

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

CWP No. 9581-CAT of 2011
Date of Decision: August 24, 2011

Agia Ram and others ...Petitioners

Versus

Union of India and others ...Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE GURDEV SINGH

Present: Mr. Sarjit Singh, Sr. Advocate with
Mr. Jagdev Singh, Advocate
for the petitioners.

Mr. Puneet Jindal, Advocate
for the respondents..

1. To be referred to the Reporters or not? Yes
2. Whether the judgment should be reported in the Digest?

M.M. KUMAR, J.

1. The instant petition filed under Article 226 of the Constitution challenges judgment dated 19.10.2010 (P-25) passed by the Chandigarh Bench of the Central Administrative Tribunal (for brevity 'the Tribunal').

2. It is appropriate to mention that some of the petitioners have retired during the period from 01.01.1986 to 31.12.1995, whereas some other have retired between the period i.e. 30.04.1996 and 30.09.2003. Their claim before the Tribunal was that they be given the benefit of revised pay scale of ₹ 5000-8000 and their pension be

accordingly computed. The basic reason in support of their claim as projected before the Tribunal is clear from the letter dated 01.11.2003, which talks of restructuring of Group 'C' staff in terms of letter dated 09.10.2003 issued by the Railway Board and circulated on 16.10.2003. It would be appropriate to read the aforesaid letter in extenso:

“As a result of restructuring of Group “C” staff in terms of Railway Board's letter No. PC-III/2003/ CRC/ 6 dated 9.10.2003 circulated vide GH(P)/ NDLS's P.S. No. 11466/97/ PC-I/ 179 dated 16.10.2003, the post of Supervisors (erst while Mistries) holding ₹ 4500-7000 + 100/- Spl. Allowance have been upgraded to the post of Junior Engineer-II in pay scale of ₹ 5000-8000.

(Emphasis added)

Consequent upon the above the following supervisors JUD-KLK Workshop of Mechanical Deptt. are designated as Jr. Engineer-II and their pay is fixed as under as shown against each in grade ₹ 5000-8000 from the dates mention below:

xx xxx x x x x x xxxx

This has approval of the competent Authority.

Note:

1. The promotion of item No. 01 to 03 of CBCR and item 1 of the Welder and item No. 1 of Black Smith trade are w.e.f. 1.11.2003 and all the remaining promotions are with immediate effect.
2. The staff on above promotion are allowed to opt their pay fixed under Rule

1313-FR-22C-R-II from the date of their promotion or under the same rule from the date of their next increment in the lower grade which ever is beneficial to them. Such options should be submitted to this office within one month from the date of issue of this notice. This may be got noted from the staff concerned under their clear signatures and acknowledgments so received be sent to this office for further action on the following proforma.

PROFORMA FOR OPTION

a) I hereby opt to fix my pay on promotion in higher grade from the date of my actual promotion.

b) I hereby opt to fix my pay on promotion in higher grade from the date of accrual of next increment in lower grade.

2. The above promotions are made as a result of restructuring of the cadre of Technical Supervisors of JUD-KLK shops w.e.f. 1.11.2003.”

3. A perusal of the aforesaid letter would show that the post of Supervisor/ erstwhile mistry in the pay scale of ₹ 4500-7000 + 100 special allowance has been upgraded to the post of Junior Engineer-II in the pay scale of ₹ 5000-8000. The effect of restructuring was that the nomenclature of the post of Mistry-cum-Supervisor had undergone changed and it came to be known as Junior Engineer-II in the pay scale of ₹ 5000-8000/

4. Mr. Sarjit Singh, learned Senior counsel has also

invited our attention to letter dated 04.06.2001 (P-20) addressed by the Government of India to the General Manager, Northern Railway and paras (iv), (v) and 2 talk of improvement in pay scale of Artisan Staff and the decision taken by the Ministry of Railway with the Government. In the aforesaid para, following table has been quoted, which is extracted for ready reference:

Grade	IV CPC Scale	Normal Revised V CPC Scale	Revised Scale finally allotted.
Skilled Gr. III	950-1500	3050-4590	3050-4590
Skilled Gr. II	1200-1800	4000-6000	4000-6000
Skilled Gr. I	1320-2040	4000-6000	4500-7000
Mistry	1400-2300	4500-7000	4500-7000+ Spl. Allowance @ Rs. 100 p.m.
Master Craftsman	1400-2300	5000-8000	5000-8000
JE-II	1400-2300	5000-8000	5000-8000

(v) It may be noted that Mistries have been granted a special allowance of Rs. 100 per month in recognition of their supervisory status vis-a-vis skilled grade I. Their pay scale, however, is lower as compared to Junior Engineer Grade II. Allotment of pay scales as above to the Mistries took note of the Supreme Court's directive that the supervised and the Supervisors should not be in the same scale of pay.

2. On demand from the recognised staff Federations, a proposal for upgradation of the

posts of Mistries is under consideration of the Railway Board, in consultation with the Staff Federations.”

4. From the aforesaid facts, it is clear that the post of Mistry-cum-Supervisor has acquired new name of Junior Engineer-II, which was also in the same scale of ₹ 1400-2300, in the pre-revised pay scale. However, the case of the respondent was that on the restructuring the pay scale granted to the post of Junior Engineer-II because it would be available only to the Mistry-cum-Supervisor who are working as such and has enjoyed the designation of Junior Engineer-II.

5. Having heard learned counsel for the parties, we are of the considered view that once the post of Mistry-cum-Supervisor has acquired a new nomenclature and it has also been given higher scale of pay then the cosmetic cover which has been put forward by the respondent cannot be permitted to hide the real face of the erstwhile Mistry/supervisor. For all instants and purposes, they would all be treated as Junior Engineer-II. Once the pay scale of the post of Mistry/ supervisor is deemed to be revised then their pension is also be required to be re-fixed w.e.f. 1.11.2003.

6. As a sequel to the above discussion, the writ petition is allowed. The judgment of the Tribunal is set aside. It is directed that respondents shall re-fix the pay of the

petitioners in the pay scale of ₹ 5000-800 by treating them under new nomenclature given to the post of Mistry-cum-Supervisor i.e. Junior Engineer-II. Accordingly, their pension be revised w.e.f. 01.11.2003. However, arrears of pension shall be confined to three years from the date preceding the date of filing of the original application i.e. November, 2009.

7. Let needful be done within three months from the date of receipt of a certified copy of this order.

(M.M. KUMAR)
JUDGE

(GURDEV SINGH)
JUDGE

August 24, 2011
Atul