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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A. NO.1039/1990

DATE OF DECISION: 14.2.92

SHRI LAL CHAND MISHRA & ORS. ...APPLICANTS
VS.

UNION OF INDIA & ORS. ...RESPONDENTS

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SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANTS

...SHRI O.P. GUPTA

FOR THE RESPONDENTS

...SHRI P.S. MAHENDRU

1. Whether Reporters of local papers may be allowed to see the Judgement? yf
2. To be referred to the Reporter or not? yf

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

Lal Chand Mishra and four others jointly filed this application with permission under Section 19 of the Administrative Tribunals Act, 1985, being aggrieved by non grant of proforma fixation in the grade of Rs.1200-2040 and the consequential benefits to the applicants (graduates) in terms of Railway Board's letter No. PCI II/81 dt. 18.6.1981 and 31.7.1981 and also decided in the PNM proceedings dt. 7/8.9.1989 Item-13.

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2. The applicants claimed the relief that a direction be issued to the respondents that the applicants are entitled to proforma fixation from 1.10.1980 or the latter date, i.e., the date of their appointment and are entitled to all service benefits.

3. The facts of the case are that the applicants on the date of the application were working as UDCs. in the grade of Rs.1200-2040 and their service particulars are as under :-

Sl. No.	Name	D.O.B.	D.O.A.	Present Pay (Rs.)	w.e.f.
1.	Lal Chand Mishra	1.7.56	29.1.81	1320/-	10/1985
2.	Krishan Lal	14.1.52	26.7.80	1320/-	10/1985
3.	Ghanshyam	30.11.55	28.2.81	1320/-	10/1985
4.	Jagdish Narain Kesri	5.11.55	22.5.80	1320/-	10/1985
5.	Rahisuddin	7.5.59	26.7.82	1320/-	10/1985

4. It is further stated that all the applicants are graduates. The Railway Board sanctioned scheme of upgradation and under its circular dt. 18.6.1981 (Annexure A), reserved $13\frac{1}{3}$ % of the total posts in the pay scale of Rs.1200-2040 to be filled from amongst graduate clerks already serving in the lower grades etc. Further, it provided that it will have retrospective effect from 1.10.1980 giving the benefit of proforma fixation from

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the actual date of taking over of charge of the upgraded post. The respondents conducted a written test on 2.6.1985 followed by interview on 14.8.1985 and 16.8.1985 and as a result of this selection, the applicants including many others were selected. The applicants were placed from Sl.No.33 to 37 of the Select List (Annexures M & N). The applicants were, however, given proforma fixation from October, 1985, instead the proforma fixation with consequential relief w.e.f. 1.10.1980 as ordained. The applicants represented, but to no effect. The applicants, however, also invited the attention of the respondents to the judgement passed in OA No.132/1986 decided on 28.10.1986 (Annexure O) passed by the Central Administrative Tribunal, Allahabad Bench and the implementation letter of Divisional Railway Manager, Moghul Sarai (Annexure P).

5. The respondents contested the application and stated in the reply that the application is barred by time and the period of limitation cannot be judged on the basis of the PNM meeting, but the period of limitation is to be counted from the date of the Railway Board's letter dt. 18.7.1981. It is stated that para-3 of Annexure A of the application clearly shows that it was based on the vacancies of 30.9.1980. On the other hand, the applicants

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were promoted only in 1985 and as such are not entitled to the benefit of Annexure A. The applicants passed their selection as Senior Clerks vide letter dt. 25.9.1985 against graduate quota. Since they never assailed the status of Senior Clerk as on 10.1.1980 or prior thereto, they cannot claim or be granted proforma fixation w.e.f. 10.1.1980 without shouldering the responsibility of the post of the higher grade. The judgement of OA 132/86 under question, does not clarify all these points. In view of this, the applicants are not entitled even to the benefit of the judgement.

6. I have heard the learned counsel for both the parties at length and have gone through the record of the case. In fact, the present case is covered fully by the facts of the case of OA 132/86. In that case, Surinder Kumar Sandhya and Ors. working as Senior Clerks in various departments of the Eastern Railway at Moghul Sarai and who were graduates, claimed eligibility for promotion and upgradation to the post of Senior Clerks in the pay scale of Rs.330-560 amongst the graduate clerks already serving to the extent of $13\frac{1}{3}\%$ of the total posts of Senior Clerks. The petitioners of that case also appeared in the selection and they were empanelled for appointment on 30.1.1985. The applicants of that case

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claimed on the basis of the letter dt. 18.6.1981 issued by the Railway Board for filling up the vacancies retrospectively w.e.f. 1.10.1980 on proforma basis. The respondents also contested that case and after discussing the matter in greater detail, by the judgement dt. 28.10.1986, ^{the claim of} ~~the~~ applicants of that OA 132/86 for proforma fixation of their pay on the basis of para-2 of Railway Board's letter dt. 10.6.1981 (Annexure A to this application) from 1.10.1986 was declared valid and justified and the application was allowed. Not only this, but the judgement has also been implemented by the Divisional Railway Manager, Eastern Railway, Moghul Sarai by the letter dt. 8.9.1988 (Annexure P). Thus the applicants also claimed the benefit of the same judgement. The respondents have raised the point of limitation, but the same point was also raised in the OA 132/86. The respondents themselves by the letter dt. 10.8.1989 (Annexure L) on the subject of non grant of proforma fixation from 1.10.1980 to certain senior clerks on promotion under restructuring against 13.1/3% graduate quota, issued by the Divisional Railway Manager, Northern Railway, New Delhi to the General Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi, stated that the matter be decided by the competent authority and a copy of the

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same was sent to the Divisional Secretary, NRMU & URMU. Thus the claim of the applicants remained under consideration and the applicants have filed a number of representations, annexed with the application as Annexures-E, F, G, H, I, J and K of different dates. Thus it cannot be said that the present application is barred by limitation. In the judgement of OA 132/86, the Hon'ble Bench also observed that the application of all those applicants should not be dismissed on technical grounds.

7. On merits, besides the case being covered by the judgement of the OA 132/86 decided in October, 1986, the Board's letter dt. 18.6.1981 provides that the vacancies of Senior Clerks existing as on 30.9.1980 should be filled up in accordance with orders in force prior to the issue of this letter. The vacancies arising on or after 1.10.1980 shall be filled up in accordance with the procedure prescribed in this letter. Para-1 of this aforesaid letter of 1981 provided for direct recruitment of graduates to the post of Senior Clerks to the extent of 20% of the total strength. Para-1(ii) provided that 13.1/3% of the total posts of Senior Clerks in the pay scale of Rs.330-560 will be filled up from amongst the graduate clerks, already

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serving in the lower grades after allowing them the age relaxation. These vacancies will be filled up by a competitive examination to be held by the Railway Service Commission. Para - 2, provided that these orders will take effect from 1.10.1980, but no arrears shall be payable on this account. The pay of an employee appointed to the upgraded post may be fixed proforma from 1.10.1980, but the actual payment of emoluments in the higher posts should be allowed only from the date he takes charge of the upgraded post.

8. I am fully in agreement with the reasoning given in judgement in OA 132/86. The applicants in this case are similarly situated in as much as from 2.10.1980 to 31.10.1983. There were 15 posts and prior to 1.10.1980, there were 37 posts. The panel dt. 16.10.1985 (Annexure N) clearly shows that the present applicants are at Sl.No.33 to 37. So it cannot be said that the posts were not available for them after 1.10.1980.

9. The learned counsel for the respondents, besides taking the point of limitation, argued that since the applicants never assailed the status of Senior Clerks as on 10.1.1980 or prior thereto, they cannot claim or be

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granted proforma fixation w.e.f. that date because they were promoted only in 1985. It is vaguely argued by the learned counsel that the letter of the Railway Board as well as the judgement referred to by the respondents do not clarify all the points in issue. However, this is not so. The present application is squarely covered by the judgement of OA 132/86 because the applicants situated in the similar position and circumstances have been given the benefits. The applicants are also graduates entitled to proforma fixation from 1.10.1980 as per Railway Board's circular.

10. The Railway Board's letter clearly shows that the upgradation was to be given effect only when such graduate candidates are available; actual payment of the emoluments of the higher posts were to be allowed only from the date, the selected persons took charge of the higher grade posts and thirdly, proforma fixation of the applicants should have been made from 1.10.1980, but no arrears were to be allowed. There is no ambiguity, therefore, in any respect. However, the applicants cannot claim the arrears of pay from 1.10.1980.

11. The application is, therefore, partly allowed and the claim of the applicants for proforma fixation of their

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pay on the basis of para-2 of the Railway Board's letter dt. 18.6.1981 from 1.10.1980 is allowed. The rest of the reliefs claimed for ^{on} the other grounds are disallowed. In the circumstances, the parties to bear their own costs.

J. P. Sharma
14.2.92
(J.P. SHARMA)
MEMBER (J)

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