

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1302/2002

New Delhi, this the 18th day of March, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri Govindan S. Tampi, Member(A)

1. Suresh Chand
2559, Dharampura, Delhi
2. Smt. Uganti
B-102, Tigari Sangam Vihar, Delhi
3. Baldev Singh
164-B, Thomson Road, New Delhi
4. Bishal Singh
S-136, Pandav Nagar, Delhi
5. Ram Swaroop
B-885, Mangolpuri, Delhi
6. Anand Mani
354, Kalyan Vas, Delhi
7. Ramesh Chand
E-60, East Vinod Nagar, Delhi
8. Rakesh Verma Prabhakar
Minto Road, New Delhi
9. Mahesh Kumar
B-46, Suraj Mal Vihar, Delhi
10. Kishan Singh
H-365, Nagang Vihar, Delhi .. Applicants
(Shri Yogesh Sharma, Advocate)

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi
2. Secretary
Railway Board
Rail Bhavan, New Delhi
3. General Manager
Northern Railway, New Delhi .. Respondents
(Shri R.L. Dhawan with Shri V.S.R.Krishna, Advocates)

O R D E R (Oral)

Shri Govindan S. Tampi:

Heard both learned counsel S/Shri Yogesh Sharma and V.S.R.Krishna, appearing respectively for the applicants and respondents.

2. All the ten applicants in this case are employees of the statutory Railway Canteens who have been declared as Railway employees w.e.f. 22.10.1980 in terms of the Hon'ble Supreme Court's order in Union of India & Ors. Vs. Jaggarao & Others (Civil Appeal No.368/78). Their service conditions have also been comparable to other railway employees of equal status (a position awarded by the Hon'ble apex court in the case of M.M.R.Khan Vs. UOI & Others in Writ Petition No.2275-86/86). However, the restructuring of various Group 'C' & 'D' cadres communicated by the Railways vide their circulars No.PC-III/80/UPG/19 dated 29.7.83 and PC III/61/CRC/1 dated 27.1.93 and granted to Traffic, Signal, Mechanical and Commercial cadres, were not granted to the applicants. Their OA No.1627/96 seeking the above was finally disposed of by the Tribunal on 30.3.2000 with directions to the respondents to take a policy decision on the issue and finalise the matter. the pendency of the OA, respondents on 10.5.98 revised the pay scales of the canteen employees, which according to the respondents amounted to the exercise of restructuring. However, the benefits so granted had not been made effective from 1983 and 1993 in tune with those granted to other employees. The applicants' detailed representation dated 15.3.2002 for getting the above benefit had not been acted upon leading to the filing of this OA.

3. Grounds raised in the OA are that:

- i) the applicants having been duly declared as Railway employees, were correctly entitled to the benefit of restructuring as has been granted to other employees in Railways;
- ii) circular dated 10.5.98 did not represent the cadre restructuring but only grant of revised pay scales in tune with 5th CPC's recommendations;
- iii) if the above circular represented restructuring it should be made applicable from 83 and 93 and not from 98; and that
- iv) no justifiable ground/reason has been shown for denying the benefit from 83 and 93.

Applicants' pleas were strongly reiterated by Shri Yogesh Sharma, their counsel who prayed that the OA be allowed with full benefits to the applicants.

4. Respondents contest the above. According to them, the OA is hit by both limitation and res judicata. While the issue raised by the applicants relate to 83 and 93 the OA has been filed only in 2002. Besides, the applicants' request for extending the benefit of restructuring to them also has already been adjudicated in OA No.1627/96, a fact recognised while dismissing CP No.110/01 on 14.5.2001. As the Railway Board's letter No.PCV/98/I/II/18(8) dated 10.5.98 has been issued after considering all the relevant aspects nothing further

remained to be done. In fact by letter No.123/2001/PCV/97/I/II/16 dated 26.6.2001 improved scales have been given to certain categories of canteen staff and a detailed and reasoned order had been issued by the respondents. Railway Board has taken the policy decision on the staffing pattern of canteen staff keeping in mind all the relevant factors. Railway Board's letter dated 10.5.98 gave not only the benefit of revised scales but also examined the entire cadre structure. The order dated 18.4.2001 passed by them explained the scenario clearly and nothing else was called for. In fact, the applicants' representation against the impugned order dated 18.4.2001 was itself filed much later as obviously most of the applicants had been benefited by the directions in the said letter. OA in the circumstances deserved to be dismissed, pleaded Shri Krishna, appearing for the respondents.

5. We have very carefully considered the rival contentions and perused the documents brought on record. The two preliminary objections raised by the respondents are of limitation and res judicata. The first one does not merit acceptance as the matter relating to pay and allowances, is a continuous cause of action and decision of the Hon'ble Supreme Court in M.R. Gupta Vs. Union of India (1995(5)SCALE 29) supports the applicants' case. On the aspect of res judicata while the respondents point out that the issue has already been decided by this Tribunal in OA-1627/96, as would be clear in the order passed by the Tribunal while disposing of CP. However, the

19

Tribunal has not specifically adjudicated the issue on merits and, therefore, the present OA is not hit by the principle of res judicata also.

6. The applicants in this case are employees of the non-Statutory Railway Canteens, who have been declared as equivalent to Railway employees w.e.f. 22.10.1980. Following the directions of the Hon'ble Supreme Court in the case of Union of India & Ors. Vs. Jaggarao & Ors. (supra), they are seeking the benefit of restructuring ordered by the Railway Board as has been extended to Groups 'C' & 'D' officers of comparable ranks. On the other hand, the respondents point out that the restructuring in respect of the employees of the canteens has already been ordered w.e.f. 10.5.1998 and nothing further remains to be granted. On perusal of the documents, we find that cadre review and restructuring of Groups 'C' & 'D' staff of Railway have been ordered in terms of letter dated 16.4.1984 w.e.f. 1.1.1984. The second restructuring has been ordered in terms of Railway Board's letter dated 27.1.1993 w.e.f. 1.3.1993. These two orders of restructuring cover the staff on various streams, like loco running staff, drawing grade, ministerial staff, etc. but the same does not include the staff attached to Non-Statutory Railway Canteen, the cadre to which the applicants belong. The plea of the respondents is that the orders issued on 10.9.1998 should be taken as restructuring for the canteen staff, which the applicants contest. A reading of the RBE No.99/98 dated 10.5.1998 issued by the Railway Board makes it

14

clear that the restructuring in respect of these people have in fact been ordered by the said letter. It is true that the heading of the letter is slightly misleading. It reads only as "Pay scales for employees of canteens (statutory and recognised non-statutory) in the Railways and Production Units etc." This would, *prima facie*, give the impression that it relates only to revised pay scales arising from the acceptance of the recommendations of the 5th CPC. But the reading of the order in detail would make it clear that this amounts to cadre restructuring, fixation of recruitment qualifications as well as the channels of promotion, classification of filling up the vacancies to minimum years of service required for promotion, etc. It would, therefore, mean that the letter of 10.4.1998 does represent the restructuring in the cadre of the employees of the Railway Canteen, like the applicants. We also find that immediately after the later order, the respondents have also issued orders fixing the improved pay scales of some of the canteen staff which would effectively take care of their demands. It is in this context that the impugned order passed by the Department on 18.4.2001 becomes relevant. This letter states that the cadre restructuring has been ordered and duly completed in respect of the category of staff to which the applicants belong. Obviously, therefore, it is evident that as far as this particular cadre is concerned, restructuring has been ordered only from 10.5.1998. The applicants' plea that this was not restructuring but only revision of pay scales in terms of the acceptance of the recommendations of the 5th CPC,

does not merit acceptance. The applicants are, therefore, correctly entitled to the benefit of restructuring and revision of pay scales from 10.5.1998 and nothing more.

6. The OA is disposed of in the above terms. No costs.

(Govindan S. Tampli)
Member (A)

/sunil gtv/

VS Ag
(V.S. Aggarwal)
Chairman