

13

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.2031/2003

This the 24th day of August, 2004.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Latoori Singh S/O Jeeva Ram,
R/O 4/2610-B, Gali No.9,
Behari Colony, Shahdara,
Delhi-110032.

... Applicant

(By Shri Prakash Chandra, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Railways,
Railway Board, Rail Bhawan,
New Delhi.
2. G.M., Northern Railway,
New Delhi.

... Respondents

(By Shri Satpal Singh, Advocate)

ORDER (ORAL)

Hon'ble Shri V. K. Majotra, Vice-Chairman (A) :

Applicant had been working as Operation Theatre Assistant (OTA) grade Rs.950-1500 as a result of revised percentage of 5% of the strength on restructuring in the cadre of Dressers w.e.f. 1.1.1993 as per respondents' letter dated 7.4.1993 (Annexure A-5). Applicant was accorded the scale of Rs.4000-100-6000 in terms of Annexure A-7 dated 29.1.1998 under Railway Services (Revised Pay) Rules,

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1997 on the basis of recommendations of the Fifth Central Pay Commission (CPC) w.e.f. 1.1.1996. On introduction of additional pay scales on the recommendations of the Fifth CPC, vide Annexure A-1 dated 10.5.1998 applicant was given benefit of pay in grade Rs.4500-7000 w.e.f. 10.5.1998. Applicant retired on superannuation on 31.1.2001. He is aggrieved that while on the basis of the recommendations of the Fifth CPC respondents should have accorded the scale of Rs.4500-7000 w.e.f. 1.1.1996, he has been discriminated against by placing him in the superior scale of Rs.4500-7000 w.e.f. 10.5.1998 in terms of annexure A-1.

2. The learned counsel of applicant contended that in terms of the recommendations of the Fifth CPC as also on acceptance of the pay scales recommended by them in other government hospitals w.e.f. 1.1.1996, applicant should also have been allowed the pay scale of Rs.4500-7000 w.e.f. 1.1.1996 and further considered for the higher grade of OTA-I Rs.5000-8000. The learned counsel relied on Tribunal's orders dated 9.2.2004 in OA No.63/2003 : **Ram Prashad & Ors. v. Union of India & Ors.**, wherein Mistries/Supervisors in the Indian Railways were directed to be considered for grant of pay scale allocated to Master Craftsman w.e.f. 1.1.1996. He further relied on Railway Board's circular RBE No.264/48 dated 24.11.1998 whereby Skilled Artisan Grade-I and Mistries were given the higher scale w.e.f. 1.1.1996.

3. The learned counsel of respondents stated that on the recommendations of the Fifth CPC, grade Rs.950-1500/3050-4590

was improved upon to the grade Rs.4000-6000 w.e.f. 1.1.1996. On introduction of additional pay scales on the recommendations of the Fifth CPC, Ministry of Railways issued letter dated 10.5.1998 (Annexure A-1) whereby 5% of Dresser Grade-I/OTA Grade-I were placed in the scale of Rs.4500-7000 with effect from the date of issue of Annexure A-1, i.e. 10.5.1998. The learned counsel stated that retrospective effect from 1.1.1996 to Annexure A-1 cannot be given.

4. We have considered the respective arguments of both sides.

5. Paragraph 83.269 of the Fifth CPC's report as related to the Operation Theatre posts is reproduced below :

"83.269. We have discussed the pay structure and general service conditions of para-medics and hospital staff in the relevant Chapter. We have evolved the pay structure of hospital staff and para-medics in Railways within the broad framework outlined by us in general. We, however, note below the recommendations in respect of pay scales and a few deviations wherever necessary in respect of Railway staff.

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Designation	Pay Scale		Remarks
	Fixed	Proposed	
Dresser II/ Operation Theatre Assistant Grade III	800-1150 Dresser III/OTA III	950-1500	The initial rectt. Qualification should be minimum matriculation and suitability test as prescribed now
Dresser I/Operation Theatre Assistant Grade II	825-1200 Dresser II/OTA II	1320-2040	
Operation Theatre Assistant Grade I	950-1400 Dresser Gr.I/OTA-I	1400-2300	

As per these recommendations, against the existing scale of Rs.950-1400, OTA Grade-I were proposed to be placed in the grade of Rs.1400-2300 for which the CPC recommended the replacement scale of Rs.4500-7000 w.e.f. 1.1.1996. Initially the respondents vide Annexure A-7 dated 29.1.1998 granted the scale of Rs.4000-6000 to this category. However, as the recommendations of the CPC for certain categories of staff were to be effected on functional considerations, the Ministry of Railways introduced the new scales for those categories as per Annexure A-1 dated 10.5.1998, however, it was directed that effect for such allocation be made w.e.f. 10.5.1998, i.e., the date of issue of these orders.

6. Admittedly, the upgradation to Rs.4500-7000 has been on the basis of recommendations of the Fifth CPC. While initially a lower pay scale was accorded, it was upgraded by Annexure A-1 dated 10.5.1998 w.e.f. 10.5.1998 and not from 1.1.1996. While all the recommendations of the Fifth CPC which had been accepted by the government were to be implemented w.e.f. 1.1.1996, reasons for implementation of this upgradation from a later date, i.e., 10.5.1998 have not been provided at all. The ratio of the case of **Ram Prashad** (supra) is squarely applicable to the facts and circumstances of the present case. Respondents have themselves accorded higher pay scales to Skilled Artisans Grade-I and Mistries w.e.f. 1.1.1996 as per RBE No.264/48 dated 24.11.1998. Placement of the applicant in the scale of Rs.4500-7000 from 10.5.1998 instead of 1.1.1996 is clearly arbitrary and discriminatory.

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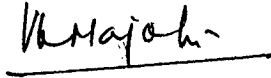
17

7. Having regard to the facts and circumstances of the case, this OA is partly allowed directing the respondents to consider according the scale of Rs.4500-7000 to the applicant as OTA-I w.e.f. 1.1.1996 instead of 10.5.1998. They shall also grant the consequential benefits to the applicant. Respondents are directed to implement these directions expeditiously and preferably within a period of three months from the date of communication of these orders.



(Shanker Raju)
Member (J)

/as/



(V. K. Majotra)
Vice-Chairman (A)

24.8.04