

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

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Date of Decision: 24.12.92

DA 1796/92

SMT. ARTI MISHRA & ORS.

... APPLICANTS.

Vs.

UNION OF INDIA & ANR.

... RESPONDENTS.

CORAM:

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

For the Applicants

... SHRI O.P. GUPTA.

For the Respondents

... Ms. AHJU SRIVASTAVA,
proxy counsel for
SHRI SHYAM MOORJANI.

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

J_U_D_G_E_M_E_N_T

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

Smt. Arti Mishra, Smt. Santosh Arora and Smt. Kanak Yadav were appointed as LDC in the office of the respondents on 18.8.80, 19.9.80 and 11.8.80 respectively. They were appointed in the grade of Rs.260-400. All of them are Graduates. The Railway Board, in their letter dated 18.6.81, sanctioned 'scheme of Upgradation' thereby restructuring the cadre of Ministerial staff directing the reservation to the tune of 13.1/3%

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of the total of the Senior Clerks posts in the scale of Rs.330-560 to be filled in from amongst the serving Graduates Clerks in the lower grade (Annexure 'A'). Further, it provided that it will have effect from 1.10.80 retrospectively and giving benefits of proforma fixation from actual date of taking over the charges of the upgraded posts. The applicants, after due selection were promoted as Senior Clerks and were given proforma fixation from October, 1985.

2. The grievance of the applicants in this application, jointly filed by them, is regarding non-grant of proforma w.e.f. 1.10.80 fixation/in the grade Rs.330-560, revised to Rs.1200-2040 besides, consequential benefits in terms of Railway Board's letter dated 18.6.81.

3. The applicants have claimed the relief that non-grant of proforma fixation from 1.10.80 is illegal and against the principles of natural justice and void, and that they should be granted proforma fixation from 1.10.80 including the service benefits. It is further prayed that it be declared that the 'Rider' denying the consequential benefits from 1.10.80 is illegal, discriminatory and against the principles of natural justice and the applicants are entitled to the consequential benefits from 1.10.80.

4. It is not disputed that the Railway Board issued a circular dated 18.6.81 on the subject of restructuring of the

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cadre of Ministerial staff of departments other than Personnel.

Para-(ii) of the said circular is as follows :-

"13-1/3% of the total posts of Senior Clerks in scale Rs.330-560 will be filled from amongst the Graduates Clerks already serving in the lower Grades after allowing them the age relaxation already in force. These vacancies will be filled up by a competitive examination to be held by the Railway Service Commission. In the event of Graduates Clerks not being available from amongst the serving employees to fill this quota, the residual vacancies will be filled by direct recruitment through the Railway Service Commission over and above the 20% quota referred to in (i) above."

However, in para-2 of the said Circular is as follows :-

"These orders will take effect from 1.10.80 but no arrears shall be payable on this account. The pay of an employee appointed to the upgraded post may be fixed proforma from 1.10.80 but the actual payment of emoluments in the higher post should be allowed only from the date he takes over charge of the upgraded post. This has the sanction of the President."

This circular also lays down that all vacancies arising on or after 1.10.80 shall be filled in accordance with the proportion prescribed herein.

5. The respondents in their reply have stated that the pay of the employees so appointed under the above restructured scheme in pursuance of the circular dated 18.6.81, the pay of the employees is to be fixed from 1.10.80 but actual payment of the emoluments to the higher post were to be allowed only from the date when the charge of promoted post but by the circular dated 31.7.81, P.S. No.9176, it was clarified that the serving Graduate Clerks in the grade Rs.260-400 promoted as Senior Clerks in the grade of Rs.330-560 against the upgraded

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post on the basis of a competitive examination held as per instructions on the subject can get the benefit of upgradation only from the date they were promoted as such. Thus, it is argued by the learned counsel for the respondents that the serving Graduates are not entitled to proforma fixation of posts w.e.f. 1.10.80 against the restructures vacancies. It is also stated that the present application is barred by limitation.

6. The learned counsel for the applicants referred to the decision in the case of OA 132/86 Surender Kumar Sandhia & Ors. Vs. UOI, and other judgements annexed with the application in the case of Bipin Kumar Jha, [&] Lal Chand Mishra. A copy of the judgements have been annexed as Annexure-H and I to the appln. The issue involved was the same in those cases also. The present applicants were appointed in August, 1980 and the benefit of restructuring was allowed by the Circular dated 18.6.81. 13.1/3% of the total posts in the scale of Rs.330-560 were to be filled from amongst Graduates Clerks, already serving in the lower grades. This circular also provided that the benefit of proforma fixation was to be given from 1.10.80 and actual benefit from the date of taking over charge of the upgraded post. It is not disputed that the respondents conducted the selection and the applicants have been empanelled as Senior Clerks on the basis of that selection and joined the promoted post of Senior Clerk in October, 1985. The applicants, therefore, are fully covered by the Circular dated 18.6.81. The clerifica-

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tion ~~due~~ in the circular of the Railway Board dated 31.7.81, enclosed as Annexure R-2 to the counter, specifically lays down that 13.1/3% of the vacancies of Senior Clerk grade Rs.330-560 arising on 1.10.80 consequent upon implementation of the aforesaid order dated 18.6.81 will be filled from amongst the graduates Clerks already serving in the lower grade in the manner indicated in para-1(ii) of this Ministry's letter dated 18.6.81. Sub-para-ii of para-1 of the circular dated 18.6.81 already been quoted above. In view of this fact, the case of the applicants covered by the Circular dated 18.6.81.

7. The respondents in their counter have taken a preliminary objection that the applicants are challenging the Circular of 1981, which cannot be allowed as the same is beyond the jurisdiction of the Tribunal because the action arose ~~was~~ three years prior to the enforcement of the Administrative Tribunals Act, 1985. The challenge of these applicants to the circular is only to the extent that they should be given actual benefit of fixation of pay w.e.f. 1.10.80 and that relief has not been allowed to the applicants, who filed earlier applications before the Tribunal. So, obviously the challenge to that part of the circular is barred by limitation and is not within the jurisdiction of the Tribunal. But as regards the proforma fixation of pay as Senior Clerk w.e.f. 1.10.80 in compliance with the circular dated 18.6.81 cannot be said beyond the jurisdiction of the Tribunal. The only point that survives, therefore, is

(12) (XII)

that the applicants have come very late before this Tribunal and the applicants in the earlier Original Applications, referred to in the application itself, have been granted relief though they also came very late before the Tribunal. The applicants have desired that the benefit which has already been given to similarly situated applicants, who were also working as LDC at the time when the circular of the Railway Board dated 18.6.81 became operative, to deny that benefit to the applicants who were also LDC before 1.10.80 would be arbitrary and discriminatory and shall also be against the principles of natural justice. Though the judgement in a case does not give a fresh cause of action but in the present circumstances when the respondents have themselves implemented the circular in favour of some of the Clerks then the same benefits should also be extended to the applicants even though they have approached the Tribunal quite late. The judgement in OA 132/86 Surender Kumar Sandhia & Ors. Vs. UOI has already been implemented by DRM, Eastern Railway. When the administration has adopted a particular line of action in regard to fixation of pay of the Clerks on their promotion to Senior Clerks on the basis of available vacancies in the quota of 13.1/3% then the applicants should not be deprived of that benefits. In the present circumstances, it cannot, therefore, be said that the applicants should be refused the benefits only because they have approached the Tribunal quite late.

8. In the case of A.K. Khanna Vs. UOI (ATR 1988 (2) CAT 518) the benefit of earlier judgement has been given to similarly

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situated persons. The Hon'ble Supreme Court also in the case of Amrit Lal Bery Vs. Collector of Central Excise (1975 (1) SLR 153 SC) and in another judgement of K.L. Shephard Vs. UOI (1988 (1) SLJ 105 SC), the benefit of an earlier judgement has been given to similarly situated persons.

9. In view of the above facts and circumstances, the applicants are entitled to the relief claimed only to the extent that their pay should be fixed in a proforma manner without any monetary benefit w.e.f. 1.10.80 and the actual benefits of restructuring of the cadre will be available to them from the date they have actually taken over the charge to the post of Senior Clerk after clearing the departmental examination.

10. The application is, therefore, disposed of in the following manner:-

The application is partly allowed and the claim of the applicants for proforma fixation of their pay on the basis of para-2 of the Railway Board's letter dated 18.6.81 from 1.10.80 is allowed. The rest of the claims are rejected.

In the circumstances, the parties shall bear their own costs.

J.P. Sharma
(J.P. SHARMA) 24.12.82
MEMBER (J)