

140  
CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

8

U.A.No.44/94

New Delhi, this the 28<sup>th</sup> July, 1994.

HON'BLE SHRI P.T.THIRUVENGADAM, MEMBER(A)

1. Shri Baldev Singh  
son of late Shri Tara Singh  
7/15, Tilak Nagar, New Delhi.
2. Shri Chaman Lal  
s/o Shri Shankar Lal  
E-1, Fine House Apartments,  
Mayur Vihar, Phase-I, Delhi.
3. Shri Mohinder Lal Katyal  
s/o Shri Jawala Dass  
1/218, Sadar Bazar,  
Delhi Cantt: Delhi.
4. Shri Gajanan Rao  
s/o Shri Sita Ram  
1574, Nahar Sadat Khan  
Nai Basti, Delhi.
5. Shri Raj pal Mehta  
s/o Shri Kishori Lal,  
7363, Prem Nagar, Shakti Nagar,  
Delhi.
6. Shri Tek Chand Bhagra  
s/o Shri D.Dina Nath  
E-52, Anand Miketan,  
New Delhi.

..Applicants

(By Shri S.K.Sawhney, Advocate)

Vs.

Union of India, through:

1. The General Manager,  
Northern Railway,  
Baroda House, New Delhi.
2. The Dy.CAO/T,  
Northern Railway,  
Delhi Kishan Ganj,  
Delhi.
3. The FAO & CAO (WST)  
Northern Railway,  
Baroda House,  
New Delhi.

..Respondents.

(By Shri Romesh Gautam, Advocate)

ORDER

HON'BLE SHRI P.T.THIRUVENGADAM, MEMBER(A)

In this U.A. filed under section 19 of the Central Administrative Tribunal Act, 1985 the applicants- six in number- have prayed for a direction to the respondents to revise the pension and other retirement benefits based on the pay to be reckoned in the light

A

~~/~~ promotion as selection grade/  
of Sub-Heads in the scale of Rs.550-750. Interest  
at market rate on the delayed payment has also been  
prayed for.

2. The applicants' case, briefly, is that pursuant to the reorganisation and restructuring of the staffing pattern in Accounts Departments of railways, they were promoted as selection grade Sub-Heads in the scale of Rs.550-750 with effect from 1-4-1984. But after working for some months in the traffic accounts office of northern railway, they were reverted to the post of Sub-Heads in the grade 425-700 by order dated 28-5-86. Separately orders were <sup>/also</sup> issued for recovery in view of the retrospective reversion. The applicants then filed OA No.953/87 in this Bench of the Tribunal praying for the quashing of the reversion retrospectively with effect from 1-4-1984 and for refunding of the recoveries already effected from them. This U.A. was disposed of by an order dated 8-2-1991 and the operative portion reads as under:-

"In result, we quash applicants' reversion from selection grade sub-heads, Grade Rs.550-750 (RS), to selection grade CG-1, Grade Rs.425-700 (RS), vide S.C.No.169/TA/OKU/ADMI/88 dated 28-5-85, issued by the respondents, and order that they be promoted to the post of selection grade sub-heads in the scale of Rs.550-750 (RS) retrospectively, w.e.f. 1-4-84 and onwards. We further direct that the recoveries, if any, effected from the salaries of the applicants, on their reversion from the selection grade sub-heads to selection grade CG-1, will also be refunded to them. Action in this respect be ensured by the respondents, as early as possible, but not later than two months, from the date of receipt, by the respondents, of a copy of this judgement. The respondents shall however be free to take action in accordance with law and the rules, for correcting

the alleged mistake after giving a reasonable opportunity to the applicants, to show cause."

Pursuant to the above orders, respondents issued show cause notice to the applicants vide letters dated 2-4-92 (An.A7 to the DA) stating reasons as to why the applicants had to be reverted to the lower scale w.e.f. 1-1-84. Applicants replied to the show cause notices during April 1992. Replies were finally disposed of by the impugned communication dated 30-8-93 where it was reiterated that the applicants should be reverted to grade 425-700 with effect from 1-1-1984 but there would however be no recovery of differential amount of payment already made to them as the same had been done in implementation of the directions given by the Tribunal in O.A.No.953/87. In the reply affidavit, it has also been added that there would be no revisions of retirement benefits as such action is not called for because there was no direction to that effect in the order of Central Administrative Tribunal dated 8-2-91 in OA No.953/87.

3. The case of the respondents<sup>is</sup> that restructuring orders have been wrongly interpreted and more selection grade posts of sub-heads (grade 550-750) were assumed to have been sanctioned and accordingly the applicants were originally promoted as selection grade sub-heads vide orders dated 9-9-85 conferring the benefit of promotion retrospectively with effect from 1-1-84. Later, on proper interpretation it was noted that the number of posts in the grade Rs.550-750 should not have been increased as assumed by the local authorities and hence a corrective action was taken within a few months by issuing letter dated 28-5-86 reverting the applicants retrospectively from 1-1-84. Even as per seniority the applicants could not be saved this reversion. In other words, applicants had been promoted to posts which were not available. Action for reversion was contested in the Central

(11)

Administrative Tribunal and the orders passed were on 8-2-91/scrupulously followed by giving an opportunity to the applicants before finally reverting them. In view of the orders of the Tribunal, the earlier reversion orders of 1986 had got set aside and the arrears had to be paid to the applicants. The respondents also drew attention to <sup>the</sup> CCP filed by the applicants which ~~was~~ in the order was dismissed on 1-8-92 and it has been mentioned as under:-

"The learned counsel for the petitioners further submitted that the respondents have paid the money for the arrears towards the salary. They have not taken any action to revise the pension and other retirement benefits. We find that there is no direction in the judgement dated 8-2-1991 in that respect. The learned counsel for the respondents however states that the action in regard to revision of pension etc is dependent on the further action to be taken against the petitioners to correct the following directions given in the judgment dated 8-2-91."

The respondents thus argued that their reply dated 30-8-93 <sup>and specifically</sup> in para 8 ~~reproduced below~~ to the applicants is in order:-

Para 8

"Reply to the same has been received from you vide your letter dated 29-4-92 has been carefully examined by me as discussed above and also in exercise of the provisions contained in para 228 of Indian Railway Establishment Manual (1989 Edition) regarding erroneous promotions, I made your technical reversion from the post of Selection Grade Sub-Head in grade Rs.425-700 w.e.f. 1-1-84. There would, however, be no recovery of

differential amount of payment already made to you due to the same having been paid in implementation of directions given in the judgement dated 8-2-91 of the Hon'ble Central Administrative Tribunal in U.A.No.953/87 & in these circumstances no revisions of retirement benefit as such is called for because there is no direction to this effect in the judgement dated 8-2-91."

The learned counsel for the applicants however argued that the reversion orders of 1986 having been quashed by the Tribunal on 8-2-91, the applicants should be deemed to have continued in the scale Rs.550-750. The applicants have all retired some time during 1987-89 and the respondents have no right to revert them once again in 1992 with retrospective effect. The ld.counsel claimed that the applicants are entitled to the benefits under rule 2003<sup>R1</sup> and rule 501 of the Railway Pension Manual based on their last pay drawn which should have been in the scale of Rs.550-750/~~the~~ equivalent Fourth Pay Commission scale.

4. Having heard both the sides I note that the local authorities had wrongly computed ~~the~~ number of posts in the grade Rs.550-750 which were ~~to be made~~ available from 1-1-84. Based on overcalculation of the number of posts the applicants were promoted and when the respondents became aware of the overcalculation, they took steps to revert the applicants. Mainly on the ground of not having given an opportunity to show cause against reversion, this Bench of the Tribunal in CA No.953/87 decided on 8-2-91 quashed the orders of reversion. It was also ordered that recovery if any effected should be refunded. However, the respondents were given liberty to take action in accordance with law and the rules for correcting the alleged mistake after given a reasonable opportunity to the applicants to show cause. I note that such

follow up action had been taken by the respondents  
and <sup>the</sup> <sup>30-8-93</sup> final letter of the respondents addressed to  
the individual applicants gives detailed reasons.  
From this I find that applicants had been promoted  
to posts which were not correctly sanctioned and  
sanctions were cancelled later ~~and~~ The limited  
issue is what would be the consequences. The  
requirements of equity have been met by allowing  
the pay of the post till such time reversion finally  
took place. Respondents have relied on para 228  
of Indian Railway Establishment Manual Vol.I 1989  
Edition, the relevant portions of which read as  
under:-

"228-Erroneous promotion-

Service rendered by the railway  
servant concerned in the post  
to which he was wrongly promoted/  
appointed as a result of the error  
should not be reckoned for the  
purpose of increments or for any  
other purpose in that grade/post  
to which he would not normally  
be entitled to <sup>but</sup> for the erroneous  
promotion/appointment."

The above provision clearly brings out that the  
benefits derived cannot be extended for purposes  
like pension. Already the promotion itself was  
against ~~posts~~ posts which were non-existent <sup>ent</sup> and action  
was taken to correct this. Thus at the time the  
applicants retired from service, they were only  
functioning against the available posts of grade  
Rs.425-700 and not in posts Rs.550-750 which were  
just not there. If arrears had been given based  
on certain court orders, I do not see any reason  
to further extend the benefit permanently by allowing  
settlement benefits based on the higher scale. Even

in the earlier orders dated 8-2-91 this Tribunal had allowed the rectification of the mistake by following the correct procedure of giving show cause notice etc which rectification has since been done. In the circumstances, the O.A. is dismissed. No costs.

P. J. Thiruvengadam  
28/7/94  
(P.T. THIRUVENGADAM)  
Member (A)

'M'