

Central Administrative Tribunal
Principal Bench

O.A.No.832/95

Hon'ble Shri R.K.Ahooja, Member(A)
Hon'ble Shri Syed Khalid Idris Naqvi, Member(J)

(15)

New Delhi, this the 24th day of August, 1999

1. Mukand Lal
s/o Shri Kharak Singh
Head Train Examiner
Northern Railway
Delhi Division
Rly. Station Tughlakabad
Delhi.

2. Mohd. Harif
s/o Shri Gulshar
Head Train Examiner
Northern Railway
Delhi Division
Rly. Station
Delhi.

3. Madhwa Nand
s/o Shri Mangat Ram
Head Train Examiner
Northern Railway
Delhi Division
Rly. Station
Tughlakabad.

Applicants

(By Shri A.K.Bhardwaj, Advocate)

Vs.

1. Union of India through
the General Manager
Northern Railway
Baroda House
New Delhi.

2. The Divisional Railway Manager
Northern Railway
Delhi Division
DRM Office
Paharaganj
New Delhi.

3. The Divisional Personnel Officer
Northern Railway
Delhi Division
DRM Office
Paharaganj
New Delhi.

4. Yogesh Sharma
HTXR
wrongly promoted as CTXR
NDLS
Delhi Division
Northern Rly.
Railway Station
New Delhi.

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5.S.K.Kashyap
HTXR
PNP
Wrongly Promoted as CTXR
Delhi Division
Northern Railway
Railway Station
Nizamuddin.

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6.Shri S.K.Shukla
HTXR
DLI
wrongly promoted as CTXR
Delhi Division
Northern Railway
Railway Station
Delhi. ... Respondents

(By Shri R.L.Dhawan, Advocate)

ORDER (Oral)

Hon'ble Shri R.K.Ahooja, Member(A)

The applicants, who are the Head Train Examiners under the Northern Railway have come before the Tribunal aggrieved by the respondents action in overlooking their claim for promotion to the post of Chief Train Examiner and instead promoting some of their juniors.

2. The case of the applicants is that the respondents by their decision to restructure the C&D cadres upgraded certain posts of Ticket Examiners in the pay scale of Rs.1600-2600 to that of Chief Examiners in the pay scale of Rs.2000-3200. According to the applicants, in the case of upgradation, no element of selection is involved as all those who are working in the lower posts are automatically given higher grade. According to the applicants, the respondents, on the other hand, have allegedly rejected the claim of the applicants on the ground that in the selection process, applicants were not found suitable. As per the applicants there was no requirement for a selection procedure at all and the

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applicants were automatically to be granted higher pay scale of Chief Ticket Examiner. The claim of the applicants is resisted by the respondents.

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3. The learned counsel for the applicants has cited before us the decision of the Full Bench of this Tribunal in G.Narayanan & Others Vs. Union of India & Others, 1994(2) ATJ Page-9 and the Supreme Court Judgment in N.G.Prabhu & Anr. Vs. Chief Justice, Kerala High Court, 1973 (2) SLR 221 in support of his submission that where there is an upgradation of pay scales, no selection is required as in the case of promotion and all those who are in the lower pay scales are entitled to the higher pay scale. On the other hand, the learned counsel for the respondents has drawn our attention to Para 4 of the orders of the Railway Board, copy at Annexure-R1, which prescribes modified selection in respect of the posts in higher grades created on account of restructuring of the C&D cadres.

4. We have considered the matter carefully. The whole controversy is centred around the question as to whether the restructuring involved a process of upgradation or involved creation of new posts which will require enforcement of the promotion rules. We find that at each level of posts in C&D cadres, there are different grades and promotions are also made from one grade with a particular pay scale to the higher grade with higher pay scale. The restructuring scheme involves the variation of these percentages inasmuch as the percentage for higher grades have been raised in order to improve the promotional prospects of the

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C&D employees. The essential point is that it is not a replacement of one scale by another applicable to everyone in lower pay scale but involves the upward movement of only a higher percentage. Where one pay scale is being replaced by another higher pay scale the result will be upgradation. Here however there is a variation of percentages involving the increase in the number of posts in the higher grade. At the same time, we find that even prior to the restructuring scheme movement from the lower scales to higher pay scales involved a screening procedure whether on the basis of the seniority subject to fitness or through selection. Since we find that by restructuring the number of posts in the lower pay scales have been reduced while increasing similarly the posts in the higher pay scale, it cannot be treated as an en-bloc replacement of the lower pay scale by higher pay scale. Undoubtedly as per the ratio of the orders of this Tribunal in G.Narayanan (Supra) and the Hon'ble Supreme Court in Shri N.G.Prabhu (supra) where one pay scale is replaced, ~~all~~ those in the old pay scale would be entitled to the new pay scales. However where it is not a replacement of a scale but a creation of new posts through redistribution it cannot be said that it is a replacement of one pay scale by another. When there is an element of movement from a lower level to the higher pay and rules exists for certain process of screening, then such process would apply even when the number of posts at the lower level are reduced and those posts are transferred to the higher pay scale. The respondents themselves have in these circumstances modified the promotion rules and have said that instead of holding written examination

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and viva-voce test movement from the lower to higher grades will be done on a modified basis by screening the service records of the officials. Since ^{all} the posts at the lower have not been abolished and movement from one to the other involves screening, necessarily the applicants herein had to go through the modified screening prescribed in the scheme itself. In this view of the matter the respondents could not be faulted for applying the modified screening procedure to the applicants. The applicants had only a right to be considered for promotion, it could not be said, in the facts and circumstances, that they had a right to promotion.

In the result, finding no merit in the OA, the same is dismissed. No Costs.

Saeed
(SYED KHALID IDRIS NAQVI)
MEMBER(J)

Rao
(R.K.AHOOJA)
MEMBER(A)

/RAO/