

11.9

O.A. 356/602/2015

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Central Administrative Tribunal

Calcutta Bench

Panel

② Bhola Mahato, S/o Late G. Mahato, aged about 76, working as Ex-Head Clerk, under Divisional Railway Manager, Eastern Railway, Asansol at present residing at Vill. Barsatia, P.O. Kushmaha, via - Madhupur, Dist. Deoghar, State - Jharkhand, PIN - 815353.

... Applicant

- Vs -

1. Union of India through General Manager
Eastern Railway, Fairlie Place,
Calcutta - 1.
2. Divisional Railway Manager,
Eastern Railway, Asansol 713301
3. Sr. Divisional Personnel Officer,
Eastern Railway, Asansol. 713301
4. Sr. Divisional Finance Manager,
Eastern Railway, Asansol. 713301
5. Sr. Divisional Mechanical Engineer,
Eastern Railway, Asansol. 713301

... Respondents

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.350/602/2015

Date of order : 11.9.19

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Mr. N. Neihisal, Administrative Member

BHOLA MAHATO
VS.
UNION OF INDIA & ORS.
(Eastern Railway)

For the applicant : Mr. C. Sinha, counsel

For the respondents : Mr. S.K. Das, counsel

Bidisha Banerjee, Judicial Member

This application has been filed to seek the following reliefs:-

"a) To set aside and quash the Impugned Speaking Order dated 14.10.14 issued by Sr. Divisional Personnel Officer, Eastern Railway, Asansol communicated under letter No:E(T-1)/Court Case/Rtd. Guards/13 dated 14.10.14;

b) To direct the respondents to protect the pay of your applicant at Rs.440 on promotion to the Post of Goods Guard in scale Rs.330-560/- w.e.f. March 1985 and accordingly recast pension and other retiral benefits based on such pay protection with consequential benefits;

c) To direct the respondents to grant benefit of order passed by the Hon'ble Tribunal in OA1516 of 1992 passed by CAT Allahabad Bench and OA212 of 2005 by CAT Patna Bench and OA 180 of 2006 by CAT Circuit Bench at Ranchi since applicants are similarly placed and similarly circumstanced as that of applicants in the abovementioned OAs;

d) Any other order or order(s) as the Hon'ble Tribunal deems fit and proper."

2. The order, impugned in the present O.A. is extracted hereunder:-

"SPEAKING ORDER"

Pursuant to the Order of Hon'ble Tribunal in OA Numbers 1128 of 2013, 1129 of 2013, 1130 of 2013, 1131 of 2013, 242 of 2013, 243 of 2013, 244 of 2013, 245 of 2013, 246 of 2013 & 247 of 2013 dt. 30.4.2014. I, the respondent No.2 have gone through the representations of the applicants, OAs and the Service Records. In the light of the factual verification of these documents and keeping in view the ruling provisions it is observed as under:

The applicants altogether 10 namely, S/Shri Bhola Mahato, Gulam Rasool, Md. Tayeb, M.P. Sahu, B.M. Mahato, Arjun Tanti, Banwary Mistry, S.P. Gupta, Deo Raj Ram, S.P. Yadav who are retired Guards had filed the aforesaid OAs before Hon'ble Tribunal/Calcutta seeking following relief:

- (i) To protect their pay on promotion as Goods Guard
- (ii) To grant benefits citing order passed by Hon'ble Tribunal/Allahabad in OA No.1556 of 1992 stating themselves to be similarly placed and circumstanced.

It is observed that basically the 10 applicants belong to two (2) groups – one comprising of 6 applicants who got promoted as Guard – 'C'/Goods Guard prior to 01.01.1986 and the other one comprising of rest 4 applicants who had been promoted after 01.01.1986 but before 31.12.1995. The details of these applicants are shown below in tabular format:

Group – A: Applicants who got promotion prior to 01.01.1986

Name of the applicants	OA No.
Sri S.P. Gupta	242 of 2013
Sri Deoraj Ram	243 of 2013
Sri B.M. Mahato	245 of 2013
Sri Banwary Mistry	247 of 2013
Sri Bhola Mahato	1128 of 2013
Sri Gulam Rasool	1129 of 2013

(The applicants falls in this category)

Group – B: Applicants who got promotion after 01.01.1986

Name of the applicants	O.A.No.
Sri S.P. Yadav	244 of 2013
Sri Arjun Tanti	246 of 2013
Md. Taiyab	1130 of 2013
Sri M.P. Sahoo	1131 of 2013

The above stated applicants belonging to the first group while being posted as Sr. TNC/Head TNC in Sc. Rs.330-560/- /Rs.425-640/- respectively had opted for selection to the post of Guard – C which was in lower scale of Rs.330-530/- as per pay structure of 3rd Pay Commission i.e. prior to 01.01.1986.

On the contrary, the applicants who belong to the second group all got their promotion as Guard – C while working as Sr. TNC in Sc. Rs.330-560/- revised to Rs.1200-2040/- on implementation of IVth Pay Commission w.e.f. 01.01.1986. The Grade of Sr. TNC though in identical Scale of Rs.1200-2040/-, however, formed part of the feeder grades for promotion in the category of Goods Guard in Sc. Rs.1200-2040/- after merger of the grades of Guard – C and Guard – D on implementation of IVth Pay Commission.

It is because of the distant dated case of action, only the Service Records of the applicants could be treated out and it is seen that entries were made in the SRs as under:

"acceptance of the post of Guard – C in Sc. Rs.330-530/- tantamount to refusal of the post of Trains Clerk in Sc. Rs.330-560/- and Rs.425-640/-(on restructuring) without further claim."

In all the above cases, fixation of pay as Guard – C was done with reference to pay as TNC in Grade Rs.260-400/-(RS) only without affording any protection of pay in officiating grades as Sr. TNC and above. But, in terms of Railway Board's Establishment circular No.119/99 circulated vide CPO's Serial Circular No.107/99, Sr. TNC in Sc. Rs.1200-2040/-(RPS) on being promoted as Goods Guard in identical scale of Rs.1200-2040/-, the benefit of pay fixation under Rule 1313(FR)-22(1)(a)(i) RII(erstwhile FR 22 C) was to be allowed for those who were promoted between 01.01.1986 to 31.12.1995. This facility was granted only in those cases wherein feeder post and promotional post were placed in identical Scales of pay, though the promotional post had duties and responsibilities of greater importance than those of the feeder post. This decision was taken by the Ministry of Railways in consultation with the Ministry of Personnel, Public Grievances and Pensions(DOP&T) and President was pleased to accord his kind sanction to grant this benefit in those situations mentioned in the said Serial Circular.

Further in terms of the provisions of this circular, the employees were to exercise option within the period of 3 months from the date of issue of the said circular. Subsequently, vide Railway Board's letter No.PC IV/2003/PNM/NFIR/I, dt.19.01.2004, docketed vide CPO's serial circular No.22(3)/2004 dt. 10.3.2004, the provision of exercising options by the employees who were covered under the orders circulated by RBE No.119/99 was done away with. Since the 4 applicants as mentioned above who were promoted as Goods Guard after 01.01.1986 and were thus beneficiaries as laid down in the aforesaid circular, did not exercise option earlier, their cases were not considered for fixation of pay on promotion in identical scale even after issuance of circular dt. 2004 since they had retired. As these applicants are eligible for the said benefit, necessary action is being taken for re-fixation of their pay on their promotion as Goods Guard in identical Scale of Rs.1200-2040/-.

The Tribunal while considering the demand for pay protection of the applicants has observed that it has to be first examined if the grievance of each and every applicant in these OAs is for protection of pay in the lower scale of pay as Goods Guard and the pay is to be protected was less than the maximum pay of scale of Goods Guard. In this context the provisions laid down in Railway Board's Establishment No.195/2002 circulated vide CPO/ER's Serial No.145(11)/2002 need to be discussed.

Detailed guidelines regarding pay protection available under FRs in various situations of appointment in lower post on own volition have been provided. As per the existing provision of para FR 22(i)(B) i.e. Rule 1313(i)(b)

of R II as indicated in Serial No.(ii) of the said circular when a Government servant seeks transfer to a post from which he was promoted, it will be treated as a case of reversion and his pay will be fixed at a stage what he would have drawn had he not been promoted. Keeping this rule in view, fixation of pay of the applicants in these OAs was done at the time of their promotion in the period pertaining to 1978 to 1986 with respect to their feeder grade of TNC, i.e. Rs.260-400/- before fixing their pay in the category of Guard -C in Sc. Rs.330-530/-, subsequently revised to Rs.1200-2040/- as per IVth Pay Commission. Hence, it is observed that there was no error in fixing their pay on their promotion as Guard - C/Goods Guard in the respective case except for the provision laid down in RBE No.119/99 which should have been implemented in the cases of 4 applicants who got their promotions in the year 1986.

In view of the foregoing and with reference to the order of Hon'ble Tribunal/Allahabad in OA No.1556 of 1992, it is stated that the applicants of these OAs who got their promotion prior to 01.01.1986 cannot compare their cases with the applicants of OA No.1556 since they were promoted prior to 01.01.1986.

This disposes of the order of Hon'ble Tribunal/Calcutta dt. 30.4.2014 in the aforesaid OAs."

3. We note that the applicant has heavily relied upon the decision in O.A.1516/1992, O.A.212/2005, O.A.180/2006 as enumerated hereinbelow:-

(i) O.A.1516 of 1992 was preferred to seek setting aside impugned orders dated 30.11.1991 and 23.04.1992 and restoration of the substantive pay of the applicants and cancellation of seniority list dated 31.12.1991 and a direction to respondents to assign seniority to the applicants on the basis of length of service in the equivalent grade alongwith consequential benefits. The Tribunal observed that the applicants

"were appointed as Trains Clerk in the scale of Rs.900-.....(not legible) and were, thereafter, promoted as Senior Trains Clerk in the scale of Rs.1200-2040/- and were granted further promotion to the post of Head Trains Clerk in the scale of Rs.1400-2300. It is claimed that Trains Clerk in the pay scale of Rs.1200-2040/- and Rs.1400-2300/-.....(not legible) channel of promotion to the post of Goods Guard in the pay scale of Rs.1200-2040/-. By letter dated 02.03.1990 applications were invited from amongst the Trains Clerk, Yard Staff, Assistant Guard and Commercial Clerks etc. The

applicants applied for the post of Goods Guard and were selected and empanelled. Applicants No.1,2,3 and 6 were posted by order dated 04.12.1990 and applicants No.4 and 3 were posted by order passed in August 1989 on the basis of an earlier selection. They continued to draw the scale in which they were before their induction as Goods Guard. He also received increments on due dates. They were paid Rs.1640/-, 1600/-, 1440/-, 1560/-, 1540 and 1600/- upto December 1991 on 30.12.1991. Their pay was fixed in the scale of Rs.1200-2040/- at Rs.1380/-, 1350/-, 1320/-, 1300/-, 1380 and 1350/- respectively. They filed representation which were turned down. It is contended that the fixation of pay as well as assignment of seniority to the applicants was contrary to the rules applicable to the applicants."

And having considered that :-

"The respondents on the other hand have drawn attention to the provision in letter dated 02....(not legible).1990 inviting application for promotion to the post of Goods Guard in which it has been provided in the conditions of eligibility that applicants have working as Head Trains Clerk but were not confirmed will have to give in writing a declaration that reversion to the scale of Rs.1200-2040/- was acceptable to unconditionally."

And

"the letter dated 05.04.1989 of the Chief Personnel Officer of Eastern Railway which provided that the officiating TNC in the grade of Rs.1400-2300/- will not be allotted to back out once selected as Goods Guard and their pay will be fixed without protection in officiating higher grade as Trains Clerk.

As also

"that rule 1313(ii) of Indian Railway Establishment Code is applicable to pay fixation of the applicants No.1,2,3 and 6 is correct in view of the provisions cited above of the Indian Railway Establishment Code."

"11. set aside impugned orders dated 30.12.1991 and 23.04.1992 regarding the pay fixation of the applicants and others who are similarly situated" and held :

".....it should be clear that no recovery is to be made from the applicants on the basis of these orders. If any recovery has been made it will have to be refunded to the applicants. We also set aside the impugned seniority list dated 31.12.1991. The respondents are directed to pass orders regarding pay fixation after taking into consideration to provision of rule 1313(not legible)(ii) of Indian Railway Establishment Code, Volume II. The respondents also directed to fix seniority after considering the(not legible) of paragraph 320 of Indian Railway Establishment(not legible) Volume-I. These orders shall be complied with by the respondents within a period of three months from the date of communication of a copy of this order.

There shall be no order as to costs."

In O.A.212 of 2005, the applicant preferred to seek extension of the same and similar benefits as has been granted by the Allahabad Bench of this Tribunal on 27.6.2000 in O.A.No.1516/1992, under which similarly placed persons had been allowed and promoted to the post of Goods Guard under FR 22(C), but the respondents have not given that pay and scale to the applicant. The applicant was working as Sr. Trains Clerk when he appeared for selection to the post of Goods Guard under the 31% Departmental Promotion Quota, and he was declared successful through Annexure A/1 dated 3.1.1985. He was posted as "Goods Guard". However, though he was promoted his pay as Sr. Trains Clerk was not protected at the time of his regular posting as Guard "C". The applicant has claimed for such pay protection, which he states was available to him under Rule 18 read with Railway Board letter dated 22.8.1981. The pay of the applicant was protected upto 31.12.1985, but while refixing his pay under the new pay scale w.e.f. 1.1.1986, his pay was fixed at the minimum of pay scale of Guard© which the applicant has assailed as being bad in law, and against the Rules. The Tribunal held as under:-

".....without any hesitation, it appears to us that the applicant of this O.A. is also entitled to the same relief and it is ordered that his pay also cannot be reduced on his joining the post of Goods Guard, and he shall also be entitled for his pay to be fixed to the pay scale of Rs.1400-2300/- from the date of his joining duties as Goods Guard."

In O.A.No.180 of 2006, the applicants five in number, sought for direction upon the respondents to restore their pay in the higher scale and set aside the orders dated 20.3.90 and 5.7.91 whereby their pay

has been fixed in the scale of Rs.1200-2040/- and to fix their seniority as per paragraph 320 of IREM Vol.I. The Tribunal noted that "all the applicants were initially appointed as Train Clerk in the scale of Rs.950-1500/- and thereafter, promoted as in the scale of Rs.1200-2040/-. They were granted further promotion to the post of Head Train Clerk in the scale of Rs.1400-2300/- thereafter, the applicants were invited for the posts of Good Guards in the pay scale of 1200-2040/-. All the applicants applied for the post of Goods Guards and were selected and empanelled" and had "alleged in OA that before joining the post of Goods Guard, they continued to draw pay in the scale of Rs.1400-2300/-. They also received increments date. Thereafter the respondents vide order dated 5.7.91 posted the applicant No.1 as Goods guard in the scale of Rs.1200-2040/- and his pay was fixed at Rs.1280/- (in the scale of Rs.1200-2040/-" and similarly "applicant No.....(not legible) and 5 were posted as Goods Guard and their pay has been fixed at Rs.1280/- per month in the scale of Rs.1200-2040/-". Upon considering the decision in O.A.No.1516/00 the Tribunal disposed it of in terms of directions issued in OA210 of 03 with a direction upon Respondent No.2 to treat the O.A. as representation of the applicant to be made available to the concerned respondents at earliest and to dispose it of in accordance with law, by passing speaking order within a period of three months from the date of receipt of the order and ordered that in case the applicants are found to be similarly placed applicants of O.A.210 of 93, then the same benefits should be(not legible) them."

4. Per contra the respondents to refute their claim have averred as under :-

Bhola Mahato was appointed as MCC in scale Rs.70-85/- (AS) w.e.f. 26.05.1961. At the time of selection for the post of Guard "C" in scale Rs.330-530(RS) he was working as Hd. Trains Clerk in scale Rs.425-640/-(RS). As per item No.124 of IREM Vol.II the Trains Clerk in scale Rs.260-400/-(RS) were eligible in the zone of consideration for promotion against General Selection quota for the post of Guard 'C' in scale Rs.330-530(RS) by selection. While working as such he had opted for selection to the post of Guard - C which was in lower scale of Rs.330-530/- as per pay structure of 3rd Pay Commission i.e. prior to 01.01.1986. After the selection and on completion of prescribed training he was posted as Guard "C" in scale Rs.330-530/-(RS) and his fixation was at first made in reference to his substantive pay as TNC in scale of Rs.260-400/-(RS) and then as Guard 'C' in scale of Rs.330-530/-(RS) w.e.f. 21.12.1984, as the scales of Guard "C" was lower than that of Sr. TNC in scale Rs.330-560/-(RS) and Hd. TNC in scale Rs.425-640/-(RS).

The applicant along with few other candidates filed O.A. No.242 to 247 of 2013 & 1128 to 1131 of 2013 before Hon'ble CAT/Calcutta showing the judgment of Hon'ble CAT/Allahabad bench in OA No.1516 of 1992. This Tribunal ordered as under:-

"For grant of such benefits the respondents shall first examine whether the grievance of each & every applicant in these OAs are for protection of pay in the lower scale of pay as Goods Guard and the pay to be protected was less than the maximum of scale of Goods Guard. Appropriate detailed reasoned and speaking orders be passed within three months."

Accordingly the "Speaking Order" dated 14.10.2014 was passed.

The respondents would further contend that basically the applicants of the said OAs belong to two (2) groups-one who got promoted as Guard 'C'/Goods Guard prior to 01.01.1986 and the other who had been promoted after 01.01.1986 but before 31.12.1995. In terms of CPO/E. Rly.'s office Circular No.E834/2/Guard/T&C-L(R) dated 30/09/85 as mentioned in the CPO's letter dated 21.08.91, relaxation from time to time was granted for the officiating TNCs up to Gr. Rs.550-750(RS) to opt for the post of Guard Gr. "C" in scale Rs.330-530/-(RS) subject to that "fixation as Guard Gr. "C" will be with reference to pay as TNC in Grade Rs.260-400(RS) only without affording any protection of pay in officiating grades as Sr. TNC and above." Subsequently in the light of instructions of the Railway Board vide their letter No.E(NG)I-86-PM2-21(PNM/NFIR) dated 24/07/87, the matter was reviewed as under:-

As mentioned in CPO's letter dated 21.08.91 in supersession of earlier order, the procedure to be followed for the purpose of selection from TNC cadre to the post of Goods Guard which was discussed therein is given below for information and guidance:-

- a) As has been provided in Railway Board's circular dated 24.07.87 and para 124 of IREM Vol.I(Revised edition 1989), henceforth the TNCs upto Grade Rs.1200-2040/-(RP) only are eligible to opt for the post of Goods Guard in Gr.1200-2040/-(RP) against 31% quota fixed for the TNCs. TNCs in the further higher grade i.e.

18

Rs.1400-2300/- and above are not eligible to opt for the selection as Goods Guard.

- b) For the purpose of fixation of pay of the TNCs in scale Rs.950-1500 as Guard in Gr.1200-2040(RP), FR 22(C) will be applicable. In case of Sr. TNCs in Sc. Rs.1200-2040(RP) however, their pay is to fixed in the category of Guard in relation to their pay in existing grade as Sr. TNC with pay protection.
- c) In regard to fixation of pay of the higher grade TNCs (i.e.1200-2040/- and above) already absorbed as Guard, those who have come to the category of Guard after issue of the Bd's letter lt.24/07/87, will be granted pay protection on the line indicated vide item (b) above i.e. in relation to pay upto Grade 1200-2040 (RP) only and ignoring their officiating pay in further higher grade.
- d) Cases relating to the period to 24.07.87 dealt with in terms of circular dt. 30.09.85 will remain unchanged.

However, the said benefit has been granted to the Sr. TNCs officiating in scale 1200-2040/- and promoted as Goods Guard within the period from 01.01.1986 to 31.12.1995 as per RBE No.119/99 (CPO/E. Rly's Sl.No. 107/99. Further that as per the existing provision of para FR 22(i)(B) i.e. Rule 1313(i)(b) of R II as indicated in Serial No.(ii) of the said circular when a Government servant seeks transfer to a post from which he was promoted, it will be treated as a case of reversion and his pay will be fixed at a stage what he would have drawn had he not been

promoted. Keeping this rule in view, fixation of pay of the applicants in these OAs was done at the time of their promotion in the period pertaining to 1978 to 1986 with respect to the then feeder grade of TNC, i.e. Rs.260-400/- before fixing his pay in the category of Guard-C in Sc. Rs.330-530/-, subsequently revised to Rs.1200-2040/- as per IVth Pay Commission. Hence, it is observed that there was no error in fixing their pay on their promotion as Guard-C/Goods Guard in the respective case except for the provision laid down in RBE No.119/99 which should have been implemented in the cases of 4 applicants who got their promotions in the year 1986. With reference to the order of Hon'ble Tribunal/Allahabad in OA No.1556 of 1992, it is stated that the applicant of this OA who got his promotion prior to 01.01.1986 cannot compare his case with the applicants of OA No.1556 since they were promoted after 01.01.1986. The applicants of OA No.1556, who were working as Sr. TNC, were enjoying the scale of Rs.330-560/-(RS)/Rs.1200-2040/-(RP). On implementation of 4th Pay Commission, the pay scale of Guard "C" Rs.330-530/-(RS) and the scale of Guard "B" Rs.330-560/-(RS) were merged as Goods Guard in identical scale of Rs.1200-2040(RP). The post of Sr. TNC in scale of Rs.1200-2040/-(RP) became one of the feeder grades for promotion to the post of Goods Guard vide RBE No.119/99(CPO's Serial circular No.107/99).

5. Ld. counsel for the applicant would voice his grievance that the applicants deserved identical treatment with the applicants in O.A. referred to supra.

B

6. We heard the Id. counsels and perused the materials on record.

7. We would discern the following facts:-

(i) The applicants who belong to the first group as enumerated by respondents(supra) while being posted as Sr. TNC/Head TNC in Sc. Rs.330-560/- /Rs.425-640/- respectively had opted for selection to the post of Guard – C which was in lower scale of Rs.330-530/- as per pay structure of 3rd Pay Commission i.e. prior to 01.01.1986.

Therefore, such Sr. TNC who got promoted to Goods Guard were in the identical scale of Rs.330-560/425-640/- as that of Goods Guard and not in higher scale than that of Goods Guard C.

(ii) The respondents have admittedly and irrefutably granted benefit to those Goods Guard 'C' who were promoted after 01.01.86 from Sr. TNC who were in the identical pay scale of Goods Guard 'C' i.e. Rs.1200-2040/- but the pay scale of Head TNC was higher, and hence their case was not mentioned. Therefore, the claim of the respondents that only those Goods Guard who came from identical scale of pay(Rs.1200-2040) post 01.01.2006 were given protection of pay, is far from truth.

(iii) It is evident that the applicants were deprived of pay protection, as according to the respondents, acceptance of the post of Guard – C in scale of Rs.330-530/- tantamounted to refusal of the post of Trains Clerk in the scale of Rs.330-560/- and Rs.425-640/-(on restructuring) whereas the applicants in O.A.212/2005 were also in the pre-revised

scales of Senior TNC. If such applicants could be granted pay protection, the reason for depriving the present applicants becomes inexplicable and, therefore, arbitrary and discriminatory, creating a class within a class without adequate justification.

8. Due to aforesaid reasons we direct the authorities to consider and grant benefits to the applicants in the light of O.A.212/2005 by issuing appropriate order within 2 months of receipt of a copy of this order. No costs.

