

## Union Of India & Ors vs Jagdish Pandey & Ors on 8 July, 2010

**Equivalent citations: AIR 2010 SUPREME COURT 3019, 2010 AIR SCW 4762, 2010 LAB IC 3823, (2010) 3 SERVLJ 486, (2010) 126 REVDEC 914, (2010) 3 CAL HN 252, (2010) 5 ALL WC 5276, (2010) 5 SERVLR 209, (2010) 3 SCT 495, 2010 (6) SCALE 651, 2010 (7) SCC 689, (2010) 92 ALLINDCAS 13 (SC), (2010) 6 SCALE 651**

**Author: Swatanter Kumar**

**Bench: Swatanter Kumar, B.S. Chauhan**

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 365 OF 2007

Union of India & Ors.

....Petitioners

Versus

Jagdish Pandey & Ors.

...Respondents

JUDGMENT

Swatanter Kumar, J.

1. The Union of India being aggrieved from the judgment and order of a Division Bench of the Calcutta High Court dated 2nd March, 2005 dismissing, the Writ Petition filed by the Union of India against the order of the Central Administrative Tribunal, Calcutta, (hereinafter referred to as 'the Tribunal') dated 18th January, 2002, has filed the present appeal under Article 136 of the Constitution of India. The Tribunal vide its judgment had allowed the application filed by the respondents herein and had set aside the order dated 22nd February, 2001 issued by the Union of India.

2. The facts giving rise to the present appeals are that the respondents are/were working as Tower Wagon Drivers (for short 'TWD') under the Eastern Railways. They were promoted to the said post

between the period 1979-1981. These respondents claimed running allowance @ 120 k.m. per day while on duty in terms of para 3.12 of the New Running Allowance Rules - structuring of the cadre. This was not paid to them resulting in the filing of a Writ Petition by them before the High Court of Calcutta. This Writ Petition was allowed by the High Court and the Eastern Railways were directed to pay 'running allowance' to the respondents. It may be noticed that while disposing of that Writ Petition being Civil Petition No. 4143 of 1988 and C.O. No. 1812 (W) of 1984 the Court passed the following Order:

"After hearing the Learned Advocates and considering their submissions, we feel that a happy solution has been arrived at. We thus, after bearing them direct that with four months from today, the petitioners will be paid at the rate of 120 kilo meter per day while on duty in terms of paragraph

3.12 of the New Running Allowance Rules - structuring of cadre. We also keep it on record that while making such payment, authorities will be able and entitled to adjust the amount, which has already been received by the employees concerned on the basis of the works, which they have done. The time, we directed, was suggested by Mr. Chakrabarty on instructions from Mr. C.B. Chowdhury, Deputy Chief Electrical Engineer, Eastern Railway, who was present in Court."

3. After this allowance had been paid to the respondents, the Eastern Railways passed an order dated 22nd February, 2001 stating that they were granted higher pay scales inadvertently and the said scale is withdrawn as well as for recovery of amounts paid in excess of the amounts which ought to have been paid to the respondents in the lower scale. The correctness of this order was questioned by the respondents before the Tribunal, submitting that they were granted the pay scale of Goods Driver vide IVth Pay Commission w.e.f. 1.1.1986. They continued to draw the prescribed pay scale which was subsequently revised to Rs.5,000 - 8,000/- w.e.f. 1.1.1996 in terms of Vth Pay Commission. The order was arbitrary as the function and duties of the TWDs were similar to that of the Goods Driver and these posts were treated to be inter-changeable by the department which passed such orders of transfer from time to time. Thus, they prayed that they be permitted to withdraw the same pay scale. This application was contested by Eastern Railways on behalf of the Union of India and it was stated that the scale was granted by inadvertent error and they are not entitled to the pay scale of Rs.1350-2200/- w.e.f. 1.1.1986 and also that they are not equivalent to the Goods Drivers. The matter was examined at some length by the Tribunal. It was noticed that vide Annexure 'E' to that application dated 15th April, 1993, the Eastern Railways itself has stated that all TWDs should be given the grade of Goods Drivers i.e. Rs.1350- 2200/- (unrevised). There is no Railway Board's circular or order directing that TWDs are not entitled to the pay scale of the Goods Drivers and they are not justified in taking decision to grant lower pay scales. The respondents had also relied upon the judgment of this Court in the case of Chandraprakash Madhavrao Dadwa v. Union of India, [(1998) 8 SCC 154] and Shyam Babu Verma v. Union of India, [(1994) 27 ATC 121].

4. Referring to the pleadings of the parties and the record available before the Tribunal, the Tribunal did not accept the contention of the Eastern Railways that it was by mistake that higher pay scale was given to the respondents as they were getting the same pay scales right from the year 1959. The

Railways had hardly produced any records before the Tribunal to justify its decision in down grading the pay scale of the respondents and directing the consequential recoveries. It will be useful to refer to reasoning given by the Tribunal at this stage itself:

"12 In view of the clear averments made in the OA, which have not been specifically rebutted by the respondents, as already stated above, and in view of the Railway Board's letter issued in implementation of the Calcutta High Court's order, by which the Tower Wagon Drivers were placed in the category of Goods Drivers for all purposes, the applicants were certainly entitled to have the salary in the pay scale of Rs.1350-2200/- w.e.f. 1.1.1986 and as a matter of fact, they have been paid salary in the same pay scale till the impugned order was issued.

13. It may also be pointed out that pursuant to the acceptance of the 5th Pay Commission Report by the Government, the Tower Wagon Drivers were given the salary in the pay scale of Rs.8000-8000/- w.e.f. 1.1.1996. In the letter dated 15.4.1993 (Annexure E), the Sr. DLD/TRD/Sealdah, intimated to the Sr. DPC/Sealdah that in Sealdah Division, out of 32 Tower Wagon Drivers, 24 Tower Wagon Drivers were getting the pay scale of Rs.1350-2200/- and the remaining 8 Tower Wagon Drivers were getting the pay scale of Rs.1320-2040/- and according to him, all the Tower Van Drivers may be given the uniform pay scale of Rs.1350-2200/-. It seems that two different pay scales for Tower Van Drivers were prescribed because of the fact that prior to 1986, there were two different pay scales at the ratio of 60% and 40% for Goods Drivers as mentioned above. Be that as it may, it is evident that in Sealdah Division also, the Tower Wagon Drivers were given the pay scale of Rs.1350-

2200/- w.e.f 1.1.1986. It is different thing that the order of giving pay scale of Rs.1350-2200/- was withdrawn by the respondents after filing of this O.A.

14. It is not understood on what basis, the respondents decided to discontinue to pay the salary to the Tower Wagon Drivers in the pay scale of Rs.1350-2200/-. There could be a situation if the Tower Wagon Drivers were not considered as part of the "Running Staff" and, therefore, their service conditions would be different. Once they have been treated as part of the "Running Staff" and they are also performing the job of driving the Tower Vans/Wagons, there cannot be any justification not to treat them at par with the lower grade of Goods Drivers in the railway.

15. It is not the case where the respondents claim that the pay scale of the Tower Wagon Drivers has been re-

fixed on the basis of some Expert Committee Report. It is obvious that the pay scale of Rs.1350-2200/- was given to the applicants on the basis of some Expert Committee Report. It is obvious that the pay scale of Rs.1350- 2200/- was given to the applicants on the basis of the decision that they were at par with the Goods Drivers. Now if the respondents seek to place the applicants in the lower pay scale, the burden lies on them to show the basis of taking such decision adverse to the interest of Tower Wagon Drivers."

5. As already noticed, the challenge to the above order was not accepted by the High Court and both the issues raised before the High Court, namely that the case of the Railway was not considered properly by the Tribunal on merits and secondly, it had no jurisdiction to examine the said circular as the order was passed by the Divisional Railway Manager outside the jurisdiction of the Tribunal were rejected and while upholding the order of the Tribunal, the High Court of Calcutta held as under:

"Considering the aforesaid, it is apparent that at all relevant time Tower Wagon Drivers are being treated as equivalent to Goods Train Drivers. There is no reason shown for treating them now differently. Contention of authorities refusing to treat the Tower Wagon Drivers equivalent to driver of Goods Train, cannot be accepted. If the Tower Wagon Drivers are continuously being treated as running staff and equivalent to drivers of goods trains; drivers there is no reason shown for which Tower Wagon Drivers cannot be refused to be treated as equivalent to the same grade as earlier was being done for a long period. The impugned judgments have dealt with the relevant aspects appropriately and there is no reason to interfere with the same."

6. The above decision of the High Court is impugned in the present appeal. The basic contention raised on behalf of the Union of India before this Court is that the job, duties, responsibilities and even essential training required for TWDs are not comparable to those of the good train drivers. In addition, the contention is also that the scales were granted inadvertently and now the competent authority, after due application of mind, has passed the order granting lower scales to the TWDs in comparison to goods train drivers.

7. In order to examine the merits of these contentions, which obviously are disputed by the respondents, it will be appropriate to refer to the order impugned itself which reads as under:

"Eastern Railway Estt. Office Order No. 199/02/Misc.

C of 2001 (22.02.01) With the approval of the competent authority the following order are issued to have immediate effect -

The pay of the following T.W. Drivers of Dhanbad Division was fixed in scale S. 1350-2900 (RP) w.e.f.

01.01.1996 in IVth PC in the scale Rs.

1350-2200/- (R.P.) and scale Rs.

5000-8000/- (RSRP) erroneously for which they were not entitled.

As such their pay scale is revised to S.1320-2040 (RSRP) w.e.f.

01.01.1986 in IV P.C. and Rs. 4500- 7000/- (RSRP) w.e.f. 01.01.1996 in Vth P.C. xxx  
xxx xxx The staff concerned should be intimated accordingly"

8. The respondents in the present appeal had challenged the validity of the above order before the Tribunal on various grounds including that they have always been placed at parity with the goods driver, they have been given similar scales and there was no reason, whatsoever, for altering the pay scale to the prejudice of the respondents, which was in force for a considerable time. It will be useful for us to notice the findings recorded by the Tribunal. In paragraph 8 of its judgment the Tribunal noticed that both the parties have not placed on record any material to indicate as to what was the pay scale provided for the TWDs pursuant to the various Pay Commission Reports. The Tribunal specifically noticed and recorded the finding that for the last 40 years, i.e. right from 1959 the respondents were being paid the same pay scale as goods drivers. There was no disparity of pay scales between TWDs and goods drivers after Union of India and Railways had accepted recommendations of the IInd, IIIrd, IVth and even of Vth Pay Commissions. The Tribunal also specifically noticed vague denials of the Union of India and that such denials were hardly substantiated by any cogent material. Reliance was placed upon the judgment of the Calcutta High Court in relation to the grant of running allowance. In that Writ Petition, the only dispute raised by the parties related to the grant of running allowance and the Union of India did not raise the issue of disparity in pay scale. This order of the High Court had attained finality. We have already referred to the findings recorded by the Tribunal where it is specifically noticed that after acceptance of Vth Pay Commission Report by the Government, TWDs were given the salary in the pay scale of Rs. 5000-8000 w.e.f. 1.1.1996 and in the letter dated 15.4.1993 the concerned authorities noticed the disparity created even between the TWDs i.e. in Sealdah division out of 32 TWDs, 24 were getting pay scale of Rs. 1350-2200 (unrevised) and remaining 8 were getting the pay scale of Rs. 1320-2040 and it directed a uniform pay scale of Rs. 1350-2200 should be given to all the TWDs. Another reason that weighed with the Tribunal was that no material has been produced to show as to what were the reasons or material on the basis of which the authorities had decided to discontinue the pay scale of Rs. 1350-2200 to these respondents. The above reasoning and discussion in the order of the Tribunal clearly shows that the action on the face of it was arbitrary. This order of the Tribunal was confirmed by the High Court and the respondents made no effort to place anything on record to show that they were different and distinct classes and were entitled to receive different pay scales. Even in the order dated 9th August, 2002 the Tribunal specifically noticed that it was not even averted that eligibility criteria for the post of TWDs was different than that for the goods driver and their duties were substantially different. In other words, either before the Tribunal or before the High Court the Union of India never pleaded the essential basis for justifying payment of different pay scales to two categories of drivers i.e. TWDs on the one hand and goods train drivers on the other. There has to be a substantial difference in method of recruitment, eligibility, duties and responsibilities before substantial disparity in

scale can be justified. As far as recording of finding of facts is concerned, factual disputes can hardly be raised before this Court and in any case for the first time. Despite this the Union of India has failed to place any material to substantiate its decision before the Forum/Courts. The judgment of the Calcutta High Court, in relation to running allowances, has attained finality. At that time no other issue was raised by Union of India that they are different and distinct posts with different pay scales and as such identical running allowances could not be paid. In fact, the judgment of the Calcutta High Court has duly been implemented now for years together without objection. Not only this, same pay scale as that of the goods train driver has been paid to these respondents for years and there appears to be no justification on record for unilateral withdrawal of such a scale. Pay scale is a legitimate right of an employee and except for valid and proper reasons it cannot be varied, that only in accordance with law. None of these justifiable reasons exist in the present case. The impugned order itself does not give any reason. The expression 'erroneously' used in the order can hardly justify withdrawal of such an existing right.

9. We may also notice that the respondents had specifically pleaded and even placed on record certain orders in which in certain divisions the post of TWD is inter-changeable with goods driver. Orders have also been placed on record to show that in different divisions TWDs are getting different scales and the Railway Board, as such, has not passed any final order which is uniformly applicable to all the divisions of the Railways in India. Of course, this has been disputed by the appellants. The appellants have also attempted to file certain documents on record to show that the duties of both these posts are different and even recruitment criteria is different. We are afraid that this contention cannot be raised for the first time before this Court. This was expected of the Union of India to raise all these issues before the appropriate forum i.e. the Tribunal and justify the same. Even before us, these averments have been made without any supporting data or documents to substantiate such a plea. No comparative chart of the duties and responsibilities of these two posts, recruitment rules specifying eligibility or selection criteria and working conditions have been placed on record. The vague averments made to that effect cannot persuade this Court to disturb the concurrent findings recorded by the Tribunal as well as by the High Court.

10. It is a well settled rule that parties are expected to raise specific pleadings before the first forum for adjudication of the dispute. Those pleadings are the basis of the case of the respective parties even before the appellate/higher Courts. The parties would be bound by such pleadings, of course, subject to the right of amendment allowed in accordance with law. In the present case, no such amendment has been carried out even before the High Court and it will be unfair for this Court to get into the controversy of factual matrix of the case at this stage of the proceedings, particularly, when there exists no justification whatsoever on record as to why even these averments were not made before the Tribunal and not even before the High

Court, despite the fact that the Tribunal had specifically made comments in this regard in its judgment. Even before this Court but for bald averments no documents, data or cogent material has been placed for appropriate adjudication of the rights of the parties.

11. During the course of arguments this was also brought to our notice that most of the respondents in the present appeal have already retired from service and there exist no justification for affecting any recoveries from their salaries as they have already worked and received their salaries as granted by the Union of India itself.

12. For the reasons afore stated, we find no legal infirmity in the judgments of the Tribunal and the High Court. While dismissing this appeal we make it clear that this judgment will not affect the right of Union of India to pass an appropriate order in relation to the pay scales applicable to any class of its employees including the respondents afresh and in accordance with law. We do hope that if such an order is passed it will be upon proper application of mind and after taking into consideration appropriate material and/or data.

13. The appeal is dismissed leaving the parties to bear their own costs.

.....J. [ DR. B.S. CHAUHAN ] .....J. [ SWATANTER  
KUMAR ] New Delhi July 08, 2010.