

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P (S) No.5864 of 2023

With

W.P (S) No.5823 of 2023

1. The Union of India through the General Manager, South Eastern Railway, 11, Garden Reach Kolkata, P.O & P.S- Garden Reach, District-Kolkata, 700043, State-West Bengal.
2. Chief Personnel Officer, South Eastern Railway, Garden Reach Kolkata, P.O & P.S- Garden Reach, District-Kolkata, 700043, State-West Bengal.
3. Senior Divisional Personnel Officer, South Eastern Railway, Ranchi Division, Post Office Hatia Police Station. Jagarnathpur District- Ranchi, Jharkhand.
4. Senior Divisional Commercial Manager, South Eastern Railway, Ranchi Division, Ranchi, Post Office Hatia Police Station Jagarnathpur District- Ranchi, Jharkhand.

..... ... **Petitioners**
(in both the cases)

Versus

Sanjeev Kumar Suman Son of Sri Chandeshwar Prasad Resident of Village-Mokimpur, Post Office- Kotwand Police Station- Chandi District-Nalanda (Bihar) Presently posted as Chief Commercial Clerk (Goods) at Hatia, Post Office and Police Station- Hatia, District- Ranchi under Ranchi Division of South Eastern Railway.

... ... **Respondent [In W.P.(S) No.5864 of 2023]**

Sudhir Kumar Son of Bisheshwar Prasad, Resident of village-Dhobi Bigha, Post Office and Police Station-Asthawan, District-Nalanda (Bihar) Presently posted as Chief Commercial Clerk (Goods) at Muri, Post Office and Police Station-Muri, District-Ranchi under Ranchi Division of South Eastern Railway.

..... ... **Respondent [In W.P.(S) No.5823 of 2023]**

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE ARUN KUMAR RAI

For the Petitioners : Mr. Prashant Pallav, ASGI
Ms. Shivani Jaluka, AC to ASGI
Mr. Ravi Prakash, CGC
For the Respondents : Mr. Niladri Shekhar Mukharjee, Advocate
Mrs. Sandhya Singh, Advocate
Dr. Shree Krishana Pandey, Advocate

Order No.10/Dated:9th February, 2026**Per Sujit Narayan Prasad, J.**

1. Both the writ petitions are taken up together for hearing since the common issues are involved in these writ petitions and these are preferred against the common order passed by the learned Central Administrative Tribunal, Patna Bench, Patna (Circuit Bench at Ranchi) [in short, the learned Tribunal].

2. These writ petitions under Article 226 of the Constitution of India are directed against the common order dated 19.05.2023 passed in O.A No. OA/051/00343/2021 and the second one in O.A No. OA/051/00346/2021 by the learned Tribunal whereby and whereunder direction has been given to grant same pay as Sachin Kumar Gupta and Anurag Kumar to the respondent-applicants from the date they were promoted as Chief Commercial Inspector and the order dated 29.04.2021 passed by the Senior Divisional Commercial Manager, South Eastern Railway, Ranchi Division, Ranchi has been quashed.

3. The brief facts of the case as per the impugned order and the pleadings made in the writ petition which require to be enumerated reads as under:

- (i) The Grievance of the applicants(respondents herein) is that they were selected for the post of Commercial Apprentice, after due process, pursuant to Centralised Employment Notice of year 2010 and after training they were appointed to the post of Chief Commercial Clerk/Commercial Inspector in year 2015 but are being given GP @ Rs 4200/- P.M. whereas some of their junior selected for the same post of Commercial Apprentice pursuant to similar Employment Notice of subsequent year and after training

were appointed to the post of Chief Commercial Clerk/Commercial Inspector are being given GP @ Rs 4600/- P.M..

- (ii) The case of the applicants, as is emerging from their respective OA is that they presently are manning the post of Chief Commercial Clerk (Goods), that they are selectee of Batch No2/13 for the post of Commercial Apprentice and were selected pursuant to Centralised Employment Notice No. 02/2010 dated 13/2/2010 (Annexure A/1 in OA No. 343/2021 and offer of appointment dated 07.01.2013 and dated 13.09.2012, respectively for the post of Commercial Apprentice was given to them and after recruitment to the post of Commercial Apprentice they were sent for requisite training.
- (iii) They underwent three years training successfully and on completion of training were appointed as Chief Commercial Clerk/Commercial Inspector, in the Pay band of Rs. 9300-34800+ Grade Pay Rs. 4200/-, vide office order dated 18.05.2015 (Annexure A/8 in OA No. 343/2021).
- (iv) Thereafter on reporting the Division, they vide order dated 04.06.2015 (Annexure A/9 in OA No. 343/2021) were posted as Chief Commercial Clerk.
- (v) Further averment of applicant is that in subsequent year, after appointment of applicants, similar Employment Notice for appointment of Commercial Apprentice (Batch 4/14) was given and after due process of selection & on

completion of training said selected candidates, like applicants were appointed as Chief Commercial Clerk/Commercial Inspector in the Pay band of Rs. 9300-34800+ Grade Pay Rs. 4200/-and some of them were posted as Chief Commercial Clerk and some other as Commercial Inspector. Sachin Kumar Gupta and Anurag Kumar were posted as Commercial Inspector in December, 2016.

- (vi) Sachin Kumar Gupta and Anurag Kumar who were appointed subsequent to applicants as Commercial Apprentice, in Batch of 2014, were appointed as Chief Commercial Clerk/Commercial Inspector clearing the same examination and though they are juniors to them but as of now they are posted as Chief Commercial Inspector in the Grade Pay of Rs. 4600/- whereas the applicants in spite of being senior are still in the Grade pay of Rs. 4200/.
- (vii) The applicants raising grievance submitted representations for equal Grade Pay and equal opportunity. They wrote also to change the cadre, if necessary, to maintain equality in pay and opportunity, however, when no action was taken they did file the OA before the Tribunal (OA No. 051/00080/2021 and OA No. /051/00081/2021) and their OAs were disposed of on 11.02.2021 directing the respondents(petitioners herein) to treat the OA as their representation and to take a decision thereon as per law within three months.

- (viii) Thereafter separate order, both dated 29.04.2021, rejecting the representation of the applicants were passed by respondent no. 4 (writ petitioner no.4) the Senior Divisional Commercial Manager, stating that Commercial Apprentices are posted either as Chief Commercial Clerk or as Commercial Inspector and that cadre of Chief Commercial Clerk and Commercial Inspector are two different cadres.
- (ix) Consequently, O.A being OA/051/00343/2021 and O.A No. OA/051/00346/2021 has been filed by making a case that Sachin Kumar Gupta and Anurag Kumar are their juniors, that the post of chief Commercial Clerk and Commercial Inspector are same in all respects, it is not the choice of the candidate to be posted as Chief Commercial Clerk or Commercial Inspector, no choice of the candidate to accept or not to accept the posting was there and moreover it is not the fault of the applicants that they were posted as Chief Commercial Clerk (Goods) and not as Commercial Inspector.
- (x) Respondents (Writ petitions herein) have filed written statement wherein it has been submitted that post of Chief Commercial Clerk and Commercial Inspector are of two different cadres, having different avenue of promotion and different strength of cadre. That the post of Chief Commercial Clerk, in GP 4200, is an intermediate grade of Commercial Clerk category whereas the post of Commercial Inspector in GP 4200 is direct recruitment

entry grade of such category and as such in both the categories, i.e. in Chief Commercial Clerk and Commercial Inspector seniority of the officials are maintained separately. The respondents have denied that the posts of Chief Commercial Clerk and Commercial Inspector are same.

- (xi) The learned Tribunal vide order dated 19.05.2023 after hearing both the parties has allowed the said O.A. and accordingly quashed the order dated 29.04.2021 against which the present petition has been filed.

4. Thus it is evident that it is the case of the respondent-applicants that they have been appointed after getting the apprenticeship as Chief Commercial Clerk under 15% Direct Recruitment quota. The other sets of employees who have been appointed through Direct Mode as Commercial Inspector have subsequently been granted promotion to the higher post of Commercial Inspector, Grade-II in the pay scale of Rs.6500-10500/-.

5. The respondent-applicants have agitated their grievance that even though they have been appointed in the year 2013, they are still in the pay scale of Rs.5500-9000/-, while other sets of employees who have been appointed as Commercial Inspector, Grade-III in the pay scale of Rs.5500-9000/- are now getting the pay scale of Rs.6500-10500/-. In addition, thereto, a prayer has also been made for merger of the cadre of the Chief Commercial Clerk to that of the Commercial Inspector.

6. The issue of merger has been discarded by the learned Tribunal by assigning the reason that the merger is the matter to be looked into by the establishment since it is the matter of policy decision and, as such, has refused to pass any positive direction on that.

7. It needs to refer herein that the issue of merger after having been decided to not come out with the positive direction by the learned Tribunal, has not been assailed by the respondent-applicants, since, no writ petition has been filed on their behalf.

8. The only issue which has been decided by the learned Tribunal is the issue of parity in the pay scale.

Submission of the learned counsel for the writ-petitioners :

9. It has been submitted that parity in the pay scale has been granted by learned Tribunal even though accepting the fact that both the respondent-applicants and other sets of employees, namely, Sachin Kumar Gupta and Anurag Kumar are in two different cadres and, as such, they cannot be equated so far as the pay scale is concerned, but the learned Tribunal, by way of one-time exercise, has granted the relief by applying the principle of parity.

10. Referring the aforesaid fact the learned counsel has assailed the order of tribunal on the following grounds:

- (i) Once the learned Tribunal has come to the specific finding that both the respondent-applicants and the another sets of employees, namely, Sachin Kumar Gupta and Anurag Kumar, have been appointed in two different cadres, i.e., of the cadre of Chief Commercial Clerk and Commercial Inspector, Grade-III although on the same pay scale, but one sets of employees who have been appointed as Commercial Inspector, Grade-III had been granted promotion in the higher cadre of Commercial Inspector, Grade-II in the pay scale of Rs.6500-10500/- which pay scale has been extended, i.e., the pay scale of Rs.6500-10500/- also to the Chief

Commercial Clerk by way of one time exercise which is not available to the learned Tribunal while exercising its jurisdiction.

(ii) It has been contended that the learned Tribunal, as a Court of first instance, while exercising the power is only supposed to consider the impropriety in the decision, if taken by the appointing authority, on the issue of arbitrariness, but arbitrariness which is the core of the Constitution as per provision of Article 14 of the Constitution of India.

11. The learned counsel appearing for the writ petitioners has submitted that the learned Tribunal has, therefore, committed serious error in granting the pay scale of Rs.6500-10500/- even accepting the fact that the said pay scale cannot be granted/extended in favour of the employees working in the cadre of Chief Commercial Clerk.

Submission of the learned Counsel for the respondent/applicant:

12. Mr. Niladri Shekhar Mukharjee, the learned counsel appearing for the respondent-applicants has defended the impugned order passed by the learned Tribunal.

13. It has been contended that the learned Tribunal has rightly passed the order as per mandate of the constitution of India in order to rectify the anomaly in the pay scale in order to maintain the principle of parity therefore the order impugned requires no interference by this Court.

Analysis: -

14. We have heard the learned counsel for the parties and gone through the findings recorded by the learned Tribunal in the impugned order.

15. It needs to refer herein which we have perused from the order passed by the learned Tribunal, wherefrom it is evident that the learned

Tribunal has not adjudicated the core of the issue, rather by applying the principle of parity and by way of one time exercise the relief which has been sought for on behalf of the respondent-applicants, i.e., the pay scale of Rs.6500-10500/-, which was the pay scale available to the employees working as the Commercial Inspector, Grade-II, has been granted.

16. This Court, in the context of the aforesaid consideration, given by the learned Tribunal is to consider as to whether the learned Tribunal was having jurisdiction to extend such relief of pay scale of Rs.6500-10500/- in favour of the respondent-applicants on the ground of maintaining the principle of parity if such pay scale is not available under the pay scale earmarked for another cadre and the said pay scale of Rs.6500-10500/- in the cadre of the respondent-applicants was to the next hierarchy of the post, i.e., the post of Commercial Superintendent.

17. This Court, in order to consider the aforesaid issue, is first to consider the jurisdiction which is to be exercised by the learned Tribunal. This Court is conscious that the learned Tribunal has been conferred with the power to exercise its jurisdiction by virtue of amendment as has been carried out by insertion of a provision by adding Article 323A in the Constitution.

18. It is, thus, evident that the power conferred under Article 226 of the Constitution of India is also to be exercised by the learned Tribunal as a Court of first instance so far as the employees working under the Central Government or the other establishment who has been brought under the purview of the Administrative Tribunal Act, 1985 by issuance of notification to be issued by the appropriate Government in exercise of power conferred under section 14(5) of the Administrative Tribunal Act, 1985.

19. The power which is to be exercised under Article 226 of the Constitution of India is on the basis of the issuance of the writ that is known as the prerogative writ, i.e., the writ of mandamus, writ of certiorari, writ of prohibition, writ of quo warranto and writ of habeas corpus.

20. We are, herein, concerned with the writ of mandamus, since, no order was under challenge before the learned Tribunal warranting the learned Tribunal to come out with the power to exercise for issuance of writ of certiorari, rather the writ was sought for by issuance of writ of mandamus/command to rectify the error said to be committed as per the claim put by the respondent-applicants before the learned Tribunal.

21. The core of the grievance was that the difference in between the slab of the salary between two sets of employees working in two sets of cadre, i.e., the Chief Commercial Clerk having the pay scale of Rs. 5500-9000/- and the Commercial Inspector, Grade-II having the pay scale of Rs.6500-10500/-.

22. The post of Chief Commercial Clerk is to be filled up by way of three modes, i.e., 75% by promotion, 15% plus shortfall against Limited Departmental Competitive Examination (LDCE) by direct recruitment (Commercial Apprentice) and 10% from Limited Departmental Competitive Examination (LDCE).

The next hierarchy of the post of Chief Commercial Clerk is the Commercial Superintendent in the pay scale of Rs.6500-10500/- which is to be filled up by way of promotion only from the post of Chief Commercial Clerk having the pay scale of Rs.5500-9000/-, being the feeder cadre.

23. While, on the other hand, the post of Commercial Inspector, Grade-III having the pay scale of Rs.5500-9000/- is to be filled up 15% plus shortfall against LDCE by Direct Recruitment (Commercial Apprentice), 10% LDCE and 75% Promotion whereas the next hierarchy of the post of Commercial Inspector, Grade-III is the Commercial Inspector, Grade-II in the pay slab of Rs.6500-10500/- to be filled up totally on the basis of the promotion, i.e., 100% by way of promotion, for ready reference the scheme of filling up of vacancies as existed on 31.08.2009 in the Railway is reproduced hereunder as:

Scheme for filling up of vacancies as existed on 31.08.2009
Revision of Classification of Posts consequent upon merger of grades
as a result of implementation of VIth Central Pay Commission’s Recommendation

S. No.	Category/Existing Scale	Existing mode of filling up	Existing Classification	Pay Band/Grade Pay	Revised Position		Remarks
					Revised Mode of filling up	Revised Classification	
1	2	3	4	5	6	7	8
TRAFFIC TRANSPORT DEPARTMENT							
1)	Assistant Station Master (ASM)/4500-7000	60% plus shortfall against LDCE by DR. 15% plus shortfall against General Selection by LDCE; 25% General selection	Selection (Rectt. grade)	PB-1/(2800)	60% plus shortfall against LDCE by DR. 15% plus shortfall against General Selection by LDCE; 25% General selection	Rectt./Entry grade (General Selection)	Please see footnotes 1 & 6. LDCE by written Exam
	Asstt. Station Master/5000-8000	100% Prom.	Non-Selection	PB2(4200)	75% Prom. 15% plus shortfall against LCE by DR(Traffic App.) 10%LDCE	suitability with prescribed benchmark.	
	Station Master/5500-9000	75% Prom. 15% plus shortfall against LDCE by DR(Traffic App.) 10% LDCE	Non-Selection				
	Dy. Station Supdt./6500-10500	100% Promotion	Selection	PB2(4600)	100% Prom.	Subsidy with prescribed benchmark.	
	Station Supdt./7450-11500	100% Promotion	Non-Selection				
2)	Traffic Signaller/3200-4900	75% DR; 25% Promotion	Selection	PB-1(1200)	75% DR. 25% Prom.(General Selection)	Rectt./Entry grade(General Selection)	
	Senior Signaller/4000-6000	100% Promotion.	Non-Selection	PB-1(2400)	100% Promotion	Non Selection/Seniority-cum-suitability	
	Head Signaller/5000-8000	100% Promotion.	Non-Selection	PB2(4200)	100% Promotion	suitability with prescribed benchmark.	
	Inspector of Telegraph Traffic/5500-9000	100% Promotion.	Selection				
	Chief Inspector of Telegraph Traffic/6500-10500	100% Promotion.	Non-Selection				

3)	Goods Guard/4500-7000	60% by General Selection; 15% plus shortfall against Genl Sel by LDCE; and, 25% plus shortfall against LDCE quota by DR;	Selection (Rectt. Grade)	PB-1(2800)	60% by General Selection 15% plus shortfall against Gen Sel by LDCE; and, 25% plus shortfall against LDCE quota by DR.	Rectt/Entry grade(General Selection)	Passing of pre-promotional course/training consisting of written test, will be mandatory in case of promotion to the posts in grade pay Rs.4200 wherever mode of promotion has been prescribed as suitability with prescribed benchmark.
	Sr. Goods Guard/5000-8000	100% Promotion.	Non-selection	PB-2(4200)	100% Promotion	Non-selection/seniority-cum-suitability	
	Passenger Guard/5000-8000	100% Promotion	Selection	PB-2(4200)	100% Promotion	Suitability with prescribed benchmark	
	Sr. Passenger Guard/5500-9000	100% Promotion	Non-selection	PB-2(4200)	100% Promotion	Suitability with prescribed benchmark	
	Mail/Express Guard/5500-9000	100% Promotion	Non-selection	PB-2(4200)	100% Promotion	Suitability with prescribed benchmark	
4)	Train Clerk/3050-4590	50% DR. 33.33% Prom. 16.67% by LDCE	Selection	PB-1(1900)	50% DR; 33.33% Prom.(General Selection) 16.67% by LDCE	Rectt/Entry grade(General Selection)	
	Sr. Train Clerk/4000-6000	100% Promotion	Non-selection	PB-I(24)00	100% Prom.	Non-selection/seniority-cum-suitability	
	Head Tr. Clerk/5000-8000	100% Promotion	selection	PB-2(4200)	100% Prom.	Non-selection/seniority-cum-suitability	
	Chief Tr. Cleark/5500-9000	100% Promotion	selection	PB-2(4200)	100% Prom.	Non-selection/seniority-cum-suitability	
5)	Wagon Movement Inspector-II/5000-8000	100% Promotion	selection	PB-2(4200)	75% Promotion (General Selection) 15% plus shortfall against LDCE by DR(Traffic Apprentices) 10% LDCE	Rectt/Entry grade(General Selection)	Pl. see footnote 1.
	Wagon Movement Inspector-I/5500-9000	75% Promotion 15% plus shortfall against LDCE by DR(Traffic Apprentices). 10%LDCE	Non-selection	PB-2(4200)	75% Promotion (General Selection) 15% plus shortfall against LDCE by DR(Traffic Apprentices) 10% LDCE	Rectt/Entry grade(General Selection)	
	Sr. Wagon Movement Inspector-II/6500-10500	100% Promotion	selection	PB-2(4600)	100% Promotion	Suitability with prescribed benchmark.	
	Sr. Wagon Movement Inspector-I/7450-11500	100% Promotion	Non-selection	PB-2(4600)			
6)	Section Controller/5500-9000	75% Prom. 15% plus shortfall against LDCE by DR(Traffic Apprentice); 10% LDCE	Selection	PB-2(4200)	75% Prom. (General Selection) 15% plus shortfall against LDCE by DR(Traffic Apprentices) 10% LDCE	Rectt/Entry grade(General Selection)	
	Deputy Chief Controller/6500-10500	100% Promotion	Non-selection	PB-2(4600)	100% Promotion	Suitability with prescribed benchmark.	
	Chief Controller/7450-11500	100% Promotion	Selection	PB-2(4600)			
	COMMERCIAL DEPARTMENT						
7)	Ticket Collector/3050-4590	50% DR; 33.33% by Prom.; 16.67% by LDCE	Selection	PB-1(1900)	50% DR; 33.33% by Prom.; 16.67% by LDCE	Rectt/Entry grade(General Selection)	
	Sr.TC/TTE/4000-6000	100% Promotion	Non-selection	PB-I(2400)	100% Prom.	Non-selection/seniority-cum-suitability	
	Head TC/Sr.TTE/5000-8000	100% Promotion	selection	PB-2(4200)	100% Prom.		

	Traveling Ticket Inspector (TTI)/5500-9000	100% Promotion	Non-selection			Suitability with prescribed benchmark.	
	Chief TTI/6500-10500	100% Promotion	Selection	PB-2(4600)			
8)	Commercial Clerk/3200-4900	50% DR; 33.33% by Prom.; 16.67% by LDCE	Selection	PB-1(2000)	50% DR; 33.33% by Prom (General Selection); 16.67% by LDCE	Rectt. Entry grade(General Selection)	
	Sr.Commercial Clerk/4000-6000	100% Promotion	Non-selection	PB-1(2800)	100% Prom.	Non-selection/seniority-cum-suitability	
	Head Commercial Clerk/5000-8000	100% Promotion	Non-selection	PB-2(4200)	75% Prom. 15% plus shortfall against LDCE by DR(Comm. App.); 10% LDCE	Suitability with prescribed benchmark.	Pl. see footnote 1.
	Chief Commercial Clerk/5500-9000	75% Prom. 15% plus shortfall against LDCE by DR(Comm. App.); 10% LDCE	Selection				
	Commercial Supdt./6500-10500	100% Promotion	Selection	PB-2(4600)	100% Promotion.		
9)	ECRC-II/4500-7000	25% DR; 75% Promotion	Selection	PB-1(2800)	25% DR; 75% Promotion(General Selection)	Rectt/Entry grade(General Selection)	
	ECRC-I/5000-8000	100% Promotion	Non-selection	PB-2(4200)	100% Promotion.	Suitability with prescribed benchmark.	
	Reservation Supervisor-II/5500-9000	100% Promotion	Non-selection				
	Reservation Supervisor-I/6500-10500	100% Promotion	Selection	PB-2(4600)	100% Promotion	Suitability with prescribed benchmark.	
10)	Commercial Inspec. Gr.IV(Marketing/Claims/Rates/R&D) 5000-8000	100% Promotion	Selection	PB-2(4200)	75% Prom.(General Selection) 15% plus shortfall against LDCE by DR(Comm. App.); 10% LDCE	Rectt/Entry grade(General Selection)	Pl. see foot Note 1.
	Commercial Inspec. Gr.III(Marketing/Claims/Rates/R&D) 5500-9000	15% plus shortfall against LDCE by DR(Comm. App.); 10% LDCE 75% Prom.	Non-selection				
	Commercial Inspec. Gr.II(Marketing/Claims/Rates/R&D) 6500-10500	100% Promotion	selection	PB-2(4600)	100% Promotion 100% Promotion	Suitability with prescribed benchmark.	
	Commercial Inspec. Gr.I(Marketing/Claims/Rates/R&D) 6500-10500	100% Promotion	Non-selection				
11)	Law Assistant/6500-10500	40% DR. 60% Promotion	Selection	PB-2(4600)	40% DR. 60% Promotion.(General Selection)	Rectt/Entry grade(General Selection)	Pl. see foot Note 2.
	Chief Law Assistant/7450-11500	100% Promotion	Non-selection				
12)	Asstt.Manager Canteen/3050-4590	50% DR; 50% Promotion	Selection	PB1(1900)	50% DR; 50% Promotion .(General Selection)	Rectt/Entry grade(General Selection)	

24. The claim of the respondent-applicants is that they have been appointed as the Chief Commercial Clerk under the 15% Direct Recruitment Quota sometime in the year 2013. Hence, they claimed themselves to be the senior to that of the other recruits who have been appointed as Commercial Inspector, Grade-III under 15% Direct Recruitment quota some time in the year 2015.

25. The sets of the employees who have been appointed as Commercial Inspector, Grade-III in the pay slab of Rs.5500-9000/- have subsequently been promoted to the post of Commercial Inspector, Grade-II in the pay scale of Rs.6500-10500/-.

26. The respondent-applicants have raised the grievance that even though they have been appointed sometime in the year 2013, but even then they are still in the pay scale of Rs.5500-9000/-, while the other sets of the employees who have been appointed as Commercial Inspector, Grade-III sometime in the year 2015 have now been promoted to the next higher hierarchy, i.e., the post of Commercial Inspector, Grade-II, in the pay slab of Rs.6500-10500/-.

27. They, therefore, have reached to the learned Tribunal for rectifying the said anomaly as also by making a prayer of merger of the post of Commercial Clerk and the Commercial Inspector, Grade-III so that they may also be given the pay scale of Rs.6500-10500/- on being promoted to the higher post having the pay scale of Rs.6500-10500/-.

28. But the issue of merger has been decided in negative by holding in paragraph-24 of the impugned order that the same being the policy decision, it is none of the business of the Tribunal to pass a positive order by merging the two cadres i.e., the cadre of Chief Commercial Clerk to the Commercial Inspector into one cadre.

29. Admittedly, the said part of the order has not been challenged by the respondent-applicants by filing another writ petition, meaning thereby, they have admitted the findings so recorded on the issue of merger.

30. The second issue, i.e., extending the pay scale of Rs.6500-10500/- as had been extended in favour of the employees holding the post

of Commercial Inspector, Grade-III on being promoted to the post of Commercial Inspector, Grade-II which was not made available.

31. A finding has been recorded, on adjudication, that no parity can be claimed by the respondent-applicants, since, the respondent-applicants and Sachin Kumar Gupta and Anurag Kumar the employees holding the post of Commercial Inspector, Grade-III and subsequently promoted to the post of Commercial Inspector, Grade-II at the pay scale of Rs.6500-10500/- cannot be equated as both are having in the two different grades. But even then, the pay scale has been granted in favour of the respondent-applicants of the pay scale of Rs.6500-10500/-.

32. It further needs to refer herein that the pay scale of Rs.6500-10500/- in the cadre of Chief Commercial Clerk is attached to the post of Commercial Superintendent which is to be filled up, 100% by way of promotion.

33. It is, thus, evident that the learned Tribunal on the one hand has declined to pass positive direction on the issue of merger, while on the other hand, the pay scale attached to the post of Commercial Superintendent, i.e., the pay scale of Rs.6500-10500/- has been extended in favour of the respondent-applicants even though they were in the substantive post of Chief Commercial Clerk without even granting promotion to the higher post of Commercial Superintendent which is to be filled up by way of promotion.

34. The aforesaid fact has been rectified by the learned Tribunal by way of onetime exercise.

35. The question is that if the issue revolves around on the issue of entitlement, can such relief be extended by way of onetime exercise.

36. The answer of this Court is in negative, in view of the fact, that the provision as contained under Article 226 of the Constitution is to be exercised as a power to ask the respondent-applicants to remain in their bound of law and not to exceed their bound of law. If the same is applicable to the respondent concerned, then how can it be exceeded by the Court of Law that is the question.

37. Exercising the power conferred under Article 226 of the Constitution of India does not mean that the Court having the power under Article 226 of the Constitution will exceed its jurisdiction even though, as per the decision taken by the authority, no entitlement is available to the concerned employees as the fact of the present case is.

38. The matter would have been different to exercise the power conferred under Article 226 of the Constitution of India if the issue touches the issue of parity, meaning thereby, if the violation of Article 14 of the Constitution of India, then certainly the Court having power under Article 226 of the Constitution of India is to rectify so as to observe the principle as laid down under Article 14 of the Constitution of India. But while exercising such power, the Court having jurisdiction under Article 226 of the Constitution is duty bound to threadbare the difference in between the reasonable classification and the un-classification. If the difference is based upon the principle of reasonable classification, then there is no application of Article 14 of the Constitution of India.

39. While on the other hand, if the difference is based upon unreasonable classification, then certainly Article 14 will be applicable and in such situation in order to deal with the issue of hostile discrimination, it is always available for the writ Court to exercise with the power conferred under Article 226 of the Constitution of India to

rectify the same, reference may be made to the judgment of the Hon'ble Apex Court rendered in "***Western U.P. Electric Power & Supply Co. Ltd. vs. State of U.P. (1969) 1 SCC 817*** while observing that article 14 does not operate against rational classification, has held as under:

"Article 14 of the Constitution ensures equality among equals : its aim is to protect persons similarly placed against discriminatory treatment. It does not however operate against rational classification. A person setting up a grievance of denial of equal treatment by law must establish that between persons similarly circumstanced, some were treated to their prejudice and the differential treatment had no reasonable relation to the object sought to be achieved by the law."

Further, the Hon'ble Apex Court in the case of ***Air India vs. Nergesh Meerza, (1981) 4 SCC 335*** has observed that Article 14 forbids hostile discrimination but not reasonable classification and Article 14 certainly applies where equals are treated differently without any reasonable basis.

40. Adverting to the factual aspect of the present case and as per the tabular chart produced by the learned counsel appearing for the writ petitioners, which has been admitted by the learned counsel appearing for the respondent-applicants that the post of Chief Commercial Clerk having the pay slab of Rs. 5500-9000/- and the next cadre of the post having the pay slab of Rs.6500-10500/- is available to the post of Commercial Superintendent to be filled up by way of promotion 100%. Meaning thereby, the hierarchy of post of Chief Commercial Clerk is having its own independent cadre and as having the different cadre it has no nexus with the cadre of Commercial Inspector, Grade-III.

41. The learned Tribunal has, however, admitted the aforesaid fact as would be evident from paragraph-25 of the impugned order regarding

the placement of respondent-applicants and other sets of employees, namely, Sachin Kumar Gupta and Anurag Kumar are in the two different cadres, but even then the respondent-applicants have been granted relief of the pay scale and it has been held that the respondent-applicants are entitled for the pay scale of Rs.6500-10500/-.

42. This Court is conscious of the jurisdiction conferred under Article 226 of the Constitution of India which is the power of judicial review as per the ratio laid down by the Hon'ble Apex Court at paragraph-99 in the judgment rendered in the case of "**L. Chandra Kumar**" (*Supra*), relevant paragraph-99 thereof is quoted hereunder as:

"99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323- A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323- B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section

5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."

43. The power of judicial review has been deliberated by the Hon'ble Apex Court, which is to be considered while exercising the said power only to the extent that if any order is being passed found to be having error on the face of the order or without jurisdiction or suffers from perversity. The error apparent on the face of the order means that if the order appears on its face having with error, then only the power of judicial review is to be exercised.

44. The Hon'ble Apex Court in the case of ***West Bengal Central School Service Commission vs. Abdul Halim, (2019) 18 SCC 39***, has held at paragraph-30 that the power of judicial review must be exercised by the Court after determining that the impugned is vitiated by an error apparent on the face of 2026:JHHC:2418-DB the record and not the same has been established by a process of reasoning. Paragraph-30 of the aforesaid judgment is being referred as under:

"30. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale [Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale, AIR 1960 SC 137] . ---."

45. In the case of **T.C. Basappa vs. T. Nagappa and Anr., (1955) 1 SCR 250**, their Lordship have held that the patent error in a decision can

be corrected by writ of certiorari, when it is manifested by the error apparent on the face of the proceedings. The relevant portion of the aforesaid judgment is quoted hereunder:

"11. ... An error in the decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error apparent on the face of the proceedings e.g. when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision."

46. This Court has considered the impugned order passed by the learned Tribunal on the touch stone of the ratio laid down by the Hon'ble Apex Court at paragraph-99 in the case of **"L. Chandra Kumar"** (*supra*) and as per the discussions made hereinabove, is of the view that the findings so recorded by the learned Tribunal is well versed but the conclusion which has been arrived holding the respondent-applicants entitled the pay scale of Rs.6500-10500/- is totally contrary to the aforesaid findings based upon the consideration made by the learned Tribunal.

47. This Court, therefore, is of the view that the power which has been exercised by the learned Tribunal, by way of onetime exercise, putting the respondent-applicants in the pay scale of Rs.6500-10500/- is held to be exceeding the jurisdiction by the learned Tribunal.

48. The law is well settled that if any order is passed exceeding the jurisdiction, it is nullity in the eyes of law. Reference may be made to the judgment of the Hon'ble Apex Court rendered in **Balvant N. Viswamitra v. Yadav Sadashiv Mule** reported in **(2004) 8 SCC 706**.

"..Where a court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such court would be without jurisdiction, non est and void ab initio. A defect of jurisdiction of the court goes to the root of the matter and strikes

at the very authority of the court to pass a decree or make an order. Such defect has always been treated as basic and fundamental and a decree or order passed by a court or an authority having no jurisdiction is a nullity. Validity of such decree or order can be challenged at any stage, even in execution or collateral proceedings.”

49. Considering the aforesaid facts, the part of the order by which the direction has been given by the tribunal holding the respondent-applicants entitled to the pay scale of Rs.6500-10500/- is hereby quashed and set aside.

50. In the result, these writs petitions stand allowed.

51. Pending I.As, if any, stands allowed.

(Sujit Narayan Prasad, J.)

(Arun Kumar Rai, J.)

Dated:09.02.2026
Sudhir
A.F.R.