

(Reserved on 11.10.18)

***CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD***

This the **13th** day of **November, 2018**

Present:

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER-A.
HON'BLE MR. RAKESH SAGAR JAIN, MEMBER-J.

EXECUTION APPLICATION NO. 00004 OF 2017
IN
ORIGINAL APPLICATION NO. 602 OF 2007

1. P.K. Mittal, S/o Late Sri B.K. Gupta, R/o – 976, Rajrooppur, Allahabad.
2. Vinod Kumar, S/o late Sri Chandrika Prasad, R/o 134/C, Railway Colony No. 3, SFG, Allahabad.
3. Ram Subhag, S/o late Sri Gudari R/o 940, NC Railway Colony, Leader Road, Allahabad.
4. Krishna Lal, S/o late Sri Hari Prasad, R/o 782, Baraiya Tola, Old Ram Nagar, Varanasi.
5. Shambhu Dayal, S/o late Sri Bhai Lal, R/o 84/225, Bhusauli Tola, Allahabad.
6. Smt. Gayatri Devi, W/o Sri D.R. Tripathi, R/o Yojna No. 3, Sector -9, House No. 9/2004, Jhunsi, Allahabad.
7. Jadishwar Yadav, S/o Late Sri Ganpat Yadav, R/o 112, Rest House Compound, Prayag, Allahabad.
8. Vikram Jeet Singh, S/o Late Sri Awadh Bihari Singh, R/o S/B GM out House, Leader Road, Allahabad through its Registrar.

.....Applicants.

V E R S U S

1. Union of India General manager, NR, Now North Central Railway, Head Quarter, Subedarganj, Allahabad.
2. Divisional Railway Manager, North Central Railway, Nawab Yusuf Marg, Allahabad.
3. Sr. Divisional Engineer (co-ordination), North Central Railway, Nawab Yusuf Marg, DRM's Office, Allahabad.

4. Secretary, Ministry of Railway, Railway Board, Rail Bhawan, New Delhi -1.

..... Respondents

Present for the Applicant : Shri Sudama Ram

Present for the Respondents: Shri R.S. Gupta

ORDER

(Delivered by Hon'ble Mr. Gokul Chandra Pati, A.M)

The Execution Application No. 4/2017 has been filed by the applicants of the OA for execution of the order dated 9.10.2015 passed by the Tribunal in OA No. 602/2006 filed by the applicants claiming similar benefits allowed to other similarly placed railway employees in pursuance of the order dated 03.04.2004 passed by the Principal Bench of the Tribunal in OA No. 648/1999 - Sukhdeo Singh vs. UOI and Ors .

2. The facts of the case that the respondents decided to re-designate the post of Storeman to Material Checker (in short MC) with a higher pay scale vide letter dated 20.7.1979. Accordingly the decision was implemented by the respondents except for Allahabad division. The matter was adjudicated by the Tribunal and the respondents implemented the Tribunal's directions by regularizing the concerned employees who had filed the OA as MC, with observation that this should not be treated as a precedent for any other similar cases. This was challenged by the applicants in OA No. 602/2006. The Tribunal disposed of the OA vide order dated 9.10.2015 with the following directions:-

“16. From the above analysis, it emerges that the applicants herein were initially given the lower equivalent scale of Rs. 800-1150/- whereas their claim is for higher scale of Rs. 825-1200. Further, vide letter dated 20.7.1979, the re-designation of the post of Storeman was done as Material Checker. As a result of cadre structuring, the benefit of upgradation should have been extended to the applicants but only the Storemen working in the Engineering Department of Allahabad

Division were not given this benefit. In view of the cases cited by the applicants wherein the similarly situated employees were given this benefit of upgradation, it should have accrued to them. As similarly situated persons were given these benefits in pursuance of order in OA No. 648 of 1999, the applicants seem to have been a disadvantage as initially they were placed in a lower grade against the scheme of re-designation in compliance of order dated 20.07.1979.

17. In view of facts and circumstances of these OAs and legal position, we are of the considered view that the applicant/s have been discriminated against as the similarly situated employees were given these benefits. They also deserve to be given the similar benefits. Similar employees cannot be treated in a dissimilar manner. Therefore, it will be just and proper to grant similar benefits to the applicants in terms of designation of pay. The O.As. deserve to be allowed."

3. When no action was taken by the respondents to implement the order dated 9.10.2015, the applicants filed a contempt petition (CCP No. 73/2016) against the respondents. During pendency of the contempt petition, the respondents passed the order dated 16.5.2016 (Annexure 3 to the EA) refusing to grant the benefit to the applicants on the ground that the benefit was allowed to the applicants in OA No. 648/1999 only and the Railway Board letter dated 20.9.1979 was only a re-designation of the post of Storeman in the Stores Department and such re-designation was to be done without any change of the pay scale of the employees. It was further stated that such benefit was wrongly allowed to the employee of Bridge Department. In Civil Engineering department, there is no post of Storeman and the applicants are not entitled for regularization as Material Checker in higher grade.

4. This order dated 16.5.2016 was considered by the Tribunal in the CCP No. 73/2016) which was disposed of as per the order dated 19.10.2016, in which it was held as under:-

8. A careful perusal of the order passed by this Tribunal shows that while the order dated 09.10.2015 was passed, the respondents were left with option for reconsidering the matter. Since an option had been left open to the respondents by the Tribunal to reconsider the matter in accordance with rules, the respondents have taken action in pursuance of that part of the order as per their understanding and passed the order dated 16.05.2016. Hence, they cannot be said to have committed willful disobedience.

9. In the facts and circumstances, we feel that substantial compliance has been made by the respondents and no case of contempt is made out. Consequently, the notices issued to the respondents are discharged and the contempt proceeding is dropped. If the applicants are aggrieved by any inadequacy / infirmity contained in the order dated 16.05.2016, they may challenge the same on original side.”.

5. The respondents, upon notice, have filed their Counter Reply to the Execution application stating that vide order dated 19.10.2016, this Tribunal had accepted the order dated 16.5.2016 as compliance of the order dated 9.10.2015. It is further mentioned that the Execution application for execution of the order dated 9.10.2015 has been filed by the applicants on 16.3.2017. Thus it is delayed in view of the judgment in the case of Hukum Raj Khinwasra vs. Union of India reported in 1997 SCC Vol. IV page 284. Further, there is no prayer for condoning delay. Hence, it was pointed out that the Execution Application is liable to be dismissed on the ground of delay.

6. The applicants have filed Rejoinder denying the averments in the Counter Reply. It is stated that as mentioned in the order dated 16.5.2016 passed by the respondents, it was decided not to

implement the order dated 9.10.2015 on the plea that the Railway Board in letter dated 10.3.2004 has observed that the order of the Tribunal in Sukhdeo Singh case has been passed as a special case without it being taken as a precedence. The Tribunal had directed to allow same benefit as allowed to other similarly placed employees, which was not accepted by the respondents. The applicants have also referred to the case of Jitendra Kumar Bhattacharya vs. Union of India and Ors. in OA No. 1562/2003, in which, under similar circumstances, the Execution Application was held to be maintainable. It was mentioned that the respondents did not re-consider giving the same benefits with regard to pay scale etc. which was granted to other similarly placed employees in pursuance to the order of the Tribunal in Sukhdeo Singh case. It was further stated that the observation of the Tribunal in the order dated 19.10.2016 while dismissing the contempt petition was to file application in original side if the applicant is still aggrieved, has been followed by filing the Execution application.

7. We have heard learned counsels for both parties in this case and considered the pleadings on record. The order dated 19.10.2016 passed by this Tribunal in the CCP No. 73/2016 is very clear about the observation that if the applicants are aggrieved by the decision of the respondents, they should agitate the same in original side. Further, it is also held that as per the order dated 9.10.2015, the respondents were left with option for re-considering the matter, which has been done vide the order dated 16.5.2016. The applicants have enclosed copy of order dated 13.1.2017 passed in the CCP No. 92/16 passed for non-compliance of the order dated 9.10.2015 for other OA No. 1221/06 which was clubbed with the OA No. 602/06 filed by the applicant at Annexure 8 to the Execution Application. As per this order, the order dated 16.5.2016 was not accepted as compliance of the order dated 9.10.2015 of this Tribunal and one more opportunity was given to the respondents to comply the order dated 9.10.2015. It is not mentioned in the Execution applications if the respondents have allowed the benefits to the applicants in the OA No. 1221/06 and 1401/06 which were clubbed with the OA No. 602/06 while passing the common order dated 9.10.2015. Further, there is nothing on record to show that the order dated 19.10.2016

passed in the contempt petition filed by the applicant has been challenged in appropriate forum in case the applicants were not satisfied with the same. Hence, the finding of the Tribunal in the order dated 19.10.2016 regarding compliance of the order dated 9.10.2015 cannot be changed in this Execution proceedings, in which the scope is limited to execution of the order dated 9.10.2015 and its scope does not include giving other directions to the respondents. Since in the case of the applicants Tribunal has already decided that the order dated 9.10.2015 has been substantially complied vide order dated 19.10.2016 (Annexure 7 to the EA), this decision cannot be changed in this proceedings.

8. In the facts and circumstances as discussed above, the Execution Application is dismissed, since the order dated 9.10.2015 has been held to have been substantially complied with by the respondents vide order dated 19.10.2016 of the Tribunal. However, the applicant will be at liberty to file original application as per law, if he is aggrieved and if the employees who are applicants in the OA No. 1221/06 and OA No. 1401/06, to which also the order dated 9.10.2015 was also applicable, have been allowed the benefit by the respondents in spite of the order dated 16.5.2016 (Annexure 3 to the EA). No costs.

(Rakesh Sagar Jain)
Member (A)

(Gokul Chandra Pati)
Member (J)

Anand...