

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.020/01021/2016

Date of CAV: 24.08.2018

Date of Pronouncement: 04.09.2018

Between:

1. Y.V.L. Srinivas, Aged about 46 years,
S/o. Y.V. Appa Rao, Tower Wagon Driver,
O/o. Sr. Section Engineer, Over Head Equipment (OHE),
South Central Railway, Tuni,
West Godavari District, A.P.
2. J. Koteswara Rao, Aged about 47 years,
S/o. Koti Lingam, Tower Wagon Driver,
O/o. Sr. Section Engineer, Over Head Equipment (OHE),
South Central Railway, Ongole, Prakasam district, A.P.
3. N.M. Samson Babu, Aged about 47 years,
S/o. M. Chitti Babu, Tower Wagon Driver,
O/o. Sr. Section Engineer, Over Head Equipment (OHE),
South Central Railway, Vijayawada, Krishna District, A.P.
4. Sk. Abdul, Aged about 60 years,
S/o. Sk. Kasim, Tower Wagon Driver (Retd),
17-9-43, Islam Peta, Tenali, (PO & M),
Guntur District, A.P.

... Applicants

And

1. Union of India, Represented by
The Chairman, Railway Board,
Government of India, Ministry of Railways,
Rail Bhavan, New Delhi – 110001.
2. The General Manager,
South Central Railway,
Government of India, Ministry of Railways,
Rail Nilayam, Secunderabad – 500003.
3. Senior Divisional Personnel Officer,
South Central Railway,
Government of India, Ministry of Railways,
Vijayawada, Krishna District, AP.

... Respondents

Counsel for the Applicant ... Mr. T. Koteswara Rao, Advocate
 Counsel for the Respondents ... Mr. D. Madhava Reddy, SC for Railways.

CORAM:

Hon'ble Mr. B.V. Sudhakar ... *Member (Admn.)*
Hon'ble Mr. Swarup Kumar Mishra ... *Member (Judl.)*

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

The OA is filed against the impugned order SCR/P.BZA/405/2-Trd/TWD/CAT dt 31/8/2016 of the respondents which denies the grant of pay scale of Rs.5000-8000 to Tower Wagon Drivers (TWDs) at par with that of the Goods Train Drivers.

2. The case in brief is that the applicants were recruited as Khalasis in South Central Railway and over the years got elevated as TWDs in 2003 with a Grade pay of Rs 2800. Applicants having come to know that in South Eastern Railway, East Coast Railway and East Central Railway zones a separate cadre for TWDs was created, the applicants approached this tribunal vide OA 654/2015 for similar creation. The Tribunal disposed of the O.A. on 21.01.2016 by giving the liberty to the applicants to represent to the respondents for creation of posts in Sr. Tower Wagon driver just as it was done in other railway zones. Accordingly the applicants represented on 06.02.2016 which was turned down by the impugned order.

3. The applicants case solely banks on the Hon'ble Supreme Court's observation in Civil appeal No 365 of 2007 confirming the decision of the Hon'ble High Court of Calcutta in WPCT no 697 of 2002 wherein the orders of

the Calcutta Bench, CAT were upheld. The CAT Calcutta observed that the TWDs were treated as equivalent to Goods train drivers and there was no reason to treat them differently. Further, Hon'ble High court of Calcutta in WPCT No. 208 of 2007 on 2.4.2014 granted pay scales of Goods Train drivers to the TWDs. The respondents filed SLP © No 12002 /2015 against the WPCT 208/2007 but was dismissed by the Hon'ble Supreme court on 1.10.2015. Therefore the applicants assert that the impugned order issued is invalid. The applicants being similarly placed employees they should also be extended the same benefit of being treated at par with the Goods train driver as is being done in other Railways cited.

4. The respondents claim that the applicants are not entitled to the pay scale of 5000-8000 at par with the Goods driver as was decided by the Railway Board vide lr dt 15.11.2010 in compliance with the observations of the Hon'ble Apex court in the same SLP C No 365/2007. The respondents reject the demand of the applicants mostly on the grounds that the duties and responsibilities, feeder cadre, nature of work, etc for the TWDs and the Goods driver are different. By invoking para 12 of the judgement in SLP 365/2007, wherein Union of India was given the right to pass an appropriate order in relation to the pay scales applicable to any class of employees including the respondents afresh in accordance with law, the Railway Board has issued the lr. PC-V/2000/CC/16/Pt DT.15.11.2010 bringing out the differences of the two cadres on different counts.

5. Heard the learned counsel. Ld . counsel for applicant emphasized that the case is covered by Hon'ble Apex Court Judgement in SLP C no 365/2007. Ld. Counsel for the respondent quotes the same judgement and as directed therein

respondents have reviewed the issue and found no grounds to provide pay scales to Tower Wagon drivers at par with Goods drivers.

6. A close reading of the Honorable Apex Judgement will indicate that in Eastern Railways the TWDs were inadvertently paid the higher pay scales of Goods driver in II, III, IV and V Pay Commissions. When the Eastern railway decided to downgrade the pay scale, it was challenged in Hon'ble CAT, Kolkata Bench. The Tribunal found that it was Eastern Railways which decided to grant TWDs the grade of Goods Driver and that too, they allowed the same for last 40 years. Besides, the Eastern Railways have not produced any records justifying the purported downgrade nor valid reasons for doing so. The Hon'ble High court of Calcutta found no ground to interfere as it was being paid from a long period of time and that no convincing reasons were given to down grade the pay scale. While contesting the judgment of Hon'ble High court in the Apex court, the Union of India took the plea that the job, duties, responsibilities and training required for TWDs were not comparable to that of Goods driver. However, Hon'ble Apex court observed that such submissions should have been raised in the first forum of adjudication i.e. Tribunal and not for the first time before Hon'ble Apex Court and there being no amendment to the plea moved even before the Hon'ble High court, it would be unfair to get into the factual matrix. However, Hon'ble Apex Court while confirming the orders of the Hon'ble High court and the Tribunal has given the right to the Union of India to pass an appropriate order in relation to the pay scale applicable to any class of its employees. Accordingly the respondents have come up with Railway Board letter dated 15.11.2010 demarcating the roles and responsibilities of the two cadres as under:

S. No.	Subject	Goods driver	TWDs
1	Qlfcn	Matriculate/ITI/diploma	VIII class + heavy motor driving licence
2	feeder	From shunter/asst driver	From existing motor vehicle drivers
3	Duty	Drive large no. of wagons	Drive single motor car
4	distance	Large distances	Within 30 kms
5	Duty hrs	10 hrs	8 hrs
6	H.P	3850-6000 engine H.P	530 engine horse power (H.P)
7	Technical	many in detail	Not required
8	Registers	Read many registers	No such reading
9.	Reports	Fill up many reports	Free from such duties
10	Trg	90 days with refresher trg	30 days with no refresher trg
11.	Log book	Study log book /inspect eng	No such work
12	Load	Handle different loads	Not so
13	Job type	strenuous	Light in comparison
14.	Nature	Heavy responsibility	Lighter responsibility comparison.

7. It is an accepted principle that for different duties and responsibilities wages are differently paid. In the present case as is seen from the above table the duties and responsibilities are clearly discernible. They are definitely not the same to provide for same pay scales. The respondents have admitted that it was an error on their part to grant same scale to TWDs at par with goods drivers in the railways cited. They also could not properly place the correct facts before the Hon'ble Courts and therefore lost the case. Nevertheless, taking advantage of the opportunity given by the Honorable Apex Court in the judgment enclosed, to fix pay scales of its employees by proper application of mind, they have corrected the mistake done by coming up with the letter dt 15.11.2010. The room given by the SC is based on the fact that the mistake cannot be perpetuated. That observation is more in the nature of a direction to correct the mistake at the earliest as otherwise unequalled will be treated as equals, which will hinder the equality clause of the Constitution. The letter clearly details the facts and comes to the conclusion that parity sought with goods driver in terms of pay is

unacceptable. Claiming a benefit based on error committed by the respondents is against law. The Supreme Court judgement in *State of U.P. v. Rajkumar Sharma, (2006) 3 SCC 33*, summarizes the same. By providing pay scales at par with the Goods Driver would tantamount to injustice being done to them as they would feel discriminated for getting lower pay in discharging higher responsibilities vis-à-vis TWDs. Demanding higher pay for a lower responsibility is illogical. Moreover, in the present case, the applicants were not paid at par with the goods drivers unlike in the cited railways wherein they were being paid for nearly 40 years and the withdrawal of the same led to the grievance discussed. To conclude, as the duties and responsibilities of the TWDs are different from that of the Goods Drivers, staking parity in pay scale is not justifiable.

8. Therefore, the only course open to this Tribunal is to dismiss the O.A. Resultantly, the OA is dismissed with no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 4th day of September, 2018

evr