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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.1269/1987

DATE OF DECISION: 5.9.1991

SHRI KIDAR NATH KAPOOR & OTHERS ...APPLICANTS

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

CORAM:

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

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

FOR THE APPLICANTS

SHRI B.S. MAINEE, COUNSEL

FOR THE RESPONDENTS

SHRI O.N. MOOLRI, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE  
MR. I.K. RASGOTRA, MEMBER (A))

This Original Application has been filed by Shri Kidar Nath Kapoor, Head Clerk under Carriage and Wagon Superintendent, Northern Railway and four others under Section 19 of the Administrative Tribunals Act, 1985 against the order dated 6.4.1987, issued by Respondent No.2, rejecting "the representation of Shri Kidar Nath Kapoor, Head Clerk/C&W/DLI.

2. The facts of the case lie in a very narrow compass. Nine (9) posts of Store Issuer in the scale of Rs.105-135 were upgraded w.e.f. 1.1.1964 to the pay scale of Rs.110-180 vide order dated 5.9.1986 (page 13 of the paper book). The said order reads as under:-

"Sub:-Up-gradation of 9 posts of Store Issuer in  
grade RS 110-180 (AS) with effect from  
1.1.1964 in C&W New Delhi and TKD.

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Ref:- Your letter No.758-E/103/VI-P-9 dated  
21.7.1986.

Approval has been accorded by C.P.O. with the concurrence of F.A. & C.A.O to the Up-gradation of 9 posts, as detailed below, of store issuer in grade RS 110-180 (AS) with effect from 1.1.1964.

1. 6 Posts of store issuer of New Delhi Goods.
2. 3 posts of store issuer in TKD.

It is requested that further necessary action may please be taken at your end and to implement the order immediately."

The applicants' contention is that the benefit of upgradation in the matter of promotion should have been given in accordance with the seniority assigned to the Store Issuers as per the seniority list as on 31.10.1969 circulated on 13.11.1969. They are aggrieved from the fact that the respondents chose to ignore the seniority of the Store Issuers in the pay scale of Rs.105-135 as on 31.10.1969 and promoted persons junior to the applicants on the ground that they were holding the said posts, which have been upgraded at New Delhi (Goods) and Tughlakabad vide order dated 5.9.1986 (Annexure A-2) at the relevant time.

3. In their preliminary objection the respondents have submitted that the applicants have no cause of action to file the O.A., as the impugned order does not relate to them nor does it give any cause of action, as the same is applicable to the Store Issuers of New Delhi (Goods) and Tughlakabad. According to them, the applicants are not governed by the order dated 5.9.1986, as applicant No.1 was employed at CW, Delhi, applicant No.2 at Faridabad, applicants No. 3 and 4 at Ghaziabad while the place of employment of applicant No.5 was not known. They also

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submit that the Petition is bad for non-joinder of parties, necessary to the petition. On merits, the stand of the respondents is that six posts of Store Issuer were upgraded at New Delhi (Goods) while three posts were upgraded at Tughlakabad. Since the applicants were not working either at New Delhi (Goods) or at Tuglakabad at the relevant time and as they did not shoulder the specific heavy responsibilities for which the upgradation in the pay scale of Rs.110-180 was approved by the General Manager, the question of seniors and juniors is totally irrelevant. Further Shri Avtar Narain and Shri Omparkash, who have been extended the benefit of upgradation, were entitled to the higher pay scale, as they shouldered the higher responsibilities at the relevant time and that on the basis of local seniority they were the two seniormost persons available for holding the upgraded posts.

The applicants have filed the rejoinder, reiterating their stand projected in the Original Application.

4. We have heard the learned counsel of both the parties. We find that seniority list of Store Issuers in the pay scale of Rs.105-135 is maintained on centralised basis for the Division, as is apparent from the seniority list of Store Issuers Rs.105-135 as on 31.10.1969 (Annexure A-5). The Rules governing the promotion of Group 'C' staff are laid down in Chapter II, Section 'B' of the Indian Railway Establishment Manual (IREM for short). Provisions in paragraphs 214 (a) and (b) of IREM stipulate that:-

"214.(a) Non-selection posts will be filled by promotion of the senior most suitable Railway servant Suitability whether an individual or a group of Railway Servants being determined by the authority competent to fill the posts on the basis of the record of service and/or departmental tests if necessary. A senior Railway servant may be passed over only if he/she has been declared unfit for holding the post in

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question. A declaration of unfitness should ordinarily have been made sometime previous to the time when the promotion of the Railway servant is being considered.

(b) When, in filling of a non-selection post, a senior Railway servant is passed over the authority making the promotion shall record briefly the reason for such supersession."

The non-selection posts in higher grade accordingly have to be filled with due respect to seniority and suitability of the individual. No rule or administrative instruction has been brought to our notice which lays down that a person who happens to hold a post at a particular time alone should be considered and appointed to the post when the same is upgraded. If the posts at New Delhi (Goods) and Tughlakabad carried higher responsibilities it should have been ensured that senior persons subject to their suitability in accordance with the published seniority list of Store Issuers are posted against the upgraded posts at New Delhi (Goods) and Tughlakabad. Some individuals who are holding these posts in the pay scale of Rs.105-135 in fortuitous circumstances cannot be made the recipients of the munificence w.e.f. 1.1.1964 retrospectively by an order issued on 5.9.1986 to the prejudice of the Store Issuers placed higher in the seniority list.

We are also not convinced by the argument that the applicants have no cause of action and, therefore, no judicial review of the decision is called for. In **Council of Civil Service Unions v. Minister for the Civil Service (1984) 3 All ER 835, 950** Lord Diplock said:


"Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The

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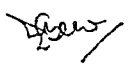
first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'."

The action of the respondents suffers from all the three infirmities viz. 'illegality', 'irrationality' and 'procedural impropriety', as the senior persons have not been considered at all while giving the benefit of upgradation to the persons who were holding the posts at the relevant time at New Delhi (Goods) and Tughlakabad.

We are of the view that the administrative action taken by the respondents in upgrading the posts and granting the benefit in fortuitous circumstances contains all the three ingredients which warrant judicial review and see force in the prayer of the applicants for granting them the reliefs, as prayed for by them. Accordingly, we order that the applicants should be considered for holding upgraded posts in the scale of Rs.110-180 w.e.f. 1.1.1964 and if they are found fit their pay should be refixed in the grade of Rs.110-180 retrospectively w.e.f. 1.1.1964 notionally with the further direction that their settlement dues viz. gratuity, pension, leave encashment shall also be revised in accordance with the pay fixed notionally w.e.f. 1.1.1964 with the actual benefit being given only by way of revised retiral benefits. The O.A. is disposed of, as above, with no order as to costs.

  
(I.K. RASGOTRA)  
MEMBER(A) 5/9/91

/SKK/

  
(T.S. OBEROI)  
MEMBER(J)