

**Central Administrative Tribunal
Ernakulam Bench**

OA No.180/00387/2015

Tuesday, this the 13th day of November, 2018

C O R A M

Hon'ble Mr. E.K.Bharat Bhushan, Administrative Member
Hon'ble Mr.Ashish Kalia, Juducial Member

1. M.S.Unnikrishnan Nair, aged 53 years
S/o Mohandas
Working as Senior Section Office3r (Accounts)
Southern Railway, Trivandrum Division.
Residing at TC 51/3118(6)
Industrial Estate P.O., Thiruvananthapuram-695 019.
2. Ambika Velayudhan, aged 49 years
W/o Velayudhan
Working as Senior Section officer (Accounts)
Southern Railway, Trivandrum Division
Residing at "Prannavam", TSGRA 137
Thycaud P.O., Thiruvananthapuram-695 014
3. S.R.Vijayan, aged 61 years (Retd)
S/o Rajasekharan
Accounts Assistant, Trivandrum Division.
Residing at Kalluvarambu Veedu
Arumana P.O.,
Kanyakumari District

Applicants

[Advocate: Mr.Martin G.Thottan]

versus

1. Union of India represented by
the General Manager
Southern Railway, Headquarters Office
Chennai-600 003.
2. Financial Advisor & Chief Accounts Officer
Southern Railway, Chennai-600 003.
3. Senior Divisional Finance Manager
Southern Railway, Trivnadrum Division
Trivandrum – 695 014.

4. Senior Divisional Finance Manager,
Southern Palghat Division
Palakkad-2.

Respondents

[Advocate: Mrs.P.K.Radhika)

This OA having been heard on 1st November, 2018, the Tribunal delivered the following order on 13th November, 2018:

ORDER

By E.K.Bharat Bhushan, Administrative Member

Applicants 1 & 2 are serving employees and No.5 retired from service on 30.7.2013. Applicants 3 & 4 are deleted from OA vide order dated 1.9.2016 in MA No.1005/2016. They contest the condition imposed on the allotment of higher pay scales to the Railway Accounts Staff by virtue of Railway Board order dated 7.3.2003, specifying that the revised pay scales allowed as per the above order will have notional basis with effect from 1.1.1996 and actual benefit only from 19.2.2003. The reliefs sought specifically are as follows:

Declare that the applicants are entitled to be extended the benefit of the judicial decisions at Annexure A2, A3, A4, A6 and A7 and direct the respondents accordingly.

The applicants, as mentioned, are from the category of Accounts Staff in the Railway establishment. The OA contains, little by way of argument, except to state that the demand raised has already been favourably looked upon by the order of this Tribunal in OA 671/2003 (Annexure A2), the order of the Hon'ble High Court in WP(C) No.22276 of 2007 (Annexure A3) and the order of the Hon'ble Supreme Court in CC 1997/2013 (Annexure A4). In OA No.671/2003, this Tribunal, considering the case of certain Junior Accounts Assistants working in the Divisional Accounts Office of the Southern Railway who had challenged

the same order (Annexure A1), had considered the issue in detail and had come to the conclusion that the applicants therein are entitled to the revised pay scales including the arrears of pay and allowances with effect from 1.1.1996 which is the date of implementation of the 5th CPC recommendations. The Tribunal had quashed Annexure A1 (Annexure A3 in the said OA) to the extent it declared the actual benefit as effective only from 19.2.2003. The Tribunal had rejected the contention of the respondents in that case that the matter of pay scales for the Accounts Staff had arisen from a proposal based on consideration other than the recommendation of the 5th CPC and in fact was based on a decision of the Council of Ministers. The orders of this Tribunal were upheld by the Hon'ble High Court in WP(C) No.22276 of 2007, finding that there is “no rationale to refuse the relief to the railway employees particularly when such relief had been granted to the employees of the other sector covered by the Pay Commission's order”. The Hon'ble Supreme Court who had been approached by the respondent Railways in SLP (C) No.1587-1588/2014 ordered that the question of law relating to the issue be kept open giving the claimants liberty to have their cases adjudicated on its merit as and when such claim is raised.

2. The applicants have also called to their assistance the decision of the Hon'ble High Court of Patna (Annexure A6) which also follows the same line, going on to comment that the Writ Petition is to be treated as belonging to a representative category for all employees of the Accounts Establishment and ordering that all of them shall get the benefits of appropriate pay scales w.e.f. 1.1.1996 with payment of arrears of salary but without the obligation of payment of interest.

3. The respondents have filed a reply statement wherein they have argued that the Government is vested with necessary powers to consider and grant the benefit as sought for to one as distinct from another. When this is done, no discrimination can be alleged. It is stated that the particular decision enforced through Annexure A1 order is not the result of the recommendation of the 5th CPC; instead it is based on a Cabinet decision. The Government's decision itself was based on the recommendation of a GOM (Group of Ministers). It is these decisions which have been enforced by the Railway Board's letter dated 7.3.2003.

4. In the reply statement, the respondents have called to their assistance the judgment of the Hon'ble Supreme Court in the case of *Arun Jyoti Kundu* (C.A.No.2468-2469 of 2005) (Annexure R4) wherein it is stated that *“it is not possible to postulate that the decision of the Government must be given retrospective effect because of the reason that the very right to their benefit arose because of the decision of the Government to extend to them a particular benefit not specified in the 5th CPC report”*.

5. The respondents further go on to state that the Tribunal/Hon'ble High Court “had erred in not appreciating the factual distinction of respective categories which resulted in passing of an order contrary to the ruling of the Hon'ble Supreme Court laid down in the matter of *Arun Jyoti Kundu*”. Further, the respondents also referred to a judgment of the Principal Bench of CAT, copy of which is available at Annexure R7, wherein a different view has been taken and it has been ordered as follows:

“25. It will be clear from the above quoted order that this up-gradation was not recommended by the Pay Commission but was a result of policy decision taken by the Government in September 2006 and the pay revision benefits were given from 15.9.2006. Therefore, this is clearly within the domain of the government to decide from which date a particular pay scale would be made effective. This view is consistent with the ratio laid down by the Hon'ble Supreme Court in Arun Jyoti Kundu (supra) case. Moreover, as stated earlier, the Hon'ble Supreme Court by its order dated 7.7.2014 in Special Leave to Appeal No.1587-1588/2014 (supra) has confirmed the earlier CAT order as affirmed by the High Court to the parties before CAT/High Court and further left it open for new cases to be decided on merits.

26. In view of the above discussion, we are of the view that this cannot be treated as a case of hostile discrimination at all. We are, therefore, not inclined to interfere in the matter. The OAs are accordingly dismissed. No costs.”

6. Heard Mr.Martin G.Thottan, learned counsel for the applicants and Mrs.P.K.Radhika, learned counsel for the respondents, and examined the documents and pleadings in the OA.

7. Facts being so, it is seen that diametrically opposite views have been taken by this Tribunal and the Principal Bench of CAT. While Hon'ble High Court of Kerala has dismissed the Writ Petition filed against this Tribunal's (Ernakulam Bench) order, the SLP filed by the Railways has been disposed of by the Hon'ble Supreme Court leaving the question of law open and also instructing that the right of other claimants is to be considered on its own merit.

8. Divergent views though exist, the fact remains that Hon'ble Patna High Court in W.P.No.11452/2005 (Annexure A6) as well as the Hon'ble High Court of Kerala had found that there was no rationale to refuse relief to the railway employees particularly when such relief has been granted to the employees of the other sector covered by the Pay Commission order. The Patna High Court held as follows:

*“We take this writ petition to be in a **representative category** for all employees of the Accounts Establishment of the Indian Railways, all of whom shall get the benefits of appropriate pay scales w.e.f. 1.1.1996, with payment of arrears of salary, but without the obligation of payment of interest. It goes without saying that the post-retirement benefits of such employees who have already superannuated, shall be revised, apart from payment of arrears of salary. There shall be no order as to costs”.*

9. The view taken by the aforesaid judicial fora was affirmed by the Hon'ble Supreme Court as well, albeit the judgment rendered was in persona. No fetter has been placed by any of the judicial forums above in granting relief to similarly situated claimants. The applicants in this OA being similarly situated, we do not find any reason to deny them the relief sought for. The OA succeeds and we declare that the applicants are entitled to the reliefs sought for. Necessary orders are to be issued within 60 days of receipt of this order. No order as to costs.

(Ashish Kalia)
Judicial Member

(E.K.Bharat Bhushan)
Administrative Member

aa.

Annexures filed by the applicants:

- Annexure A1: Copy of the Railway Board's letter RBE No.48/2003 dated 7.3.2003.
- Annexure A2: Copy of the order dated 30.6.2006 in OA No.671 of 2003.
- Annexure A3: Copy of the judgment dated 27.3.2012 passed by the Hon'ble High Court of Kerala in WP(C) No.22276 of 2007 (S).
- Annexure A4: Copy of the order dated 25.2.2013 in CC 1997/2013 passed by the Hon'ble Supreme Court of India.
- Annexure A5: Copy of the letter No.P.535/HQ/Admn/Court case/Jose Sebastian/CC dated 3.1.2014.
- Annexure A6: Copy of the judgment of the Hon'ble Patna High Court dated 9.4.2010 in WP No.11452/2005.
- Annexure A7: Copy of the order dated 7.7.2014 in SLP (C) No.1587-1588/2014 passed by th Hon'ble Supreme Court of India.
- Annexure A8: Copy of the representation submitted by the association in which the applicants belong dated 17.7.2014 to the Hon'ble Minister for Railways.

Annexures filed by the respondents:

- Annexure R1: Copy of the Fifth Central Pay Commission of pay scale for Accounts Staff in Indian Railways.
- Annexure R2: Copy of the Note for the Cabinet Np. PC-V/98/I/II/23 dated 2.2.2003.
- Annexure R3: Copy of the approval of the Union Cabinet dated 19.2.2003.
- Annexure R4: Copy of the judgment in C.A.No.2468-2469 of 2005 of the Hon'ble Supreme Court of India dated 27.8.2007.
- Annexure R5: Copy of the letter No.PC-V/97/R-II/17 dated 24.11.1998.
- Annexure R6: Copy of the letter No.PC-V/97/T/11/9 dated 22.10.1999.
- Annexure R7: Copy of the order dated 15.9.2015 in OA No.527/2015 and connected cases.