
(2015) 08 CAL CK 0058
In the Calcutta High Court
Case No : WPCT 357 and 617 of 2007

Union of India and Others	Vs	APPELLANT
Jitendra Singh and Others		RESPONDENT

Date of Decision : 28-08-2015

Acts Referred:

Citation : (2015) 5 CHN 504

Hon'ble Judges : Nishita Mhatre, J;Asha Arora, J

Bench : Division Bench

Advocate : P.S. Bose and Debjani Mitra, for the Appellant; Kashi Kanta Moitra, Aloke Ghosh, Arup Kumar Lahiri and Debashis Kar, Advocates for the Respondent

Judgement

Nishita Mhatre, J—These two petitions challenged the order passed by the Central Administrative Tribunal, Calcutta Bench, in O.A. No. 128 of 2006. For the sake of convenience the petitioners in WPCT 357 of 2007 will be referred to as the "Railways" while the petitioners in WPCT 617 of 2007 will be referred to as the "petitioners".

2. The petitioners were initially appointed as Khalasis in the Stores Department of the Railways between 1985 and 1987. They were promoted to various posts between the period 1998 and 2006. After working as Shunting Masters, the petitioners were promoted to the post of Assistant Yard Masters on various dates in the scale of Rs. 5,000-8,000. They were all promoted later to the post of Yard Master in 2006 in the scale of Rs. 5,500-9000.

3. The Deputy Chief Materials Manager, Eastern Railways, issued an office order dated 15th September, 2005 reducing the pay-scale being enjoyed by the petitioners. The office order indicated that the scale which the petitioners ought to have drawn as Assistant Yard Masters in the Stores Department was Rs. 4,500-7000 and as Yard Masters Rs. 5,000-8,000. The Deputy Chief Materials Manager directed that the necessary rectification of the pay-scales of the concerned staff in the Stores Department should be made and the excess

payment should be recovered from the staff.

4. A representation was submitted to the Deputy Chief Materials Manager by the employees' association, of which the petitioners were members, objecting to his decision to reduce the pay-scales and to recover the salary from the petitioners. It was also pointed out that the decision of the General Manager, Eastern Railways did not disclose any reason for the same and that it was erroneous on several counts. There was no response from the officer and therefore the petitioners preferred O.A. No. 1100 of 2005 before the Central Administrative Tribunal, Calcutta Bench. The Tribunal directed the Railways to take a decision on the representation of the petitioners within three months.

5. The Chief Personnel Officer, Eastern Railways, passed an order on 12th December, 2005 reiterating the office order of the Deputy Chief Materials Manager. The revised pay of the Assistant Yard Master in the Stores Department was scaled down to Rs. 4,500-7000 where the Yard Master's pay was fixed at Rs. 5,000-8,000 in the Stores Department. The representation of the petitioners was thus rejected.

6. Being aggrieved by that order the petitioners preferred O.A. No. 128 of 2006 before the Central Administrative Tribunal, Calcutta Bench. By an order dated 30th November, 2006 the Tribunal held that the Railways were justified in rectifying an administrative error in the pay-scales accorded to the petitioners. However, the Tribunal directed that the excess payment made to the petitioners should not be recovered from their salaries.

7. Mr. Kashi Kanta Moitra, the learned Counsel for the petitioners, drew our attention to the fact that the scales of pay for the Assistant Yard Master, Shunting Master Gr. I and Yard Master employed in the Stores Department were not at par with the pay scales for the identical posts in the Transport (Traffic) Department of the Railways. He submitted that both the departments, i.e., the Stores Department and Transport (Traffic) Department belong to the Howrah Division and therefore there was no reasonable justification for treating the employees of the Stores Department and the Transport (Traffic) Department differently. The learned Counsel urged that the pay-scales of the Railway employees were fixed by various Pay Commissions. Therefore, the Railways could not differentiate between the employees of one department and another by paying them different pay-scales. He submitted that the Fifth Central Pay Commission had not recommended the difference in pay-scale for identical posts after evaluating the nature of duties and responsibilities of each post. The learned Counsel then urged that the Railways had drawn an invidious classification between the Yard Masters, Assistant Yard Masters and Shunting Masters employed in the Stores Department and those employed in the Transport (Traffic) Department. He pointed out further that while the Deputy Chief Materials Manager had decided to reduce the pay-scales which the petitioners were enjoying till 15th September, 2006, no steps were taken to reduce the same pay-scales which were extended to the Yard Master, Assistant Yard master

and Shunting Master in the Transport (Traffic) Department. Mr. Moitra then submitted that the Pay Commission is a quasi-judicial body and the Chief Personnel Officer who passed the reasoned order pursuant to the directions issued by the Tribunal in O.A. No. 1100 of 2005 could not change the pay-scales by an administrative fiat. He supported this proposition by relying on the judgment in the case of R.T. Rangachari vs. Secretary of State AIR 1937 27 (Privy Council) . The learned Counsel then submitted that even assuming that there was an administrative error as held by the Tribunal it was necessary for the Railways to afford the petitioners a personal hearing as their pay was being reduced. He urged that the principles of natural justice cannot be thrown to the winds by the Railways on the specious plea that there was an administrative error in the calculation of the pay-scale and fixation of the petitioners in the correct scale. The learned Counsel then relied on the judgment in the case of H.L. Trehan and Others Vs. Union of India (UOI) and Others, AIR 1989 SC 568 : (1989) 65 CompCas 673 : (1989) 1 CompLJ 191 : (1988) 4 JT 464 : (1989) LabIC 1031 : (1988) 2 SCALE 1376 : (1989) 1 SCC 764 : (1988) 3 SCR 925 Supp : (1989) 1 UJ 54 , K.I. Shephard and Others Vs. Union of India (UOI) and Others, AIR 1988 SC 686 : (1989) 1 CompLJ 167 : (1987) 3 JT 600 : (1988) LabIC 1497 : (1988) 1 LLJ 162 : (1987) 2 SCALE 599 : (1987) 4 SCC 431 : (1988) 1 SCR 188 : (1988) 1 SLJ 105 , Shri Shekhar Ghosh Vs. Union of India (UOI) and Another, (2007) 112 FLR 661 : (2007) 1 JT 63 : (2006) 11 SCALE 363 : (2007) 1 SCC 331 : (2007) 1 SCC(L&S) 247 : (2006) 8 SCR 274 Supp to submit that a post-decisional hearing would not suffice in this case and therefore, the petitioners are entitled to be put back in the scale that they were drawing prior to 15th December, 2006.

8. Mr. P.S. Bose, the learned Counsel for the Railways submitted that the decision of the Tribunal preventing the Railways from recovering the excess amounts paid to the petitioners was contrary to the law laid down by the Supreme Court in several judgments including the case of Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others, AIR 2012 SC 2951 : (2012) 135 FLR 161 : (2012) 7 JT 460 : (2013) 169 PLR 148 : (2012) 7 SCALE 376 : (2012) 8 SCC 417 : (2012) AIRSCW 4742 : (2012) 5 Supreme 418 , State of Punjab Vs. Rafiq Masih (White Washer), (2014) 8 JT 448 : (2014) 8 SCALE 613 : (2014) 8 SCC 883 . He submitted that the excess amounts paid to the petitioners were through the exchequer and public money was frittered away on the petitioners unnecessarily. The learned Counsel submitted that each of the employees had submitted an undertaking which is annexed to the petition under which they agreed to return all excess payments made to them after being extended the benefit of the Fifth Pay Commission. The learned Counsel urged that since the employees had willingly submitted undertakings permitting the Railways to recover all unauthorised payments made to them, the Tribunal has erred in preventing the recovery by not accepting the undertaking. The learned Counsel then submitted that in any event the Transport (Traffic) Department and Stores Department were separate entities. Therefore, the pay-scales in those two

departments could not be equated considering the nature of work performed. Mr. Bose drew our attention to the Railway Services (Revised Pay) Rules, 1997. The rules specified the pay-scales applicable to the categories of Railway employees including Group A to Group D. The First Schedule of the rules notified the revised pay-scales for Assistant Yard Master, Yard Master and other posts. He pointed out that Annexure B to the Schedule specifically grants the Transport (Traffic) Department different pay-scales as compared to those doing the same work in other departments. The learned Counsel submitted that although the First to the Fourth Pay Commissions did not differentiate between those employed in the Stores Department and the Transport (Traffic) Department, the recommendations made by the Fifth Pay Commission had a change inasmuch as two sets of pay-scales were permitted for those working in the Transport (Traffic) Department and those from the Stores Department. He submitted further by relying on the judgment in the case of Haryana Financial Corporation and Another Vs. Kailash Chandra Ahuja, (2008) 118 FLR 700 : (2008) 8 JT 70 : (2008) 3 LLJ 897 : (2008) 10 SCALE 101 : (2008) 9 SCC 31 : (2008) 2 SCC(L&S) 789 : (2009) 1 SLJ 37 that no prejudice has been caused to the petitioners while reducing the pay-scale as they were not entitled to it under the recommendations made by the Fifth Pay Commission. Therefore, submitted Mr. Bose, the question of following the principles of natural justice before rectifying the pay-scale of the petitioners did not arise. He submitted that the petitioners had enjoyed the higher pay-scale unwarrantedly from 1st January, 1996 to September 2006 when it was withdrawn. The learned Counsel urged that while there was no need to interfere with the Tribunal's order holding that the rectification of the pay-scale was valid, this Court should interfere only with the directions issued by the Tribunal not to recover the excess payment made to the employees.

9. We will first deal with the issue as to whether the petitioners are entitled to higher pay-scale which they were drawing prior to the reduction of the same upon the Railways detecting an error in the amount paid to them.

10. There is no dispute that the petitioners were employed as Assistant Yard Masters and later as Yard Masters in the Stores Department. There can be no dispute that the Yard Masters, Assistant Yard Masters and Shunting Masters in the Stores Department were treated at par with those employed in the same posts in the Transport (Traffic) Department till the recommendations of the Fifth Pay Commission. There is no material before us to suggest that the Fifth Pay Commission had recommended lower pay-scales for employees of the Stores Department as compared to their counterparts in the Transport (Traffic) Department. Mr. Bose has relied on the notification issued by the Ministry of Railways where a distinction has been made between the Transport (Traffic) Department and other departments of the Railways. By this notification the scales of pay recommended by the Fifth Pay Commission has been accepted by the Railways to a certain extent. The question is whether the Railways are bound to accept the recommendations of the Pay Commission in toto or can it decide to accept only some recommendations while discarding others.

11. We are unable to accept Mr. Bose's argument that no prejudice is caused to the petitioners while stopping the payment allegedly in excess made to the employees of the Stores Department. Mr. Bose submitted that unless prejudice is shown by the petitioners there was no need to interfere with the well-reasoned order passed by the Chief Personnel Officer.

12. It is now well-settled that the distinguishing line between the powers exercised administratively and quasi-judicially has become blurred as noticed in the case of *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, AIR 1970 SC 150 : (1969) 2 SCC 262 : (1970) 1 SCR 457 . The Supreme Court has observed in this case that the principles of natural justice ensured the prevention of miscarriage of justice. These rules operate in areas not covered by any law validly made. They do not supplant the law of the land but supplement it. The Court held that since the purpose of the rules of natural justice is to prevent miscarriage of justice, there was no reason why those rules should not be applicable to administrative enquiries. The Constitution Bench decision in *A.K. Kraipak's case* (supra) marks a watershed on administrative law in this country.

13. Mr. Bose has relied on the decision of a Bench of two learned Judges of the Supreme Court in the case of *Kailash Chandra Ahuja* (supra). The Court observed that a decision delivered in breach of the principles of natural justice would not render it illegal or void, ipso facto, unless it is demonstrated that the non-observance of the principles had prejudicially affected the applicant. While referring to the case of *A.K. Kraipak* (supra) and several of its earlier decisions the Court observed that the effect of the violation of the rule of *audi alteram partem* has to be considered. Unless the prejudice caused because of the violation of the principles of natural justice is demonstrable, it would not necessarily mean that the order is illegal or unlawful.

14. In the present case there can be no doubt that reduction of salary of employees would be to their prejudice. Before reducing their salary or revising the salary of the employees to their detriment the Railways ought to have given a personal hearing to the petitioners and other similarly situated employees. In fact the representation submitted by the petitioners went unheeded. It is not clear from the record before us whether the petitioners were heard at all while passing the speaking order consequent upon the directions issued by the Central Administrative Tribunal in O.A. No. 1100 of 2005. Apparently the Chief Personnel Officer decided that they were not entitled to the salary that they were drawing previously and that their salaries were required to be reduced, unilaterally without affording a hearing to the petitioners. As mentioned earlier, one of the orders impugned before the Tribunal in the present original application is the speaking order passed by the Chief Personnel Officer, Eastern Railways, Kolkata, on 12th December, 2005. This order was passed pursuant to the directions of the Central Administrative Tribunal, Patna Bench in O.A. 827 of 2003. It is *ex facie* a verbatim reproduction of the speaking order passed by the General Manager, Eastern Railways, pursuant to the Patna Bench of the Central Administrative

Tribunal. The order of the General Manager is annexed to the petition filed by the Railways whereas the order passed by the Chief Personnel Officer, Eastern Railways has been annexed to the other petition. It is apparent therefore from this speaking order, impugned before the Calcutta Bench of the Tribunal, that there has been no application of mind whatsoever by the Chief Personnel Officer of the Eastern Railways. The Tribunal did not notice that the order was an exact reproduction of the General Manager's order passed pursuant to the directions of the Patna Bench of the Central Administrative Tribunal. When directions were issued by the Calcutta Bench of the Tribunal in O.A. No. 1100 of 2005 to decide the prayer of the petitioners by treating the original application as a part of the representations submitted to the Railways, it was expected that the Railways would pass an order having regard to the principles of natural justice. The order of the Chief Personnel Officer does not disclose that the issue raised in O.A. No. 827 of 2003 before the Patna Bench of the Tribunal was the same as the one which he was expected to decide. In fact there is no reference at all to that order. However, the fact that it is a mere reproduction of the order is evident from the last line of the order which states "the orders of Hon"ble CAT/Patna are thus complied with." This shows a total non-application of mind on the part of the Chief Personnel Officer of the Eastern Railways, Kolkata. The utter lackadaisical attitude and callous negligence in obeying the Tribunal's order by the Railways is writ large in this case. It was expected that the Chief Personnel Officer would apply his mind independent of any other directions issued unless an earlier decision taken by the Railways on the same issue had been approved by any order passed by the Court or Tribunal. Moreover, if the Chief Personnel Officer was of the view that it was necessary to adopt the same order which was passed by the General Manager pursuant to the order of Patna Bench of the Tribunal, the rules of natural justice demand that the order passed by the General Manager ought to have been brought to the notice of the petitioners before it was made applicable to their case. They should have been given an opportunity to demonstrate the distinguishing features, if any, in the two cases. The principle of audi alteram partem has been arbitrarily, capriciously and whimsically ignored thus causing great prejudice to the petitioners. The contention of the Railways that an administrative error had been corrected by an administrative order and therefore there was no need to afford a personal hearing to the petitioners smacks of the high handed attitude of the Railways. An order reducing the pay scale of an employee is manifestly to his detriment and therefore prejudicial to him.

15. Unfortunately, the Tribunal has not noticed this error on the part of the Railways in complying with its order passed in O.A. No. 1100 of 2005. It is thus not necessary for us to consider the other decisions cited before us by the parties.

16. The Railways have sought to rely on the Railway Services (Revised Pay) Rules, 1997 vide GSR No. 584-E dated 8th January, 1997 to contend that its decisions to reduce the pay-scale was in consonance with the Schedule to these revised pay rules. Rule 14 of these Rules provides that if any question arises

relating to the interpretation of any of the provisions of the Rules, it should be referred to the Railway Board for its decision. Thus, the Chief Personnel Officer could not have decided the issue at all. The Tribunal erred in directing this officer to pass a speaking order on the representation of the petitioners. In all probability it had passed the order in view of the fact that the petitioners through their union had requested the Chief Personnel Officer to consider their representation. In fact in their representation dated 27th July, 2005 the employees' union had brought to the notice of the Chief Personnel Officer that the decision of the General Manager, Eastern Railways passed pursuant to the directions of the Patna Bench was faulty. However, while passing the reasoned order, the Chief Personnel Officer took no notice of this representation and reproduced the order of the General Manager. It is evident that the question in this case is of interpretation of the provisions of the Rules and the Schedules thereto. It is only the Railway Board which can take a decision in the matter of interpretation of the rules and not any officer of the Railways.

17. In these circumstances the impugned order of the Tribunal is set aside. The speaking order dated 12th December, 2005 passed by the Chief Personnel Officer is also set aside. We direct the Railway Board to take a decision on the representation of the petitioners made through their union on 27th July, 2005, 23rd September, 2005 and any other representations submitted with regard to the pay-scales to be extended to the Yard Master, Assistant Yard Master and Shunting Master employed in the Stores Department of the Eastern Railways. The Railway Board shall afford a personal hearing to the petitioners and/or their union/association. The Railway Board will take a decision in the matter within six months from today. The petitioners would be at liberty to submit any additional documents or submissions before the Railway Board.

18. No recovery of the alleged excess amounts paid to the petitioners shall be made while the matter is pending with the Railway Board.

19. Urgent certified photocopies of this judgment, if applied for, be given to the learned Advocates for the parties upon compliance of all formalities.