

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

O.A. 050/00722/2015

**Reserved on- 04.09.2017.
Date of pronouncement 01.11.2017**

CORAM

Hon'ble Shri A.K. Upadhyay, Member [A]
Hon'ble Shri J.V. Bhairavia, Member [J]

1. Uday Shankar Jaiswal son of late Panchanan Bhagat, resident of Railway Colony, Bunglow no 624 Road No. 1 P.O.- Samastipur, P.S. Samastipur, District- Samastipur.

.....Applicant

By Advocate : Shri S.K.Bariar

Versus

1. The Union of India through the Chairman Rail Board, Railway Bhawan, New Delhi.
2. The General Manager East Central Railway, Hajipur.
3. The General Manager (P), East Central Railway, Hajipur.
4. The Chief Commercial Manager, East Central Railway, Hajipur.
5. The Divisional Railway Manager, East Central Railway, Samastipur.
6. The Divisional Railway Manager (C), East Central Railway, Samastipur.
7. The Sr. Divisional Personnel Officer, E.C. Railway, Samastipur.
8. The Assistant Personnel Officer (P), E.C. Railway, Samastipur.

.....Respondents

By Advocate: Shri S.K.Griyaghey

Shri Vinay Kumar.

O R D E R

Jayesh V. Bhairavia, M [J]: The applicant in this O.A prays for a direction to the respondents to grant/fix his pay in the Pay Scale Rs 6500-10500 against the pay scale of Commercial Grade-I from 01.08.1996 instead of 17.05.2002, the date of juniors granted and the consequential benefits. As such, he prays for the following relief(s) in terms on para 8 of this O.A.:-

"[8.i] The applicant humbly prays that the respondents be directed to fix the pay scale of Rs.6500-10500 from 01.08.1996 i.e the date of juniors promoted to the post of Commercial Inspector-1 and granted pay scale Rs.6500-10500/-

[8.ii] Any other relief / reliefs may be granted to the applicant for ends of the justice."

2. The brief facts of the case, as submitted by the applicant, are as below :-

[i] The applicant, namely Shri Uday Shankar Jaishwal, was initially appointed as Commercial Apprentice in the Pay Scale of Rs.455-700(RP Rs 1400-2300) and after completion of training he was appointed as Commercial Inspector Grade-III on 30.08.1984 in the Samastipur Division, East Central Railway.

[ii] The Pay Scale of Commercial Apprentice Rs.455-700(RP Rs 1400-2300) had been fixed as Rs. 550-750(RP Rs 1660-2600 & RP Rs.5500-9000) vide letter RBE No. 119/87 dated 15.05.1987 to the new direct recruit.

[iii] That, the applicant had also filed O.A 1608/1991(Jai Prakash & Anr Vs UOI & Ors) before the Principal Bench, CAT, New Delhi which was allowed vide order dated 07.08.1992 and the department had granted the Pay of Rs. 550-750(RP Rs 1660-2600 & RP Rs.5500-9000) with effect from 15.05.1987 vide order dated 06.12.1993(Annexure A/1). Thereafter, the applicant had been granted pay scale of Rs. 2000-3200 (RP.6500-10500) of Commercial Inspector Grade -I) by way restructuring cadre with effect from 01.03.1993 vide order dated 04.04.1994 (Annexure A/2).

[iv] The applicant and three others were granted regular promotion to the post of Chief Commercial Inspector in pay scale of Rs.2375-3500 vide order dated 19.01.1996 (Annexure A/3).

[v] The four post of Commercial Inspector Grade-I of pay scale of Rs.2000-3200 (RPRs 6500-10500) were vacant and against these posts, selection were made. As per the selection procedure for the post of Commercial Inspector Grade-I, 75% reserved for eligible candidates of Commercial Supervisor-II Cadre and 25% reserved for eligible candidates of Commercial Supervisor-II Cadre/Commercial Superintendent-II Cadre/CRS Cadre and they will call for selection as per the seniority of their respective grades.

[vi] Three candidates of Commercial Superintendent -II Cadre namely Mr. Shiv Kumar Prasad, Priyadarshi Sujit and Sanjiv Raman and one Shri Durga Prasad Mishra, Commercial Inspector Grade-II Cadre were selected and granted promotion vide letter dated 21.08.1996 (Annexure A/4) against the four resultant vacancies due to promotion of the applicant and three others. Shri Shiv Kumar Prasad, Priyadarshi Sujit and Sanjiv Raman were Commercial Superintendent-II Cadre not from the cadre of Commercial Inspector-I. Shri Durga Prasad Mishra was in Commercial Inspector cadre but very junior to the applicant.

[vii] The department preferred an appeal against the order of this Tribunal dated 07.08.1992 in OA 1608/1991 before the Hon'ble Supreme Court by filing SLP 8090/1993 and Hon'ble Supreme Court vide its order dated 06.05.1996 in a SLP 8090/1993 quashed the order of this Tribunal. In pursuance of the order of Hon'ble Supreme Court, the applicant and three others had been reverted back to the pay scale of Rs.455-700(RP.1400-2300) vide order dated 14.07.1997 (Annexure A/5).

[viii] L/c for applicant submits that after reversion on 14.07.1997, the applicant was granted pay scale of Rs. 100-2600 (5500-9000) with effect from 01.03.1993 vide order dated 29.07.1997 (Annexure A/6). Subsequently the applicant was granted promotion to the post of Commercial Inspector Grade-I and Chief Commercial Inspector in the pay scale Rs. 2000 -3200 (RP Rs6500-10500) and Rs. 2375-3500 (RP 7450-11500) on 17.05.2002 and 2005 respectively. On 15.02.2007, the applicant was again promoted to the post of Assistant Commercial Manager on 15.02.2007 by way of selection.

[ix] The applicant alongwith three others, had made earlier a representation to fix their seniority and grant the pay scale Rs.2000-3200 from 01.08.2008 as given to juniors i.e Mr. Shiv Kumar Prasad, Priyadarshi Sujit, Sanjiv Raman and Durga Prasad Mishra. The Division office had granted the seniority and pay scale to the applicant and

three others from the date of juniors but for its approval, a letter dated 12.05.1998 (Annexure A/7) had been sent to Head Quarter for same. The Head Quarter instead of approving the pay scale Rs2000-3200 from 01.08.2008 to the applicant and three others, reverted the junior namely Mr. Shiv Kumar Prasad, Priyadarshi Sujit, Sanjiv Raman and Durga Prasad Mishra. After giving show cause notice dated 05.10.1999 (Annexure A/8).

[x] That, Shiv Kumar Prasad, Priyadarshi Sujit and Sanjiv Raman had filed O.A 718/1999 challenging the reversion order 134 dated 17.11.1999. The O.A 718/1999 was dismissed vide order dated 09.08.2005. Thereafter Shiv Kumar Prasad filed CWJC No.13342/2005 which was allowed on 13.04.2010. The department moved before Hon'ble Supreme Court against the said order dated 13.04.2010 but the same was also dismissed in the year 2011. The department, after dismissal of SLP, granted promotion to Mr. Sanjeev Raman and Shiv Kumar Prasad in the pay scale 2000-3200 (RP Rs 6500-10500) with effect from 01.08.1996. Since the juniors had been granted pay scale 2000-3200 (RP Rs 6500-10500) with effect from 01.08.1996, the applicant is also entitled for fixation of pay scale w..f. 01.01.1996.

In sum, the applicant submits that there has been miscarriage of justice due to incorrect action of the respondents; hence reliefs prayed for in para 8 of this OA.

3. The respondents, primarily raised the question of maintainability of this OA on grounds of limitation and also on the ground of principle of res-judicata as this case has already been decided by Hon'ble High Court. Additionally, l/c for respondents further submitted as below :-

[i] L/c for respondents submits that the applicant was initially appointed as Commercial Apprentice in the Pay Scale of Rs.455-700. Thereafter the applicant was granted Rs. 550-750/1660-2600 vide order dated 14.03.1990. Thereafter he was reverted in scale of 1400-2300 on 27.12.1990. Subsequently in the light of Hon'ble CAT Principal Bench New Delhi order in OA 1608/1991, benefit of scale 1600-2660

was granted from 15.05.1987 vide order dated 06.12.1993. The scale of 2000-3200 was granted to him under restructuring w.e.f. 01.03.1993 vide office order dated 04.04.1994. Subsequently, he was promoted to the post of Chief Commercial Inspector (Scale 2375-3500) vide office order dated 19.01.1996.

[ii] In the meantime, a notification was issued on 22.02.1996 (Annexure R/1) for filling up 04 post of Commercial Inspector Grade-I (Scale 2000-3200) . After due selection, Sanjeev Raman & others were empanelled vide office letter dated 28.05.1996 and subsequently promoted vide order dated 21.08.1996. (Annexure A/4 of OA).

[iii] The Hon'ble Supreme court vide its order dated 06.05.1996 in SLP 8090 of 1993, had quashed the order of CAT, Principal Bench New Delhi, passed in OA 1608/1991.In compliance of Supreme Court's order Shri U.S. Jaiswal was reverted in the scale of Rs1400-2300 w.e.f. 15.05.1987 vide order dated 14.07.1997. and then granted scale Rs1600-2660 w.e.f. 01.03.1993 under restructuring vide order dated 29.07.1997 & pay scale 6500-10500 w.e.f. 17.05.2002. Thereafter the applicant was promoted as CCI (scale 7450-11500) w.e.f. 31.12.2004. After completion of due selection process, he has been promoted as ACM (Scale 9300-34800) + GP 4800/-) w.e.f. 15.02.2007 vide office order dated 14.02.2007.

[iv] It has further been submitted by the I/c for respondents that in the light of Hon'ble Supreme Court's order in SLP 8090/1993 applicant and others were reverted vide office order dated 14/07/1997 as such, Sanjeev Raman & others were also reverted by the department vide office order dated 17.11.1999.

[v] Thereafter Sanjeev Raman & others had approached Hon'ble High Court, Patna through CWJC 13342/2005 & 4755/2006 which was allowed vide order dated 13.04.2010 and 29.09.2010 in MJC 2267/2010. The Railway Administration filed SLP 11602-03/2011 before the Hon'ble Supreme against this order of Hon'ble High Court.

However the same was dismissed. Thereafter the pay of Sanjeev Raman and others were restored and their seniority were fixed in accordance with the pay and seniority of Sri U.S. Jaiswal vide order dated 13.01.2012.

In sum, the respondents submits that there is no infirmity in the in fixation of seniority and pay of the applicant. Therefore, prays that this O.A, being devoid of merit, is liable to be dismissed.

4. In rejoinder to the written statement I/c for applicant has reiterated his earlier submissions and additionally he submitted that his pay scale of Rs. 2000-3200/- shall be fixed from 01.08.1996 instead of 17.05.2002 i.e the date of promotion of his junior Mr. Durga Prasad Mishra.

5. Heard the parties and considered their submissions/arguments/documents. The facts/views which emerge are as below :-

(a) In the present case, on the basis of material on record, it reveals that the applicant was initially appointed as Commercial Apprentice in the Pay Scale of Rs.455-700 (Revised Pay scale Rs.1400-2300/-) on 30.08.1984. Thereafter the applicant was granted pay scale of Rs. 550-750 (RP Rs 1600-2660 & RP Rs.5500-9000) vide order dated 14.03.1990. Thereafter he was reverted in scale of 1400-2300 on 27.12.1990. Subsequently in the light of order passed by the Hon'ble CAT Principal Bench New Delhi in OA 1608/1991, benefit of scale 1600-2660 was granted from 15.05.1987 vide order dated 06.12.1993. However, the Hon'ble Supreme court vide its order dated 06.05.1996 in SLP 8090 of 1993, had quashed the order of Hon'ble CAT, Principal Bench New Delhi, passed in OA 1608/1991.

The respondent authority, in compliance of Supreme Court's order, the applicant was reverted in the scale of Rs1400-2300 w.e.f. 15.05.1987 vide order dated 14.07.1997. It is admitted fact that the said order dated 14.07.1997 was never challenged by the applicant and accordingly the service and the pay scale of the applicant has been

considered accordingly by the respondent department for further service avenue of the applicant.

The record of the case further reveals that thereafter other employees namely Sanjeev Raman, Shiv Kumar Prasad and the others who were originally appointed in the year 1993 as a Commercial Apprentice under direct recruit by the Railway Recruitment Board under 10% quota in the unrevised pay scale of Rs.1600-2660/- (as per the policy of the Indian Railways issued as per the memorandum of 15.5.1987) were also reverted by the respondents vide office order dated 17.11.1999. on the basis of order and judgment passed by the Hon'ble Apex Court (Supra)

The said order dated 17.11.1999 reverting the employees namely Shri Sanjeev Raman & others had approached Hon'ble High Court, Patna through CWJC 13342/2005 & 4755/2006 which was allowed vide order dated 13.04.2010 and 29.09.2010 in MJC 2267/2010. The Hon'ble High Court of Patna had held in para 3 that "**.....it appears to us to be of paramount important in the present case that the petitioner was a direct recruit in 10% quota as commercial apprentice in the unrevised pay scale or of Rs.1600-2660/-, Therefore the petitioner did not belong to pre-15.05.1987 era having been appointed on 25.5.19993. The judgement in Union of India Vs M. Bhaskar (supra) is entirely confined to the employees who had commenced their employment in the Indian Railways prior to 15.5.1987, which had resulted in the anomaly of grant of pay scale to junior persons which erroneously made them senior to their seniors. It is thus evident that the petitioner was rightly given the unrevised pay scale of Rs1600-2660 at the time of his entry into service, and was rightly given the revised pay scale of Rs.6500-10500/-, consequent thereupon their promotion as Commercial Superintendent Grade-I and equally rightly they were promoted to the next higher post of Commercial Grade-I.**"

Hon'ble High Patna court, Patna further held that **the judgment of Hon'ble Supreme Court (Supra) did not apply to the fact and circumstances of the case on hand and negated the contention of the railway department that the said petitioner's promotion creating anomaly with the employees who had already entered in services of the Indian Railways prior to 15.05.1987 and pleased to quash and set aside the order passed by the railway authority on 17.11.1999 as well as the order passed on 09.08.2005 by the C.A.T Patna Bench in O.A 781/1999.**

6. The Railway Administration filed SLP 11602-03/2011 before the Hon'ble Supreme against the above stated judgement passed by Hon'ble High Court of Patna. Thereafter the respondent authority had restored the pay of Sanjeev Raman and others and their seniority were fixed in accordance with the order passed by the Hon'ble High Court, Patna. (as per R/5 series). In view of this the claim of the applicant for grant of benefit of the pay scale as granted to direct recruittee i.e Shri Sanjeev Raman and others (the petitioners of writ petition before Hon'ble High Court of Patna) is devoid of merit. The applicant was appointed to the post of Commercial Inspector on 30.08.1984 thus admittedly, the applicant was received the employment before the new policy introduced for the appointment and recruitment by way of memorandum dated 15.5.1987. The pre- 1987, Commercial Apprentice claim for the higher scale of pay on the basis of 1987 memorandum has been denied by the Hon'ble Apex Court. The respondent authority has rightly fixed the pay and the seniority of the applicant by following the *Dictum* of the Hon'ble Apex Court and cannot be said that it is in infirmity. Hence, the prayer sought for by the applicant in this O.A is not tenable. Accordingly, the O.A is dismissed. No order as to cost.

(J.V. Bhairavia) M [J]

(A.K. Upadhyay] Member [A]

/mks/

