

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 1015 of 2012

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
 Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Mukund, aged about 47 years, S/o. Late Sudhakar Deshkar, at present working as Progressman, working under CPM-RE,B-22 Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda, Odisha.

.....Applicants

VERSUS

1. General Manager, Central Organization, Railway Electrification, Nawab Yusuf Road, Allahabad, Uttar Pradesh.
2. General Manager(P), Central Organization, Railway Electrification, Nawab Yusuf Road, Allahabad, Uttar Pradesh.
3. Chief Project Manager, Railway Electrification, B-22, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda.

.....Respondents

For the Applicant : Mr. N. R. Routray, Ld. Counsel.

For the Respondents: Mr. T. Rath, Ld. Counsel.

Heard & reserved on : 06.09.2019

Order On: 17.10.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

In this OA, the applicant who was initially appointed as a casual work supervisor under the Railway Electrification wing of Nagpur on 29.8.1986, was re-designated as Progress-man at Vijaywada project w.e.f. 2.4.1987 (Annexure-A/2) after completion of Nagpur project. The applicant and other technical personnel moved the authorities for same pay scale given to their counterparts in Bhopal project. When no action was taken, the technical mates moved CAT, Hyderabad Bench in OA No. 290/94 and as per the direction of the CAT, they were allowed the higher pay scale of Rs. 1320-2040/- and Rs. 4500-7000/- after completion of 180 days of work vide order dated 30.4.1996 (Annexure-A/3). Vide order dated 4.2.1997 (Annexure-A/4), other staffs with similar duties as the applicant as

Progress-man, were also allowed the benefit. But since the same benefit as allowed to Technical mates were not allowed, some of the staffs working as Progress-man filed OA No. 543/1997 before CAT, Hyderabad Bench. It is stated in the OA that the respondents vide order dated 30.9.1997(Annexure-A/5) extended the same benefits to the staffs who had filed the said OA. Then another OA No. 1638/1998 was filed and the benefits to the applicants in OA No. 1638/1998 were also allowed vide order dated 6.7.1998 (Annexure-A/6). The case of the applicant is that although the benefits of higher pay scale were allowed to other staffs working as Progress-man, who have filed the OAs in pursuance to the order of the Tribunal, the same were not allowed to the applicant, who claims to be similarly situated as the applicants in the above OAs.

2. Before filing the OA, the applicant had represented vide Annexure-A/8 series and filed the OA No. 860/1998 which was disposed of with a direction to the respondents to dispose of the representation if filed by the applicant within one month. The representation filed by the applicant on 12.1.2002 for placing him in the pay scale of Rs. 1320-2040 from the date he was given temporary status in the light of the order of the Tribunal in similar cases, was rejected by the respondents in order dated 2.5.2002 (Annexure-A/11) on the ground that the order of the Tribunal in the OA acted by the applicant should have been contested. It is stated in the OA that the Railway Board vide order dated 23.7.1996 (Annexure-A/12) had decided not to file SLP and to implement the said order. It is also averred in the OA that the juniors of the applicant were getting the higher pay scale as per the details in para 4.12 of the OA.

3. After the applicant was transferred from Ranchi to Surat, he again filed the OA No. 514/2002 before Ahmedabad Bench of this Tribunal, which alongwith other OAs were referred to the Full Bench and vide order dated 18.1.2005, the issue was answered negatively against the claim of the applicant. It is stated that after 6th CPC recommendations, 12 Progress-man were getting the Grade Pay of Rs. 2800/- corresponding to pre-revised pay scale of Rs. 1320-2040/- and 6 Progress-man were getting the Grade Pay of Rs. 2400/ with the corresponding pre-revised pay scale of Rs. 1200-1800. It is stated that in 1998, the applicant was regularized against Group-D post in violation of the Railway Board circular dated 9.4.1997, although similarly placed diploma holders were regularized in Group-C post in Vijaywada project. In the meantime, another similarly placed Progress-man (Shri N.G. Santosh) had filed an OA before Ernakulam Bench which was dismissed by the Tribunal. The order of the Tribunal was challenged before Hon'ble Kerala

High Court in W.P.(C) 39980/2003(S), which. was allowed vide the judgment dated 18.8.2007 (Annexure-A/16) of Hon'ble Kerala High Court. The said judgment was implemented by the respondents. The applicant submitted a representation at Annexure-A/21 giving a comparative statement of other similarly placed Progress-man who have been allowed same benefits and when no response came from the respondents, the applicant approached CAT Nagpur Bench in OA No. 2034/2009 for the benefit of the pay scale of Rs. 4500-7000/-. The said OA was disposed of with an order dated 5.7.2011 (Annexure-A/23) to consider the applicant's case in the light of the judgment of Hon'ble Kerala High Court. Accordingly, the respondent no. 2 passed the speaking order dated 4.11.2011 (Annexure-A/24), which was communicated by the letter dated 9.12.2011 (Annexure-A/25).

4. Thereafter, the applicant submitted a representation to the respondent no. 1 for reconsideration of his case in the light of the case of Mr. N.G. Santosh, the petitioner before Hon'ble Kerala High Court. The respondent no. 2 replied vide order dated 2.3.2012 (Annexure-A/29) stating that the applicant's representation has already been complied. Being aggrieved by the orders at Annexure A/24 and A/29, the applicant has filed this OA with the following prayers:-

“a. To quash the order of rejection dated 04.11.2011 and 02.03.2012 under Annexure-A/24 and A/39 respectively.

b. And to direct the respondents to grant higher pay scale of Rs.1320-2040/- Rs.4500-7000/- PB-I Plus GP Rs.2800/- from the date of conferment of temporary status by extending benefit of order dated 18.08.2007 passed in W.P(C) No.39908/2003 (S) under Annexure-A/16 and pay the consequential financial benefits.

And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice.

And for which act of your kindness the applicant as in duty bound shall ever pray.”

5. Counter filed by the respondents stated that the applicant was given temporary status with the pay scale of Rs. 950-1500/- w.e.f. 28.8.87 and was promoted on adhoc basis as skilled artisan grade-II in the pay scale of Rs. 1200-1800/- w.e.f. 12.7.89 although he had not passed the prescribed test for regular promotion to artisan grade-II. Being in the Casual artisan grade-III, he was not entitled for grade-I in the pay scale of Rs. 1320-2040/- even on attaining temporary status. As per the circular dated 9.4.1997 regarding regularization of casual workers working in Group-C posts in the construction department, are entitled for being absorbed against 25% promotional quota to Group-C on absorption as such. They are also entitled for absorption in Group-D posts. It is stated that the applicant was screened and absorbed on regular basis in Group-D post and he has never challenged the

said regularization order. He was promoted to Helper-I after passing a trade test on 26.12.2002. It is further averred that his absorption as Group-D has become final and he was then placed on promotion as adhoc Progress-man and is not entitled for another adhoc promotion to the pay scale of Rs. 1320-2040/- (pre-revised).

6. It is further averred by the respondents in the Counter that the applicant had raised same grievance before Patna Bench of the Tribunal at Ranchi, but it was not allowed. He had filed the OA No. 514/2002 before Ahmedabad Bench of the Tribunal and the issue was examined by the Full Bench of the Tribunal, which did not allow the claim. It is therefore, stated in the Counter that the present OA is barred by the principle of res judicata/constructive res judicata. It is stated to be barred by limitation also as the cause of action on account of his pay fixation arose on 29.8.1986 and he had raised the same issue unsuccessfully in OA No. 514/2002. The order dated 18.1.2005 (Annexure-R/2) passed by the Full Bench of Ahmedabad Bench in OA No. 514/2002 is enclosed with the Counter. It is stated that the instance of the pay scale of the Technical Mates in Bhopal division will not apply to the applicant as the pay scale fixed in Bhopal is not as per the rules and no rule is cited specifying that the nature of duty of the Technical Mates and Progress-man is similar. It is stated that the order of the Tribunal not as per the railway Board circular is to be treated as per incuriam and it cannot be the basis to allow similar benefit to the applicant.

7. The applicant has filed Rejoinder denying the contentions in the Counter and stating that the applicant was placed in the grade of Rs. 1200-1800/- considering the diploma qualification and it was not a promotion as stated in the order dated 27.6.1989 (Annexure-A/31 to the Rejoinder). It is stated that in Bhopal, the diploma holders were designated as Technical Mate and were placed directly to the pay scale of Rs. 1320-2040/-. The Technical Mates of Vijaywada were also granted the same pay scale as per the order in OA No. 290/94. It is further stated that for placing the applicant in pay scale of Rs. 1200-1800/- no screening was conducted and that in one organization, the pay scale should be same for similar posts with similar duties. It is further averred that the applicant was allowed lower scale of pay, while the juniors were getting the benefit of higher pay scale and the instances of some of the juniors have been furnished in para 11 of the Rejoinder. It is further stated that the railway Board decided not to file the SLP to challenge the order in OA No. 290/94 and implemented the same. The contentions in the OA are also reiterated in the Rejoinder.

8. Heard learned counsel for the applicant. He explained the facts of the case and also the orders of the Tribunal in which the benefit of the pay scale of Rs. 1320-2040/- was allowed to the employees who were similarly placed as the applicant. It was submitted that the applicant has claimed parity with the petitioner who was allowed the benefit by Hon'ble Kerala High Court judgment dated 18.8.2007 (Annexure-A/16) and the applicant was entitled for the same benefit. It was also pointed out that the judgment of Hyderabad Bench of the CAT in OA No. 290/94 was not challenged by the respondents through a conscious decision as at Annexure-A/12 of the Railway Board. Learned counsel for the applicant also relied on the judgment of Hon'ble Kerala High Court in the case of N.G. Santosh (supra). The representation of the applicant in this regard has been rejected by the respondents on the ground that the case of the applicant is different from the case of N.G. Suresh. Learned counsel for the applicant filed a copy of W.P.No. 4542/2008 filed by him before Hon'ble Bombay High Court and the OA No.2034/2009 filed before CAT, Mumbai Bench in which the reference to the order of Full Bench constituted by Ahmedabad Bench of the Tribunal was referred to.

9. Per contra, learned counsel for the respondents was heard and he reiterated the grounds taken in the Counter. His first ground was that the OA is barred by the principle of res judicata. Second ground was that although the identical prayer of the applicant was rejected by the Tribunal earlier, he accepted the same and did not challenge these orders. The judgment dated 18.1.2005 of the Full Bench of Ahmedabad Bench of the Tribunal in OA No. 514/2002 (Annexure-R/2 of the Counter) clearly rejected the claim of the applicant and he did not challenge the same. Learned counsel for the respondents also reiterated the contentions in the Counter to submit that on merit also, the applicant has no case and he cannot get the benefit of the judgments cited by him.

10. We have perused the pleadings of the parties on record and also considered their submissions at the time of hearing. In this case, the following questions need to be answered:-

(i) Whether the OA is barred by the principles of res judicata?

(ii) Whether the judgment dated 18.8.2007 (Annexure-A/16) of Hon'ble Kerala High Court in the case of N.G. Santosh(Supra), is applicable to the case of the applicant?

11. Regarding the question no. (i) of para 10 above, the respondents have stated that the applicant had raised the same prayers in earlier OAs filed by him. It is seen that in the OA No. 38/2000 before Ahmedabad Bench, the applicant was a party. It was held by the Tribunal in that OA vide order dated 9.11.2001 (Annexure-R/1) as under:-

“10.....We are in respectful agreement with the views expressed by Patna Bench of this Tribunal in this regard. The present applicants had not successfully completed the regular selection conducted by the Central Railway for Group C post.

11.Following the decision of the Full Bench we hold that the applicants claim for regularization in Group C posts as asserted in the O.A. cannot be granted and instead they are required to be regularised in feeder cadre in Group D post by providing pay protection of Group C post.”

There is nothing on record to show that the above order of the Tribunal was challenged by the applicant. As per the above directions, the applicant was conferred temporary status with the pay scale of Rs. 950-1500/- w.e.f. 28.8.87 and was allowed adhoc promotion to the pay scale of Rs. 1200-1800/- w.e.f. 12.7.1989. The applicant claimed the pay scale of Rs. 1320-2040 from the date of being given temporary status claiming parity with other similarly placed employees who had agitated the matter before the Tribunal in OA No. 290/1994 which was implemented by the respondents without challenging the same. The representation dated 2.5.2002 of the applicant in this regard was rejected by the respondents and he approached the Tribunal (Ahmedabad Bench) by filing the OA No. 514/2002, which was referred to the Full Bench and vide order dated 18.1.2005 (Annexure-R/2 of the Counter), the Full Bench held as under:-

“As noticed hereinabove, the Progress-man/Technical Mates have been treated by the respondents as skilled category workers and therefore, they would be entitled to be treated as monthly rated workers on consolidated wages at the rate of minimum of the scale of pay plus DA thereon without however the benefit of increment on completion of 180 days of continued employment and to regulate scale of pay with increments and DA etc on completion of 360 days of continuous employment. They are not entitled to be placed in the scale of Rs. 1320-2040 (highly skilled grade) on conferment of temporary status. The question is accordingly (answered) in negative.

In view of the foregoing conclusions, the Original Applications are dismissed without any order as to costs.”

12. Thus the Full Bench judgment was against the claim of the applicant, who did not challenge the same before any higher forum. Hence, there is no doubt that the present OA filed by the applicant claiming to be placed in the pay scale of Rs. 1320-2040/- on some other grounds will be hit by the principle of res judicata and hence, it will not be permissible under law. The issue no. (i) of para 10 above is answered accordingly against the applicant.

13. Regarding the other question about merit of the claim of the applicant, the impugned order dated 4.11.2011 (Annexure-A/24) stated that the applicant was regularized by Bhusawal division against the Group-D post and the said decision was not challenged by the applicant and that he was promoted to Helper-I after passing the Trade test held on 26.12.2002 and that the facts of the applicant's case were different from the facts in the judgment dated 18.8.2007 of Hon'ble Kerala High Court. The applicant claims that his case was similar to the case of N.G. Santosh for the pay scale of Rs. 1320-2049, which was allowed by the judgment dated 18.8.2007 of Hon'ble Kerala High Court. On perusal of the said judgment at Annexure-A/16 of the OA, it is seen from paragraph 3 of the judgment, which states as under:-

“3. From the materials produced in this writ petition it can be safely concluded that the scale of pay of Regular Progress-man is Rs. 1320-2014. The only dispute is whether the petitioner who got temporary status in the post of Progress-man is entitled to draw his salary in that scale of pay. We find that in many cases the Central Administrative Tribunal has made declarations regarding the entitlement of that scale pay in relation to similarly placed employees and the railways without any demur implemented those orders also.....”

14. From above, it appears that the petitioner before Kerala High Court in the judgment dated 18.8.2007 was given temporary status as Progress-man, whereas the applicant in the present OA was conferred temporary status as Skilled Artisan grade-III as stated in the Counter. In reply to such averment in the Counter, it is stated in para 4 of the Rejoinder that “the applicant was not engaged as casual Skilled Artisan-III rather all Diploma Holders engaged by RE/Nagpur as Work Supervisor and afterward changed as Progress-man by granting pay scale of Rs. 950-1500/- (Rs. 3050-4500/-), as is very clear from Annexure-A/2.” The Annexure-A/2 dated 2.4.1987 stated that the casual diploma holders working as casual work supervisors/Tech. Mate etc. should be designated as Progressmen only and necessary trade test of Progress-man should be conducted and results furnished. But the document at Annexure-A/2 does not disprove the contention in the Counter that the applicant was given temporary status w.e.f. 28.8.1987 as casual Skilled Artisan Grade-III with pay scale of Rs. 950-1500/-. In absence of any document to disprove such contention in the Counter about the designation for which the applicant was given temporary status, we have to accept the contention in this regard in the Counter that he was conferred temporary status as casual skilled artisan Grade-III as contended in the Counter and not as a Progress-man. Hence, the case of the applicant is factually different from the case of the petitioner in the judgment dated 18.8.2007, which will be inapplicable to the applicant's case.

15. In the impugned order dated 4.11.2011 (Annexure-/24), it is stated that as per the Railway Board circular dated 9.4.1997, a diploma holder engaged as a casual labour in Group C can be absorbed as skilled artisans in Group-C post against 25% promotion quota and they can also be considered for absorption in Group-D on the basis of the number of days of work as casual labour. It is further stated in the impugned order that the applicant was absorbed against Group-D post and the said regularization against Group-D post had become final as the same was not challenged by the applicant. The para 3 of the Counter reiterates the same averments, which has not been specifically contradicted by the applicant in the Rejoinder. It is therefore, clear that the applicant was absorbed in the Railway establishment against Group-D post, which has not been challenged by the applicant in this OA. Without challenging this decision of the respondents to absorb him as Group-D and not as Group-C as per the Railway Board circular dated 9.4.1997, his claim for the pay scale of the Group-C post from the date he was given temporary status is not tenable.

16. For the aforesaid reasons as discussed in the preceding paragraphs, we are unable to accept the claims of the applicant in this OA both on account of the principle of res judicata as well as on merit. The OA is accordingly dismissed with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath