

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH ALLAHABAD

Dated: This the 21st day of August 2018.

PRESENT:

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

Original Application No. 1646 of 2010

ALONG WITH

Original Application No. 1645 of 2010

1. Ram Ashrey Yadav aged about 56 years, S/o Shri Hari Nath Yadav.
2. Krishna Dev Yadav aged about 55 years, S/o Shri Sudama Yadav.
3. Halan Kandulna, aged about 48 years, Shri Ishak Kandulna.
4. Prakash Ram aged about 48 years, S/o Shri Dukkhan Ram.
5. Raj Kumar, aged about 42 years, S/o Late Ram Prasad.

All working as Tower Wagon Drivers and posted under the control of Senior Divisional Electrical Engineer (TRD) East Central Railway, Mughalsarai and presently residing at C/o Shri Ramai Prasad, House No. 151, Chaturbhujpur, Mughalsarai District Chandauli (UP).

. . . Applicants in O.A. No. 1646/10

By Adv: Shri Rakesh Verma

V E R S U S

1. Union of India through the General Manager, East Central Railway, Ram Ashish Chowk, Diggi, Post Diggi District Hazipur (Bihar).
2. The Divisional Railway Manager, East Central Railway, Mughalsarai, District Chandauli 232101.
3. The Senior Divisional Personnel Officer, East Central Railway, Office of the Divisional Railway Manager, Mughalsarai, District Chandauli 232101.

- 4.The Senior Divisional Electrical Engineer, (TRD) (Remote Control Centre Office), Office of the DRM, East Central Railway, Mughalsarai, District Chandauli 232101.

. . .Respondents in O.A. No. 1646/10

By Adv: Shri Atul Kumar Shahi/Shri R.K. Rai

Original Application No. 1645 of 2010

- 1.Ramai Prasad aged about 62 years, S/o Shri Khedan Prasad.
- 2.Chhotey Lal, aged about 62 years, S/o Shri Vishwa Nath Ram.
- 3.Magan Bihari, aged about 61 years, S/o Late Vishwa Nath Ram.
- 4.Paran Ram, aged about 61 years, S/o Shri Pateshwar Ram.
- 5.Wali Mohd. Aged about 61 years, S/o Late Noor Mohd.

All retired while working as Tower Wagon Drivers and posted under the control of Senior Divisional Electrical Engineer East Central Railway, Mughalsarai and presently residing at C/o Shri Ramai Prasad, House No. 151, Chaturbhujpur, Mughalsarai District Chandauli (UP).

.....Applicants in O.A. No. 1645/10

By Adv. Shri Atul Kumar Shahi

Versus.

- 1.Union of India through the General Manager, East Central Railway, Ram Ashish Chowk, Diggi, Post Diggi District Hazipur (Bihar).
- 2.The Divisional Railway Manager, East Central Railway, Mughalsarai, District Chandauli 232101.
- 3.The Senior Divisional Personnel Officer, East Central Railway, Office of the Divisional Railway Manager, Mughalsarai, District Chandauli 232101.
- 4.The Senior Divisional Electrical Engineer, (TRD), (Remote Control Centre Office), office

of the DRM, East Central Railway, Mughalsarai
District Chandauli 232101.

.....Respondents in O.A. No. 1645/10

By Adv. Shri Atul Kumar Shahi

O R D E R

BY HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

1.The present Original Application has been filed
by the applicants seeking following reliefs-

"(i) to issue a writ, order or direction in the nature of mandamus commanding the respondent No.s 2 & 3 to fix, in pursuance of the judgment dated 20.4.2004, passed by this Hon'ble Tribunal in O.A. No. 393 of 2004, filed by the present petitioners along with the six others, confirmed by the Hon'ble High Court, Allahabad by dismissing the writ petition No. 26617 of 2004, filed by the respondents herein, giving liberty to file review application which on being filed being Review Application No. 80 of 2004, has been dismissed and thereby confirming the aforesaid order passed in the above referred O.A. by this Hon'ble Tribunal and there being no further challenge to it, the same has become final and binding on all the concerned, the pay of the petitioners in the scale of pay of Rs.1350-2200 and Rs.5000-8000 with effect from 01.01.1986 and 01.01.1996 and further placement in the corresponding Pay Band pursuant to the VIth CPC with effect from 1.1.2006 respectively with arrears thereof, within a period as may be fixed by this Hon'ble Tribunal.

(i) (A) to issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 15.11.2010, as communicated to the petitioner vide letter dated 16.12.2010 and thereby not conferring the benefit of the judgment delivered by this Hon'ble Tribunal in OA No. 393 of 2004, filed by the present

petitioners along with six others, confirmed by the Hon'ble High Court, Allahabad by dismissing the writ petition No. 26617 of 2004 filed by the respondents herein, giving liberty to file Review Application, which on being filed being Review Application No.80 of 2004 has also been dismissed, confirming the aforesaid order passed in the above referring O.A. and there being no further challenge to it, the same has become final and binding upon all the concerned (Annexure A-16 to Compilation No. 1 of this petition).

(ii) To issue any other suitable writ, order or direction in the facts and circumstances of the case which this Hon'ble Tribunal may deem fit and proper.

(iii) To award cost of the petition in favour of the petitioner".

2. applicants case is that they are working as Tower Wagon Drivers (TWD) in Mugalsarai Division under the control of Respondent No. 4. The Railway Board vide its letter dated 10.04.1991 (Annexure A 1) classified TWD as running staff w.e.f. 10.04.1991 thereby entitling them to a payment of running allowance at the rates applicable for Goods Drivers category. Since the introduction of various scales of pay in 1959, the pay scale of TWD was at par with the pay scales of Goods Driver.

3. However, as Tower Wagon Drivers were being paid the same pay-scales at par with the Goods Drivers, the Sealdah Division of East Central Railway allowed the Tower Wagon Drivers the same pay-scale at par with Goods Drivers i.e. Rs. 1350-2200 which came to be revised to that of Rs. 5000-8000 with effect from 01.01.1996.

4. The present applicants including several others working as Tower Wagon Drivers in East Central Railway in Mughalsarai Division were not allowed the same pay-scale at par with Goods Drivers in the pay-scale of Rs. 1350-2200 but were provided lower pay-scale of Rs. 1320-2040 which came to be revised as Rs. 4000-6000 with effect from 01.01.1996.

5. In the other Divisions also, the said discrimination was made in respect of the Tower Wagon Drivers. In these circumstances, few persons working as Tower Wagon Drivers staked their claim of same pay-scale of Rs. 1350-2200/Rs. 5000-8000 at par with the Goods Drivers by means of O.A. No. 1059 of 2001 before the Hon'ble Central Administrative Tribunal, Calcutta Bench which was allowed, holding that the pay-scale of Tower Wagon Drivers was at par with that of Goods Drivers since the introduction of various scales of pay in 1959. The Hon'ble Calcutta Bench was pleased to allow the same pay-scale at par with Goods Drivers to the Tower Wagon Drivers also. The Hon'ble Calcutta Bench was also pleased to hold, relying upon judgment of the Hon'ble Calcutta High Court dated 24.11.1982 in F.M.A.T. No. 373 of 1982, that since the Tower Wagons Drivers have been classified as running staff, it has to be held that the applicants are entitled to the pay-scale of Rs. 1350-2200 from 01.01.1986 and Rs. 5000-8000 from 01.01.1996. A copy of the aforesaid judgment and order dated 02.08.2002 is being annexed

herewith as an Annexure - A-3 to compilation No. 'II' of this petition. The aforesaid judgment and order of the Hon'ble Calcutta High Court, as also the Calcutta Bench of this Hon'ble Tribunal have duly been implemented by the Railway Administration in respect of the petitioners in the aforesaid case.

6. It has been averred that few persons working as Tower Wagon Drivers in the Northern Railway also filed O.A. No. 1699 of 2000, staking the aforesaid claim. The aforesaid claim was disputed by the Railway Administration pointing out that judgment rendered by the Calcutta Bench of the Hon'ble Tribunal in the earlier matter, in O.A. No. 321 of 2000 titled Jagdish Pandey & Others versus Union of India and others, decided on 18.01.2002, has been challenged by them before the Hon'ble Calcutta High Court and is pending.

7. The Hon'ble principal Bench was pleased to allow the aforesaid O.A. vide judgment and order dated 27.01.2003 directing the Railway administration that in terms of the decision of the Calcutta Bench of the Hon'ble Tribunal, the applicants before it would be entitled for the pay-scale of goods Drivers i.e. Rs. 5000-8000 with consequential benefits with the stipulation that the same shall be subject to the decision of the Hon'ble Calcutta High Court and in case the Calcutta High Court stay the operation of the judgment of the Hon'ble Tribunal, the payment of arrears, if any, would be deferred.

8. Applicants' further stand is that the aforesaid judgment and order was passed by the Hon'ble Principal Bench following the aforesaid two judgment of Calcutta Bench of this Hon'ble Tribunal. That it is also pertinent to mention here that the aforesaid judgment of the Hon'ble Principal Bench has also been implemented by the Railway administration in the Northern Railway.

9. The applicants filed a joint representation 04.07.2003 seeking parity with aforementioned TWD in matter of pay scale of Rs. 5000-8000/-, they filed O.A. No. 393/2004 which on the basis of judgment passed in O.A. No. 1699/2000 decided on 27.01.2003 by Principal Bench Delhi disposed of the O.A. in terms of the direction given in O.A. 1699/2000 whereby the applicants therein were held entitled to pay scale of Goods Driver i.e. Rs. 5000-8000/- subject to the decision of Hon'ble High Court of Calcutta.

10. Thereafter, applicants filed O.A. 554/2010 claiming the pay scale of Rs. 1350-2200/5000-8000 w.e.f 01.01.1986 and 01.01.1996 respectively which was disposed of by directing the respondents to consider representation of the applicants dated 25.09.2008 which was disposed of by the respondents by averring therein that the judgment of the Hon'ble High Court of Calcutta was challenged in CA No. 365/2007 in the Hon'ble Apex Court wherein the impugned orders were stayed.

11. Admittedly, aforementioned SLP has been dismissed by the Hon'ble Supreme Court vide judgment dated 08.07.2010 (Annexure A-13). Therefore, the applicants contention is that with the dismissal of the SLP, the applicants are entitled to the pay scale at par the Goods Drivers as has been given to TWD of Sharda Division. And it only in Mugalsarai Division that the pay scale of Goods Driver is not being given to TWD which makes it highly discriminatory and violates the rights of the petitioners under Article 14 & 16 of Constitution of India. Therefore, the applicants be given the benefit of the judgments referred to above most specifically judgment dated 20.04.2004 passed by Central Administrative Tribunal, Allahabad in O.A. No. 393 of 2004 titled Ramai Prasad & Ors. Vs. Union of India.

12. It comes out that the Hon'ble Apex Court while dismissing the SLP, made it clear that this judgment will not affect the right of Union of India to pass appropriate order in relation to the pay scale applicable to any class of its employees including the respondents afresh and in accordance with law. In the light of the above observations, the Railway Board had considered the issue and decided that the Tower Wagon Drivers are not entitled to the grant of pay scale of Rs. 5000-8000 at par with that of Goods Drivers and that they shall continue to be in scale Rs. 4000-6000 and Rs. 4500-7000.

13. In the counter affidavit, it has been averred that in compliance to Supreme Court's order, the Ministry of Railways/Railway Board, having considered the matter in terms of appointment, recruitment, qualification nature of duties and level of responsibilities and also training period and having considered the issue regarding grant of pay parity of Tower Wagon Drivers with Goods Drivers observed that Tower Wagon Driver age not identical and comparable with Goods Driver had decided that the Tower Wagon Drivers are not entitled for grant of pay scale Rs. 5000-8000 (RSRP) on par with Goods Drivers and they shall continue to be in pay scale Rs. 4000-6000 (RSRP) and Rs. 4500-7000 (RSRP). In this regard Photostat copy of Railway Boards letter No. PC.V/2000/CCC/16/Pt. dated 15.11.2010 is annexed herewith and marked as Annexure 'A'.

14. Looking to the reply of the respondents it would be necessary to refer to Annexure 'A' wherein respondents had taken the view that TWD are not entitled to grant of pay scale being given Good Driver. This view have been taken by the respondents by averring in Annexure '1' attached to Short Counter Reply dated 15.11.2010 that :

"2.1 That as regards eligibility and the mode of filling up the post, it is seen that the post of Goods Drivers is filled up from Shunter/Asstt. Drivers on promotion. Further, in terms of Board's orders RBE No. 152/2001, educational

qualification for the post⁶ is Matriculate and Act Apprentice passed on ITI passed or Diploma in Mech./Elect./Electronics in lieu of ITI. Whereas, the post of Tower Wagon Drivers are filled up from the existing Motor Vehicle Drivers for which educational qualification is class Viii Pass with ability to read and understand the traffic rules and other electrical safety rules along with heavy Motor Driving License.

2.2 That the nature of duties & responsibilities of Goods Drivers is much more strenuous and difficult vis-à-vis that of Tower Wagon Drivers (TWDs). While Goods Drivers have immensely greater responsibility of driving a Goods Train independently with large number of wagons and the job calls for great amount of alacrity and concentration, Tower Wagon Drivers drive single Motor Car only on specified area to carry staff for attending brake downs in their jurisdiction within about 30 Kms.

2.2.1 That normal duty hours of Goods Drivers are 10 hours while that of TWDs is 8 hours.

2.2.2 That Goods Drivers are responsible for running sic locomotives varying from 3850 to 6000 Horse Power, while the type of Tower wagons driver by TWDs are of a maximum of 530 Horse Power.

2.2.3 That a Goods Driver has to study lock book and inspect the Locomotive (Engine) follow other instructions as laid down in the Operating Manual of the particulars class of Locos. No such work is required to be done by TWDs.

2.2.4 That several other technical aspects are involved in the job profile of a Goods Driver such as careful examination of the State of OHE of his own line and lines in proximity, the Under-Gear, the brake of the train lower the Pantograph and earth the Locomotive before carrying out any work in the high tension compartment. TWDs are not required to perform and such technical or specialized work.

2.2.5 That goods Driver have to work with different load likes 58 'N'/Loaded, 40 BCN, 40BOX, 41 BRH Loaded/empty. They have to also keenly observe Signal, the vacuum and pressure Gauge, etc. to ensure that everything is in order.

2.2.6 That while taking charge of the train, Goods Driver has to check continuity integrity/completion of rack, brake continuity test ensuring adequate brake power, revalidation of brake power/vacuum certificate, on the contrary, TWDs are not required to perform any such responsibility.

2.2.7 That Goods Drivers have to undergo Technical refresher course training for Two weeks in every three year. TWDs are

not required to undertake any such training.

2.2.8 That at the time of signing on duty, a Goods Driver has to read various register such as. ON duty register, Green Notice register, Caution register, Currently Safety Instruction, Currently Technical Circulars, Breath Analyzer Test Register, Line abnormalities register etc. No such reading of books or registers is done by TWDs.

2.2.9 That while signing off from duty, Goods Drivers are required to fill up Combined Trains Report, Line abnormalities like Signal, Track, Loco defect register etc and they have to perform any other kind of additional prescribed work. Tower Wagon Drivers are free of all such duties.

2.3 That in view of the onerous responsibility and more sensitive nature of the job profile of goods Driver, a training period of 90 days is prescribed for them despite the fact that they are from the same Loco feeder stream i.e. Asstt. Driver. The training period of Tower Wagon Drivers is of merely 30 days.

3. From the above position, it is clear that in terms of appointment, recruitment qualifications, nature of duties and level of responsibilities and also training period, TWDs are not comparable with Goods Drivers.

4. Further, the Hon'ble Supreme Court, in their judgements on various occasions, have held that unless there is wholesale and complete identity between the two categories, there lies no case for pay parity amongst them.

5. In view of the above observations, the competent authority have decided that Tower Wagon Drivers are not entitled for grant of pay scale of Rs. 5000-8000 at par with that of Goods Drivers and they shall continue to be in the scales of Rs. 4000-6000 and Rs. 4500-7000."

The same position holds in O.A. 1645/2010 (Ramai Prasad & Ors v/s. U.O.I).

15. It was argued by the learned counsel for respondents that the issue of grant of scale of pay to the TWDs had been taken up to the Supreme Court and the Hon'ble Apex Court while dismissing the SLP vide order dated 08.07.2010 (in CA No. 365/2007 - UOI v. Jagdish Pandey & Ors) has inter alia clarified that : 'the judgment will not affect the right of Union of India to pass an appropriate order in relation to the pay scales applicable to any class of its employees including the respondents afresh and in accordance with law.

16. Applicants placed reliance upon P.Venkata Rao v/s Director General, 2002-2003 A.T. Full Bench Judgments 230 and Government of A.P. v/s Sri Sevasdas, (2011) 2 SCC (L&S) 556 to submit that notwithstanding the issuance of Annexure '1' by

the respondents, the decisions of the Lower forums have not been set aside by the Hon'ble Apex Court and therefore, the petitioners are entitled to pay parity.

17. Reliance upon the judgments by the applicants is misplaced and have no application to the facts of the present case keeping in view the leeway given to the Union of India that the judgment in the SLP will not affect the right of Union of India to pass an appropriate order in relation to the pay scales applicable to any class of its employees including the respondents afresh and in accordance with law. The Union of India has done so by passing order annexure '1' which makes both the goods and tower drivers class apart and therefore, there remains no longer the question of discrimination in pay parity between both category of drivers.

18. Keeping in view of the observation of the Apex Court, the Railway Board after a detailed comparison of the nature of duties of Goods Drivers and that of Tower Wagon Drivers by Annexure '1' order dated 15.11.2010 decided that the TWDs are not entitled for grant of pay scale of Rs. 5000-8000 at par with that of Goods Drivers and they shall continue to be in the scales of Rs. 4000-6000 and Rs. 4500-7000. As held in a catena of cases, the matter as decided by the High Court and Apex Court has now attained finality, and cannot be re-agitated as it is hit by res-judicata. LC for respondents further argued that such an action

taken as per judgment of the Apex Court cannot be now interfered with.

19. Looking to the stand taken by the respondents discussed above and perusal of the circular issued by the Railway authorities, it is clear that Tower Wagon Driver are not identical and comparable with Goods Driver and therefore, the Tower Wagon Drivers are not entitled for grant of pay scale Rs. 5000-8000 (RSRP) on par with Goods Drivers.

20. On the touchstone of Articles 14 & 16 of the Constitution, the burden was on the applicant to place on record cogent material like recruitment rules to establish discrimination or reversely establish parity. This could also be job/functional parity of the two cadres in the drivers of the railway department. The parity could also be on the mode of recruitment, qualification or the responsibilities attached to the two posts. This information is necessary to analyse the rationale in giving different treatment to the two classes of employees and then subsequently determine whether or not an invidious discrimination has been practiced. We find the applicants have not placed before us any of these arguments keeping in view the communication No. PC.V/2000/CCC/16/Pt. dated 15.11.2010 Annexure '1'.

21. When identify of job functions or pay scales between two different departments under railway administration has not been established by

applicant, it would be unreasonable and unjust to argue a case of parity in the matter of pay. Where the question of similarity of conditions of service is not established, the question of denial of equal opportunity cannot be argued. The concept of equality cannot have existence except with reference to matters which are common between the two posts.

22. Article 14 is designed to prevent discrimination. It seeks to prevent a person or a class of persons from being singled out from others similarly placed or circumstanced for the purpose of discrimination. Any such classification should be based on intelligible differentia. In this case commencing from the starting unity of working conditions, uniformity in nature of duties performed by the applicants those with whom parity is sought, applicants have not drawn up a similarity which could result in similar treatment. The applicants while trying to argue on the basis of doctrine of classification has not been able to establish that the circumstances which govern them or the persons with whom they are seeking parity, are governed by similar conditions and circumstances.

23. Further, the Hon'ble Supreme Court in K.T. Veerappa v. State of Karnataka, (2006) 9 SCC 406, has held that the fixation of pay and determination of parity in duties are the functions of the executive and the scope of judicial review of administrative decision is very limited. In paragraph No.13, it was observed as follows :

"13..... There is no dispute nor can there be any to the principle as settled in State of Haryana v. Haryana Civil Secretariat Personal Staff Assn. that fixation of pay and determination of parity in duties is the function of the executive and the scope of judicial review of administrative decision in this regard is very limited."

24. Again, the Hon'ble Supreme Court in State of West Bengal v. Subhas Kumar Chatterjee, (2010) 11 SCC 694, once again reaffirmed its earlier decisions and also condemned the Tribunal's action in interfering with the administrative authorities' power. In paragraph Nos.14 and 21, it was observed as follows:

"14. This Court time and again cautioned that the court should avoid giving a declaration granting a particular scale of pay and compel the Government to implement the same. Equation of posts and equation of salaries is a matter which is best left to an expert body. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. Even the recommendations of the Pay Commissions are subject to acceptance or rejection, the courts cannot compel the State to accept the recommendations of the Pay Commissions though it is an expert body. The State in its wisdom and in furtherance of its valid policy may or may not accept

the recommendations of the Pay Commission. (See Union of India v. Arun Jyoti Kundu and State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.) It is no doubt true, the constitutional courts clothed with power of judicial review have jurisdiction and the aggrieved employees have remedy only if they are unjustly treated by arbitrary State action or inaction while fixing the pay scale for a given post".

25. In the present case, applicants have been unable to make there has been discrimination towards the Tower Wagon Drivers in matter of parity of pay with the Goods drivers and therefore cannot complain of discrimination with the Goods Drivers who are a class apart by themselves. Resultantly, the O.A being meritless is dismissed. No order as to costs.

(Rakesh Sagar Jain)

(Gokul Chandra Pati)

Member (J)

Member (A)

Manish/-