



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.**

WRIT PETITION NO.4533 OF 2025

The Union of India, through the Principal Chief Personnel Officer South East Central
Railway, Bilaspur and another.

vs.

Dr. Himanshu Shardanand Jaiswal

Ms Ashwini A. Athalye, Advocate for petitioners.

Mr. Anurag Mankar, Advocate for respondent no.1.

CORAM :- ANIL S. KILOR and RAJ D. WAKODE, JJ.

DATE :- 13th JANUARY, 2026

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Heard the learned counsel for the parties.

2. The order dated 24.01.2025 passed by the Central Administrative Tribunal (for short, 'the Tribunal'), Mumbai Bench, Mumbai (Camp at Nagpur) in Original Application No. 952 of 2023 is under challenge in this writ petition.

3. The respondent herein approached the Tribunal by making the following prayers amongst others :

8(i) To avoid and declare that the OM dated 13.08.2020 (Annexure A-14) issued by the Government of India through the Ministry of Personnel, Public Grievance and Pensions Department of Personnel and Training is prospective in nature and hence, not applicable to case of the Applicant:

8(ii) quash and set aside the order/communication 7.7.2023 (Annexure A-1) passed by the Principal Chief Personnel Officer, South East Central Railway/Respondent no.1 thereby, rejecting the claim/representation of the Applicant seeking pay protection and further direct the respondents to grant pay protection along with interest at the rate 9 percent per annum or any other rate within a stipulated time frame and this Hon'ble Tribunal may deem fit and proper:

4. The learned Tribunal recorded its findings in paras 12 to 15 while directing the petitioner to re-consider the case of the respondent for grant of pay protection after verifying the factual aspect of the probation period and its confirmation and if the applicant/respondent herein found entitled, then the benefit shall be extended. Findings recorded by the Tribunal in paras 12 to 15 are as under:

“12. The stand of the office respondents that the Office Memorandum dated 13.08.2020 (Annexure A-14) in paragraph No.4 clearly provides that the benefit will be allowed irrespective of whether the post is filled by the Recruiting Agency on the basis of interview or Open Competitive Examination or combination of both. However, the said OM was made effective from the date of its issuance meaning thereby the benefit of said OM cannot be extended to such employees who have been appointed in Central Government prior to date of aforesaid OM and they are not entitled for any pay protection.

13. The argument raised by the learned counsel for the respondents, at the first look appears to be attractive, however, on deeper scrutiny, it is found that it would create Class within Class and, therefore, cannot be said to be a reasonable classification within the meaning of Article 14 of the Constitution of India. Meaning thereby, employees appointed prior to 13.08.2020 are not entitled for the benefit of pay protection, whereas the employees appointed on or after 13.08.2020 in the Central Government services from the Public Sector Undertakings are entitled for the benefit of pay protection. Therefore, the Office Memorandum dated 13.08.2020 is arbitrary, unreasonable and violative of Article 14 of the Constitution of India to that extent (Annexure A-14). Under these circumstances, the impugned communication dated 07.07.2023 (Annexure A-1) which was issued based upon OM dated 13.08.2020 is liable to be quashed and accordingly is hereby quashed.

14. From the record, although it is not in dispute that prior to joining in the Indian Railways Health Services as a Additional Divisional Medical Officer on 21.05.2022, applicant was serving with Coalfield India Limited (CIL) on the basis of appointment order dated 02.02.2019 after selection through UPSC, he was

granted appointment through appointment letter dated 03.02.2020. However, looking to the appointment letter dated 02.02.2019 (Annexure A-3), it is not clear that what was the period of probation and whether at the time of joining in the Indian Railways, he has completed his probation period because the facts mentioned in paragraph No. 2(ii) in the case of Sanjog Kapoor (supra), it is specifically mentioned that the applicant in the said case had completed probation period successfully. Further, in paragraph No. 14 of the abovementioned case of Sanjog Kapoor (supra) clearly observes about probation period.

15. Under these circumstances, the present Original Application is disposed of with the directions to the respondents to reconsider the case of the applicant for grant of pay protection after verifying the factual aspect of the probation period and its confirmation and if the applicant found entitled, then the benefit shall be extended.”

5. From the prayer clauses, it is evident that no prayer for quashing and setting aside OM dated 13.08.2020 is made. Despite the same, the Tribunal has exceeded its jurisdiction to quash and set aside the OM dated 13.08.2020. In absence of such prayer, there was no occasion for the petitioner to argue before the Tribunal on the validity of OM dated 13.08.2020. Furthermore, despite prayer clause 8(i) of the respondent was to declare OM dated 13.08.2020 as prospective, the Tribunal has held contrary to the same and directed to re-consider the case of the respondent. Whereas, the order dated 07.07.2023 issued by the Dy. Chief Personnel Officer (Gaz.) holding that the OM dated 13.08.2020 is retrospective but not applicable to the respondent.

6. It is apparent on the face of the order impugned in this petition that the Tribunal has committed error in quashing the OM dated 13.08.2020 and further not considering the prayer clause 8(i) of the respondent in the right perspective.

7. In these circumstances, we are of the opinion that the matter needs to be remanded back to the Tribunal for a fresh decision after hearing the parties.

8. Accordingly, we pass the following order:

- (i) The impugned order dated 24.01.2025 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai (Camp at Nagpur) in Original Application No.952 of 2023 is hereby quashed and set aside.
- (ii) Original Application No.952 of 2023 remitted back to the Tribunal to decide the same afresh after hearing the parties.
- (iii) The Tribunal shall decide the matter expeditiously and in any case within three months from the date of production of copy of this order.
- (iv) The writ petition is disposed of. No order as to costs.

(RAJ D. WAKODE, J.)

(ANIL S. KILOR, J.)

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