

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

Date of Order: 13/05/2019

C O R A M

HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

I. OA/050/00336/15

1. Bishnudeo Roy, son of Late Rameshwar, resident of Village & PO- Birnama Tula, PS- Angar Ghar, District- Samastipur.
2. Pawan Kumar Rout, son of Late Basudeo, resident of Village & PO- Muradpur, PS- Rosra, District- Samastipur.
3. Bhola Mahto, son of Late Ram Prasad Mahto, resident of Railway Quarter No.- 548/A, Type-I, Gandak Colony, PO & PS- Samastipur, District- Samastipur.

.... Applicants.

By Advocate: - Mr. G. Saha

-Versus-

1. The Union of India, through the General Manager, East Central Railway Hajipur, District- Vaishali (Bihar).
2. The Divisional Railway Manager, Samastipur Division, East Central Railway, Samastipur.
3. Senior Divisional Personnel Officer, Samastipur Division, East Central Railway, Samastipur.
3. Senior Divisional Commercial Manager, Samastipur Division, East Central Railway, Samastipur.
4. Senior Divisional Commercial Manager, Samastipur Division, East Central Railway, Samastipur.
5. Assistant Commercial Manager, Samastipur Division, East Central Railway, Samastipur.
6. Assistant Personnel Officer, Administration, Samastipur Division, Samastipur.
7. Station Manager, Samastipur Division, East Central Railway, Sitamarhi.
8. Station Superintendent, Samastipur Division, East Central Railway, Samastipur.
9. Station Superintendent, Samastipur Division, East Central Railway, Bhiknathodi.
10. Station Superintendent, Samastipur Division, East Central Railway, Hayaghat.
11. Station Superintendent, Samastipur Division, East Central Railway, Saharsa.

.... Respondents.

By Advocate: - Mr. S. K. Griyaghey

II. OA/050/00337/15

1. Bashistha Poddar, son of Late Raghbir Poddar, resident of- Railway Quarter No. 556/L, Type I, Gandak Colony, Samastipur, PO & PS- Samastipur, District- Samastipur.
2. Indu Bhushan pandey, son of Late Mahesh Pandey, resident of – Village & PO- Bakhari, PS- Patahi, District- East Champaran.

.... Applicants.

By Advocate: - Mr. G. Saha

-Versus-

1. The Union of India through the Secretary, Railway Board, Rail Bhawan, New Delhi.
2. General Manager, East Central Railway Hajipur, District- Vaishali (Bihar).
3. The Divisional Railway Manager, Samastipur Division, East Central Railway, Samastipur.
4. Senior Divisional Personnel Officer, Samastipur Division, East Central Railway, Samastipur.
5. Senior Divisional Commercial Manager, Samastipur Division, East Central Railway, Samastipur.
6. Assistant Commercial Manager, Samastipur Division, East Central Railway, Samastipur.
7. Assistant Personnel Officer, Administration, Samastipur Division, Samastipur.

.... Respondents.

By Advocate: - Mr. S. K. Griyaghey

ORDER
[ORAL]

Per Dinesh Sharma, A.M:- Though the facts relating to various applicants in the above mentioned two OAs are different, the applicants have sought a common relief which is against the order bearing No. Ka/II/C A III/Ba/Bhag II dated 10.11.2014 issued by Divisional Personnel Officer, EC Railway, Samastipur. By this letter the applicants were informed that the post of Courier which has grade pay of 1800 has been classified under Group C by the 6th Pay Commission. This letter mentions that there will be no difference in the salary grade and grade pay because their classification

being Group 'C'. Hamal and R.U.S also have a grade of 1800 and therefore there is no question of giving higher scale of pay. The applicants have filed this OA against this communication because though they were recruited as Group 'D' staff they claim to have been promoted as Courier or made to do the work of Courier on an officiating basis, in some cases for more than two decades. The applicants have produced with their OA (as Annexure/7 Series in OA 337/15 and Annexure/15 Series in OA 336/15) BOS III of 2008-09, 2009-10, 2010-11 and 2011-12 to show that earlier the Couriers formed part of Group 'C' while Khalasis/Safaiwala were in Group 'D'. The merger of these two categories in Group 'C' later, while keeping the grade pay of Courier as 1800, amounts to denying them the benefit of promotion to the higher category of Courier. The applicants (in OA 337/2015) have also quoted the case of **All India Shramik and Coach Attendant Association & Ors. Vs. UOI & Ors.** to support their demand for getting higher pay.

2. The respondents have filed their written statement in which they have denied the claim of the applicant. They have made it clear that this grievance has arisen because the 6th Pay Commission has merged both 'C' and 'D' categories together. The applicants are working as Courier and also getting paid the salary of Courier as per the 6th Pay Commission. Thus, there has been no denial of pay or promotion as alleged by the applicants. The respondents have also denied the applicability of the case of the **All India Shramik and Coach Attendant Association & Ors. Vs. UOI & Ors.** to the facts of this case as both the cases are related with different streams and the facts are entirely different.

3. Both these cases were heard together since the learned counsel for the applicant admitted that the underlying issue in both the cases, applicable to all the applicants, is the same. He brought to the Tribunal's attention Rule 108 of Indian Railway Establishment Manual Vol-I where it has been specifically mentioned that "*Cases of staff promoted on a regular basis should be reviewed after completion of one year's continuous officiating service, even if a permanent vacancy does not exist, with a view to determining their suitability for retention in the grade. The review should be completed early and a decision to retain the employee in the officiating post or revert him, taken and implemented within a period of 18 months of officiating service. Having followed this procedure, there should be no question of denying the benefits of confirmation to an employee on completion of two years officiating service in a clear permanent vacancy for the reason that he is unfit for confirmation.*" The learned counsel argued that applicant no. 1 (of OA 336/2015) has been continuously working as Courier since the year 1994, following an order dated 23.10.1994 (Annexure/3 of OA 336/2015). Similarly, applicant no. 2 in OA 336/15 is functioning as Courier from 31.01.1992 by way of order of Senior DPO dated 27.12.1996 (as indirectly evidenced by a relieving letter dated 20.02.1997) (Annexure/8). In such cases the Rule 108 of the IREM (quoted above) should apply and they should be paid the higher pay on promotion. The learned counsel also cited the decision of Hon'ble Patna High Court in CWJC 12419/1992 where the Hon'ble High Court has observed that the State being a model employer should not try to defeat the claim of employee at

the time of making payment when work on the higher post had been satisfactorily discharged.

4. After going through the pleadings and hearing the arguments of both the parties, it is clear that all the applicants are being paid the salary of a Courier. Their claim is also for being paid salary of Courier only. Thus, there does not appear to be any issue regarding promotion or regularisation to the post of Courier. The Rule 108 (quoted in para 3 above) relates to cases of staff promoted on a regular basis and there is nothing on record to show that the applicants were so promoted. Since the applicants are getting the Courier's pay, the ratio of the Hon'ble Patna High Court's judgment would also not apply. The real issue appears to be the fact that after the 6th Pay Commission the grade pay of Courier is the same as the grade pay of some of the erstwhile Group 'D' employees. This appears to have caused heart-burning amongst Couriers. If the Couriers had a grievance about the 6th Pay Commission not treating them fairly, they should have raised it at the time when these recommendations were made or soon thereafter. It is certainly not an issue on which this Tribunal can pass an order now. The OAs, therefore, lack merit and are accordingly dismissed. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member