

W.P.C.T. 73 of 2018

Ratan Mistry
Vs.
Union of India & Ors.

Mr. Kishore Mukherjee,
Mr. Ahitagni Dey

...for the Petitioner

1. Supplementary Affidavit filed on behalf of the petitioner is taken on record.
2. Heard the learned counsel for the petitioner, who was one of the applicants before the Central Administrative Tribunal in O.A. No. 1169 of 2013. The second applicant is not before this Court.
3. The applicants participated in a process of selection based on Employment Notice No. JEN-1/2004 for being appointed as Apprentice Supervisor (Permanent Way) in the scale of ₹.4,500/- - 7,000/-. Petitioners' name figured in the panel prepared on 20.07.2006. As a result of his position in the panel, the petitioner was appointed on the post by an office order dated 26.04.2007.
4. After completion of two years on the post, petitioner was absorbed in the post of Senior Permanent Way Supervisor, by an order dated 20th July, 2010. He was thus placed in the scale of ₹.5,000/- – 8,000/-.

5. After the petitioner was placed in this scale he sought benefit of this scale with effect from an earlier date, being the date of his initial joining on the post of Track/Permanent Way Supervisor in April, 2007. It is submitted that the Senior Permanent Way Supervisor post was introduced on 22.03.2007. The erstwhile post of Permanent Way Supervisor thus ceased to exist. The petitioner was appointed thereafter, therefore, he is entitled to be considered as Senior Permanent Way Supervisor and grant of benefits of the pay and emoluments attached to the said post, w.e.f. the date of their appointment.
6. It is submitted that others who have been appointed after introduction of the post of Senior Permanent Way Supervisor have directly been placed in the pay scale of ₹.5,000 – 8,000/- whereas the petitioner was placed in the earlier/lower pay scale of Permanent Way Supervisor i.e. ₹.4,500/- - 7,000/-.
7. We find that the Central Administrative Tribunal, Kolkata Bench ('Tribunal' for short) has considered the claim of the writ petitioner. It has recorded a finding that the petitioner's appointment was as a result of a recruitment process initiated much prior to introduction of the category of Senior Permanent Way Supervisor. The

advertisement pursuant to which the writ petitioner applied was published vide Employment Notice No. JEN-1/2004 published on 19.06.2004. Their empanelment on 20.07.2006 was also done prior to introduction of the post of Senior Permanent Way Supervisor vide RBE No.45 dated 22.03.2007. They have thus been appointed accordingly as Apprentice Supervisor (Permanent Way) in the scale of ₹. 4,500/- - 7,000/-. The persons with whom the petitioners were claiming parity before the Tribunal were found to have been empanelled after introduction of the category of Senior Permanent Way Supervisor. The petitioner's claim for parity has thus rightly not been accepted by the Tribunal.

8. The order dated 22.03.2007 issued by the Joint Director Establishment (P&A) of the Railway Board introducing the category of Senior Permanent Way Supervisor contains a stipulation in Clause 1 which reads :-

“(1) These orders are effective from the date of issue of these instructions and would be applicable to the sanctioned cadre strength of the Track Supervisors (erstwhile P.W. Mistries/Supervisors Permanent Way) on the above date. The sanctioned cadre strength of the new category of Sr. P Way Supervisors would be fixed by the individual Railways after providing matching savings as provided in these orders. However, the total number of

sanctioned posts in the new category should not exceed the present sanctioned strength of Track Supervisors (erstwhile P.W. Mistries/Supervisors Permanent Way).”

9. It is also worthwhile to consider Clause (3.1) of this order dated 22.03.2007 which reads :

“(3.1) For the above purpose the condition regarding minimum residency period prescribed by the Railway Board for promotion within Group ‘C’ safety categories on the Railways will have to be fulfilled. Those Track Supervisors (erstwhile P.W. Mistries/Supervisors Permanent Way) who do not have the prescribed minimum service would not be absorbed (through promotion) in the new category till they acquire such service.”

10. The tone and tenor of the order introducing the category of Senior Permanent Way Supervisor is clear from a plain reading of the order. The post was introduced on 22.03.2007, and the erstwhile post of Permanent Way Mistries/Supervisors was to be phased out. The order therefore contains a stipulation that the sanctioned cadre strength of the new category would be fixed by the individual railways and such an exercise was yet to be undertaken in terms of the letter dated 22.03.2007. Only after completion of such exercise the issue was to attain finality. It is

obviously for such circumstance that Clause 3.1 provides that the condition regarding minimum residency period will have to be fulfilled. The petitioners, therefore, cannot claim that merely because the order dated 22.03.2007 introducing the category of Senior Permanent Way Supervisor was issued prior to issuance of their appointment orders, that they would automatically be entitled to benefits of the category of Senior Permanent Way Supervisor.

11. We also consider it significant to take note of the fact that the petitioner was not appointed on the post of Senior Permanent Way Supervisor to begin with, and only after completion of his residency period, he was placed against the category of Senior Permanent Way Supervisor.
12. He has obtained all service benefits till this date without any demur, and only when he has been placed in the category of Senior Permanent Way Supervisor, he has made a demand for grant of the benefits for this post, with effect from an earlier date, being the date of his initial appointment, made in the year 2007. The petitioner's claim (O.A. No. 1169 of 2013), in view of the above circumstances, has rightly been rejected by the Tribunal.

13. The petitioner has also filed a review before the Tribunal vide R.A. No. 30 of 2018. The same was dismissed since no grounds were made out by the petitioner for review.
14. We find no infirmity in the order dated 06.03.2018 in O.A. No. 1169 of 2013 and the order dated 16.04.2018 passed by the Tribunal in R.A. No. 3 of 2018 (O.A. No. 1169 of 2013).
15. The Writ Petition being W.P.C.T. No. 73 of 2018 is dismissed.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)