

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH**

Original Application No. 1004 of 1997
with
Original Application No. 1272 of 1997

Tuesday, this the 29th day of August 2006

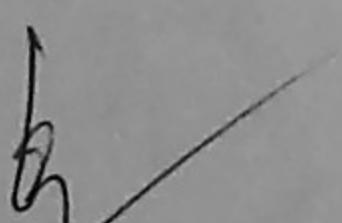
C O R A M :

**HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. A.K. SINGH, ADMINISTRATIVE MEMBER**

1. O.A. NO. 1004 of 1997
1. Akshalbar Prasad,
S/o. Late Ram Jatan,
(Ticket No. 2238),
Posted as Inspector,
Production Control Organisation,
Northern Eastern Railway,
Gorakhpur.
2. Jagdish Singh,
S/o. Shri Harbans Singh,
(Ticket No. 2169),
Posted as Inspector,
Production Control Organisation,
Northern Eastern Railway,
Gorakhpur.
3. Geeta Prasad Yadav,
S/o. Shri Ram Achal Yadav,
(Ticket No. 8318),
Posted as Inspector,
Production Control Organisation,
Northern Eastern Railway,
Gorakhpur.
4. Mirza Zuber Beg,
S/o. Shri Mirza Khursheed Beg,
Ticket No. 2126,
Posted as Inspector,
Production Control Organisation,
Northern Eastern Railway,
Gorakhpur.

... Applicants.

(By Advocate Shri Arvind Kumar)



v e r s u s

1. Union of India through
The Secretary,
Ministry of Railways,
New Delhi.
2. The General Manager /
General Manager (P),
North Eastern Railway,
Gorakhpur.
3. The Chief Workshop Manager /
Chief Workshop Manager [P] (Mechanical),
Workshop, North Eastern Railway,
Gorakhpur.
4. The Senior Divisional Personnel Officer,
Northern Eastern Railway,
Gorakhpur. ... Respondents.

(By Advocate Shri Lalji Sinha)

2. O.A. NO. 1272 of 1997

1. Vishwanath Mishra,
S/o. Late Bhagwati Mishra,
Ticket No. Ex- P/83,
Loco Chargeman Grade-B,
N E Railway Workshop,
Gorakhpur.
2. Abdul Rajjak,
S/o. Late Amjad Ali,
Ticket No. Ex- P/58,
Chargeman Grade-B,
N E Railway, Loco Workshop,
Gorakhpur.
3. Bishwanath Dixit,
S/o. Late Inder Deo Dixit,
Ticket No. Ex-1101,
Chargeman Grade-B,
N E Railway, Loco Workshop,
Gorakhpur.

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4. Naseerullah Siddiqui,
S/o. Late Abdul Rashid,
Ticket No. Ex-7963,
Chargeman Grade-B,
N E Railway, Loco Workshop,
Gorakhpur.
5. Gabbulal,
S/o. Late Kumar Sharma,
Ticket No. Ex- P/103,
Chargeman Grade-B,
N E Railway, Loco Workshop,
Gorakhpur.
6. Ram Adhare Prasad,
S/o. Late Shanker Prasad,
Ticket No. Ex-P/150,
Chargeman Grade-B,
N E Railway, Loco Workshop,
Gorakhpur.
7. Sikil Chandra,
S/o. Shri Rajkumar Pathak,
Ticket No. Ex-3382,
Chargeman Grade-B,
N E Railway, Loco Workshop,
Gorakhpur.
8. Ramesh Chandra Dwivedi,
S/o. Shri Krishna Murari,
Ticket No. Ex-P/211,
Chargeman Grade-B,
N E Railway, Loco Workshop,
Gorakhpur.
9. Laldhar,
S/o. Late Buddhu,
Ticket No. Ex-7171,
Chargeman Grade-B,
N E Railway, Loco Workshop,
Gorakhpur.
10. Tarak Nath Gupta,
S/o. Late Mahabir Prasad,
Ticket No. Ex-1494,
Loco Chargeman Grade-B,
N E Railway Workshop,
Gorakhpur.

11. Pratap Singh Pathak,
S/o. Late Shyam Bihari Pathak,
Ticket No. Ex-P/1,
Loco Chargeman Grade-B,
N E Railway Workshop, Gorakhpur.
12. Lakshmi Narain Singh,
S/o. Late Naresh Singh,
Ticket No. Ex-P/116,
Loco Chargeman Grade-B,
N E Railway Workshop,
Gorakhpur.
13. Krishnaji Srivastava,
S/o. Late Devi prasad,
Ticket No. Ex-3050,
Loco Chargeman Grade-B,
N E Railway Workshop,
Gorakhpur.
14. Bhrgu Nath Pandey,
S/o. Late Shiv Shanker Pandey,
Ticket No. Ex-P/36,
Loco Chargeman Grade-B,
N E Railway Workshop,
Gorakhpur.
15. Nirankar Prasad Srivastava,
S/o. Late Ram Saran Lal Srivastava,
Ticket No. Ex-1551,
Loco Chargeman Grade-B,
N E Railway Workshop,
Gorakhpur.
16. Kripa Shanker Dubey,
S/o. Late Ram Naresh Dubey,
Ticket No. Ex-4891,
Loco Chargeman Grade-B,
N E Railway Workshop,
Gorakhpur.
17. Kallash Nath Gupta,
S/o. Late Khuddu Ram,
Ticket No. Ex-P/79,
Loco Chargeman Grade-B,
N E Railway Workshop,
Gorakhpur.

18. Teerath Raj Shukla,
S/o. Late Raj Deo Shukla,
Ticket No. Ex-3087,
Loco Chargeman Grade-B,
N E Railway Workshop,
Gorakhpur.
19. Hirshikesh Mishra,
S/o. Late Chandrabhan Mishra,
Ticket No. Ex-P/213,
Loco Chargeman Grade-B,
N E Railway Workshop,
Gorakhpur.
20. Triloki Nath Gupta,
S/o. Late Munni Lal,
Ticket No. Ex-1829,
Loco Chargeman Grade-B,
N E Railway Workshop,
Gorakhpur.
21. Ramji Singh,
S/o. Late Rannoos,
Ticket No. Ex-6726,
Loco Chargeman Grade-B,
N E Railway Workshop,
Gorakhpur.
22. Ambika Sharma,
S/o. Sri Shri Ram Sharma,
Ticket No. Ex-P/84,
Loco Chargeman Grade-B,
N E Railway Workshop,
Gorakhpur.
23. Satendra Prasad Srivastava,
Son of Late Chaturbhuj,
Ticket No. Ex-P/91,
Loco Chargeman Grade-B,
N E Railway Workshop,
Gorakhpur.
24. Ram Ashrey Singh,
S/o. Late Ramlal Singh,
Ticket No. Ex-6796,
Loco Chargeman Grade-B,
N E Railway Workshop,
Gorakhpur.

25. S.K. Abrol,
 S/o. Late Ram Swaroop Abrol,
 Ticket No. 3268,
 Loco Chargeman Grade-B,
 N E Railway Workshop,
 Gorakhpur.

26. S.P. Pandey,
 S/o. Shri Bansraj Sharma,
 Ticket No. 1505,
 Loco Chargeman Grade-B,
 N E Railway Workshop,
 Gorakhpur.

... Applicants.

(By Advocate Sri Arvind Kumar)

versus

1. Union of India through
 The Secretary, Ministry of Railways,
 Rail Bhawan, New Delhi.

2. The General Manager,
 North Eastern Railways,
 Gorakhpur.

3. The Chief Works Manager,
 Loco Workshop, N E Railway,
 Gorakhpur.

4. The Chief Personnel Officer,
 N E Railway, Gorakhpur.

5. The Senior Personnel Officer (Mech.),
 N E Railway, Gorakhpur.

... Respondents.

(By Advocate Shri Lalji Sinha)

ORDER
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

As the subject matter of O.A. Nos. 1004 and 1272 of 1997 ^{is} ~~are~~ one and the same, the two O.A.s are decided through this common order.

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2. This bulky application, when scanned and winnowed would reduce itself to the simple ^{question} fact as to what is the entitlement of the applicants in the wake of the decision dated March 7, 1995 in CA 7284-94/1983 of the Apex Court. The said judgment reads as under:-

"Sometime, in the year 1949, piece-work bonus system was introduced by the Railways. In order to administer the said system, options were given to the highly skilled Grade I/highly skilled Grade II/skilled artisans working in various shop-floors to opt to work in the PCO. The appellants/petitioners before us offered to work in the PCO and they were transferred to work in the PCO and they were transferred to the said organization some time during the period 1961 onwards. In the year 1969, as a result of Miabhoi Commission report, it was decided that all Ministries who were working in the supervisory capacity were to be upgraded as chargemen Grade B. While the claims of the appellants/petitioners, to be upgraded to the post of Chargemen Grade B, were being processed, they were reverted back to their original shop-floors. As mentioned above, they challenged the order of reversion before various courts and Central Administrative Tribunals. It is not disputed that as a result of the stay order granted originally by the High Court/Central Administrative Tribunal and later on by this Court, the appellants/petitioners are continuously working in the PCO. It is further not disputed that all those who were eligible to be upgraded as Chargemen Grade B in terms of Miabhoi Commission's Report, have already been upgraded. Some of them have further been promoted to the higher post in accordance with the rules and regulations of the Railways. It is further stated that most of them have already retired from the PCO. Keeping in view the facts and circumstances of this case, specially that the appellants/petitioners are working in the PCO for almost two decades or more, it would not be in the interest of justice to revert them to their original shop-floors.

Without going into the merits of the controversy, we direct that the appellants/petitioners be permitted to continue to work in the PCO and their reversion orders be treated as non-est and inoperative. Needless to say that any further promotion in the PCO can only be claimed by them in accordance with the Rules which are applicable to the said organization. We allow the appeals, writ petitions and set aside the orders of

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the High Court and Central Administrative Tribunal. No costs." (Emphasis supplied) (PCO = Production Control Organizations)

3. On the strength of the above order, the applicants preferred certain representations which were, however, not favourably considered, annexure A-16 and 17 Representations were preferred by them. In nutshell, their request is contained in para 7 of Annexure A-16 representation and the same reads as under:-

"Under the circumstances mentioned above, as (one petitioner) request your honour again to be kind enough to pass favourable orders in the light of Hon'ble Supreme Court's order dated 07-03-1995 to give us (i) proportionate promotion against the higher grade posts of Group (B) cadre of PCO as per the then existing ratio percentage as on 01-08-1970 - to give further promotions on the resultant vacancies of Group C cadre of posts of PCO (III) - to give further promotions at par to erstwhile seniors i.e. above those chargeman who were drafted or grafted in PCO on 01-08-1970 and onward, (iv) to give us benefits of promotions under Restructuring schemes of Railway Board of 1984 and 1991, (v) to give other benefits if any, accrued due to the implementation of Hon'ble Supreme Court's decision dated 7-3-1995 (v) and further to make early arrangement for payment of arrears becoming due to the petitioners for stage also promotional benefits accruing on the implementation Hon'ble Supreme Court's decision dated 7-3-95."

4. Annexure A-17 also is on the above lines but it referred to certain orders on restructuring such as memorandum No E/205/IV/25/CI III Tech. Supr. Dated 6-7-84 and No. E/205/PC/NPC/84/TS/WS/Mech/IV/Loose/GKP dated 4-4-84.

5. The request of the applicants was turned down by order dated 02-04-1997 (Annexure AI, Impugned) stating that in pursuance of the Hon'ble

Supreme Court's order the reversion orders directing the applicants to revert back to shop floor, have already been cancelled. But so far as the matter of promotion is concerned, the applicants are to be considered for further promotion against the vacancies in PCO only but alongwith shop floor employees. However, it is added that the Hon'ble Supreme Court has not passed any order of promotion or payment of arrears of salary to the applicants.

6. The applicants contend that the logical corollary of the order of the Apex Court is that the applicants were part and parcel of the PCO on their having been working in the same organization for over two decades and above and as such, the benefits available to the employees of PCO should be available and thus, they should be promoted from the dates their juniors were promoted, be it by way of normal promotion or by way of re-structuring. This has been negatived by the respondents, stating that in so far as restructuring is concerned, the same is available only to regular employees and since the applicants were working on ad hoc basis they are not entitled to the benefits of re-structuring (Para 29 of the counter refers).

7. Thus, the question is what is the net effect of the order of the Apex Court.

8. If the contention of the respondents that the Apex Court's order relating to 'further promotion' would be in PCO would only mean future promotion and not past promotion is to be accepted, then, it would mean that the applicants

were to be promoted till 1995 as available in their parent organization i.e. shop floor organizations and beyond 1995 their promotions could be in PCO. It has been stated in the written submission in OA 1004/1997 filed on behalf of the respondents that the applicants, who were originally posted in PCO as skilled artisan Gr. III (260 - 400/3050-4590) are working as skilled artisan Grade I (Rs 4,500 - 7000) by getting promotion time to time as per their seniority maintained at shop floor. The applicants on the other hand contend that they should be treated right from day one as a part of PCO. Thus, the question is, whether the Apex Court had intended so. The wordings of the judgment are clear. A perusal of the order of the Apex Court would go to show that the applicants were held to belong to PCO and not shop floor. Once they were held to be so, they become part and parcel of the PCO. If so, they are deemed to have been appointed in PCO, with those terms and conditions as applicable to other employees of PCO in corresponding posts. Once, this group of employees, i.e. the erstwhile Shop Floor employees, joined the main stream of PCO, they too get the colour and climate as available to the employees of PCO. Thus, they are deemed to have severed their connection with the Shop Floor organisation. The seniority maintained in the Shop Floor would at best be utilized for working out the inter se seniority of such employees in the PCO in the seniority list of all the employees of PCO including the applicants and similarly placed employees and that too, if the induction had taken place simultaneously for any particular year and not in piecemeal. And, from the date the applicants become part of PCO, the benefits available to their colleagues in PCO are to percolate upon them as well, including restructuring.

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Art. 16 would be thoroughly violated in case the contention~~s~~ of the respondents is accepted.

9. In view of the above, the OA succeeds. The applicants are entitled to be considered as a part and parcel of the PCO from the date they were directed to serve that organization and they shall be entitled to promotion to higher grades at par with their juniors and they would also be entitled to the benefits of restructuring. However, they would not be entitled on actual basis to pay and allowances from the dates of their promotion or for any financial benefits on restructuring but would be entitled to notional benefits. This notional benefits would continue till the date of their filing the O.A. The OA has been filed in November, 1997 and as such, the actual financial benefits would accrue from December, 1997.

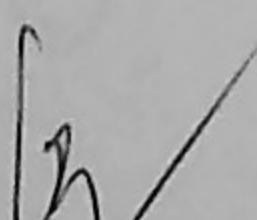
10. We are conscious of the fact that the matter pertaining to the periods dating back to early 70s and many of the applicants would have even retired and it would be a herculean task for the respondents to work out as to which applicant is entitled to what benefits. But for the purpose of ensuring equality in matters of employment under Art. 16 of the Constitution, ~~the~~ affording the applicants the due is inevitable and the respondents have to undertake this exercise. Fortunately, vide para 25 to 27 of the written submission by applicants in OA No. 1004/97, sufficient spade work had already been taken by the respondents and all that is now required is to continue from the stage the said action was stopped. The fact that such a spade work has been taken has

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not been disputed by the respondents in their counter written argument. Rather, they have stated that the contents of para 22 to 30 are 'partly accepted'. The reason for not acceding to the request of the applicants, as per the order dated 05-03-1997 vide Annexure R III annexed to the written submission of the respondents and as explained in para 12 of the written submission is that the "**matter regarding promotion of petitioners in P.C.O. had been referred to General Manager (Personnel) to give directions (Annexure attached as Annexure R-3) in which it was clearly mentioned that there is no rule to promote a person in P.C.O. as the posts are ex-cadre. The employees posted in P.C.O. maintain their seniority and lien in their respective shop floor and considered for future promotion on the basis of their seniority maintained at shop floor.**" Be that as it may; the decision of the Apex Court is the rule.

11. It is felt expedient that keeping in view the recommendations of the 5th CPC and various judgments of the Apex Court, as referred to therein, the benefit accrued to the applicants in these O.As are made available to all the similarly placed employees without driving them to move the Tribunal for the benefits. Relevant para of the Pay Commission is as under:-

"We have observed that frequently, in cases of service litigants involving many similarly placed employees, the benefit of judgments is only extended to those employees who had agitated the matter before the Tribunal/Court. This generates



a lot of needless litigation. It also runs contrary to the judgment given by the Full Bench of the Central Administrative Tribunal, Bangalore in the case of C.S. Elias Ahmed and others vs UOI and others (OA 451 and 541 of 1991), wherein it was held that the entire class of employees who are similarly situated are required to be given the benefit of the decision whether or not they were parties to the original writ. Incidentally, this principle has been upheld by the Supreme Court in this case as well as in numerous other judgments like G.C. Ghosh vs UOI (1992) 19 ATC 94 (SC) dated 20-07-1988; K.I. Shepherd vs UOI (JT 1987 (3) 600); Abid Hussain v s UOI (JT 1987 (1) SC 147) etc. Accordingly, we recommend that decisions taken in one specific case either by the judiciary or the Government should be applied to all other identical cases without forcing the other employees to approach the court of law for an identical remedy or relief. We clarify that this decision will apply only in cases where a principle or common issue of general nature applicable to a group or category of government employees is concerned and not in matters relating to a specific grievance or anomaly of an individual employee."

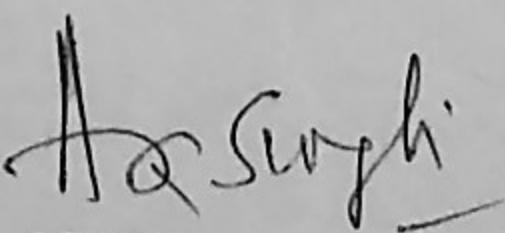
12. The following orders, are therefore, passed:-

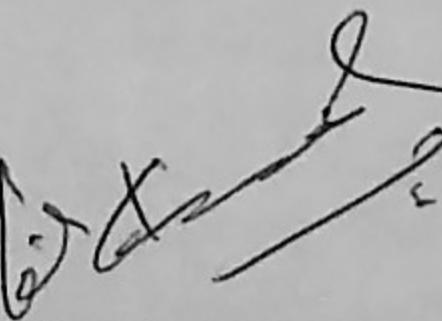
(a) Respondents shall draw the list of employees who have

been Inducted In PCO from Shop floor and on the basis of their date of entry, they would be assigned their seniority in the respective grade at the time of their Induction along with their counterparts in the PCO in the respective grades. The date of promotion of the immediate junior in the PCO shall be ascertained in various grades and the same benefits of promotion shall be accorded (save where there were any disciplinary proceedings or where the individuals do not qualify in terms of educational qualification or experience).

- (b) On their promotion to the next grade and above, the pay shall be fixed on notional basis till November, 1997 and thereafter the pay shall be on actual basis.
- (c) In case any of the applicants had retired prior to December, 1997, the notional pay as on the date of their retirement would form the basis for working out the terminal benefits, such as pension/family pension, gratuity and leave encashment. Commutation be not revised.
- (d) The arrears of pay and allowance applicable to the applicants and similarly placed employees shall be worked out and paid to them without interest.
- (e) This order be complied with, within a period of nine months from the date of communication of this order.

No costs.


A.K. SINGH
ADMINISTRATIVE MEMBER


K B S RAJAN
JUDICIAL MEMBER