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CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH, ALLAHABAD

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- (1) Registration O.A. No. 1155 of 1988
Anil Kumar Khare Applicant
Vs.
Union of India & ors Respondents
- (2) Registration O.A. No. 1122 of 1988
Shailesh Kumar Srivastava and other .. Applicants
Vs.
Union of India and ors Respondents

Hon' Mr. K. Obayya, A.M.

The above applications have been filed under section 19 of the Administrative Tribunals Act No. XIII of 1985, with a prayer to issue direction to respondents to fix the pay of the applicants on proforma basis with effect from 1-10-1980, in accordance with the Railway Boards' letter No. PC.III/81/UPG/7 dated 18.6.1981. Their further prayer is that the Respondents should be directed to implement the orders of this Tribunal in Registration No. 132 of 1986 in their cases also.

2. Since the facts in these two cases are similar and issue is common, I propose to dispose them of by a common order.

3. The applicants are all graduates who joined service in the Eastern Railway prior to 1-10-1980 in Grade II scale of Rs.260 - 400. They were eligible for selection and upgradation to the posts of Senior Clerk in scale of Rs.330 - 560 in the 13 1/3% quota reserved for serving graduates. They appeared for the examination conducted by Railway Service Commission limited to the

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departmental candidates and were declared successful in the said examination. They were put in the panel for appointment as grade I Clerks. Their names appear at serial Nos. 10, 11 and 21 (Annexures- 1 & 5) to the respective applications. They were appointed to the higher grade i.e. Rs.330 - 560 w.e.f. 30.1.1985. Their claim is for proforma upgradation w.e.f. 1-10-1980. They ^{ne-}presented to the authorities in this regard, but no orders were passed. Aggrieved with the unhelpful attitude of the Respondents, some of their colleagues (who were applicants in O.A. No. 132 of 1986) moved this Tribunal for redressal of their grievance and secured favourable orders. The Respondents implemented the orders of the Tribunal and gave them the benefit of proforma fixation of pay in the higher grade, w.e.f. 1-10-1980.

4. The facts in these applications are not in dispute. The respondents contend fixation of pay in respect of these applicants was done as per rules correctly. They concede that the benefit of proforma fixation of pay in the higher grade was done in respect of the applicants in O.A. No. 132 of 1986 as they had obtained the orders of the Tribunal. But, these orders are confined only to the applicants in that petition and would not apply to others.

5. Heard the arguments of both the parties and perused the documents on record. Since the basis of the claim of the applicants is by virtue of Railway Board's letter No.PC.III/81/UPG/7 dated 18.6.1981, it would be necessary to go through the said order. The relevant paras are at para 1(ii) and paragraph 2. They read as under :

1. "(ii) 13-1/3% of the total posts of Senior Clerks in scale of Rs.330-560 will be filled from

amongst the Graduate 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 graduate Clerks not being available from amongst the serving employees to fill this quota, the residual vacancies will be filled up by direct recruitment through the Railway Service Commission over and above the 20% quota referred to in(i) above.

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2. These orders will take effect from 1-10-1980 but no arrears shall be payable on this account. The pay of an employee appointed to the upgraded post may be fixed proforma from 1-10-1980 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. "

It would appear that there is no ambiguity whatsoever in this. One fails to understand why this could not be made applicable to all those who are entitled by virtue of selection by the Railway Service Commission and empanelment thereafter.

6. The learned counsel for the applicants cited the case decided by Calcutta Bench of the Tribunal in T.A. No. 1301 of 1986 (C.R. 8729(W) of 1981) dated 4.8.89 and also the case decided by Hyderabad Bench in T.A. No. 157 of 1986 (W.P.No. 16062 of 1984) dated 16.1.1989. In the above cases the petitions were allowed and the applicants were given the benefit of proforma fixation w.e.f. 1-10-1980.

7. In Registration No. 132 of 1986 of this Tribunal the entire issue relating to proforma fixation of pay arising out of orders of Railway Board in PC/III/81/UPG/7 dated 18.6.1981 was discussed. It was observed that the spirit of Railway Board's letter dated 18.6.1981 was that the upgradations were to be made from 1-10-1980 though they were to be effective from the date the qualified candidates took over the charge of higher grades.

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Their pay had to be fixed proforma basis keeping the date 1-10-80 in view. It was held that fixation of pay on the basis of para 2 of the Railway Board's letter dated 18.6.1981 from 1-10-1980 is valid and justified.

8. The facts in these cases are also similar. There is no reason as to why the applicants should be denied of the benefit given to similarly placed Clerks in pursuance of decisions of this Tribunal in earlier cases.

9. The applicants are serving graduate clerks, they have completed successfully in the Railway Service Commission Examination and their names were included in the panel for up gradation of the post. Under these circumstances, I am of the view that their claim for the benefit under para 2 of the Railway Board's letter referred to above is legitimate, valid and justified.

l Differential ^{Treatment} ~~payment~~, ~~payments~~, if any, would amount to discrimination.

10. For the reasons stated above, the applications are liable to succeed and accordingly they are allowed.

11. The respondents are directed to fix the pay of the applicants in these two cases on proforma basis with effect from 1-10-80. Parties to bear their costs.

[Signature]
MEMBER(A)

(sns)

December 15, 1989

Allahabad.