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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 5th December, 2019

Decided on: 18th December, 2019

W.P.(C) 1523/2016

ALL INDIA RAILWAY ACCOUNTS STAFF
ASSOCIATION AND ORS.

..... Petitioners

Through: Ms. Sumita Hazarika and Ms. Ipsja
Behura, Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Jagjit Singh, Senior Standing
Counsel for Railways with Mr. Preet
Singh, Advocates.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

J U D G M E N T

Dr. S. Muralidhar, J.:

1. The All India Railway Accounts Staff Association and 23 other individual employees of the Railways have filed this petition challenging an order dated 15th September, 2015 passed by the Central Administrative Tribunal ('CAT'), Principal Bench in O.A. No. 4419/2014 filed by them against the Union of India, the Railway Board, the Financial Commissioner (Railways), the Deputy Director (Pay Commission-V), the FA and CAO, South Eastern Railways, and the FA and CAO, Metro Railway, Kolkata. The Petitioners also challenge an order dated 11th December, 2015 passed by the CAT dismissing their R.A. No. 303/2015.

2. The short question before the CAT concerned the date of adoption of the recommendation of the 5th Pay Commission for upward revision of the pay scales of the Accounts cadre. Aggrieved by the decision of the Government to grant the revised pay scale “notionally from 1st January, 1996 and effectively from 19th February, 2003” communicated by a Railway Board order dated 7th March, 2003, the applications aforementioned were filed before the CAT.

3. The case of the Petitioners herein has been that the revised pay and allowances should be granted from 1st January, 1996 itself. The CAT has by the impugned order held that even though the 5th CPC recommendations were made effective from 1st January 1996, it did not automatically mean that all monetary benefits pursuant thereto were to be given from that date, and that this was “purely a matter for the Government to decide based on several factors including the financial burden to the exchequer, which in this case has been pointed out to be a huge burden.” In doing so, the Tribunal referred to the decision of the Supreme Court dated 27th August, 2007 in C.A. Nos. 2468-69/2005 (*Union of India v. Arun Jyoti Kundu*).

4. This Court has heard the submissions of Ms. Sumita Hazarika, learned counsel for the Petitioner and Mr. Jagjit Singh, learned senior standing counsel for the Railways.

5. The Petitioners herein are all retired Accounts Assistants, Sections Officers and Senior Section Officers of the Railways. They belonged to the Accounts cadre. When the recommendations of the 5th CPC were adopted by

the Railways, the Junior Accounts Assistants (JAAs) were given the normal replacement scale of Rs.1320-2040, whereas according to general principles they ought to have been given a higher replacement scale of Rs.1400-2300 since the JAAs had to have a minimum qualification of graduation.

6. The Railway Ministry accordingly moved a proposal that with effect from 1st January, 1996, the JAAs should be given the scale of Rs.1400-2300, i.e. the date of implementation of the 5th CPC recommendations. However, when the matter travelled up to the Standing Group of Ministers, it was decided that while the revised pay scale would be granted notionally from 1st January, 1996, the effective date of the grant of the higher pay scale would be 19th February, 2003. This was communicated by the Railway Board by its circular dated 7th March, 2003. In a tabular column, the impact of the recommendations of the 5th CPC was set out as under:

Designation	IV CPC Pay scale (Rs)	Existing pay scale (Rs)	Revised pay scale now allotted (Rs)
Jr. Accounts Assistants	1200-2040	4000-6000	4300-7000
Accounts Assistants	1400-2600	5000-8000	6500-9000
Section Officers/ Inspectors of Accounts/Cost Accountants (20%)	1040-2900	5500-9000	6500-10500
S. Section Officers/ Sr. Inspectors of Accounts/Sr. Cost Accountants (80%)	2000-3200	6500-10500	7450-11500

7. This Railway Board circular dated 7th March, 2003 has been challenged

before several CATs. Before the Ernakulam Bench of the CAT, O.A. No.671/2003 was filed claiming that the revised pay scale should be given effectively from 1st January, 1996, and not just from 19th February, 2003. The Ernakulam Bench of the CAT by an order dated 30th June, 2006 allowed the application holding that the applicants therein were entitled to the benefits of the revised pay scales with effect from 1st January, 1996.

8. W.P.(C) 22276/2007 filed by the Railways against the above order was dismissed by the Kerala High Court by an order dated 27th March, 2012. The Supreme Court, in turn, dismissed the S.L.P.(C) 9832/2013 by its order dated 1st August, 2013. The Railways accepted the order of the CAT, Ernakulam and implemented it by the Railway Board order dated 16th August, 2013. This benefit was confined to only those individuals who had filed the aforesaid O.A. before the CAT, Ernakulam.

9. The Patna High Court in a similar petition being W.P.(C) 11452/2005 passed the following order on 9th April, 2010:

"We take this writ petition to be in a representative category for all employees of the Accounts Establishment of the Indian Railways, all of whom shall get the benefits of appropriate pay-scales w.e.f. 1.1.1996, with payment of arrears of salary, but without the obligation of payment of Interest. It goes without saying that the post-retirement benefits of such employees, who have already superannuated, shall be revised, apart from payment of arrears of salary."

10. The Review Petition filed against the above order was dismissed by the Patna High Court on 3rd April, 2013. S.L.P.(C) 1587-1588/2014 was

dismissed by the Supreme Court observing as under:

“We do not find any legal and valid ground for interference. The special leave petitions are dismissed. However, the relief granted by the Central Administrative Tribunal (CAT) as affirmed by the High Court shall be confined to the parties before the Tribunal as well as before the High Court. This is without prejudice to the rights of other claimants which will be adjudicated on its own merit as and when any such claim is raised.”

11. The case of the present Petitioners is that when two High Courts, viz., the Kerala High Court and the Patna High Court have declined to interfere with the orders of the CAT, Ernakulam Bench and CAT, Patna Bench respectively granting relief as prayed herein, and with those orders having been confirmed by the Supreme Court, confining the relief only to those Petitioners who were parties to the aforesaid litigations gives rise to an anomalous situation. There is no good justification for personnel belonging to the Accounts cadres of the same railway establishment in different zones to be treated differently.

12. While as a broad proposition, the principles enunciated in *Arun Jyoti Kundu* (*supra*) by the Supreme Court that the decision by a Government to give prospective or retrospective effect to a certain benefit should not normally be interfered with, on the facts of the present cases, the Court is unable to be persuaded that there can be a discriminatory treatment amongst employees identically placed and in the same Accounts cadre but working in different zones of the Railways by happenstance.

13. The following passage in *Arun Jyoti Kundu* (*supra*) makes it clear that the context there was different:

"14. Once we find that it was open to the Government to extend a benefit to a set of its employees with effect from a particular day on the basis of some anomaly found in the report of the fifth Pay Commission, there would arise no discrimination because the very implementation of the Fifth Pay Commission Report would not entitle the respondents to any benefit. The very right to their benefit arose because of the decision of the Government to extent to them a particular benefit not specified in the Fifth Pay Commission Report, It is, therefore, not possible to postulate that the decision of the Government must be given retrospective effect and if no such effect is given, the tribunal or court can interfere and direct the giving of such retrospective effect. Once it is found that paragraph 83.296 is attracted to the case, it has to be found that the applicants before the Tribunal were not entitled to any relief".

14. A careful reading of the passage shows that the question in the above case was giving retrospective effect to a benefit "not specified in the 5th pay commission report." That is not the case here. The Court is, therefore, of the view that the decision in *Arun Jyoti Kundu* (*supra*) was in a different context and cannot come to the assistance of learned counsel for the Railways in the present case.

15. In the written submissions, it is sought to be urged that the attempt by the Petitioners to equate themselves with Artisan Staff, Master Cooks, and Primary School Teachers, for all of whom the revised pay scale was effectively granted from 1st January, 1996 is misconceived. While again, the job profile for the aforesaid categories would be different, the fact here remains that the differential pay scale is sought to be given to members of

the same Accounts cadre. The Railways have accepted the decision of the Ernakulam and Patna Benches of the CAT granting the benefit from 1st January, 1996 onwards in view of the fact that both the respective High Courts and the Supreme Court have confirmed the decision. Once that decision has been taken, there is no purpose served in denying the same benefit to other staff of the same Accounts cadre. The comparison drawn with Artisans, Cooks, and Primary School Teachers, all of whom have been granted the enhanced pay scale from 1st January, 1996, is not relevant in the context of the case on hand.

16. Recently, this Court in its order dated 2nd December, 2019 in W.P. (C) 3945/2017 (*Shailendra Singh v. Union of India*) accepted the plea of the Petitioners therein that once the Government had in principle accepted the recommendations of the 5th CPC, the effective date from which the benefits of such revised pay would accrue would be from when such benefits became available, and not from the date on which their applicability was notified by the particular Ministry or Department.

17. In the aforementioned case, the Court decided to grant consequential orders from 1st April, 2004, the date from which certain restructuring orders were ordered to be implemented. The case of the Border Security Force, however, was that till the relevant Recruitment Rules ('RRs') applying the said restructuring orders were notified, the upgradation in the pay scale could not be granted. In that context it was observed by this Court as under:

“15. The delay in notifying the changed RR's, including the eligibility criteria for upgradation on different dates for different

cadres of the BSF is entirely due to the internal administrative exigencies of the Respondents. That cannot result in delaying the date from which the benefit ought to be given. In other words, notwithstanding that the RRs had been notified on a later date, or the assessment of the suitability of the incumbent for grant of upgradation may have been completed at an even later date, the actual benefit of the upgradation ought to be given from the date when it was meant to be given i.e. 1st April, 2004.

16. This is somewhat similar to recommendations of a CPC. Periodically, restructuring is undertaken; pay-scales are introduced and revised as a result of the recommendations of the CPC. However, the actual implementation of these recommendations gets postponed because in the individual Departments and Ministries, the necessary changes to the RRs have to be made and notifications have to be issued. All of this postpones the actual grant of the benefit in that particular Ministry or Department. However, when it is finally given, the benefit is usually given from the uniform date when such revised pay-scales were made available, as a result of the recommendations of the CPC.”

18. It is sought to be urged by Mr. Jagjit Singh in the written submissions that the claim of the Respondents is barred by delay. This plea was noticed by the CAT but the petition was not dismissed on that ground. On its part the Railways has not questioned the failure of the CAT to deal with the said issue. Accordingly, the Court does not permit the Railways to raise this issue in the present petition filed by the original applicants.

19. It is sought to be contended that the decision to give the higher pay scale to the Accounts staff “does not have its genesis in the recommendation of the 5th CPC” and that the grant of the said upgraded scale is “beyond the recommendation of the 5th CPC.” The correct position is that the Railways

themselves recommended the grant of the revised pay scales to the Accounts cadre on the basis of the recommendations made by the 5th CPC, but the notice prepared by the Standing Group of Ministers on Pay Commission related matters made the following recommendations:

"As regards the pay scales for the staff, belonging to the accounts department in the Railways, the Group of Ministers decided to recommend to the Cabinet to grant the grades proposed by the Ministry of Railways for the staff belonging to the accounts department in the Railways on notional basis with effect from 01.01.1996 and with actual payment being made prospectively."

20. Thus, the proposal of the Ministry of Railways itself was for grant of the relief retrospectively from 1st January, 1996. The proposal was then sent to the Department of Personnel and Training ('DoPT'). It appears that at the stage of consideration of the Ministry of Finance, Department of Expenditure, it was decided to limit the actual effective implementation of the revised pay scale by granting it from 19th February, 2003. The Court has perused the minutes of the meeting of the Cabinet which took the above decision on 19th February, 2003. There is no indication why the effective date of implementation was postponed except on the ground of financial burden to the Railways.

21. Between Accounts cadre employees, to deny some of them the benefit of the revised pay scale from 1st January, 1996, and to grant the others the same relief would result in discrimination between equally placed employees. This is not contemplated or permissible in law. It cannot possibly be a policy of the Railways that its employees in the Accounts cadre in different zones

get the benefit of the revised pay scales from different dates.

22. For all of the aforementioned reasons, the Court finds the impugned orders of the CAT dated 15th September, 2015 and 11th December, 2015 to be unsustainable in law. They are accordingly set aside.

23. The prayers in the present petition are allowed and a direction is issued to the Respondents to grant them the revised pay scale in question from 1st January, 1996 when the recommendations of the 5th CPC became operational. The order dated 7th March, 2003 of the Railway Board, to the extent that it limits the actual benefit of the revised pay scale by granting the same from 2nd February, 2003, and not from 1st January, 1996, is hereby set aside.

24. The arrears now be granted to each of the Petitioners within 12 weeks failing which the Respondents will be liable to pay simple interest at 6% per annum thereon till the date of payment. The petition is disposed of in the above terms.

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S. MURALIDHAR, J.

TALWANT SINGH, J.

DECEMBER 18, 2019

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