARAJAN :M(A)

DATED: 14-11-1995

~~ORDER/JUDGMENT~~

M.A./R.A./C.A.No.

in

O.A.No.s 433/93, 318/94, 319/94
T.A.No. and 320/94,
(W.P.No. 320/94).

Admitted and Interim directions
Issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

Ordered/Rejected.

No order as to costs.

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Central Administrative Tribunal
DESPATCH
21 NOV 1995
HYDERABAD BENCH