

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI:

(15)

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Date of Decision: 22.05.1992

DA 557/91

NIRMAL SINGH RAJU & 34 ORS. ... APPLICANTS.

Vs.

UNION OF INDIA & ANR. ... RESPONDENTS.

CORAM:

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

For the Applicant. ... Shri R.L. Sethi with
Shri B.S. Mainee,
Counsel.

For the Respondents ... Shri H.K. Gangwani,
Counsel.

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

JUDGEMENT

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

The applicant and 34 others have filed this application assailing the impugned notification No.E(NG) II/84/RC-3/15 (AIRF) dated 15.5.1987 issued by the Deputy Director Establishment (N), Railway Board, New Delhi. This notification is on the subject of recruitment of Traffic/Commercial Apprentices.

2. The applicants have claimed the relief that a direction be issued to the respondents to give benefit

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of the revised pay and fitment vide Railway Board's notification dated 15.5.1987 to the applicants also with consequential benefits of fixation of pay, seniority and arrears and also to give the entire benefit of the Judgement of the Madras Bench of CAT, given in the Original Application Nos.322/88 and 488/87 decided on 4.12.89. It is further prayed that the said notification of 1987 be quashed so far as it excludes the Traffic/Commercial Apprentices appointed earlier from its purview. Along with this Original Application an MP has been moved by all the applicants to join together, which has been allowed.

3. The applicants briefly stated that the applicants were selected as Traffic Apprentices and after conclusion of three years' training fitted two grades above the lowest stage of the scale in their respective categories against vacancies in the post of Assistant Station Masters, Yadr Masters etc. The applicants have been placed in the scale of Rs.1400-2300(RPS). That the respondents in terms of the aforesaid notification, 1987 revised the pay scales of the Traffic/Commercial Apprentices from grade Rs.1400-2300 to grade Rs.1600-2660. The said notification of the Railway Board's so far as it excludes the Traffic/Commercial Apprentices, who have already been selected and undergoing training is absolutely illegal and discriminatory and it has been so held by Madras Bench of this Hon'ble Tribunal in

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DA 322/88 and DA 488/87 decided on 4.12.1989. A copy of the judgement is annexed as Annexure A-2. The Hon'ble Supreme Court has also upheld that the said judgement as the SLP filed against the same was dismissed by the order dated 23.7.1990(Annexure A-4). In the case of the Madras Bench a direction was issued to the respondents i.e. Railways that the benefits of the revision of pay and fitment on absorption should be given to the applicants of the DAs from 15.5.1987 with consequent monetary benefits. The same benefits is being claimed by the present applicants on the ground that the scheme of recruitment of the Traffic/Commercial Apprentices continues to be same as mentioned in clause-I para-2 of the said notification. Further, mere change of the syllabus, the applicants cannot be discriminated against so far as the scale of pay is concerned. Further, the applicants having undergone the training course cannot be considered junior to the subsequent recruits and cannot be given a lower scale of pay when the job to be performed by them will be the same. The respondents did not file any counter in this case and their right to file counter was forfeited but subsequently MP 3641/91 was filed by the learned counsel Shri R.L. Sethi that the present DA be also clubbed with DA 1395/90. However, the said DA has also been disposed of by a Division Bench on December 2, 1991 so this MP has become infructuous. The learned

counsel for the respondents Shri Romesh Gautam has also moved MP 827/92 praying that the counter be taken on record. After hearing learned counsel for both the parties this MP is allowed and the counter filed by the respondents is taken on record.

4. The respondents in their reply have stated that the present application is barred by Section 21 of the Administrative Tribunals Act, 1985. It is further stated that there is another judgement of New Bombay Bench and Ernakulam Bench which are based on the judgement dated 4.12.89 passed by the Madras Bench in OA 322/88. After these judgements were given, the Bombay Bench in order dated 29.8.1991 has upheld the stand of the respondents i.e. Railways. A copy of the judgement is filed as Annexure R-1. It is further stated that the Traffic Apprentices after conclusion of training for the period from 20.5.86 to 19.2.89 were temporarily appointed as Assistant Yard Master in the grade Rs.1400-2300 and they have joined duty as Assistant Yard Master on 4.3.89 so far as the applicant No.1 Shri Nirmal Singh Raju is concerned. That the present applicants were recruited and a different scheme then that of outlined in the Railway Board's letter dated 15.5.87. The said letter clearly says that Traffic Apprentices will have to undergo standards of

Examination higher than in the case of those whose recruitment has already been done. A combined selection has been laid down for both the categories i.e. Traffic Apprentices and Commercial Apprentices. Since both the categories pertain to different departments and have different promotional avenues as such the claim of the applicants is wrong and cannot be accepted.

5. I have heard the learned counsel for both the parties at length. As regards the judgement of the Bombay Bench in OA 920/88 decided on 29.8.91, the applicant of that case was Assistant Station Master in the Central Railway had the grievance of discriminatory pay scale gradation and deprivation from avenues of promotion made available to persons of same cadre who have been treated to be on higher scale and level all around. The Division Bench observed as follows :-

"It was open for the Railway Board to provide fresh scheme of recruitment of Apprentices and Guard etc. and also to prescribe minimum qualifications and a different pay scale. The Railway Board vide circular dated 15.5.1987 prescribed minimum educational qualification which was higher than that of existing staff and that is of pay difference of pay scale was prescribed. The principle "Equal pay for equal wages would apply to not only the duties, functions but also educational qualifications etc. are the same in regard to similarly placed employees. There can be a difference of pay scale between employees having same nomenclature and broadly performing similar nature of work. In this connection reference may be made to the case of Bench Secretaries of High Court, where equal pay was not allowed because of difference in same matter see J.P. Chaurasia and ors Vs. State of Uttar Pradesh and others (1989)/SC 12.

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A reference may also be made to the case of Mevaram Kanojia Vs. All India Institute of Medical Sciences and others 10 ATR Cases 51, 1989 pg.51 (SC) and others in which earlier cases have been considered and the principle regarding difference in pay scale has been threshed out."

After the delivery of this judgement by the Bombay Bench affirming the circular of 15.5.87 which is also in issue of the present case. The Division Bench in the OA 1395/90 decided the case of Shri Santosh Singh & 20 ors. on December 2, 1991 and in that case the Bombay Bench judgement was considered and it has been held on page 4 of the judgement "the respondents have produced a copy of the judgement dated 29.8.91 delivered in OA 920/88, but the facts of that case seems to be different from those of the applicants". This judgement of the Principal Bench also refers to a number of cases decided by the other Benches and para 4 of that judgement refers to those cases.

- "(1) Shri K.S. Kale & ors. Vs. Union of India and ors. (OA 510/89) decided by the New Bombay Bench of this Tribunal on 28.8.90.
- (2) Ashok Kumar and C.Sreekumar Vs. Union of India & Ors. (OA K.59/88) decided by the Ernakulam Bench of this Tribunal on 24.1.90.
- (3) Rajesh Kumar & Ors. Vs. Union of India & Ors. (OA 777/91) decided by the Principal Bench at Delhi on 27.11.90.
- (4) N.A. Khan & Ors. Vs. Union of India & Ors. (OA 20/89(L) decided by the Circuit Bench Lucknow on 7.1.91.
- (5) M.Bhaskar and Ors. Vs. Union of India & Anr. (OA 69/91) decided by the Hyderabad Bench on 7.8.91."

6. Having gone through the records of the case, the only plea taken by the respondents is that the

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higher scale of pay Rs.1600-2660 instead of Rs.1400-2300 has been prescribed because the standard of examination will be higher than at present, as per para-2 (vii) of the Railway Board's letter dated 15.5.87.

According to them, Commercial Apprentices appointed prior to 15.5.87 were recruited with lower standard of examination. In view of a number of decided cases of Madras Bench and those referred to above, when those applicants have been allowed giving pay scale of

Rs.1600-2660 to the applicants therein w.e.f. 15.5.87.

Since the present case is also covered by the judgement of OA 1395/90 referred to above and the case of the Bombay Bench OA 920/88 has been distinguished by the Division Bench so the present case is also is to be allowed being covered by the judgements referred to above.

7. In the result, the application is allowed with the direction to the respondents that the applicants herein shall also be entitled to the higher scale of pay of Rs.1600-2660 and fitment w.e.f. 15.5.87 as also the consequential benefits thereof. This order shall be implemented by the respondents within a period of three months from the date of receipt of a copy of this order.

There shall be no order as to costs.

J. P. Sharma
(J. P. SHARMA 23.5.92
MEMBER (J)