

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2053/88. 198
T.A. No.

DATE OF DECISION 27.11.1990.

Shri P.C. Ojha. Applicant (s)

Shri R.K. Kamal. Advocate for the Applicant (s)

Versus
Union of India Respondent (s)

Shri S.N. Sikka
Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

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

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *4/1*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

AB
(Amitav Banerji)
Chairman
27.11.90.

9

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO. O.A. 2053/88.

DATE OF DECISION: 27.11.1990.

Shri P.C. Ojha.

.... Applicant.

VERSUS

Union of India.

... Respondent.

CORAM: THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the Applicant.

... Shri R.K. Kamal,
Advocate.

For the Respondent.

... Shri S.N. Sikka,
Advocate.

(Judgement of the Bench delivered by
Hon'ble Mr. Justice Amitav Banerji,
Chairman)

The applicant is aggrieved by an order dated 15.5.1987 issued by the Secretary, Railway Board, New Delhi granting higher scale of Rs.1600-2660 to the new entrant direct recruits to the cadre of Commercial Apprentices, who entered in service from 1987 onwards, while granting a lower scale of Rs.1400-2300 to those Commercial Apprentices, who entered in service prior to 1987. The applicant's grievance is that he has been made junior to the new entrant direct recruits, who entered in service from 1987 onwards. Although the Commercial Apprentices who joined service in 1987 are in the same cadre, yet there has been a distinction between those who joined before 1987 and those who joined in 1987 and afterwards. He has invoked the jurisdiction of the Tribunal by alleging that there is a discrimination between the Commercial Apprentices doing the same nature of work. Consequently, the action of the Secretary,

Railway Board is termed to be arbitrary, without any reason or rationale and is also hit by the provisions of Article 14 of the Constitution. The applicant has prayed that the impugned order dated 15.5.1987 be set aside to the extent of discrimination against the senior batches; secondly, to grant the same initial scale Rs.1600-2660 to the applicant with advantages of increments for the services rendered in the past, without any fresh selection process; thirdly, to direct the respondents to maintain higher seniority of Commercial Apprentices (including the applicant) with longer service over the new entrants to the posts of Commercial Apprentices; and lastly, he has claimed all consequential benefits along with interest at the rate of 15% per annum on the arrears.

The respondents in their written statement have stated that the applicant has challenged the policy decision regarding the recruitment of Commercial Apprentices and this is not open to challenge. The Railway Board have taken policy decision vide letter dated 15.5.1987 in such a way that the direct recruitment made in scale of Rs.1400-2300 for Commercial Apprentices after the completion of training has been stopped and recruitment of Commercial Apprentices is to be inducted in the scale of Rs.1600-2660 after successful completion of prescribed training for a period of two ^{years} has been given effect for improving the standard of job requirement. The applicant is not entitled to challenge the impugned

order on the ground that he is equal to the candidates proposed to be selected as Commercial Apprentices for induction in scale Rs.1600-2660 after their successful completion of training for a period of two years. It is also stated that the Commercial Apprentices now proposed to be selected for induction in scale Rs.1600-2660 and the job requirements and responsibility are totally different. Consequently, the applicant has no legal right to get him inducted in scale Rs.1600-2660 as per the policy decision now taken. It was further stated that in para 2(xv) of the impugned order dated 15.5.1987, there is a provision that the existing Commercial Apprentices in the scale of Rs.1400-2300 can also apply for these posts against the future requirement by relaxing the age limit upto 45 years in case of the direct recruitment and 50 years in case of departmental selection. In view of the above, the applicant is not entitled to challenge the impugned order. It is also mentioned that out of 25% vacancies for Commercial Apprentices, 15% are filled up by direct recruitment through Railway Recruitment Board and 10% from serving Graduates Class-III staff (other than Ministerial staff) of Commercial Department on the basis of Competitive Examination. The respondents have, therefore, prayed that the applicant has not been able to make out any case for interference.

We have heard Shri R.K. Kamal, learned counsel for the applicant and Shri S.N. Sikka, learned counsel for the Respondents.

Shri Kamal argued that it is a case of discrimination inasmuch those Commercial Apprentices who are recruited before 1987 were given the lower pay scales and those who are recruited in 1987 and afterwards were given the higher pay scales. They have the same qualification and perform the same work and yet there is a discrimination. He further urged that by virtue of the higher pay scales given to the Commercial Apprentices of 1987 and afterwards, they took a place higher than that of the Commercial Apprentices recruited prior to 1987. Learned counsel referred to a decision of the Madras Bench of the Tribunal in O.A.S 322/88 and 488/87, P. BRIGHT SAMUEL & ORS. VS. U.O.I & ORS. He urged that the present case is fully covered by the aforesaid decision and the Special Leave Petition against the above decision has also been dismissed and thus, finality has been reached in the above case. In the above case, the matter pertains to Traffic Apprentices in the Railways. After completion of three years' training, the Traffic Apprentices were fitted in two grades above the lowest stage of the scale in their respective categories against vacancies in the posts of Assistant Station-Masters, Yard Masters, Traffic Inspectors, Section Controllers, etc. They had approached the Tribunal with a prayer to hold that sub-paras (12) to (15) of para 2 and other paragraphs confining the benefits of revision of

pay scales and fitment of Traffic Apprentices on absorption only to future entrants vide letter dated 15.5.1987 issued by the Railway Board as unconstitutional and invalid and further to direct the respondents to fix the pay scales of all serving Traffic Apprentices absorbed as ASMs/AYMs and Section Controllers at (Rs.550-750) Rs.1600-2660 (revised) with effect from the dates of the completion of their training and absorption with due seniority and all the other consequential benefits. It will, thus, be seen that they were also challenging the aforesaid notification No. E(NG)II/84/RC 3/15 (AIRF) dated 15.5.1987. The arguments raised by the learned counsel for the applicant before the Madras Bench of the Tribunal proceeded as follows in the words of the Division Bench:

"It is very clear from the Railway Board letter that the scheme of recruitment of Traffic and Commercial Apprentices is to continue and goes on to provide for a better scale of pay for the apprentices to be recruited in future. The said letter had tried to distinguish between the Traffic Apprentices recruited upto then and to be recruited in future whereas they formed one common cadre. This letter artificially tries to create a distinction. The qualification for the new recruits continues to be the same. The stipulation regarding training is that it is going to be more intensive, but the duration has been lowered from 3 years to two years and all the earlier recruits have been exempted from undergoing further training. Although the letter states that the standard of examination will be higher than as at present vide their Employment Notice No. 2/87 of the Railway Recruitment Board, Bombay, the new recruits have also taken a common examination along with other categories just like the applicants".

The reply on behalf of the Respondents-Railways before the Madras Bench of the Tribunal was that for the recruitment of Traffic Apprentices after 1987, the standard of examination would be higher than that was prevalent earlier. A wider exposure will be arranged for traffic and commercial apprentices by exchanging apprentices in one stream with those in other streams and that the training will be more intensive for two years as against three years. The recruitment from the open market will be through a separate examination and not combined with the examination for recruitment of Guards, Sr. Clerks, etc. The respondents, however, conceded that there was only one common examination held for the five categories when the recruitment was made by the Railway Board vide their Employment Notice No. 2 of 1987. The intention was to make the training more intensive for two years as against three years. It was also stated that the applicant cannot challenge the impugned order on the ground that they are equal with the candidates proposed to be selected as Traffic Apprentices for induction in the scale Rs.1600-2660 after their successful completion of the prescribed training since those to be selected will be qualitatively better. Lastly, it was urged that their rights had not been affected at all.

The Division Bench observed as under:-

"We have given very careful consideration to the issues raised in these applications. The Railway Board letter dated 15.5.1987 makes it clear that the scheme of Traffic/Commercial Apprentices should continue".

The Division Bench finally concluded by directing the respondents to give the benefit of revision of pay and fitment on absorption to be given to the applicants in the O.As from 15.5.1987 with consequential monetary benefits. There was a final direction that this shall be done without putting them through any final retention test. There was also a direction that this should be done and arrears disbursed within a period of 90 days from the date of receipt of this order.

We are in respectful agreement with the views expressed. The view taken by the Madras Bench of the Tribunal fully answers the contention that these were not two separate services or cadres but was one common cadre merely because the new entrants from 1987 onwards were to be given a better pay scale. It is not justified by depriving those who are recruited earlier as Commercial Apprentices to be confined to a lower scale of pay. Since they were doing the same type of work and similarly qualified, we see no reason to make a distinction on the basis of the date of recruitment.

We have already expressed that we are in agreement with the Madras Bench of the Tribunal and we adopt the same. In this view of the matter, the present O.A. is allowed and the applicant is entitled to be adjusted in the same scale of pay as that of Commercial Apprentices recruited from 1987 and afterwards and he is entitled to fitment in new pay scales i.e. 1600-2660 from 15.5.1987 with all consequential monetary

benefits. We further direct that these orders would be carried out within a period of four months from the date of service of the order.

There will be no order as to costs.

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)
27.11.1990.

AB
(AMITAV BANERJI)
CHAIRMAN
27.11.1990.

'SRD'