



**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

O.A. No. 350/00947/2013

Date of Order: 27.02.2019

Present: **THE HON'BLE SMT. MANJULA DAS, MEMBER (J)**
THE HON'BLE MR. NEKKHOMANG NEIHSIAL, MEMBER (A)

1. Sujit Kumar Ghosh, son of Late Sudhir Kumar Ghosh
 Residing at 1/5/B, Naya Pally, Post – Belgharia
 Kolkata – 700056, Senior Section Officer (Accounts)
 Metro Railway, Metro Bhawan, 33/1, J.L. Nehru Road
 Kolkata – 700071.
2. Bipul Kumar Biswas, son of Late Dhananjay Biswas
 Residing at C/O Dhanapati Baidya
 Uttar Badra, Sanghati Lane, Kolkata – 700079
 Senior Section Officer (Accounts)
 Santragachi South Eastern Railway.
3. Kaveri Bhattacherjee, wife of Kashinath Bhattacherjee
 Residing at 1/109, Garfa Main Road
 Calcutta – 700075, Senior Section Officer
 Office of the Senior Divisional Finance Manager
 Eastern Railway, Howrah.

...Applicants

-Versus-

1. Union of India, service through the Secretary
 Ministry of Railway, Railway Board
 Rail Bhawan, New Delhi – 110001.
2. Chairman, Railway Board
 Rail Bhawan, New Delhi, Pin – 110001.
3. Joint Secretary (Personal)
 Department of Expenditure, Ministry of Finance
 Room No. 39A, North Block, New Delhi – 110001.

Ministry of Railways

4. Executive Direction (Pay Commission) – 1
Railway Board, Rail Bhawan, New Delhi – 110001.
5. General Manager, Metro Railway
Metro Rail Bhawan, 33/1, J.L. Nehru Road
Kolkata – 700071.
6. Financial Advisor & Chief Accounts Officer
Metro Railway, Metro Rail Bhawan
33/1, J.L. Nehru Road, Kolkata – 700071.
7. General Manager
South Eastern Railway, Garden Reach
Kolkata – 700043.
8. Financial Advisor & Chief Accounts Officer
South Eastern Railway, Garden Reach
Kolkata – 700043.
9. General Manager
Eastern Railway, Fairly Place, 17
Netaji Subhas Road, Kolkata – 700001.
10. Financial Advisor & Chief Accounts Officer
Eastern Railway, Fairly Place, 17
Netaji Subhas Road, Kolkata – 700001.

...Respondents

For the Applicant : Mr. C. Sinha

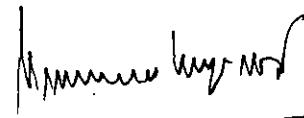
For the Respondents : Mr. M.K. Bandyopadhyay

M. K. Bandyopadhyay

ORDER (ORAL)**NEKKHOMANG NEIHSIAL, MEMBER (A):**

Being aggrieved for non-fixation of their basic pay in the cadre of Senior Section Officers (Accounts) in the pay band-2 that is Rs. 9300/- - 34,800/- with grade pay of Rs. 4800/- at par with the direct recruits in the said cadre, this O.A. No. 350/00947/2013 has been preferred by the applicants seeking the following reliefs:-

- "8.a) To file and prosecute this application jointly u/s. 4(5) (a) of Administrative Tribunal (Procedure) Rules 1987 since all the applicants prayed for the same relief arising out of same cause of action.
- b) Commanding the Respondents and each of them to fix the basic pay of the applicants in the cadre of Senior Section Officers (Accounts) in the pay band-2 that is 9,300/- - 34,800/- with grade pay Rs. 4,800/- at par with the direct recruits in the said cadre.
- c) Commanding the Respondents and each of them to fix the entry pay of the applicants in the pay band of Rs. 13,350/- with effect from 01.01.2006 along with grade pay of Rs. 4,800/- in the cadre of Senior Section Officer at par with direct recruits in terms of the revised pay band and grade pay.
- d) Commanding the Respondents and each of them to release the arrears which would be due in the meantime after fixing the basic pay of the applicants at par with the direct recruits in the cadre of Senior Section Officers (Accounts) with effect from 01.01.2006.
- e) To certify and transmit all the papers and documents in original in connection with the fixation of basic pay of the applicants as well as



the direct recruits in the cadre of Senior Section Officers (Accounts) with grade pay of Rs. 4,800/-.

f) Pass such other or further orders, mandate or mandates, direction or mandates as may appear to be fit and proper.

The applicants have also prayed for interim relief as follows:

"The respondents and each of them be directed to fix the entry pay of the applicants in the pay band-2 of Rs. 9,300/- - 34,800/- along with grade pay Rs. 4,800/- in the cadre of Senior Section Officers (Accounts) at par with the direct recruits with effect from 01.01.2006."

2. At the outset, prayer for joining together u/s. 4(5) (a) of Administrative Tribunal (Procedure) Rules 1987 is allowed.

3. The main grounds raised by the applicants in the instant petition are that they were promoted to the cadre of Senior Section Officer in the pay band of Rs. 9300-34800/- along with grade pay of Rs. 4800/-. They are entitled to get the same benefit of entry pay corresponding to direct recruit in the rank of Senior Section Officer when the nature of duties and responsibilities of the cadre of Senior Section Officer are same and identical and the mode of selection for promotees and direct recruitments are same and there cannot be any discrimination and/or classification in between promotees and direct recruits in their basic pay. Admittedly they are seniors to direct recruits in the cadre of Senior Section Officers as well as in

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service. But in the purported pay structure of direct recruits in the grade pay of Rs. 4800, they have been allowed to be superseded by direct recruits in the entry level of Senior Section Officer and the direct recruits are allowed to draw higher pay in the cadre of senior section officers than that of the promoted Senior Section Officer on or after 01.01.2006 after the introduction of the Central Civil Services (Revised Pay) Rules 2008 which is not only discriminatory but contrary to Articles 14 and 16 of the Constitution of India.

4. According to the applicants, there is no explanation in the said Revised Pay Structure as to how and why pay in the Pay Band is Rs. 13,350/- for direct recruits appointed on or after 1.1.2006 is fixed when the grade pay for direct recruits and promotees are same that is Rs. 4800/- as well as why classification is made in the entry pay and basic pay in between promotees and direct recruits when the cadre is same and the pay band and grade pay are same. The scale of pay as well as the post were upgraded and when the same was merged in the pre-revised basic pay of Rs. 7500/- - 12000/- then the respondents/ authorities should not assess the basic pay on the basis of existing pay to Section Officers on or after 1.1.2006 as because the basic pay of the post of Section Officers were

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merged in the basic pay of Senior Section Officer in the scale of Rs. 7500/- - 12000/- and the same must be treated as the existing pay of the applicants on or after 01.01.2006.

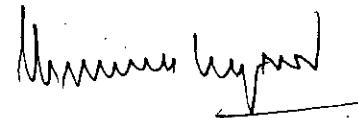
5. Applicants stated that the way and the manner of their basic pay which were fixed in the cadre of Senior Section Officers with Grade Pay of Rs. 4800/- is not only illegal and arbitrary but also contrary to Articles 14 and 16 of the Constitution of India. There has been a serious discrimination in the cadre of Senior Section Officers and their right to get the benefit of equal work with equal pay as enshrined in the Article 16 of the Constitution of India has been taken away. Since they are seniors to the direct recruits in the service and when they are more eligible and experienced in the cadre itself by dint of their long services, the direct recruits cannot supersede the applicants in the cadre of Senior Section Officer both in the rank of seniority as well as basic pay in the pay band 2.

6. The applicant No. 1 was promoted to the rank of Section Officer (Accounts) w.e.f. 24.12.2005 in the pay scale of Rs. 6500-10500/- which was fixed as per report of the 5th Pay Commission from the rank of Junior Account Assistant through selection conducted by Railway Board. Similarly applicant No. 2

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was given promotion from the rank of Junior Account Assistant to the rank of Section Officer (Accounts) w.e.f. 06.10.2005 in the same scale of pay of Rs. 6500/- - 10500/- through selection conducted by Railway Board and applicant No. 3 was given promotion from the rank of Junior Accounts Assistant to the rank of Senior Section Officer (Accounts) w.e.f. 30.12.2011 in the pay band of Rs. 9300/- - 34800/- with grade pay of Rs. 4800/-.

7. At the time of fixing of pay in regards of applicant Nos. 1 & 2 with implementation of the 6th CPC, their pay has been fixed at Rs. 6500/- in the pay scale of Rs. 6500/- - 34800/- on their promotion to the post of Section Officer. On the introduction of 6th CPC, their pay was fixed at Rs. 16,890/- ($6500 \times 1.86 + 4800$) as on 01.01.2006 in PB-2 (9300-34800) with Grade Pay of Rs. 4800/- as per Railway Estt Srl No. 125/08 (RBE No. 103/2008) and Srl No. 126/08 (RBE No. 108/08). The pay in respect of applicant No. 3 was fixed at Rs. 14,670/- and her pay was fixed (on promotion of Sr. Section Officer) at Rs. 17,270/- ($14670 + 440$ (3% increment) + 160 (qualifying pay) + 2000 (diff: Grade Pay 4800-2800) as per the rule contained in Railway Board's letter No. PC-VI/2008/1/RSRP/1 dated 04.09.2008 (RBE No. 103/2008) and Railway Board's letter No. PC-VI/2008/1/RSRP/1 dated 11.09.2008 (RBE No. 108/2008).



8. However, as stated by the respondents, the applicants are demanding that their pay should be fixed as per the First Schedule-II of Rs. (RP) of 2008 as granted in respect of direct recruits appointed on or after 01.01.2006. The stand of the respondent authority is that since cadre of Accounts Branch does not have element of direct recruitment and as per recruitment rules, there is no provision for stepping up their pay with reference to the entry pay of the direct recruits who were in the elsewhere grade pay of Rs. 4800/-. Apart from consistently maintaining their stand, the respondents have also submitted a copy of the clarification issued by the Ministry of Finance under No. 8-23/2017-E.IIIA dated 28.09.2018 wherein there is a provision for upgrading the pay of the promotees to the entry pay of the direct recruits w.e.f. 01.01.2006, if there is a provision for direct recruitment in the cadre. However, it is observed that they have not explained or justified as to why the entry pay of direct recruits should be higher than that of the promotees who are in the same grade pay.

9. In the subsequent rejoinder dated 14.11.2014 filed by the applicants and supplementary affidavit filed by the respondents on 02.07.2015, the arguments and counter arguments ultimately boiled down to the interpretation and

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mode of fixation in the revised pay order of 6th CPC. However, in the rejoinder filed by the applicants on 14.11.2014 at para 4, they have pointed out that the Ministry of Railway/Railway Board have failed to implement the Gazette Notification published by the Government of India and recommendation of 6th CPC wherein under Part-B, Section II, Sl. No. XX, it is clearly mentioned that Organised Accounts Cadre, post of SO (A) and Sr. SO(A) was upgraded to the pre revised pay scale of Rs. 7500/- - 12000/- under 6th CPC. This has been implemented in all the other Organized Accounts departments such as Controller General of Accounts, Contoller General of Defence Accounts, Postal Accounts and Telecom Accounts. It is therefore proved that pay parity should be maintained in all Organized Accounts Cadre including Railway Accounts.

10. In response to this contention of the applicants, the respondent authorities in their supplementary affidavit filed on 02.07.2015 has recorded as under:-

"With respect to the argument put forth by the appellants in para 4, 5, 6 & 7 of the rejoinder, it is stated that save and except what are matters of record, everything else is denied and disputed. The post of SO(A) & Sr. SO(A/cs) on the Railways were in actual pre revised scale of Rs. 6500-10500 & 7450-11500/- respectively and their pay fixation in the Pay Band has to be made based on 'existing Basic Pay' viz actual pay drawn and actual pay scale held by the concerned

[Signature]

employee. As per recommendation of 6th CPC the pre revised scales of SOs/Sr. SO's Rs. 6500-10500/- & Rs. 7450-11500/- were merged and allotted the scale of Rs. 9300-34800/- with GP of Rs. 4800/- as per Rule 4 of RS (RP) Rules, 2008. Accordingly, after fixation of pay in pay band as aforesaid Grade Pay Rs. 4800/- is to be added."

11. It would be evident from the above that the respondent authorities deliberately avoided the issue whether the same has been granted in other Organized Accounts Service as demanded by the applicants.

12. Keeping in view of the above, the demand being pay parity with the direct recruits and pay parity with other Organised Accounts Services, it is considered appropriate that the respondent authorities examine the grievances of the applicants after checking the status as obtained in other Organized Accounts Services on the issue and accordingly grant them same benefit, if admissible. In case the same benefit has not been granted in other Organised Accounts Department, details speaking order shall be issued by the respondent authorities. The respondents are directed accordingly.

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13. The above direction may be completed by the respondent authorities within a period of four months from the date of receipt copy of this order.

14. With the above directions, O.A. stands disposed of. There shall be no order to the costs.

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(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)

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