

(28)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

D.A.No. 1297/90.

Date of decision. 22-2-95

Hon'ble Shri S.R. Adige, Member (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

1. Pritam Singh, S/o Shri Prem Singh,
Ex-Clerk Grade, Western Railway,
R/o WZ-114, Siri Nagar, Shakurbasti,
Delhi-110 034.
2. Nihal Singh S/o Shri Jiya Ram,
Working as Clerk Grade I, Western Railway,
R/o V.&P.O. Shaharanwas, Rewari, Haryana.
3. Babu Ram Sharma S/o Sh. Toda Ram,
Working as Clerk Grade I, Western Railway,
R/o 3606/4342, Tri Nagar, Delhi-110 035.
4. Puran Chand Gupta S/o Sh. Banwari Lal,
Working as Clerk Grade I, Western Railway,
R/o A/91, Lohia Nagar, Ghaziabad (U.P.)
5. Pritam Singh, Ex. Clerk Grade I,
Western Railway, R/o WZ-59/A,
Guru Nanak Nagar, Delhi.
6. Anand Sarup Sandhuraya S/o Sh. Duli Chand,
Working as Clerk Grade I, r/o 810, Prem Gali,
Gandhi Nagar, Delhi-110 001.
7. M.L. Sharma, S/o S. Chottey Lal, working as
Clerk Grade I, Western Railway, R/o Qtr.No.13/A-1,
Railway Colony, Punjabi Bagh, New Delhi.
8. H.R. Vig S/o Sh. Balak Ram, Working as
Clerk Grade I, Western Railway, R/o Qtr.No.135/1,
DCM Railway Colony, Delhi Kishan Ganj,
Delhi-110 006.
9. H.L. Grover, S/o Shri N.R. Grover, working as
Clerk Grade I, Western Railway, R/o Qtr.No. 7/7,
Seva Nagar, Railway Colony, New Delhi.
10. Suraj Bhan S/o Shri Chuni Lal,
Working as Clerk Grade I, Western Railway,
R/o A-4/16, Railway Colony, Punjabi Bagh,
New Delhi.
11. Ratan Singh S/o Sh. Shadi Ram,
Working as Clerk Grade I, Western Railway,
R/o Vikas Nagar, Rewari.
12. Ranjit Singh Gupta, S/o Shri Sambhu Dayal Gupta,
Working as Clerk Grade I, Western Railway,
R/o 340, Than Singh Nagar, Delhi-110050. .. Applicants

(By Advocate Shri Mahesh Srivastava)

versus:

1. Railway Board, through its Chairman,
Rail Bhawan, New Delhi

(13)

2. Union of India,
Service to be effected through General Manager,
Western Railway, Church Gate,
Bombay.

3. The General Manager,
Western Railway, Church Gate,
Bombay. .. Respondents

(By Advocate Shri Romesh Gautam)

O_R_D_E_R

Hon'ble Smt. Lakshmi Swaminathan, Member (Judicial)

The petitioners have filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for stepping up of their pay ~~at~~ par with their juniors who have been given benefits of Railway Board's Order dated 3.2.1988.

2. The brief facts of the case are that the applicants, who were working as Clerk Grade II with the Respondents, had appeared and passed Appendix II-A Examination between 1968 and 31st March, 1970. Admittedly, one Shri Mange Lal Rastogi, who was junior to the applicants had passed the said examination in 1962, was promoted to Grade I and subsequently, reverted in September, 1968. Initially, only those who had passed Appendix II-A Examination could be promoted

18

from Grade II to Grade I. As per the Railway Board's circular dated 30.5.1961 (Annexure P), if a junior qualifies the Appendix II-A Examination earlier than his senior, he will be promoted, but when the senior qualifies the Examination, the junior will have to be reverted. ¹³ Shri Mange Lal Rastogi, who admittedly was junior to the applicants, having cleared the examination in 1962 and was promoted w.e.f. 1.4.1968, but when the applicants qualified the aforesaid examination in 1968 and 1970, Shri Mange Lal Rastogi and certain others were reverted to give the promotions to the applicants as per Railway Board's letter dated 30.5.61 (Ann.P to MA). By the Railway Board's Circular dated 25.7.1969 (Annexure P.1), one last opportunity was given to the seniors for passing the Appendix II-A Examination before 1.4.1970 so as to allow them to retain the benefit of their seniority available under the extant rules. Then another circular was issued on 25.9.1969 by which the previous procedure of junior persons promoted earlier having to revert on the expiry of a short-term vacancy against which a senior was promoted later ceased to exist and was modified to the effect that those Clerks Grade-I would revert on the cessation of such vacancies. On the representation of persons like Shri M.L.Rastogi and few others that if the instruction of 25.9.1969 had been issued just a little earlier, they would not have been reverted from Clerk Grade-I, their request was considered by the Railway Board who issued the order dated 3.2.1988 (Annexure P-5). The request of Shri Mange Lal Rastogi and others was accepted partially and it was decided as follows:-

" The matter has been considered carefully by the Ministry of Railways in the light of deliberations in the various meetings of the Departmental Council and it has been decided as a special case, not to be quoted as a precedent, that the concerned employees who were reverted as CG II during the period from 1.4.66 to 25.6.69 should be allowed to count for increments in the grade of CG I (since re-designated as junior accounts assistants), the period during which they were reverted as CG II if such reversion would not have taken place if the instructions contained in Board's letter dated 25.9.69 cited above had been given effect to from 1st April 1968. Pay in the grade of CG I will be re-fixed proforma accordingly. This will be subject to the following conditions:-

- i) There will be no change, merely on account of this dispensation, in the seniority position of the staff concerned in the grade of CG I nor will any claim be entertained from them in this regard.
- ii) The period during which the concerned staff would have, in any case, been reverted by senior Appendix II qualified staff in accordance with the rules then in force will not be taken into account for the purpose of proforma fixation of pay.
- iii) the enhanced pay on account of proforma fixation of pay so allowed, will be payable with effect from 1.1.88 and no arrears on this account will be payable for any period prior to 1.1.1988".

16

3. By the respondents' decision contained in the letter dated 3.2.1988 referred to above, Shri Mange Lal Rastogi & Others like him got the benefit of increments reckoning their service as CG I w.e.f. 1.4.1968, the date when they were promoted. Admittedly, the applicants have passed Appendix II A Examination nearly a decade after Shri Rastogi. These applicants were promoted before consideration for re-promotion of Shri Mange Lal Rastogi and others could be extended since as per extant instructions senior-most eligible qualified candidates were to be promoted. By the Railway Board's letter dated 3.2.1988, the period of reversion of persons like Shri Mange Lal Rastogi were ignored and the respondents treated their cases as if they had not been reverted in ^{the} particular facts and circumstances of the case.

4. The applicants have claimed the benefit of higher fixation of pay with regard to the pay of their juniors on the basis of the next below rule provision, which has been rejected by the respondents. The respondents have stated in their reply that the next below rule benefits are not admissible to the applicants since this rule deals with a situation where an officer who is working out of his regular line should not suffer by forfeiting acting promotion which he would have otherwise received this case, had he remained in his regular line, In the applicants remained in the regular line of promotion and were not

✓ 17

eligible for promotion on the dates their juniors were promoted as CG I because they had not passed the requisite departmental examination at that time.

5. The learned counsel for the applicants has argued that the applicants being admittedly senior to Shri Mange Lal Rastogi & Others cannot get lower pay than their juniors.

6. The learned counsel for the respondents relies on the judgment of this Tribunal in Sardar Paramjit and Others v. Railway Board & Others (D.A.No. 537/94) decided on 27th September, 1994. He submits that the ^{all 13} facts of this case and on fours with this decision.

7. We have carefully considered the arguments of the learned counsel of both the parties and perused the records in the case. The claim of the applicant for benefit of stepping up of their pay with those of their juniors on the basis of the next below rule provision is rejected. The applicants, no doubt, remained in the regular line of promotion but were not eligible for promotion because they had not passed the requisite departmental examination at the time when their juniors had passed and were promoted for which they cannot now take the benefit under the NBR provisions. The juniors in were this case admittedly receiving higher pay because they qualified in the examination several years earlier than the applicants. There are also a number of situations where a junior can possibly get higher salary than the senior for which the NBR provisions are not applicable.

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✓ (19)

The Railway Board's letter dated 3.2.1988 had specifically taken into account the facts that Shri Mange Lal Rastogi and Others were promoted earlier than the seniors since they had qualified Appendix II A Examination about a decade earlier and had to be reverted as per the exant rule. Taking into account the changed situation contained in the Board's instructions dated 25.9.1969, referred to above, the later instructions of 3.2.1988 had been issued whereby Shri Mange Lal Rastogi and Others were treated as if they have not been reverted from 1.4.1968 to 25.9.1969 for the purpose of pay fixation. The learned counsel for the applicants has also stated that none of the applicants are covered by the Board's instructions of 3.2.1988. These instructions further ^{provide} ~~stated~~ that the decision had been taken as a special case, not to be quoted as precedent.

8. In the facts and circumstances of the case and in the absence of any specific rules/instructions applicable to the applicants, their claims for stepping up of pay with those of the juniors like Mange Lal Rastogi & Ors. is without any basis. Accordingly, the O.A. is ~~disallowed~~ ^{disallowed} rejected. There will be no order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Anil Agarwal
(S.R. Adige)
Member (A)