

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1486/88
T.A. No.

199

DATE OF DECISION 25.1.1991

Shri Bhabotosh Roy Petitioner
Shri B.S. Mainee Advocate for the Petitioner(s)
 Versus
Union of India & Others. Respondent s
Shri Inderjit Sharma Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. T.S. Oberoi, Member (J)

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *no*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *no*

I.K. Rasgotra
(I.K. Rasgotra)
Member (A)

T.S. Oberoi
(T.S. Oberoi)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA No.1486/88

DATE OF DECISION 25.1.91.

SHRI BHABOTOSH ROY

APPLICANT

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS

FOR THE APPLICANT

SHRI B.S. MAINEE, COUNSEL

FOR THE RESPONDENTS

SHRI INDERJIT SHARMA,
COUNSEL

CORAM:

HON'BLE SHRI T.S. OBEROI, MEMBER(J)

HON'BLE SHRI I.K. RASGOTRA, MEMBER(A)

(JUDGEMENT OF THE BENCH DELIVERED BY

HON'BLE SHRI I.K. RASGOTRA, MEMBER(A)

Shri Bhabatosh Roy, Chief Draftsman, Office of Senior Civil Engineer (Construction), Northern Railway, New Delhi has filed this application under Section 19 of the Administrative Tribunals Act, 1985 challenging the order of the respondents, No.940E/13/Const./TKJ dated July 18, 1988. The short point raised in the application is whether Superintendents, Drawing Office, in Projects and Construction Units are entitled to the pay scale of Rs. 840-1040 in terms of Railway Board's letter No. PCIII/78/SG/8 dated 31.1.1983 and whether the clarificatory letter of even number dated 17.8.1984 withdrawing that grade from the Superintendents, Drawing Office in Projects and Construction is legally sustainable. The relevant part of the Railway Board's letter of 31.1.1983 which is stated to have introduced the scale of Rs. 840-1040 in the category of Superintendent (Drawing Office) reads as under:

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"Sub: Creation of posts in scale Rs. 840-1040(RS) in Projects and Construction Units.

A number of clarifications have been sought from the Board about the extent to which the scale of Rs. 840-1040 (RS) can be operated in Projects and Construction Units as part of the regular grade structure in different categories. The Board have carefully examined the matter.

2. A statement is enclosed, part 'A' of which indicates the categories in which the scale of Rs. 840-1040(RS) has been regularly allotted as a part of the regular grade structure. To the extent that these posts are required to be operated in projects and Construction Units, there is no objection to these posts in grade Rs. 840-1040(RS) being created in Projects and Construction Units, subject to the condition that the creation of the posts is justified on the basis of worth of charge and the posts are included in the sanctioned estimate."

Item 7 of part 'A' of the statement giving list of categories which have been allotted revised scale of Rs.840-1040 referred to in the above order reads:-

7.".....Superintendent Drawing Office, Chief Design Assistant (Drawing Office) Superintendent Inspection in Production Units i.e. CLW DLW and ICF only."

2. Based on the above instructions of the Railway Board, a post of Superintendent (Drawing Office) was created for a period of 12 months in the office of Deputy C.E. (construction), Tilak Bridge, New Delhi ^{and the applicant} was promoted against the said post to officiate in the

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grade of Rs.840-1040. vide order dated 27.3.1984.

3. In the meantime, the Railway Board vide letter dated 17.8.1984 observed that item No.7, part 'A' of the Annexure to the Board's letter of 31.1.1983 has been wrongly interpreted on the Railways in as much as some of the Zonal Railways are relying on those orders as authority for creation of posts in scale Rs. 840-1040 (RS) in the Drawing Office Cadre of the Railway:

"In fact, the annexure is a summary of the various, categories of posts which have been allotted the scale of Rs. 840-1040(RS) under different orders issued from time to time. It is, therefore, clarified that the scale of Rs. 840-1040 (RS) is applicable to the posts of Superintendent Drawing Office, Chief Design Assistant (Drawing office) and Supdt. Inspection on Production Units Viz. CLW, DLW and ICF only and not on the Zonal Railways including projects and consturctions Offices.

If any posts in the Drawing Office Cadre has been operated in the scale of Rs. 840-1040(RS), the same may be downgraded immediately....."

Consequently, the applicant was reverted vide respondents Notice No. 940-E 13-28/Constrn. dated 31.10.1984. The applicant represented in September, 1984 against his reversion but the same has been rejected vide impugned order dated 18th July, 1988 (Annexure A-I).

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By way of relief the applicant has prayed that:

- (a) The impugned order dated 18th July, 1988 may be set aside with the directions to the respondents to give correct and proper interpretation to the Railway Board's letter dated 31.3.1983 for creating the posts of Superintendents, (Drawing Office) in Projects/- Construction Units:
- (b) the order dated 31.10.1984 reverting the applicant may be quashed with the direction to the respondents to treat the applicant in continuous service in the grade of Rs. 840-1040 with consequential benefits.

4. Shri B.S. Mainee, learned counsel for the applicant submits that the Railway Board's orders dated 31.1.1983 allowed the creation of posts of Superintendents (Drawing Office) subject to the condition that creation of posts is justified on the basis of worth of charge and that they are included in the sanctioned estimate. The learned counsel further submits that the Railway Board could not deprive the category of Superintendents (Drawing Office) from the higher grade posts of Rs. 840-1040 when the same is available to the other feeder categories of Group 'B' post, namely Inspector of Works, Permanent Way Inspector and Bridge Inspector listed in part B of the statement attached to the Railway Board's letter dated 31.1.1983. He, therefore contended that all the feeder categories to the post of Group 'B' have to be kept on par in the matter of pay scales, as otherwise the case of Superintendent

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(Drawing Office) for selection to Group 'B' may be prejudiced.

5. The respondents in their written statement have not disputed the facts of the case. Shri Inderjit Sharma, learned counsel for the respondents, further submits that construction projects are temporary establishments while DLW, CLW and ICF are permanent Production Units. Generally it is the junior staff who are deputed to the construction units as they receive temporary benefits by way of higher scale of pay etc. during their tenure in such temporary construction units. It was therefore not practicable nor was it the intention of the Railway Board to permit creation of posts in the pay scale of Rs. 840-1040 on the construction projects. When Railway Board found that the instructions issued in 1983 were being misconstrued on the zonal Railways and junior people were being promoted to the grade of Rs. 840-1040 in the Construction Projects, the Railway Board clarified the position vide letter dated 17.8.1984. The learned counsel submitted that legislatures which frames the statutes, has also the right to amend, substitute, modify or repeal them in accordance with its intention in enacting an Act. On the same analogy, the learned counsel contended that the Railway Board was fully competent to clarify their instructions of 1983 in accordance with the intention. In this connection the learned counsel drew our attention to ^{the} case of Bhagat Ram Sharma Vs. UOI & Others 1988(6) ATC SC 783 where their Lordships in the Hon'ble Supreme Court in para 19 of the judgement (supra) observed that:

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"In the case of executive instructions the bare issue of a fresh instrument on the same subject would replace a previous instrument".

He, therefore averred that the clarificatory instructions issued in August, 1984 by the Railway Board were valid and do not contravene any legal provision.

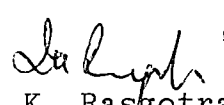
6. We have heard the learned counsel of both the parties. The Railway Board's instructions of 31.1.1983 apparently did lend themselves to the intrepertation that the posts in the grade of Rs. 840-1040 might be created in Projects and Construction Units "subject to the condition that the creation of the posts is justified on the basis of worth of charge and the posts are included in the sanctioned estimate." The instructions issued on 17.8.1984, however, elucidated the position by stating that posts of Superintendents (Drawing Office) in the grade of Rs. 840-1040 were meant to be created only in the Production Units namely DLW, CLW & ICF. To that extent the executive instructions issued by the Railway Board in 1984 replaced the 1983 instructions. Therefore, the posts of Superintendent (Drawing Office) in the grade of Rs. 840-1040 in Construction Units ceased to exist as the clarificatory orders were to take immediate effect. The applicant was therefore reverted to the lower grade of Rs. 700-900 as with the abolition of the post in Rs. 840-1040, the right to hold that post also ceased. There is also no averment in the OA that the withdrawal of the grade of Rs. 840-1040 would prejudice the

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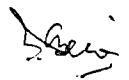
right of the applicant for advancement to Group 'B' posts in his stream as the other streams in the feeder category have been allotted the grade of Rs. 700-900. In any case such a situation is purely hypothetical, as for the purpose of fixation of integrated seniority for promotion Group 'B' posts the seniority of Group 'C' employees in the scale of Rs. 700-900 and above, viz. Rs. 840-1040/1200 is to be determined "on the basis of total length of service rendered in any or in all these grades." (Railway Board's letter No.E(EP)81/2/87 dt. 5.3.1983).

In the facts and circumstances of the case we do not find any merit in the application which accordingly is dismissed.

There will be no order as to costs.


(I.K. Rasgotra)
Member(A)

25/1/1991


(T.S. Oberoi)
Member(J)