

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.537/1994

New Delhi, This the 27th Day of September 1994

Hon'ble Shri P.T.Thiruvengadam, Member(A)

1. Sardar Paramjeet Singh
S/O S. Sant Singh
R/O D-35, Ashok Vihar
Phase I Delhi 110052.
2. Shri D P Gupta, S/o Shri Munna Lal
r/o 764-A, Kaisthwar, Rewari
(Haryana).

..Applicants

By Shri Mahesh Srivastava, Advocate

Versus

1. Railway Board, through its Chairman
Govt of India, Rail Bhavan
New Delhi.
2. Union of India, service to be effected through:
General Manager, Western Railway
Church Gate, Bombay
3. The General Manager
Western Railway, Church Gate
Bombay.

...Respondents

By Shri Romesh Gautam, Advocate

O R D E R

Hon'ble Shri P.T.Thiruvengadam, Member(A)

1. The two applicants in this OA have prayed for stepping up ☐ benefits in relation to certain juniors who have been conferred the benefits of Railway Board's order dated 3.2.88.
2. The background to the case is that in the accounts side the lowest grade is Clerk Grade II. The next higher grade is Grade I. Initially only those who have passed the Appendix II A examination could be promoted from Grade II to Grade I. This rule was subsequently relaxed and it was decided that ^{promotion} to 25 % of vacancies of Clerk Grade I could be made from non qualified candidates i.e. those who have not passed the Appendix II A examination. Therefore a ratio of 3 : 1 was to be followed in promotion. Such promotions were taking

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place against long term as well as short term vacancies. Occasionally, the short term vacancies came to an end and reversion had to be made. Such reversion was ordered on the basis of inverted seniority i.e. junior most in service had to be reverted. At this point of time the seniority in Grade I was reckoned by the seniority of entry in Grade II. One Shri Mange Lal Rastogi and few others who were junior to the applicants as CG II had been promoted as CGI since they had qualified in the Appendix II A examination in 1960. Specifically Shri Mange Lal Rastogi was promoted to CG I on 1.4.68 against a long term vacancy. A little later quite a few seniors who had not qualified in the Appendix II A examination also got promoted against short term vacancies. A situation arose in 1969 when some short term vacancies came to an end and accordingly as per instructions (Board's letter dated 30.5.61 Annexure P1 to rejoinder) Shri Mange Lal Rastogi and few others similarly placed were reverted. Around this time further instructions were issued by Railway Board vide letter E(NG) 1/68/99 dated 25.9.69. As per this letter the procedure of junior persons promoted earlier having to revert on the expiry of a short term vacancy against which a senior was promoted later ceased to exist and was modified to the effect that those clerks Grade II promoted against short term vacancies of Clerk Grade I would revert on the cessation of such vacancies. The implication was that short term vacancies would also be filled on 3 : 1 basis and when the short term vacancies came to an end the personnel actually promoted against the vacancies should be reverted and seniority will not be considered. Shri Mange Lal Rastogi and few others like him represented that if the instructions of

25.9.69 had been issued just a little earlier they would not have been reverted from the post of CG I. Their request was considered by the Railway Board vide letter E(NG)I-80-PH I-172(AIR) dated 3.2.88. But it was accepted partially and it was decided to grant proforma fixation of pay with effect from 1.4.68. The reply filed by the respondents states that with the implementation of the orders of the Railway Board dated 3.2.88 Shri Mange Lal Rastogi and others were considered as not having been reverted after the initial promotion from 1.4.68, even though they could be re-promoted only at a later date i.e. in the year 1977. The relevant portions of the Railway Board's letter dated 3.2.88 are reproduced as under:-

"The matter has been considered carefully by the Ministry of Railways in the light of deliberations in the various meetings of the Departmental Council and it has been decided as a special case, not to be quoted as a precedent, that the concerned employees who were reverted as CG II during the period from 1.4.68 to 25.6.69 should be allowed to count for increments in the grade of CG I (since re-designated as junior accounts assistants), the period during which they were reverted as CG II if such reversion would not have taken place if the instructions contained in Board's letter dated 25.9.69 cited above had been given effect to from 1st April 1968. Pay in the grade of CG I will be re-fixed proforma accordingly. This will be subject to the following conditions:-

- i) There will be no change, merely on account of this dispensation, in the seniority position of the staff concerned in the grade of CG I

nor will any claim be entertained from them in this regard.

- ii) the period during which the concerned staff would have, in any case, been reverted by senior Appendix II qualified staff in accordance with the rules then in force will not be taken into account for the purpose of proforma fixation of pay.
- iii) the enhanced pay on account of proforma fixation of pay so allowed, will be payable with effect from 1.1.88 and no arrears on this account will be payable for any period prior to 1.1.1988.

So far as the applicants are concerned they passed the Appendix II A examination held in Jan 1970 and were promoted to CG I in 1972. These applicants were promoted before consideration for re-promotion to Shri Mange Lal Rastogi and others could be extended since as per extant instructions senior most eligible qualified candidates were to be promoted. It is admitted that the two applicants were senior to Shri Mange Lal Rastogi and others who had joined as CG II later to the applicants. By virtue of the provisions in the Railway Board's letter dated 3.2.88 quoted supra Shri Mange Lal Rastogi and others like him got the benefit of increments reckoning their service as CG I with effect from 1.4.68., the original date of promotion. The period of reversion was ignored as the respondents extended such consideration to them and have stated in their reply that they would be treated as if they had not been reverted. Hence this OAO for stepping up.

3. The learned counsel for the respondents raised the preliminary objection regarding limitation.

stating that cause of action arose in 1988 and hence this OA should not be entertained. However, the applicant referred to the letter of SAO(FTA) OKZ dated 21.7.93 addressed to applicant No.1. Para 3 of this letter reads as under:

"Regarding stepping up of pay, your representation of 12.7.93 is under active consideration and necessary action shall be taken after detailed verification of the facts."

It is the case of the applicants that despite the above statement regarding consideration nothing however has happened and hence this OA has been filed in Mar 94. Hence the plea of limitation cannot be entertained.

4. The applicants have claimed the benefit of higher fixation with regard to their juniors by stating that they should be extended the Next Below Rule Provisions. This has been rightly rejected in the reply stating that the benefit claimed under Next Below Rule is ^{not} admissible to the applicants since Next Below Rule can be invoked when an officer is working out of regular line.

5. It was then argued that the applicants being senior to Shri Mange Lal Rastogi and others is not disputed and applicants being senior cannot get pay lower than their juniors. This is claimed as a matter of right and a general proposition has been made that a senior should get higher salary than the junior. I cannot accept a general statement like this since there would be myraid situations in which a junior can get higher salary than the senior. A person directly recruited to a grade is likely to get less salary compared to a person who is promoted. Again a junior may be eligible for a number of incentive allowances resulting in

higher emoluments vis a vis seniors. The learned counsel for the applicants was specifically asked to quote the rules under which the benefit of stepping up of pay is claimed by the applicants. Reference to the related rules in the Establishment Code was made. On a perusal it is noted that instructions regarding stepping up of pay have been issued only to cover specific situations and particularly whenever new pay scales as per various pay commission recommendations were introduced. In all these cases, there is a possibility of a senior, promoted earlier to the introduction of new pay scales receiving lesser emoluments compared to a junior promoted on a date after the introduction of new pay scales. To remove this anomaly instructions for stepping up of pay have been issued. In all such instructions one of the stipulated conditions is such an anomaly should have arisen due to the application of Rule 1316(FR 22C). The facts of this OA are that Shri Mange Lal Rastogi and others were promoted earlier since they had qualified Appendix 2I A examination 10 years in advance of their juniors. Consequently they were reverted due to the then extant rules. But the rigours of the reversion were lessened by the issue of the 1988 instructions. The respondents have taken the stand Shri Mange Lal Rastogi and others were treated as if they had not been reverted for the purpose of pay fixation. In these circumstances and in the absence of any specific rules/instructions on stepping up of pay which would be of relevance to the applicants, the relief claimed cannot be granted.

6. In view of the facts enumerated above and in the circumstances of the case the OA is dismissed.

No costs.

(P.T. THIRUVENGADAM)
Member(A)

LCP