

Item- 15-07-2021
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WP.CT 71 of 2020

Union of India & Ors.
Versus
Deo Raj Ram

sg Ct. 16

And

WP.CT 72 of 2020

Union of India & Ors.
Versus
Bhola Mahato

And

WP.CT 77 of 2020

Union of India & Ors.
Versus
Banwari Mistry

And

WP.CT 78 of 2020

Union of India & Ors.
Versus
Shyam Prasad Gupta

And

WP.CT 79 of 2020

Union of India & Ors.
Versus
Bal Mukund Mahato

(Through Video Conference)

Mr. R.N. Bag, Adv.
Mr. Sankar Ranjan Sen, Adv.
...for the petitioners

Mr. Chiradip Sinha, Adv.
Mr. Siddhartha Samar Mandal, Adv.
...for the respondents

The writ applications involving common questions of law

and facts are taken up together and disposed of by this common order.

Shorn of unnecessary details, the grievance of the applicants in the original applications filed before the learned Tribunal was that, while they were serving as Senior Trains Clerk (TNC)/Head Trains Clerk in the scale of Rs.330-560/- and Rs.425-640/- respectively had applied for selection to the post of Grade-C which was in lower scale of pay of Rs.330-530/- in terms of the pay structure of 3rd Pay Commission prior to 01-01-1986. On their promotion to the post of Goods Guard-C in the scale of Rs.330-560/- their basic pay was reduced to Rs.360/-.

The applicants initially approached the learned Central Administrative Tribunal, Kolkata Bench in OA 1128 of 2013 (Bhola Mahato), OA 1129 of 2013 (Md. Gulam Rasool), OA 1130 of 2013 (Md. Taiyab), OA 1131 of 2013 (Mahendra Prosad Sahk), OA 242 of 2013 (Shyam Prasad Gupta), OA 243 of 2013 (Deo Raj Ram), OA 244 of 2013 (Situ Prasad Yadav), OA 245 of 2013 (Bal Mukund Mahato), OA 246 of 2013 (Arjun Tanti) and OA 247 of 2013 (Banwari Mistry) seeking benefit of the orders passed in OA 1516/1992 decided on 27th June, 2020 by the Allahabad Bench, OA 212/05 decided on 4th March, 2011 by the Patna Bench and OA 180/06 decided on 16th January, 2001 by the Patna Bench (Circuit at Ranchi). The contention of the original applicants in the earlier proceedings and also before the learned Central Administrative Tribunal, was that OA 1516/92 was decided after critically examining the provisions of Rule 320 of IREM, 13, 13A(ii) of Indian Railway Establishment Code (in short IREC), Vol.II which is in *pari materia* to

erstwhile FR-22(C) now (FR-22)(I)(a)(1) and the attendant circumstances that the pay of Senior Trains Clerk/Head Trains Clerk should be protected while granting regular post as Goods Guards (C) on promotion. Similarly, in OA 180/06 it has been contended that the Head Trains Clerk while joining the post of Goods Guard would be entitled to protection of their pay as Head Trains Clerk in the scale applicable to Goods Guard. The contention of the present petitioners in the earlier proceedings as well as before us are stated below:

- (i) Letters inviting applications for promotion to the post of Goods Guard specifically stipulated that the applicants seeking such promotion will have to give in writing an unconditional declaration that reversion to the scale of Goods Guard was acceptable.
- (ii) The Trains Clerk as well the Head TNC on their own volition comes to a lower scale of pay as a Goods Guard for betterment of their future prospects with full knowledge about the pecuniary loss in terms of basic pay fixation since their total emoluments as Goods Guard would be more than their previous post and would entitle them a greater take-home pay.

We are mentioning these two objections since these are the common objections raised earlier and as well before us. In the earlier proceeding the learned Tribunal passed an order on 30th April, 2014 whereby the authorities were directed to examine

whether the grievance of each and every applicant in those O.A.s 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, following which a reasoned order was passed by the authority concerned on 14th October, 2014 by which, out of ten applicants, pay protection was granted to four applicants on the ground that those applicants were promoted after 01-01-1986. This time in addition to the earlier objection the Railway Board's circular being RBE No. 119/1999 is relied upon in which it is stated that the Indian Railways after examining that the feeder post and promotional post are placed in identical scales of pay, although the promotional posts have duties and responsibilities of greater importance than those of feeder posts, the benefit of pay fixation under Rule 1313 (FR 22) (1)(a)(1) will be allowed in cases of promotion made between 01-01-1986 to 31-12-1995 in respect of various feeder posts which, inter alia, mentioned as Senior Trains Clerk also. The selection of the cut-off date is presumably based on the recommendation and subsequent implementation of the 4th Pay Commission.

The reasoned order dated 14th October, 2014 passed by the Senior Divisional Personnel Officer in terms of the order dated 30th April, 2014 was challenged by the present private respondents. The learned Tribunal after an extensive hearing, by a reasoned order set aside the impugned order dated 14th October, 2014 and directed the authorities to consider and grant benefits to the applicants in the light of OA No. 212 of 2005 by issuing an appropriate order. The findings of the learned

Tribunal are as follows:

“(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 01-01-1986 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-revise 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.”

The recording of facts by the learned Tribunal is not in dispute. It is eminently clear from the records available with the learned Tribunal that the respondents were selected to the post of Goods Guard 'C' by a regular process of selection in the year 1985. The said post carries a lower scale of pay. In fact, at the relevant point of time, Deo Raj Ram before his selection to the Goods Guard 'C' was drawing Rs.440/- in the scale of pay of Rs.425-640/- which includes his basic substantive pay and one increment which has been reduced to Rs.360/- in the scale of pay of Rs.330-530/- on his being selected to the post of Guard – C. It is pertinent to mention that under Fundamental Rules 22(I)(a)(1) in case of the original applicant, a Railway servant holding a substantive post is promoted to another post which involves duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post is required to be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or Rs.100/- only whichever is more. This Rule is irrespective of the Railway circular of 1999 which may be clarificatory in nature. The said Railway circular dated 24th May, 1999 has clearly recognized that the identical scale of pay to a feeder post and promotional post was arbitrary since the promotional posts have duties and responsibilities of greater importance than those of the feeder posts. Injustice resulted to the respondents by not implementing and/or giving effect to the Fundamental Rule 22(I)(a)(1) irrespective of the fact that the circular has been continuing even today as in the speaking order, the authority concerned did not even apply its mind to the

Fundamental Rules 22(I)(a)(1) and tried to create a division between two sets of Railway servants namely those who were promoted prior to 01-01-1986 and after 01-01-1986. Moreover, it is pertinent to mention that the resistance of the Railway authorities in various proceedings all over the country have failed. In all earlier proceedings including the proceeding in Ranchi and Allahabad, similar issues have been decided against the Railway authority and in favour of the Railway employees or servants similarly placed as that of the private respondents.

In view of the aforesaid, we uphold the order passed by the learned Tribunal. The writ petitions stand dismissed. However, there shall be no order as to costs.

The authorities are directed to consider and grant appropriate benefits to the respondents as directed by the learned Tribunal by issuing appropriate order within two months from date.

All parties shall act on the basis of the server copy of this order duly downloaded from the official website of this Court.

(Hiranmay Bhattacharyya, J.)

(Soumen Sen, J.)