

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

(9)

O.A. No. 953/87
T.A. No.

199

DATE OF DECISION : 8-2-1991

<u>SHRI BALDEV SINGH & ORS.</u>	Petitioner
<u>SHRI R.K. RELAN</u>	Advocate for the Petitioner(s)
Versus	
<u>UNION OF INDIA & ORS.</u>	Respondent
<u>SHRI O.N. MOOLRI</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. T.S. OBEROI, MEMBER(J)

The Hon'ble Mr. P.C. JAIN, 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 ? *Yes*.

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m(A) 8/2/91
(P.C. JAIN)

T.S. Oberoi
8.2.91
m(J)
(T.S. OBEROI)

(10)

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PRINCIPAL BENCH, NEW DELHI.

O.A. NO. 953/87

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SHRI BALDEV SINGH & ORS.

APPLICANTS

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS

CORAM:

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

THE HON'BLE MR. P.C. JAIN, MEMBER(A)

FOR THE APPLICANTS

SHRI R.K. RELAN

FOR THE RESPONDENTS

SHRI O.N. MOOLRI

J U D G E M E N T

(Delivered by Hon'ble Shri T.S. Oberoi, Member(J).

In this O.A., filed under Section 19 of the Central Administrative Tribunal Act, 1985, the applicants-six in number-have prayed for the quashing of their reversion from the posts of Selection Grade Sub-heads, in the scale of Rs.550-750(RS), retrospectively, w.e.f. 1.4.1984, and consequently for refunding of the recoveries already effected from them.

2. The applicants' case, briefly, is that pursuant to the re-organisation and restructuring of the staffing pattern in Accounts Deptts. of Railways, they were promoted as Selection Grade Sub-heads in the scale of Rs.550-20-650-75-750 w.e.f. 1.4.84 and onwards, but after working for about nine months, as such, in the Traffic Accounts Office of the Additional FA&CAO (TA), Northern Railway, Delhi Kishanganj, Delhi, were reverted to the posts of Selection Grade

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CG-I (425-700)RS, with retrospective effect, and payments made to them, consequent on their promotion, were also ordered to be recovered. That, inspite of representation and appeal to the authorities concerned, in this regard, on the grounds, inter-alia of discrimination, as some of the other Selection Grade Sub-heads, who were similarly promoted and later reverted, and were re-promoted, whereas applicants were NOT; and on the grounds of natural justice, as the applicants had actually performed duties as Selection Grade Sub-heads and work extracted from them, as such, but the same having been turned down, they came by way of present OA. The recoveries were, however, stayed by way of interim relief, vide order dt. 28.7.87, till finalisation of the OA. It was also contended on behalf of the applicants that their representation and appeal were rejected, without assigning any reason for rejection and that their reversion could not have been effected, with retrospective effect, the applicants having actually performed duties in the promoted posts, to which they were rightly and validly promoted. They claimed equal protection under Railway Board letter No. PC III/85/CAiii/44 dt. 23.12.85, as given in some of the other cases, who were similarly promoted as Selection Grade Sub-heads and were reverted with retrospective effect, but were re-promoted, retrospectively.

3. In the written statement filed on behalf of the respondents, applicants' claim has been resisted. The respondents took up the plea that the applicants were promoted as Selection Grade Sub-heads, on account of erroneous interpretation of Railway Board's orders, contained in their letter No.PC III/85/CAiii/44 dt. 23.12.85. They also tried to differentiate the case of the applicants from that of some of others Selection Grade Sub-heads, who were, according to respondents, already working in the post of Selection Grade Sub-heads, from dates prior to the introduction of restructuring scheme, and therefore, they were re-appointed retrospectively, to the post of Selection Grade Sub-heads, in consonance with para 3 of Railway Board's letter dt. 23.12.85 (ibid). The allegations of discrimination were thus denied, as applicants' case was covered under para 4 of Railway Board's letter dt. 23.12.85, according to which the additional posts of Selection Grade Sub-heads, which had arisen due to restructuring of the cadre on 1.1.84, were not to be taken into account, for determining the number of Selection Grade Sub-heads, which could be counted, if at all, only after February, 1987, when the next review was to become due. For the same reason, the recoveries ordered to be effected from the applicants, were also held as justified. It was further contended that due to the introduction

and implementation of the 4th Pay Commission Report from January, 1986, wherein posts of Sub-heads and Selection Grade Sub-heads had been amalgamated, the question of promotion of the applicants as Selection Grade Sub-heads did not arise.

4. During the course of arguments, at the request of the learned counsel for the respondents, time was given for procuring the relevant record regarding the applicants' promotion as Senior Grade Sub-heads as well as that of the alleged other similarly placed Senior Grade Sub-heads, from the office of the respondents, and producing the same, to provide a comparison in their cases. But, the same could not be produced, inspite of M.P. (MP No.236/91) also, having been moved on behalf of the applicants, in this regard.

5. We had also heard the learned counsel for the applicants as well as the learned counsel for the respondents, who broadly speaking, put forth the respective view point, as briefly discussed above.

6. We have given our careful consideration to the respective contentions and have also carefully perused the pleadings of the parties, together with the copies of the documents filed by the applicants, alongwith the OA. In para 7(e) of the written statement filed on behalf of the respondents, it was inter alia mentioned:

"The duties of the Selection Grade Sub-heads and Sub-heads are the same and the incumbents

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have performed the duties in the same capacity as of Sub-head or Selection Grade Sub-heads and there is no difference in the responsibilities of those of the Selection Grade Sub-heads or sub-heads."

From the perusal of the order dt. 9.9.1985 (AnnexureB), it is seen that there is no mention, if the promotion of the applicants was on ad hoc basis. From the documents on record, it is also not apparent if any show-cause notice was given to the applicants, before effecting their reversions, with retrospective effect. The respondents have also failed to produce the relevant record in respect of the applicants or those stated to be standing on different footing, as per respondents' contention, inspite of opportunities given for the purpose. We, therefore, have no hesitation in arriving at the conclusion that the impugned order cannot be sustained as it has been issued in violation of the principle of natural justice. A civil right had accrued to the applicants which could not have been taken away, and that, too, with retrospective effect, without giving them an opportunity to show cause against the proposed action. The doctrine of audi alteram partem squarely applied to such a case. The plea of discrimination has also not been effectively repelled.

7. In result, we quash applicants' reversion from Selection Grade Sub-heads, Grade Rs. 550-750 (RS),

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to Selection Grade CG-I, Grade Rs.425-700(RS), vide S.O.No.169/TA/DK2/ADMI/86 dt. 28.5.1985, issued by the respondents, and order that they be repromoted to the post of Selection Grade Sub-heads in the scale of Rs.550-750 (Revised scale), retrospectively, w.e.f. 1.4.1984 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-I, 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.

In the circumstances of the case, we make no order as to costs.

P.C. Jain
(P.C. JAIN)
MEMBER(A)

T.S. Oberoi
(T.S. OBEROI)
MEMBER(J)