

SUPREME COURT OF INDIA

Union of India

Vs.

Satya Brata Chowdhury

C.A.No.7353-7354 of 2008

(S.B. Sinha and Cyriac Joseph JJ.)

17.12.2008

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. Eastern Railway Administration of Union of India is before us aggrieved by and dissatisfied with a judgment and order dated 20.4.2005 passed by a Division Bench of the Calcutta High Court in WPCT No.365 of 2004 and WPCT No.840 of 2004 dismissing the writ petitions filed by appellants from a judgment and order dated 3.6.2004 passed by the Central Administrative Tribunal in Original Application No.1254 of 2000 and 10th February 2004 passed by the Tribunal in Original Application No.1458 of 1997.

3. The short question which arose for consideration before the Tribunal and consequently before the High Court, was whether the recommendations of the Fifth Central Pay Commission could have been extended in favour of respondents herein with effect from 18.2.2000 in stead and in place of 1.10.1996; and whether their claim for fixation of pay scale with effect from 1.1.1996 was justified.

4. Respondents were appointed as Time Keepers in different workshops belonging to the Eastern Railway Administration. Other Railway Administrations also have similar workshops. Time Keepers, although are recruited in the clerical grade, in view of this Court's decision in *Works Manager, Central Railway Workshop v. Vishwanath & Ors.*¹ are to be treated as workers under the Factories Act, 1948.

5. Respondents appointed as Time Keepers at Liluah and Kancharpara Workshops were, however, being treated as Clerical Grade employees. Indisputably, the concerned workers filed an Original Application before the Central Administrative Tribunal, Calcutta Bench, which was marked as T.A. No.1585 of 1996, praying, inter alia, for the following reliefs :

"i) That a separate cadre and a separate seniority list for the Time Keepers of the Liluah Workshop be maintained and the Time Keepers should not be transferred to the post of Clerks.

(ii) For rescinding and revoking the order dated 14.7.1985 (Annexure-B to the petition) for transferring petitioner Nos.1, 2 and 11 from Time Officer to clerical side.

(iii) To pass an order of injunction restraining the respondents from transferring petitioner Nos.1, 2 and 11 from Time Office to the clerical side."

It was allowed, opining :

"We find that no records of Kharagpur Workshop, S.E. Railway, Diesel Locomotive Workshop, Varanasi or C.L.W. as stated in the reply were produced during hearing to demolish the case of the applicants that the Time Keepers are treated as a distinct cadre with separate seniority, promotion and transfer lists. In view of the admission made by the official respondents in this respect in the unreported judgment of this Tribunal, mentioned above, that except in Eastern Railway, Time Keepers are treated as a separate cadre, there could be no doubt about the authenticity of the statements made by the applicants in this petition on this point. Annexure `B' to the reply whereby the respondents wanted to establish that applicant Nos.1, 3, 4, 7, 8 and 11 refused to be Time Keepers on 26.8.84 has no legal consequence in view of the decision of the Supreme Court referred to above, holding that the nature of the duties discharged by the Time Keepers bring them within the purview of `worker' under the Factories Act, 1948. Under the circumstances, the alleged refusal cannot change the legal position. We are bound by the decision of the Supreme Court and the judgment of our Bench dated 11.5.90. In view of the findings of the Supreme Court that Time Keepers are `workers' within the meaning of Factories Act, 1948 for all practical purposes, the authorities of Eastern Railway are not permitted to treat the Time Keepers in the manner they have been treating them."

The Tribunal, on the basis of the said findings, issued the following directions :

"On careful consideration of the facts and circumstances of this case and the submissions of the counsel for the parties to the proceeding, we quash the order of transfer dated 14.7.85 of the applicant Nos.1, 2 and 11. We also direct the official respondents herein to treat the Time Keepers in the Eastern Railway, Liluah Workshop or elsewhere in a similar manner as is being done by Kharagpur Workshop, S.E. Railway, Diesel Locomotive Workshop, Varanasi and C.L.W. as a separate cadre regarding seniority, confirmation, promotion and transfer etc. and allow them all other benefits admissible to them under the Factories Act, 1948 and all these must be finalized and our direction be implemented within six months from the date of communication of this order."

It furthermore observed :

"The Eastern Railway, being one of the biggest employers, we hope that this decision will be treated as passed on a representative suit and the directions given in this application be made available to the Time Keepers who are similarly circumstanced but are not parties to this proceeding. The Railway, as a model employer, will try to prevent the Time Keepers from coming to this Tribunal for obtaining similar reliefs repeatedly and thereby prevent wasting public money in fighting out futile litigations. The country is passing through serious economic crisis and all unnecessary and useless expenses should be prevented by taking reasonable steps whenever necessary."

6. Indisputably, pursuant to or in furtherance of the said observations, options were obtained from them as to whether they would continue as clerical grade staff or workmen. They were treated to be workers under the Factories Act. A separate seniority list started to be maintained. A different cadre was created. By an order dated 28.10.1991, it was directed : "The existing staff of Mech./Elect. Deptt. Attached to Time office should be treated as one Unit and in one seniority group. If anyone of the time office staff except the petitioners desires to get merged with clerical group of staff on their own volition in writing, there should be no cause for rejection."

7. Indisputably, the Central Government constituted the Fifth Pay Revision Committee. It made its recommendations. The said recommendations were enforced as regards clerical staff with effect from 1.1.1996. By an office order dated 18.2.2000, the Railway Board directed implementation of the said revised pay with effect from 18.2.2000, in the case of respondents, stating :

"... The Ministry have noted that the pattern of recruitment of Time Keepers in Eastern Railway differs from the pattern prevalent elsewhere. Time Keepers being a common category existing in various Railways and Production Units, it has been decided that the recruitment pattern, including recruitment qualifications etc. for induction as Time Keepers at various levels in Eastern Railway should fall in line with the practice prevailing in other Railways and Production Units. 2. The Ministry of Railways, with the approval of the President, have accordingly decided as under :

(i) Induction at the level of Junior Time Keepers should continue in accordance with the existing pattern, which includes direct recruitment through RRBs to the extent of 66 from amongst candidates possessing qualification of matriculation;

(ii) Induction at the level of Senior Time Keepers should henceforth take place in accordance with the existing pattern for Sr. Clerks, which would include direct recruitment through RRBs, to the extent of 20% from amongst candidates possession qualification of graduation and 13=% through Limited Departmental Competitive examination held by RRB's from amongst serving staff in the grade Rs.3050-4590 and

(iii) The following pay scales should be allotted to the Time Keeping Staff of Eastern Railway :

S. No.	Designation Scale (Rs)	Existing Pay Improved Pay Scale (Rs)
1.	Jr. Time Keeper 3050-4580/-	3050-4590/-
2.	Sr. Time Keeper 4000-6000/-	4500- 7000/-"

8. By another letter dated 28.7.2000, it was furthermore directed by the Railway Board :

"However, with a view to standardizing the cadre structure at least for the future, since the change in recruitment pattern could take place only prospectively in Eastern Railway, the benefit of the improved pay structure has been permitted with prospective effect only."

9. We may also, at this stage, place on record, a letter of the Chief Personnel Officer of the Eastern Railway dated 13.7.2000 wherein it was stated that no such recruitment rules were framed by the Eastern Railway Administration, stating :

"Would you please connect this Railway's letters of even number dated 28.4.2000 and 8.6.2000 wherein it was requested to examine the issue related to the date of effect of the upgraded Pay Scale of Time Keeping staff of this Railway. After collecting information from various Zonal Railways/Production Units it is understood that the upgraded pay scale of Time-Keeping category (where exists) were introduced w.e.f. 1.1.1996 in all Zonal Railways/Production Units except Eastern Railway wherein instructions were issued by Railway Board that the same order will be effective from the date of issue of modified Recruitment Rules in line with Ministerial staff. In Eastern Railway no separate Recruitment Rule was framed after the order of the Hon'ble CAT/Cal on May/90 for treating the Time-keepers a separate entity as workers within the meaning of Factories Act, since there was no intake for filling up the vacancy of Time-keepers after May/90, but before that the Time-keepers of this Railway were Recruited from the same panel prepared for clerks i.e. their Recruitment Rule was same as that of the clerks."

10. The legality and/or validity of the decision of the Railway Board was the subject matter of the Original Application filed by the respondents. Indisputably, the only contention raised in support of the said decisions by the appellant was that the recruitment pattern for the post of Time-Keeper in Eastern Railway was different.

11. Pranab Kumar Chakraborty and others filed an Original Application before the Tribunal which was marked as OA No.1458 of 1997. The said application was disposed of by the Tribunal, holding:

"We have gone through the said communication dated 28.7.2000, which has been received from the Rly. Board. In this there is indication that the recruitment pattern was changed, but it is not the case. In subsequent rule depriving or denying the applicants from getting the pay scales with effect from 1.1.1996 was hampered by this change. For the time being we are not inclined to do into the change in the policy stand which may affect the equation of a particular group or grade with the corresponding Ministerial Staff, which is an internal matter to be sorted out. However, to the extent the benefits has been extended to the Time Keeper grades the Eastern Rly, the same should be equitably applicable with effect from 1.1.1996 as the case is in respect of the awarding the scales under V CPC. We, therefore, partially allow this OA to the extent that the benefit should be awarded with effect from 1.1.1996 to the present applicants only within 3 months from the date of communication of the order with arrears."

12. Satya Brata Chowdhary and 70 others thereafter filed another Original Application before the Tribunal which was marked as OA No.1254 of 2000.

"By a judgment and order dated 3.6.2004, the question, as to whether the Eastern Railway Administration was justified in its stand not to treat the respondents similarly in the matter of grant of benefit of revision in the pay scales was answered, stating :

"We have gone through the said communication dated 18.2.2000 (Annexure-A/11) as well as dated 28.7.2000 (Annexure A/18), which was received from the Railway Board. In the above said letter of Railway Board dated 28.7.2000, it has been indicated that pattern of recruitment of the Time Keepers in Eastern Railway differs from the pattern prevalent in other Railways. Accordingly, treatment of this order in Eastern Railway has to be essentially different from that of the other Railways. But a bare perusal of the record clearly indicates that actually it is not so." It was directed :

"In view of above, the Railway Board's circular dated 18.2.2000 (Annexure-A/11) and order dated 28.7.2000 (Annexure-A/10) quashed/set aside. The extent of the benefit which has been extended to the and CLW, Chittaranjan (Annexure-A/14) w.e.f 1.1.1996 and also the letter of the Chief Personnel Officer (Admn) dated 13.7.2000 Grades of S.E. Railway/as well as DLW, Varanasi and CLW, Chittaranjan should also be extended in favour of the applicants which are also similarly situated persons and working as Time Keeper in the Liluah Workshop of Eastern Railway. The respondent authorities, more particularly, the respondent Nos. 5 and 6 are directed to fix the pay scale of the applicants as per 5th Pay Commission's recommendation for the post of Time Keeping Cadre w.e.f. 1.1.1996 instead of 18.2.2000 and extend all consequential financial and other benefits in favour of the applicants within a period of three months from the date of communication of this order along with arrears. It is made clear that we are not inclined to say anything as to the payment of interest."

As noticed hereinbefore, writ petitions preferred thereagainst by appellant were dismissed by the High Court.”

13. The matter came up before this Court for hearing on 8.2.2008 when, inter alia, a contention was raised on behalf of respondents that the revised pay scales of Time-Keeper at the Jamalpur workshops had been implemented but the same was denied to the staff at Liluah and Kancharpura workshops.

14. An additional affidavit thereafter has been placed on record on behalf of appellant to contend that the Time-Keepers of Jamalpur workshop had been treated as clerical grade staff and, thus, they are not similarly situated as the respondents.

15. The learned Additional Solicitor General, Mr. Amarendra Sharan, appearing for the appellant, would contend that as the respondents had been treated to be workers under the Factories Act and obtained several benefits including overtime, the appellants were entitled to implement the recommendations of the Fifth Pay Revision Commission with effect from 18.2.2000 in stead and in place of 1.1.1996. Such a classification, according to the learned counsel, being valid and reasonable, does not attract the wrath of Article 14 of the Constitution of India.

16. Mr. Gaurav Jain and Mr. Shekhar Kumar, learned counsel appearing on behalf of respondents, on the other hand, would contend that the purported classification of Time-Keepers in different workshops cannot be treated to be valid warranting different treatments so far as regards implementation of the recommendations of the Fifth Pay Commission is concerned.

17. We may, at the outset, notice that the only contention raised by the appellant before the Tribunal, as also before the High Court, was that the recruitment Procedure in the Eastern Railway Administration was different for the Time-keepers. It has been held not to be so. The judgment of the Central Administrative Tribunal dated 5.7.1991 in TA No.1585 of 1986 has been noticed by us. Therein, the Tribunal directed the workmen of the workshops at Liluah and elsewhere to be treated at par with their counterparts of Kharagpur, Banaras and Chittaranjan locomotive workshop. It was, therefore, impermissible for the appellant to treat the workers similarly situated, differently. They were to be treated as workers under the Factories Act. Only because some overtime allowance became payable to them or a separate seniority list was maintained or a cadre for the said workers on workshop basis was constituted, the same by itself, in our opinion did not authorize the Eastern Railway Administration to discriminate the workers working in one workshop with the workers working in the other.

18. We may also notice that letter dated 13.7.2000 issued by the Chief Personnel Manager, Eastern Railways Administration; from a perusal whereof it appears that the claim of appellants that a different recruitment rules existed for the Time-Keepers of different workshops within the Eastern Railway Administration, is not correct. It has also been so found by the Tribunal as also by the High Court.

19. The contention of the learned Additional Solicitor General that the Time-Keepers recruited in the Liluah workshop could be treated differently from their counterparts at Jamalpur as in the said letter they were not treated as clerical grade staff, also does not appear to be wholly correct. Appellants themselves have annexed with their affidavit a letter dated 16.6.2006 issued by the Assistant Personnel Officer, Eastern Railway, Jamalpur to Chief Assistant Officer, Eastern Railway, Kolkatta wherein it was stated:

"As cadre/seniority of Time keeping staff is being maintained with General Group Clerks as such benefit of restructuring has been given to the time keeping staff. The staff posted in Time Office and working as Time keepers is governed under Factories Act."

20. The Time keepers of Jamalpur Workshop, thus, have been treated as workers under the Factories Act and if they had been given the benefit of recommendations of the Fifth Pay Revision Commission, we fail to understand why the same benefit would be denied to the respondents herein.

21. For the reasons aforementioned, we do not find any ground to interfere with the impugned judgment and orders. The appeals are dismissed with costs. Counsel's fee assessed at Rs.25,000/-.

¹*AIR 1970 SC 488*