

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 2449/96
T.A. No.

199

21-8-97

DATE OF DECISION

Rly. Board Sectt. Service

Petitioner

Group B Officers Asso. through
President Sh. Sunil Kumar & Ors.

Advocate for the Petitioner(s)

Shri H.K. Gangwani

Versus

Chairman Rly Board & Ors

Respondent

Shri E.X. Joseph, Sr. counsel
with Shri V.S.R. Krishna.

Advocate for the Respondent(s)

CORAM

The Hon'ble Shri S.R. Adige, Member (A)

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?

(Smt. Lakshmi Swaminathan)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. No. 2449/96

New Delhi this the 21 th day of August, 1997

Hon'ble Shri S.R. Adige, Member (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

In the matter of
Railway Board Secretariat Service
Group 'B' Officers Association (Recognised)

Through

President

Shri Sunil Kumar s/o Shri R.K. Singh
working as Section Officer, in the
Ministry of Railways, Railway Board,
Rail Bhawan, New Delhi.

2. Smt. Vaidehi Gopal, u/o Sh.V. Gopal,
Section Officer, Railway Board,
Rail Bhawan, New Delhi.

(By Advocate Shri H.K. Gangwani)

.... Applicants

vs.

Union of India and Others

Through

1. Chairman, Railway Board and
Ex-Officio Principal Secretary to
the Government of India, Ministry of
Railways, Rail Bhawan, New Delhi.

2. Secretary, Railway Board,
Rail Bhawan, New Delhi.

.... Respondents

(By Advocate Sh.E.X. Joseph, Sr. Counsel
with Shri V.S.R. Krishna)

O R D E R

[Hon'ble Smt. Lakshmi Swaminathan, Member (J)]

The applicants are aggrieved by the order
passed by the respondents dated 19.4.96 by which they
state that their prayer for extension of the benefit of

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the judgement
/in Northern Railway Class-II Officers' Association (OA 731/87) ^{NOTED 18.}

decided by this Tribunal on 30.7.93 has not been agreed to. The applicants have submitted that since they are similarly and identically placed persons as the applicants in OA 731/87, their rejection order dated 19.4.96 is, therefore, illegal, arbitrary, mala fide, discriminatory and violative of ~~the~~ Articles 14 and 16 of the Constitution.

2. The applicants belong to the Railway Board Secretariate Service Group 'B' Officers Association, which is a recognised Association of Section Officers of ^{the} Railway Board. They rely on the directions given in OA 731/87 dated 30.7.93, which reads as follows:-

In the result, we direct the respondents to accord to the Group B services of the Indian Railways a scale of pay higher than the existing scale of Rs 2375-3500/- drawn by Group C service with effect from the date of this judgment. The prescription of the higher scale shall be done within four months from the date of receipt of the judgment and arrears due from today shall be paid within a further period of four months."

The above judgment has been upheld by the Supreme Court vide its order dated 18.4.94 in SLP(C) 24858 of 1994 filed by the respondents. The Review Application was also rejected by the Supreme Court vide its order dated 3.5.95. Following the above orders of the Supreme Court, the respondents have awarded the scale of Rs 2375-3750 to all Group 'B' Officers of the Indian Railways w.e.f. 30.7.1993.

3. The grievance of the applicants is that though the order was issued in respect of all Group 'B' Officers of the Indian Railways, the Railway Board Administration

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have intentionally discriminated against the Section Officers (Group 'B' Gazetted) of the Railway Board by not applying the above order to them. Therefore, they ^{claim that respondents} have disobeyed the directions of the Tribunal given in OA 731/87 dt. 30.7.1993.

4. The applicants had submitted a representation to the respondents on 4.12.1995 in reply to which they had been informed that since the matter was being considered by the Fifth Central Pay Commission, their recommendations will be awaited. Shri H.K. Gangwani, learned counsel has submitted that it is settled law that even if ~~the~~ similarly situated persons have not come to the Court, they will be entitled to the similar benefits as granted to their counterparts by the Court. They also rely on the judgments of the Supreme Court in Amrit Lal Berry Vs. Collector of Central Excise, N/Delhi and Ors (1975(1) SLR 168 ; Inder Pal Yadav and Ors Vs. UOI and others (1985(2) SLR 248 ; Yanamandra Gnanananda Sharma Vs. UOI & Ors (1991) 17 ATC 82 (Calcutta Bench). The applicants have also submitted that the above impugned decision of the respondents would mean that the Group 'B' Officers in Zonal Railways are entitled to the pay scale of Rs 2375-3750 whereas the persons holding Group 'B' posts in the Railway Board are given only the scale of Rs 2000-3500. They have referred to Rules 106 to 108 of the Indian Railway Establishment Code (IREC) Vol. I (1985 Edition) to show that there is no distinction drawn in Group 'B' officers of the Zonal Railways and Group 'B' officers of the Railway Board Sectt. Service. They have submitted that the Group 'B' officers of the Railway Board Sectt. Service are also governed by the instructions of the Railway Board and, therefore, they are entitled to get the benefits given by the respondents to Group 'B' officers who were applicants before the

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Tribunal in OA 731/87. They have also relied on the recommendations of the respondents that the revised scale of Group 'B' officers of Rs 2375-3750 may be extended to all Group 'B' posts in Railway Board Sectt. Service, but as mentioned above, the Ministry of Finance had not agreed ^{when the 5th. Central Pay Commission was considering these matters.} to the proposal. They have also submitted that the Section Officers discharge the higher responsibilities in the Secretariat as compared to Group 'B' officers of Zonal Railways/Production Units.

5. The respondents have filed their reply in which they have submitted that the applicants in the present case and those in OA 731/87 are not similarly situated. They have submitted that the Section Officers of the Railway Board Sectt. Service are similarly placed with ^{that} of the Section Officers in other Ministries of the Govt. of India but not similar to Group 'B' officers of Zonal Railways/Production Units. They have submitted that the service conditions, nature of work, and the avenues of promotion of Group 'B' officers of Zonal Railways and Section Officers in Railway Board Sectt. Service are basically different and there is no absolute parity between them. Shri Joseph, learned counsel has submitted that the ratio of the judgment in OA 731/87 should be read in the context of the facts and circumstances presented before the Tribunal. In para 24 of the judgment, it was observed by the Tribunal that when a person in Group 'C' service in the pay scale of Rs 2375-3500 is promoted to Group 'B' post, in fact the promotion entailed a lower pay scale. Thus the Supervisory authority functions in a pay scale lower than that of the persons he supervises. In these circumstances, the Tribunal has held that 'unequals are being treated as even less than equals, which itself is violative of Article 14 of the Constitution'. It was, therefore,

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directed that group 'B' service of the Indian Railways should be accorded a higher pay scale than the existing scale drawn by Group 'C' service. As regards the Railway Board, the respondents have submitted that the employees normally in the scale of Rs 1640-2900 are promoted to the scale of Rs 2000-3500 in Group 'B' and, therefore, there does not exist any anomaly in pay scale of the supervisor and the supervised. In addition, Shri Joseph, learned counsel submitted that there is no similarity in the position between the Section Officers in the Railway Board and the group 'B' officers in the Zonal Railways/ Production Units inasmuch as the mode of recruitment, educational qualifications, nature of duties and responsibilities, avenue of promotions, transfer liability etc. are not similar between these class of officers. They have also submitted that since the nodal Ministry for granting revision of pay scales is the Ministry of Finance, the Ministry of Railways cannot take any unilateral decision and the former had not agreed to their proposal. Another factor which was emphasized was that Group 'B' officers of the Railway Board have been always on the pattern of the Central Sectt. Service Group 'B' officers in other Ministries/Departments in the same scale of Rs 2000-3500. Therefore, they have submitted that if this parity between the group 'B' officers of the Indian Railway Board and Central Sectt. Services is disturbed, it will have a very wide effect on other Group 'B' Officers in other Ministries of the Govt. of India which is not desirable and not within the powers of the Courts or Tribunals. In these circumstances the Ministry of Finance had not agreed to their proposal which will disturb the parity among Section Officers. Learned counsel has also emphasized that merely because in para 25 of the judgment

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dated 30.7.93, reference had been made to Group 'B' service of the Indian Railways who were to be accorded higher pay scale than the existing scale drawn by Group 'C' service., does not mean that the same benefits ought to be given in this case to persons who are not similarly situated. The learned counsel has also relied on a catena of judgments to show that the Courts/Tribunals should not normally interfere in pay scale matters, but this should be left to expert bodies like the Pay Commissions. (See UOI and Others Vs. Makhan Chandra Ray) (1997(3) Scale 648 ; State of Haryana and others V. Ram Chander and others. (JT 1997(5)- SC 217 ; UOI and others Vs. P.V. Hariharan and others (1997 SCC(L&S) Jan to June Copy-3 ; State of Tamilnadu and others Vs. M.R. Alagappan and others (JT 1997(4) SC 515 ; Federation of All India Customs and Central Excise Stenographers Vs. UOI & Others (1988 (3) SCC 91 ; State of U.P. and others Vs. J.P. Chaurasia and others (AIR 1989 (SC) 19 ; State of U.P. Vs. Rama Sharma Yadav (1996 A AD SC 157)). They have also submitted that in view of the revision of the pay scale of group 'B' officers of Zonal Railways in pay scale of Rs 2375-3750/- when they are posted in the Board's office, they were allowed to carry their pay scale. However, this will not apply to the case of Group 'B' Officers in the Railway Board when they are posted against Group 'B' ex-cadre post in Board's office to get the higher pay scale.

6. In the rejoinder filed by the applicants, they have more or less reiterated the same stand taken in the application. They state that the Tribunal had nowhere held

that the Group 'B' scale should be revised for employees promoted from Group 'C' posts in the scale of Rs 2375-3500, but the basic spirit of the judgment is that supervisors should get a higher pay scale to the persons he supervises. They claim that Section Officers of the Railway Board do supervise Group 'C' officials from Zonal Railways, Production Units in the scale of Rs 2375-3500 who are on deputation to the Railway Board. They, therefore, claim that their pay scale should also be revised to Rs 2375-3750.

7. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties. We are of the view that we are unable to grant the reliefs claimed by the applicants, to direct the respondents to accord the revised pay scale of Rs 2375-3750 to the Section Officers of the Railway Board Secretariate Service w.e.f. 30.7.93 along with arrears.

8. It is settled position of law that the ratio of the orders/judgments given by any Court or Tribunal is to be read in the context of the facts and circumstances of the case.

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In other words, merely reading the last paragraph of the judgment in which normally the directions are given alone will not suffice and it would be very necessary to understand the directions given in the judgment in the context of the situation which the Division Bench was dealing with.

9. Para 23 of the aforesaid judgment reads as follows:-

" Before concluding we would advert to an important point regarding pay scale sanctioned for Group B officers in the Railways, which although not specifically forming a part of the relief claimed, has been raised by the applicants in their pleadings as well as in the course of arguments by Mrs. Pappu. This concerns the anomalous situation created by the grant of pay scale of Rs 2000-3500/- for those promoted to Group B posts while those in the feeder category, occupying in the highest of Class C posts are in the pay scale of Rs 2375-3500/-. Mrs Pappu Emphasized in this connection that 75% of the posts in Group 'B' are filled by promotions from those occupying the highest rung in Group C, while 25% of the posts in Group B are filled by a limited departmental examination open to all those who are occupying Group C posts. Thus, for the majority of the persons promoted from Group C to Group B, it would mean that on promotion they get a lower scale of pay. This is on the face of it arbitrary and violative of Article 14. Shri Tulsi very rightly and fairly conceded that this situation was indeed anomalous!

10. In para 24(on page 19 of the judgment), it was held that

" thus, when a person in Group C services in in the pay scale of Rs 2375-3500/- is promoted to a Group B post, in fact the promotion entails a lower pay scale. Thus, the Supervisory authority functions in a pay scale lower than that of the persons he supervises. Pay scales

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form one of the crucial determinants to determine the service hierarchy and it hardly needs reiteration that for proper supervision, control, discipline, maintenance of morals etc, the Supervisory Authority should be placed in pay scale higher than that of those whom they are supervising. If they are placed in a pay scale equal to or less than that it will imply that unequals are being treated as even less than equals, which itself is violative of Article 14 of the Constitution. Merely because the anomaly is continuing since well before the Fourth Pay Commission does not make it any the less anomalous or violative of Article 14. This problem appears to be peculiar to the Railways. None of the other Group B services of the Government of India appear to have raised this issue in any application before the Tribunal. Therefore, the apprehension that granting of a somewhat higher pay scale to Group B service in the Railways would have repercussions on all the Group B posts, does not appear to be well founded."

(Emphasis added)

From the above extracts of the judgment, therefore, it is seen that the higher pay scale which was recommended to Group 'B' posts in ^{the} Zonal Railway was recommended vis-a-vis the Group C service ^{officers} who ^{is} were getting higher scale of Rs 2375-3500 and on the ground that the promotion post cannot carry a scale of pay which is lower than the feeder category. It is also necessary to note the observations of the Tribunal that none of the other Group 'B' services of the Govt. of India appear to have raised this issue at any time earlier. Therefore, the directions for granting higher pay scale to Group 'B' services of the Indian Railways has to be read in the context of the facts and circumstances

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of the case which the Tribunal was dealing with, namely, when a person in group 'C' service in a higher scale is promoted to Group 'B' post, ^{and} then the promotion entails a lower pay scale. We were informed during the hearing that this situation existed in the Zonal Railways, Production Units and certain other categories ^{in the Railways}. It was submitted by the learned counsel for the respondents that this was not the position applicable to the Group 'B' officers in the Railway Board who are similar to the Section Officers in other Ministries of the Govt. of India who are all given ^{uniform B} the scale of Rs 2000-3500. The normal channel of promotion in the Board's office is that persons in the scale of of Rs 1640-2900 are promoted to the scale of Rs 2000-3500 in Group 'B' and, therefore, the anomaly in the pay scales of the Supervisor and the Supervised which was noticed by the Tribunal in OA 731/87 does not exist in the present case. Therefore, merely because the Tribunal had referred to Group 'B' service of the Indian Railways in para 25 of the Judgment cannot be taken to mean that it is applicable to all Group 'B' officers; otherwise the ratio of the judgment is likely to be misinterpreted and given a meaning which was not intended by the Tribunal. Therefore, the submissions made by the learned counsel for the applicants that all the Group 'B' posts, whether in the Zonal Railways or in the Railway Board were included in the Tribunal's judgment dated 30.7.93 cannot be ^{accepted} and the same is accordingly rejected.

11. In order to bring the applicants within the ambit of the judgment in OA 731/87, learned counsel submitted that when officers from Zonal Railways are posted in the Railway Board, the Section Officers exercise supervisory power on them and, therefore, they should also be considered

to exercise power of supervision which requires that this scale of pay should be enhanced. However, ^{they} have not established this from the duties ascribed to them under the Railway Rules. From perusal of the facts and rules submitted by the applicants it cannot also be stated that in the Railway Board's office where normally the employees in the scale of Rs 1640-2900 are promoted to the scale of Rs 2000-3500 in Group 'B' posts there is any anomaly in the pay scale of the Supervisor and the Supervised, which was the subject matter under consideration before the Tribunal in OA 731/87. As regards their pay and allowance, they have also submitted that while the Group 'B' officers in the Zonal Railways/Production Units have restricted responsibilities, their role is superior to them. They have submitted that the role of Section Officers in the Railway Board Sectt. Service has also been upheld by the Hon'ble Supreme Court in the judgment dated 13.5.94 in OA No. 6037/93 (Sh. A.K. Nigam and Ors Vs. Sunil Mishra and Ors) in which the Supreme Court has held that "the nature of working being performed by the section officers of RBSS are similar to the nature of working being performed by the Junior Scale Group 'A' IRPS!! From the materials placed on record we have, however, not found that this either equates the work of Section Officers in Railway Board Sectt. Service and Zonal Railways or makes the former superior in the nature of discharge of duties and responsibilities as claimed by them. Further, the duties performed by the Section Officers of the Railway Board appear to be similar to the duties performed by Group 'B' officers in other Ministries of the Govt. of India and have always been in the pattern of the Central Sectt Services who are in the pay scale of Rs 2000-3500. Any change in the scale as claimed by the applicants is

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bound to have a cascading effect all round. The order dismissing CP No. 337/94 filed by the UP employees of the Indian Railways who are working in RDSO dated 24.4.96 is also relevant.

12. Much emphasis was placed on the recommendations of the Ministry of Railway sent to the Ministry of Finance for revising the pay scale of the Group 'B' officers to Rs 2375-3750, which was, however, not agreed to. It is true that the proposal was returned by the Ministry of Finance on the ground that at that time the Fifth Central Pay Commission was look into these matters. It is also true that the Commission has, stated that they were not making any recommendations for removing the anomalies in the past or to grant new scales retrospectively. In view of what has been given above, we do not also feel that there is an anomaly or arbitrary discrimination in the past which justifies our interference in the matter.

13. In a catena of judgments, the Supreme Court has cautioned the extension of the principle of doctrine of "equal pay for equal work" to different classes of employees unless there is clear case of discrimination ; otherwise such matters should be left to expert bodies like the Pay Commission (See State of U.P. Vs. J.P. Chaurasia (AIR 1989) 1 SCC 121 ; and State of West Bengal Vs. Hari-narayan Bhowal (1994) (27) ATC 524. The Supreme Court in UOI & Ors. V. P.V. Hariharan and Ors (supra) has held :-

" Before parting with this appeal, we feel impelled to make a few observations. Over the past few weeks, we have come across several matters decided by Administrative Tribunals on the question of pay scales. We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly

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situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of "equal pay for equal work" is also being misunderstood and misapplied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales."

13. To sum up, therefore, we find that the ratio of the judgment of the Tribunal in OA 731/87, namely, the anomaly noted by the Tribunal regarding a person when promoted from Group 'C' to Group 'B' service and gets a lower pay scale on the basis of which the directions were given are not applicable to the facts in the present case. It cannot also be held on the basis of the records placed before us that the Group 'B' officers in the Railway Board and other Group 'B' officers in the Zonal Railways are performing the same or similar nature of jobs or have the same responsibilities or other conditions of service. In the light of the above discussion, we do not find that the action of the respondents to accord revised pay scale of Rs 2375-3750 to the Section Officers of the Railway Board Sectt. Service w.e.f. 30.7.93 is either unreasonable or discriminatory which warrants any judicial interference.

14. In the result, the applications fails and is dismissed. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Anil Chandra
(S.R. Adige)
Member (A)

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