

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-2646/96

New Delhi this the 4th day of December, 1997.

Hon'ble Shri S.P. Biswas, Member(A)

Shri Om Nath Mundra,
S/o Sh. Phool Chand Mundra,
Headquarters Office,
Claim Branch, NDCR Building,
State Entry Road,
New Delhi.

..... Applicant

(through Sh. K.K. Patel, advocate)

versus

1. Union of India through
General Manager,
Northern Railway,
New Delhi.
2. Divisional Railway Manager,
Northern Railway,
Jodhpur.

..... Respondents

(through Shri Rajeev Sharma, advocate)

ORDER(ORAL)

Heard the learned counsel for both parties.

The only issue that falls for determination in this case is whether an official possessing the requisite higher qualifications, at any point of time is entitled to get two advance increments under the Scheme of incentives provided in P.S.No.10108 issued by the Railway Board. The admitted facts are that:- (i) the applicant continued to work in the Personnel Branch from 1982 to March 1990; (ii) the applicant does have the necessary higher qualifications stipulated under the Railway Board's Instructions dated 14.2.90 as at Annexure A-4; (iii) the applicant has acquired the said

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qualification at his cost and that a similarly placed official has earlier been granted such an incentive by the respondents (Railways); and (ii) that applicant's eligibility for consideration of the benefits under the Scheme remains uncontroverted.

2. The learned counsel for the applicant challenges the impugned orders at Annexures A-1 and A-2 on the basis that they are in violation of A-4 instructions issued by the Railway Board. Although the Scheme "incentives for acquiring higher qualification" was originally made applicable to non-gazetted Scientific/Technical/Accounts Staff of Indian Railways, the respondents have been extending the same from time to time to certain other departments such as to those non-gazetted officials working in stores and personnel departments. The specific nature of qualifications that would entitle an official, like the applicant therein, are shown in para (ii) of the Railway Board's letter No. E(NG)1/87/IC2/1 dated 14.2.90. The learned counsel for the applicant argued that the Scheme so far as the personnel department is concerned was made operative w.e.f. 25.5.89 and the applicant was already a Member in Personnel Branch as a Law Assistant after the Scheme came into operation. The applicant is, therefore, well covered under the Scheme.

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3. To buttress his arguments further the learned counsel for the applicant came out with the case of a similar nature having been considered by the Railways. It is seen from the records made available to us that one Sh. N.K. Khandelwal, an Assistant Commercial Manager, working under DRM Jodhour/Northern Railway was granted two increments for possessing Post Graduate Diploma in Labour Law in 1968. The official had worked as Chief Law Assistant, Jodhpur in the year 1989-90. Under these circumstances, as per the applicant, the denial of the same benefit to him would be against the law of natural justice. To add strength to his contentions, the learned counsel relied on the decisions in the following cases decided by the Hon'ble Apex Court:-

1. Londona Property Trust Ltd. Vs. High Trees House Ltd. (1956(1) All. E.R. 256 K.B. 130).
2. M.P. Sugar Mills Co. Ltd. Vs. M/s Mottial Padampet Sugar Mills Co. Ltd. (AIR 1979 SC 621).
3. Vasant Kumar Radhakrishnan Vora Vs. The Board of Trustees of the Port Trust of Bombay (AIR 1991 SC 149).

In the counter, the learned counsel for the respondents drew this Tribunal's attention to the only one issue and that is with respect to the time when the applicant acquired qualification. It was argued that the applicant herein acquired the necessary qualification only in 1980-81 when he was working as Draftsman in the Electrical Department. Respondents have also taken the plea that Railway Board's instructions under P.S.No.10108 are of prospective in operation.

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4. The question, therefore, is: Is it necessary that an official, to claim the benefit, has to acquire the necessary higher qualifications at his cost only while working in the concerned department where the Scheme is in operation?

The learned counsel for the respondents fairly conceded that there is no particular mention in the series of circulars as regards the point of time when the aforesaid qualifications have to be obtained. In other words, an employee acquiring such higher qualifications at a point of time earlier to the joining the relevant department would be eligible for the same benefits. The two circulars of the Railway Board dated 19.8.66 and 14.2.90 respectively do not stipulate any specific time frame for acquiring the qualifications laid down.

The respondents have also not come out with any convincing details as to how the benefits could be offered to an official in Jodhpur Division and the basis on which it could be denied to the applicant herein. I also find that the applicant has been working in Personnel Branch upto 26.3.90 and, therefore, the benefit of Railway Board's order issued in February 1990 could not be denied to the applicant. The plea of prospective applicability, thus, shall not be applicable to the applicant in the absence of any clear stand by respondents as to

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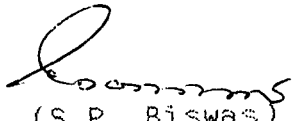
whether prospectivity was with reference to attainment of higher qualification or joining/working in the department having the Scheme in operation.

6. Based on the pleadings on this case as well as materials placed before me, I am of the firm view that the applicant's case is identical with that of the Jodhpur case which remains uncontroverted by respondent Railways. It would be apposite to reproduce the following from the judgement of the Supreme Court in the case of Inderpal Yadav S. U.O.I. (1985) 2 SCC 648):-

".....Therefore, those who could not come to the Court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated they are entitled to similar treatment....."

7. For the reasons aforementioned, the O.A. succeeds on merits and is accordingly allowed with the following directions:-

- (a) Orders at A-1 and A-II dated 10.6.96 and 3.4.96 shall stand quashed..
- (b) Respondents shall pay the arrears due to the applicant within a period of 3 months from the date of receipt of a certified copy of this order.
- (c) There shall be no order as to costs.


(S.P. Biswas)
Member(A)

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