

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1109 of 1996

Allahabad this the 7th day of May 2002

Hon'ble Mr.C.S. Chadha, Member (A)
Hon'ble Mr.A.K. Bhatnagar, Member (J)

1. Safar Ahmad Son of Sri Sayeed Ahmad, Presently posted as Traffic Inspector(HQ)Allahabad, INR. Railway, Allahabad Division.
2. Anand Prakash a/a 41 years Son of Sri T.N. Srivastava, presently posted as Dy.Station Supdt. Allahabad(Northern Rly) Allahabad Division.
3. S.Mohd.Ali Ansari Son of Sri Noor Mohd.Ansari Posted as Station Supdt.Sirathu, Northern Railway, Allahabad Division.
4. Mohd. Aslam Khan Son of Late Abdul Qadir Khan, posted as Deputy Chief Yard Master, Allahabad, Northern Rly. Allahabad Division.
5. Anil Kumar Kalshreshtha, aged about 44 years, Son of Shri K.P. Srivastava, Posted as Station Sepdt., Mitawli, Northern Railway, Allahabad Division.
6. Mohd. Aslam Ali aged about 41 year, Son of Sri Irshad Ali, Posted as Station Supdt., Best giver) Aligarh Junction, Northern Railway, Allahabad Division.
7. Mohd. Masih a/a 42 years, Son of Sri Raziudding Siddiqi Posted as Traffic Inspector, Mirzapur, Northern Railway, Allahabad Division.

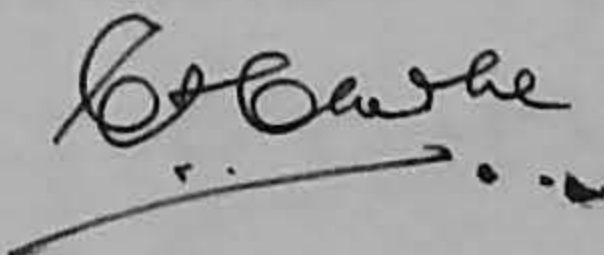
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8. Waheed Uddin a/a 42 years Son of Sri Moinuddin,
Posted as Divisional Transit Inspector, Allahabad
Northern Railway, Allahabad Division.
9. Jamaluddin Khan a/a 42 years Son of Abdul Wahid
Khan, Posted as Traffic Inspector, Allahabad
Northern Railway, Allahabad Division.
10. Mohd. Khaliqullah S/o Sri Hamidullah, Posted as
Station Supdt. (Rest giver) Allahabad, Northern
Railway, Allahabad Division.
11. S. Tariq Masood a/a 41 years, Son of Sri S.M.
Ahmad Posted as Traffic Inspector (SWR) Allahabad,
Northern Railway, Allahabad Division.
12. S.N. Singh a/a 31 years, Son of Sri Ram Jeet
Singh, Posted as Traffic Inspector, Chunar,
Northern Railway, Allahabad Division.
13. Roohullah a/a 42 years Son of Late Mohibullah,
Posted as Station Supdt., Karchana, Northern
Railway, Allahabad Division.
14. Arshad Mumtaz Siddiqui a/a 32 years Son of Mumtaz
Ahmad Siddiqui, Posted as Yard Master, Panki,
Northern Railway, Allahabad Division.
15. R.N. Sonkar a/a 36 years Son of Sri M.L. Sonkar,
Posted as Yard Master, Allahabad Northern Railway,
Allahabad Division.
16. Mauz Ahmad Siddiqui, a/a 37 years Son of Sri Raiz
Ahmad Posted as Yard Master, Juhi, Kanpur, Northern
Railway, Allahabad Division.
17. Parveen Kumar a/a 43 years, Son of Sri B.N. Srivastava
Posted as Station Supdt., Siwaith, Northern Railway,
Lucknow Division.

Applicants

By Advocate Shri Sudhir Agarwal



1. Union of India through the Secretary, Ministry of Railways, New Delhi.
2. The Railway Board, Rail Bhawan, New Delhi through its Chairman.
3. The General Manager, Northern Railway, Baroda House, New Delhi.
4. The Divisional Railway Manager, Northern Railway, Allahabad.
5. The Divisional Railway Manager, Northern Railway, Lucknow Division.

Respondents

By Advocate Shri A.K. Gaur

O R D E R

By Hon'ble Mr. C.S. Chadha, Member (A)

This O.A. has been filed by the applicants (seventeen in number) seeking the quashing of the orders of the D.R.M., Northern Railway, Allahabad, dated 12.08.96 by which the respondents proposed to revert the applicants to the posts in the grade of Rs.1400-2300 (Annexure A2B to A2P) in pursuance of the orders passed by the Hon'ble Supreme Court in Civil Appeal No5410 of 1992 on 06.05.96, which gave a direction contrary to the directions issued on the same subject by various Benches of the Central Administrative Tribunal and also earlier upheld by a Bench of the Supreme Court.

2. The brief facts of the case are that Traffic/Commercial Apprentices recruited before 15.05.1987 were considered to be not entitled to



be placed in the revised scale of Rs.1600-2660, but were considered instead entitled to be placed in the scale of Rs.1400-2300. As a result of this a large number of them approached various Benches of this Tribunal which ruled in the favour of the applicants, and the Tribunal in all cases ruled that the benefit of the Railway Board's Circular dated 15-05-87, in this behalf, must be applied to both the type of Apprentices, already working prior to 15.05.87 and those that were appointed after that date and all must get the benefit of being placed in the scale of Rs.1600-2660/- rather than in the scale of Rs.1400-2300/-. Special Leave Petition were filed against such orders of the Tribunal, and the Hon'ble Supreme Court vide its orders dated 06.05.96 upheld the Railway Board's Circular dated 15.05.87 and thereby upheld the grant of the scale of Rs.1600-2660/- to all the Apprentices in accordance with that circular. It is claimed that since the Govt. did not take any remedial action against the orders of the Hon'ble Supreme Court, the same became final and binding on the Railway, and therefore all Apprentices appointed prior to 15.05.87, were entitled to the benefit of the scale of Rs.1600-2660/-.

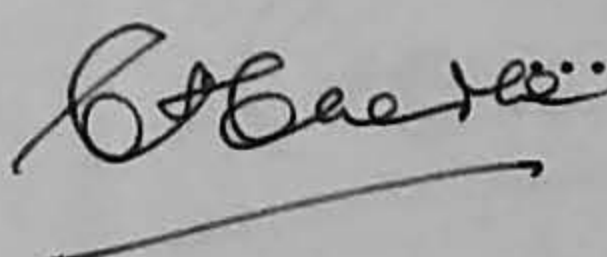
3. However, in some cases the Hon'ble Supreme Court was again approached and a Constitutional Bench passed an order In M. Bhaskar and Others Vs. U.O.I. & Others 1996 Vol (5) J.T. page 500, upsetting the earlier order of a Bench of the Supreme Court which had upheld

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the validity of the benefit granted to Apprentices working prior to 15.05.1987 and held that such persons were entitled to be placed only in the grade of Rs.1400-2300.

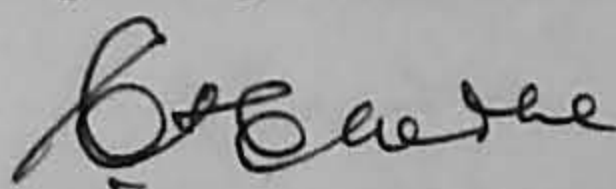
4. AS a result of the Supreme Court's last mentioned order the respondents passed the impugned order. The major ground on which the impugned order have been challenged is that since the applicants were not a party to the last mentioned case, decided by the Hon'ble Supreme Court, and since the orders of the Tribunal had become final in their favour, they cannot be affected by a later order.

5. The major issue to be decided is whether the principle laid down by the Hon'ble Supreme Court in M. Bhaskar and others (supra) can be applied to all such cases or only to those who were a party to that litigation. Any principle or matter of interpretation of any law/rule/statute decided by the Hon'ble Supreme Court is binding on all subordinate courts, as a result of the provisions of Article 141 of the Constitution will be applicable in all similar cases uniformly. Only regarding facts concerning the particular persons involved in the litigation, circumstances of each case and the decision thereon can have a different effect, more so if the Court itself gives such directions. This has been amply illustrated by the Judgment in this particular case itself. The Hon'ble Supreme Court had held that although the principle had been

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decided(leading to the reversion of the Apprentices appointed prior to 15.05.87) , for those Apprentices, in whose cases the decision of the Tribunal had become final and in their favour, no recoveries shall be made from them for the period they fortitiously drew the higher scale till the changed decision of the Court. This benefit was not given to those who had not gone to the Courts/Tribunals and not received such benefit at the hands of the Courts/Tribunals. Therefore only regarding this matter the Hon'ble Supreme Court made a distinction between those that did approach the Courts/Tribunals and those that did not But, as regards the applicability of the principle is concerned, there is no room for any doubt, and none exists in our minds, that by virtue of the provisions of Article 141 of the Constitution the principle laid down by the Hon'ble Apex Court shall apply uniformly to all similar cases. In effect there is nothing really wrong with applying the principle to all the applicants as well.

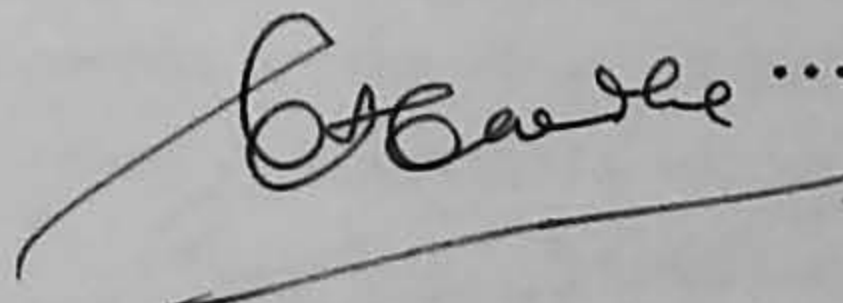
6. Nevertheless we have to see whether the Principle is being correctly applied and whether the result thereof is what the Hon'ble Supreme Court decided. Although this is not one of the reliefs claimed directly in the D.A., the learned counsel for the applicants stated that as a result of the impugned orders the applicants were losing the benefit of not only the scale of Rs.1600-2660/- already granted to them but the subsequent promotions as well, which



they had earned by going through and clearing selection processes, which cannot be construed to be the intention of the Hon'ble Supreme Court while passing the said orders. Against this the learned counsel for the respondents argued that even in the body of the order of the Hon'ble Supreme Court, the Court itself spoke of a similar objection raised by the concerned persons before it and had ruled that subsequent promotions cannot be a reason for not withdrawing the fortitious benefit gained by them by being wrongly placed in the scale of Rs.1600-2660/- when they were, in fact, entitled to only the scale of Rs.1400-2300. We feel that we must interpret the Hon'ble Supreme Court's orders correctly and we definitely draw a distinction from the interpretation put forth by the learned counsel for the respondents. What the decision of the Apex Court meant was simply that later promotions cannot undo the wrong at the earliest stage, however it also does not mean that after undoing the wrong done at the earliest stage the later right action should all be a nullity totally. To clarify, the Court's decision implied that the category of persons to which the applicants belonged, whether they got further promotions or not, must lose the benefit they got by being placed wrongly in the scale of Rs.1600-2660. However, this only means that the orders placing them in the higher scale should be considered to have been never passed and further any gain that they received only because of this wrong placement must be withdrawn. In effect



the applicants should have been deemed to be placed in the scale of Rs.1400-2300/- from the date they got the scale of Rs.1600-2660/-, and any promotions they got as result of the added seniority due to this placement must be reviewed but not withdrawn totally. Therefore, after having notionally reduced them ^{to} to the scale of Rs.1400-2300 and drawing up their seniority afresh due to this change from the relevant date the subsequent benefits will certainly accrue to them in their own rightful turn as determined by the new seniority lists. They cannot actually start functioning in the scale of Rs.1400-2300/- after several years of the fortitious placement in the scale of Rs.1600-2660/- and despite getting cleared for later promotions. They have to be only notionally reduced ^{to} to that scale on the relevant date and then considered for the later promotions they received in their own rightful turn. However, the impugned orders seek to do this with a small difference. The impugned orders do not mention that the applicants are proposed to be only notionally reduced to Rs.1400-2300/- from the dates they wrongly received the higher scale of Rs.1600-2660/-, but would retain the consequential benefits in their rightful turn, but straight away propose reversion to the scale of Rs.1400-2300/- and at the same time hold out the promise of being considered for promotions, according to the fresh seniority, without specifying the time period in which such consequential action was proposed to be

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completed. The impugned order read:-

"..... this office notice no.ET./3/T.App./CAT/ALD/91 dated 21.4.93 stand withdrawn and youx are proposed to be reverted to the post of A.Y.M. Grade Rs.1400-2300(RPS), which you held, prior to the implementation of Judgment of Hon'ble C.A.T., Allahabad in O.A.No.1178 of 1991 , you will be assigned fresh seniority accordingly and will be considered for further promotions in higher grades according to fresh seniority."

7. It is the underlined portion which the applicants have an objection to, for, they do not know when the latter action will be completed and for the time being they will fall several steps in the ladder of heirarchy in one go, without knowing when the consequential benefits of later promotions will be restored. To illustrate this further, the circumstances of this case, i.e. the travel of the proceedings after filing of this O.A., are itself a good indicator. We observe that an interim stay order was given against the impugned order of 12.8.96. -- There is no doubt that the Supreme Courts order in M. Bhaskar's case are to apply to the applicants, but if, the respondents interpretation of the Supreme Court's order is taken to be correct, it would mean that despite the lapse of more than five years since filing the O.A. the applicants would still be reverted directly to Rs.1400-2300/- even today, in 2002, without benefits that not only accrued to them from the date of their wrongful placement in the scale of Rs.1600-2660/- but also the benefits they were entitled to, or actually

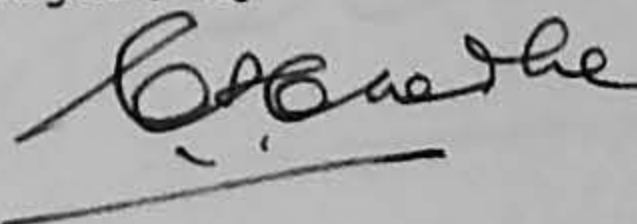
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received by them since the date of the filing of the O.A. (14.10.96) till the date of this Judgment. This would lead to an absurd situation and some persons may start receiving half the salary that were receiving (apart from plummeting two or three steps in rank) without any certainty of getting their rightful in a limited period of time. Although the respondents have ^{very} rightly mentioned that the applicants will be considered for further promotions according to the changed seniority, they have committed two mistakes:-

(a) they have straight away sought to reduce the applicants to the scale of Rs.1400-2300, from the dates of new orders to be passed in this behalf;

(b) they have not given any limit for the subsequent and consequential benefit.

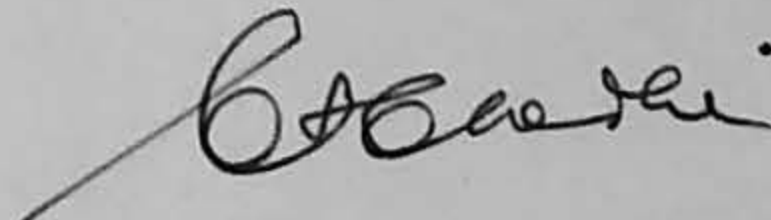
8. This led to a panic among the applicants. What should have been done is that the orders should have mentioned that the applicants were only being proposed to be notionally reduced (to the lower scale of Rs.1400-2300/-) from the relevant date, to be mentioned specifically in each case, and further fixed an interim notional pay for each applicant, taking into account the subsequent promotions/increments earned, with the stipulations that their further promotions will be considered according to a fresh seniority list, within, say, six months and that when that process reaches ^{by} a finality the difference between the interim notional pay and the final pay fixed would be properly adjusted.

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9. ~~So~~, we have come to conclusion that although the Supreme Court's decision in M. Bhaskar's case should and must be applied to the applicants, it should have been done in the manner discussed in the preceding paragraphs. However, the most important thing to be seen is what should be the relief granted by us. We are constrained to observe that the so called impugned orders are not final orders in every sense of the term, because they ^{len} ~~are~~ ^{only} ~~proposed~~ to revert the applicants with a further promise to consider later ^{len} ^{which would} benefits, ~~to~~ follow. After such proposals had received a finality, and after representations against such final orders (which would also include the publishing of the fresh seniority list of similar class of persons, and also further rightful promotions) were considered by the Railways and rejected, would the applicants have a right to approach the Tribunal. On the other hand we find that the applicants after receiving the notices (containing proposals) on 12.08.96 and 06.09.96 rushed to this Tribunal on 14.10.96 without waiting for the action. Of course they were ^{len} ~~driven~~ ^{to} this hurried action, by the anxiety that they would be, for ~~some~~ unspecified time, put to a great loss and would straight away go down several steps to the scale of Rs. 1400-2300, when, in fact they were supposed to ^{be len} ~~only~~ notionally reduced to that scale from their relevant date.

10. In the circumstances we cannot grant the relief of totally quashing the 'proposals' communicated



to the applicants vide the impugned notices *Br*
dated 12.08.96 and 06.09.96. However, in view
of the fact that we have been seized of the matter
and in view of the further fact that if we were not
to suggest any changes in the action proposed to
be taken by the respondents, there would be mis-
carriage of justice, at least temporarily till any
such wrong action taken is challenged before the *Br*
Tribunal again and till it is decided finally, *We, therefore*
direct that the respondents may carry out the
proposed action vide the impugned notices with the
modifications suggested by us above. This would
obviate any delay in giving justice to the applicants
and also the likely unnecessary litigations if our
directions are not followed. The O.A. is disposed
of accordingly. No order as to costs.

[Signature]
Member (J)

/M.M./

[Signature]
Member (A)