

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,

JABALPUR.

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Original Application No. 473 of 1997

this the 26th day of February'2003.

HON'BLE MR. R.K. UPADHYAYA, MEMBER(A)
HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

1. Gopal K. Kendurkar, S/o late Sri K.M. Kendurkar, aged about 33 years, R/o Padav, Gwalior.
2. Mohd. Azam Khan, S/o S/o Hussain Khan, aged about 37 years, R/o C/o Sri R.S. Tomar, Padav, Gwalior.

Applicants.

By Advocate : Sri P.R. Bhave.

Versus.

1. Union of India through Secretary, Ministry of Railways, Rail Bhawan, New Delhi.
2. General Manager, Central Railway, Mumbai.
3. Chief Administrative Officer (Construction), Central Railway, Mumbai.
4. Financial Advisor & Chief Accounts Officer (Construction), Mumbai (CST).
5. Senior Accounts Officer (Construction), Central Railway, Jhansi.

Respondents.

By Advocate : Sri S.P. Sinha.

O R D E R (ORAL)

BY MRS. MEERA CHHIBBER, MEMBER(J)

This O.A. has been filed by two applicants claiming a direction to the respondents to fix their pay in the grade of Rs. 1400-2300 w.e.f. 2.7.1987 as per Annexure A-2 and have sought a further direction to pay all the arrears w.e.f. 2.7.1987 with interest @ 18% till ~~the~~ payment.

2. It is submitted by the applicants that they were working in Construction Organisation of Central Railway as

Highly Skilled Technical Mistries (in short HSTM) (Diploma in Civil Engineering) since 19.2.1987 and 24.2.1987. It is further submitted by them that they were initially posted as Casual H.S.T.Ms and on completion of 180 days of continuous service, they were placed in the scale of Rs.1200-2040/- applicable to Monthly Rated Casual Labourers and since it is of supervisory nature of job and indeed they fall in the lowest supervisory level in the Civil Engineering Department which is evident from the letter dated 25.8.1992 annexed as Annexure A-1, They are seeking higher pay scale as per the recommendations of 4th Pay Commission. They have submitted that one person namely Sri Brijesh Singh Tomar, who was junior^{to} them, was placed in the pay-scale of Rs.1320-2040/-, so they also gave a representation on 22.8.1992 (Annexure A-3) for grant of same pay-scale, but no response was given to them. They have also relied on the judgment given in O.A. No. 357/95 in the case of Brijesh Singh Tomar Vs. Union of India & Ors., wherein the Tribunal by its order dated 27.6.1996 (Annexure A-5) held that the applicant was entitled for fixation in the grade of Rs.1400-2300/- w.e.f. 13.7.1987 till the date of his representation dated 3.2.92 on notional basis and actual payment thereafter. The applicants in this case have stated that they are fully covered by the said judgment and also one was decided by the Principal Bench of the Tribunal in the case of Manoj Kumar Srivastava & Others Vs. Union of India & Others in O.A. No. 1443/95 decided on 26.10.1999 (copy taken on record). It is submitted by the applicants' counsel that since the present case is fully covered by the aforesaid judgments, they should also be given the same benefit.

3. The respondents have opposed the O.A. on the ground that the applicants are working in the Construction

Organisation, which is a temporary department as monthly rated casual Mistries and were recruited on pay and scale as provided in that Organisation, therefore, the applicants cannot claim parity with the scale provided to the permanent staff in open line or on division. They have further submitted that the applicants are presently working under Dy. Chief Engineer (Construction), Dadar, as such this Tribunal has no jurisdiction to decide the present case and O.A. is liable to be dismissed on this very ground. They have also stated that the O.A. is liable to be dismissed as it is barred by limitation. They have further specifically stated that their cases are not identical with that of Sri Brijesh Singh Tomar and have stated that the work of HSTMs is not of supervisory nature as they are working under the supervision of Permanent Way Inspector (in short PWI) and their work was only to assist and carry-out work under their supervision, thus, the applicants are not in supervisory cadre. They have further submitted that the Railway Board's letter, which is relied-upon by the applicants is not applicable to them as they belong to Construction Organisation and are paid monthly rated in the scale of Rs.1200-2040/- in the Artisan category, hence they are not entitled to get the pay-scale of Rs.1400-2300/-. With regard to Sri Brijesh Singh Tomar and Sri A.V. Bhagwat, it is submitted by them that they were working in the pay-scale of Rs.1320-2040/-, while the applicants are getting the pay-scale of Rs.1200-2040/-, which is sanctioned for Construction Organisation. Moreover, in the case of Sri Brijesh Singh Tomar, the department had filed an SLP before the Hon'ble Supreme Court and, therefore, the matter is sub-judice before the Hon'ble Supreme Court, but since he was in the higher scale than the applicants, therefore, the applicants cannot claim parity with them. They have further submitted that the

applicants are working under the supervision of PWI, who themselves are in the grade of Rs.1400-2300, therefore, they cannot seek the same grade as that of their superiors and under whom they are working. They have, thus, submitted that since there is no similarity and the applicants are working in the different scale of pay, they cannot get the relief as claimed by them and even otherwise the Hon'ble Supreme Court has repeatedly held that the Tribunal should not endeavour to decide the pay-scales matter as these are to be decided by the expert bodies like Pay Commission etc. and Vth Pay Commission had again given different pay-scale for HSTMs in the grade of Rs.4500-7000/- while the PWI had been given the pay-scale of Rs.5000-8000/-, thus, the difference is still maintained.

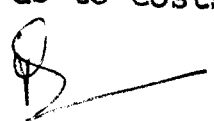
4. We have heard both the counsel and perused the pleadings as well.

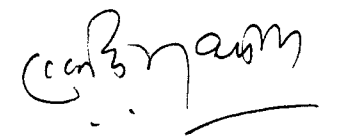
5. The counsel for the applicants mainly relied on two judgments, as referred to above and claimed that the same relief should be granted to the applicants as well. However, when we asked ^{to him} to show us the initial appointment of the applicants as to in which scale they were appointed and what was the nature of duties, he was not able to show us a single document for our satisfaction. On the contrary, it is seen that both the judgments which he was relying, were decided on the basis of documents produced by those applicants in their respective O.As, therefore, we are of the opinion that unless the applicant could produce the basic document to show how they were appointed and what was the nature of duties performed by them, no direction could be given to give the same benefit to them as was given to other applicants in different O.As. We are also aware of the judgment given by the Hon'ble

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Supreme Court wherein it is repeatedly held that what pay-scale is to be given to a category are the subject matter of expert bodies and the Tribunal should not give any direction to give a particular scale to the individual in a routine manner. Even otherwise, when we asked the counsel as to what ^{the} final out-come of the matter pending before the Hon'ble Supreme Court, none of the parties were able to give us a clear picture, nor any order was placed on record by either of the side. Therefore, we think it would be better to direct the applicants to give a self-contained representation alongwith the judgments relied upon by them to the respondents within a period of two weeks from the date of receipt of copy of this order and incase the representation is given by the applicants, the respondents are directed to look into their records, which are maintained by them, and verify ^{the} facts as stated by the applicants, keeping in view the judgments already passed by the Tribunal and taking into consideration the final order passed by the Hon'ble Supreme Court in the SLP filed by them and than pass a reasoned and detailed order within a period of three months from the date of receipt of such representation. The final order should be intimated to the applicants.

6. With the above direction, the O.A. stands disposed off with no order as to costs.


(Mrs. Meera Chhibber)
Member (J)


(R.K. Upadhyaya)
Member (A)

GIRISH/-

पूरांकन सं ओ/का.....जबजब, दि.....

प्रतिपादित: अद्योदिना:-

(1) तमिऴुनाडु प्रजासत्ताक सरकार

~~(2)~~

~~(3)~~

(4) तमिऴुनाडु प्रजासत्ताक सरकार

पूरांकन सं ओ/का.....

प.र.भाले - 17-44

स.प.सिंह 9/44

महाराष्ट्र
17/3/03

Issued
on 5.3.03
PS