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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 10995/2016**

Date of Decision : 21st November, 2016

UNION OF INDIA AND ORS. Petitioners
Through Mr. Ashok Singh, Advocate for UOI

versus

JAVED AHMED AND ORS. Respondents
Through

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

CM No. 43001/2016

Exemption allowed subject to all just exceptions.

The application stands disposed of.

W.P.(C) 10995/2016 and CM No. 43002/2016 (Stay)

- 1) Having heard learned counsel for the Union of India and the General Manager, Northern Railway, we are inclined to uphold the impugned order dated 01.09.2016 whereby the OA 1386/2013 filed by the respondent has been allowed.
- 2) The respondents were appointed as Mistries in the pay scale of Rs.1400-2300 and were promoted to the post of Junior Engineer prior to 1998. These two posts were then in the identical pay scale of Rs. 1400-2300.
- 3) In 1998, the scale of Junior Engineers was revised and raised to

Rs.5000-8000/- whereas the pay scale of the Mistries was revised to Rs.4500-7000/-.

4) By the circular dated 09.10.2003, several Group 'C' and 'D' cadres including the posts of erstwhile Mistries were restructured. The post of Mistries had by then been redesignated as "Supervisors".

5) Paragraph 13 of the circular dated 09.10.2003, applicable with effect from 01.09.2003, reads as under:-

13. Upgradation of the posts of Supervisor (erstwhile Mistries):-

(a) Subject to provisions of Para 13.2 below, all the post of Supervisors (erstwhile Mistries) in grade 4,500-7000+ Rs. 100 Special Allowance (Excluding Supervisors (P.Way) should enbloc be upgraded to the post of Junior Engineer Gr. II in the pay scale of Rs. 5,000-8,000 and merged with the respective cadres of Technical Supervisors with its spread effect in higher grades Rs.5,500-9000, 6,500-10,500 & 7,450-11,500 as per the revised percentage distribution of posts prescribed for Technical Supervisor in these orders.

(b) In case of Supervisor (P. Way), the posts being held by the erstwhile PWMs supervising more than one gang upto a maximum of 17.26% of the sanctioned cadre of PWMs shall be upgraded to and merged with the posts of Junior Engineer (P.Way) Gr. II in the pay scale of Rs. 5,000-8,000 with its spread effect in higher grades of JE-I, SE & SSE in grade Rs.5,500-9,000, 6,500-10,500 & 7,450-11,500 respectively, as per the revised percentage prescribed for Technical Supervisor in these orders.

As per Paragraph 13 (a) Mistries, now designated as Supervisors, in pay grade Rs.4500-7000 were to be upgraded to the post of Junior Engineer Gr. II in the pay scales of Rs.5000-8000 and

merged with the respective Technical Supervisor cadres. However, this would not apply to Supervisors (P.Way) which were separately dealt with under paragraph 13 (b). The respondents in the present case were Mistries covered under Paragraph 13(a) and not 13(b).

6. Learned counsel for the petitioner, however, relies upon paragraph 13.2 of the same circular, and submits that the scales of Mistries, now designated as Supervisors, were not upgraded and the posts were not merged, but a scheme for promotion, or a promotional avenue, was created. The said paragraph reads as under:-

“13.2 Procedure for fitment: The placement of the existing incumbents will be regulated as per the procedure given below:-

(a) The existing regular incumbents of the post of Supervisors (including Supervisors/P.Way to the extent of upgradation of posts) will be placed in grade Rs.5,000-8,000 without subjecting them to normal selection procedure. Their suitability shall be adjudged by following modified selection will be based on scrutiny of service records and confidential reports only.

(b) The Supervisors (other than P. Way) who do not get promoted to grade Rs.5,000-8000 shall continue to hold the post in the existing grade Rs.4,500-7000+ Rs.100 SA as personal to them. To this extent, the posts upgraded to grade Rs.5,000-8,000 will be operated in the lower grade Rs.4,500-7,000+ Rs.100 SA till the existing incumbents vacate the same by way of promotion retirement etc. On vacation of the posts, the same will be automatically be operated in grade Rs.5,000-8,000.”

Paragraph 13.2 of the circular dated 09.10.2003 relates to the procedure of placement of existing incumbents in terms of paragraphs 13 (a) and (b) of the circular dated 09.10.2003. All existing regular

incumbent Mistries were to be placed in the grade of Rs.5000-8000 without subjecting them to the normal selection procedure. This would include Supervisors (P.Way) to the extent of upgradation of posts. Their suitability was to be adjudged by scrutinizing their service records and confidential reports. Paragraph 13.2(b) applies to Supervisors, excluding Supervisors (P.Way), who are not promoted to grade Rs.5000-8000. They were to continue in the pay scale of Rs.4500-7000 till promotion/retirement and thereafter the vacated posts would be assigned the pay scale of Rs. 5000-8000.

7. In our opinion, the Tribunal rightly interpreted the said clauses. Mistries (now Supervisors) in the grade of Rs.4500-7000 were upgraded to the post of Junior Engineer in the pay scale of Rs.5000-8000. It is a case of merger and unification of posts. Paragraph 13(b) states that erstwhile Mistries would be en bloc upgraded to the post of Junior Engineers. No doubt Paragraph 13(a) is subject to Paragraph 13.2, albeit the said clause relates to "Fitment". It was a regulatory mechanism. It does not negate or curtail the effect of Paragraph 13(a). Upgradation was mandated. Suitability was to be examined, not as per normal procedure but with reference to the service records and confidential reports. Further, retention in the lower grade of Rs. 4500-7000 was personal to the incumbents who would not be placed in the scale/grade of Rs.5000-8000. This was a stop gap arrangement till retirement etc. For all intents and purpose, the scale/grade of Rs.5000-8000 was granted to the erstwhile Mistries (now Supervisors). The amalgamation and merger was complete. It is apparent that the posts of Supervisor, as such, had ceased to exist or

would cease to exist. The post of Supervisors was not to be the feeder post for promotion as Junior Engineers. This is not urged or stated.

Thus, the Tribunal has rightly held that this was a case of upgradation and, consequently, merger of the pay scales. Thus, grant of pay scale of Rs.5000-8000 to erstwhile Mistries (Supervisors) cannot be treated as promotion to the post of Junior Engineer. Consequently, the earlier promotion granted to the respondents from the post of Supervisors (Mistries) to the post of Junior Engineer was inconsequential. The two posts had identical payscale, i.e. the pre-revised pay scale of Rs.5000-8000 or revised scale of grade pay of Rs.4200 in the pay band of Rs.9300-13800. This being the position, the respondents would be entitled to financial upgradation at the first stage to grade pay of Rs.4600/- and second stage to grade pay of Rs.4800/- as per the CCS (Revised Pay) Rules, 2008 read with the Modified Assured Career Progression Scheme.

The writ petition has no merit and is accordingly dismissed.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

NOVEMBER 21, 2016/B