

(8)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 2727

of 1993

DATE OF DECISION 16th July, 1999.

Shri A.L.Chadha & Ors.

....Petitioner<sub>s</sub>

Shri P.M.Ahlawat,

....Advocate for the  
Petitioner(s)

VERSUS

Union of India & Ors.

....Respondent<sub>s</sub>

Shri R.L. Dhawan

....Advocate for the  
Respondents.

CORAM

The Hon'ble Mr. V. Ramakrishnan, Vice Chairman (A)  
The Hon'ble ~~Shri~~ Mrs. Lakshmi Swaminathan, Member(J)

1. To be referred to the Reporter or not? YES ✓
2. Whether it needs to be circulated to other  
Benches of the Tribunal? No.

*V.R.*  
(V. Ramakrishnan)  
Vice Chairman (A)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

O.A. No.2727/93

New Delhi this the 16<sup>th</sup> Day of July 1999

Hon'ble Mr. V. Ramakrishnan, Vice Chairman (A)  
Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

1. Shri A.L. Chadha,  
Hony. Secretary,  
I.R.E.D.P.S Association,  
Northern Railway, New Delhi.
2. Shri D.P. Sharma, S/o Shri S.N.Sharma,  
working as Data Entry Operator in  
the Office of E.D.P. Centre, Northern  
Railway, Baroda House, New Delhi. and  
R/o H.No. 1845, Mamoor Pur,  
Narela, Delhi-110040. Applicants

(By Advocate: Shri P.M.Ahlawat)

Versus

Union of India through:

1. The Chairman,  
Railway Board,  
Rail Bhawan,  
New Delhi.
2. The General Manager,  
Northern Railway,  
Baroda House,  
New Delhi. Respondents

(By Advocate: Shri R.L. Dhawan)

O R D E R

Hon'ble Shri V. Ramakrishnan, VC (A)

The second applicant, in the O.A. is one Shri D.P. Sharma, Data Entry Operator in the Office of E.D.P. Centre, Northern Railway, Baroda House, New Delhi and the first applicant is Hony Secretary of the Indian Railway EDP Service Association. They have approached this Tribunal seeking a direction to the Railway Administration to extend the benefit of the judgement of the Hyderabad Bench of this Tribunal dated 7.9.1989 in TA 65/87 wherein the Hyderabad Bench had directed the respondents to give upgradation benefits to a number of

staff working in the EDP Centre, of South Central Railway. It is contended that this judgement, copy of which is annexed as Annexure A-4, is a judgement in ~~rem~~ and the benefit should be extended to all the other comparable categories in other railways also.

2. We have heard Shri P.M. Ahlawat for the applicants and Shri R.L. Dhawan for the respondents.

3. The learned counsel for the applicant submits that the Railway Board by their Circular dated 26.3.1970, Annexure A-8, had classified the Punch Room Staff viz., the EDP as ministerial staff. The Railway had issued a Circular dated 18.6.1981 on the subject of restructuring of the cadre of ministerial staff of Departments other than Personnel, (Annexure A-3) which led to upgradation of certain posts in the ministerial cadre w.e.f. 1.10.1980. The applicants also belong to the ministerial cadre and, as such, were entitled to these benefits. As the same was not extended, a number of staff belonging to the EDP Wing of the Railways approached the Andhra Pradesh High Court seeking the same benefit. The Writ Petition was transferred to the Hyderabad Bench as TA 65/87 and the Hyderabad Bench noted that the Punch Room Staff had been treated on par with the ministerial staff all along. It further observed that by a letter dated 16.11.1984, the benefit of upgradation was given to the Punch Room Staff of EDP Centre w.e.f. 1.1.1984 and the Tribunal proceeded to hold that as the Railways have treated them on par with the ministerial staff they were entitled to have the upgradation benefit w.e.f. 1.10.1980. An SLP filed by the Department has been dismissed by the Supreme Court.

(11)

The counsel submits that in view of this clear directions of the Tribunal, the present applicants who are similarly situated should also be extended the same benefit. He further contends that the plea of the respondents that the application is barred by limitation is not tenable as All India Railway Federation had taken up the matter with the Railway Board and this was also an item in the PNM Meeting held in March 1993 requesting the Railway Board to implement the decision of the Hyderabad Bench unanimously on all the Zonal Railways. This was turned <sup>down</sup> ~~out~~ by the Railway Board by letter dated 21.8.1993 as at Annexure A-1 and applicants have approached the Tribunal immediately thereafter. For these reasons Shri P.M. Ahlawat contends that the O.A. should be allowed.

4. Shri R.L. Dhawan, learned counsel for the Railway Administration resist, the O.A. He states that the EDP Staff had been treated as a separate Seniority Unit right from 1970 as is seen from the Railway Board Circular dated 26.3.1970, Annexure 'A'. The Punch Room Staff had also been given the benefit of restructuring w.e.f. 1.8.1979 by the Railway Board letter dated 31.8.1979 at Annexure A-7. The EDP Staff has been constituted as a separate cadre by the Railway Board order dated 26.3.1970 which has been issued in exercise of the powers conferred on the Railway Board by Rule 123 of the Indian Railway Establishment Code and was thus in the nature of the statutory order. This was not taken into account by the Hyderabad Bench. Besides the factual position that EDP Staff had been separately given the benefit of upgradation w.e.f. 1.8.1979 was also unfortunately not brought to the

62

notice of the Hyderabad Bench. Shri R.L. Dhawan, learned counsel for the respondents, therefore, says that the decision of the Hyderabad Bench is not binding.

He also forcefully argues that the claim of the applicants is barred by limitation. The applicants seek the benefit of an order issued in 1981 and have filed the O.A. after about 12 years that in 1993. He says that the letter dated 28.1.1993 rejecting the request of the All India Railway Federation (AIRF) was addressed to the concerned Federation and not to the present applicants. He submits that the EDP<sup>SA</sup> is not a recognised Association. In any case the request was to extend the decision of the Hyderabad Bench to other Railways and according to him it is well settled that limitation will not be saved only by the fact that applicants filed the belated application after coming to know of the court decision.

5. We have carefully considered the rival contentions. The stand of the applicants is that the judgement of the Hyderabad Bench is a judgement in rem and the refusal to extend the benefit to similarly situated persons in other Zonal Railways is discriminatory and is in violation of Articles 14 and 16 of the Constitution of India. We find that 13 individual applicants had approached the Andhra Pradesh High Court which was transferred to the Hyderabad Bench as TA 65/87. The Tribunal had given a specific direction to the respondents to fix the pay of the applicants therein by giving them the upgradation benefits. It is clear that the benefit was to be extended only to the applicants therein, all of whom are individuals working in the EDP Centre in South

Centre Railway, Secunderabad. We do not agree that the judgement of the Hyderabad Bench is a judgement in rem and it is clearly a judgement in personam.

6. Shri R.L. Dhawan has referred to the decision of the Hon'ble Supreme Court in case of Bhoop Singh Vs. Union of India ATR 1992(2) S.C. 278 and also to the case of State of Karnataka & Others Vs. S.M. Kotrayya and Others 1996 SCC (L&S) 1488. We may reproduce the Head Note in Bhoop Singh's case:

" Constitution of India - Articles 14 and 136- Termination of Service - Challenged after a period of 22 years on the ground that some other similarly dismissed employees had been reinstated as a result of their earlier petitions being allowed - inordinate and unexplained delay or laches - no cogent explanation for delay - Relief refused - Government Servant having legitimate claim is expected to seek relief within a reasonable period even when no fixed period of limitation applies - Inordinate and unexplained delay is a strong reason to decline consideration of stale claim.

(ii) Constitution of India - Article 14 - Explained - Requirement of principle of non discrimination is an equitable principle and any relief claimed on that basis must itself be founded on equity - HELD - Grant of relief to the petitioner would be inequitable instead of its refusal being discriminatory."

Also in Kotrayya's case, the Supreme Court had held that there should be proper explanation for the delay and the Tribunal should satisfy itself whether the explanation offered was proper. The Head Note in this case reads as follows:

"Administrative Tribunals Act, 1985 - S.21 - Condonation of delay - Grounds for - The mere fact that the applicants filed the belated application immediately after coming to know that in similar claims relief had been granted by the Tribunal, held, not a proper explanation to justify condonation of delay -

(VA)

The explanation must relate to failure to avail the remedy within the limitation period -- Limitation."


It will be clear from the above directions that the mere fact that the applicants took steps after knowing that in similar cases the Hyderabad Bench had given some relief will not by itself justify condonation of delay. In the context of the law laid down in Bhoop Singh's case, we also hold that refusal to extend the benefit of the Hyderabad Bench decision to the present applicants does not by itself offend Articles 14 and 16 of the Constitution. The judgement of the Hyderabad Bench was a judgement in personam and, the benefit of the judgement has been given to the applicants therein. The present applicants cannot claim that they also have an automatic right to the same benefit.


7. We also find from the judgement of the Hyderabad Bench that it has not referred to the fact that the EDP Staff got the benefit of upgradation w.e.f. 1.8.1979 whereas the ministerial staff in Departments other than Personnel were given the benefit from 1.10.1980. Obviously, the same was not brought to its notice. Having got the benefit of upgradation from 1.8.1979, the EDP staff cannot get one more upgradation w.e.f. 1.10.1980. We also notice that subsequently they have been given upgradation benefits from time to time. It is stated that w.e.f. November 1984, the EDP Staff are in an advantageous position as compared to the Clerical staff in other Departments. This crucial information was unfortunately not brought to the notice of the Hyderabad Bench either by the Railway Administration or EDP Staff

who had approached the Court and the Hyderabad Bench had not taken into account this very relevant aspect while rendering its order.

8. We therefore hold that the judgement of the Hyderabad Bench does not automatically bind us and we are not required to follow the same decision when the Railways have now informed us about the factual position which they had not done before Hyderabad Bench. The letter of the Railway Board dated 28.1.1993, (Annexure A-1) lucidly brings out the reasons for not extending the upgradation benefit to the EDP Staff w.e.f. 1.10.1980 and we do not see any infirmity in this order.

9. In the light of the foregoing discussion, we hold that the O.A. is devoid of merit and dismiss the same. No costs.

  
(Mrs. Lakshmi Swaminathan)  
Member (J)

  
16/7/1993  
(V. Ramakrishnan)  
Vice Chairman (A)

\*Mittal\*