

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH
ALLAHABAD

ALLAHABAD THIS THE 6th DAY OF February 1997.

CORAM : Hon. Mr. S. Das Gupta, Member-A
Hon. Mr. I. L. Verma, Member-J

ORIGINAL APPLICATION NO. 1065 of 1994.

1. Balmiki Pathak s/o. Sri Ajodhya Pathak aged 54 years, r/o. 785 B, Loco Colony, Allahabad.
2. M.U.Khan s/o. late G.U.Khan, aged 52 years, S/1, Lalit Nagar Railway Colony, Allahabad.
3. L. R. Singh s/o. Sri R.S.Singh, aged 42 years, 79, Surya Banshi Bhawan, Arsh Nagar, Allahabad.
4. Moti Lal s/o. Bam Nath aged 42 years, 93-A, Subedarganj, Railway Colony No.2. Subedarganj, Allahabad.
5. M.K.Banerjee s/o. G. Banerjee, aged 46 years, 841, Loco Colony, Allahabad.
6. R. P.Ojha s/o. R. M. Ojha, aged 35 years, R/o. Rly. Qr. No.773/A, Lalit Nagar, Allahabad.
.....Applicants.

(THROUGH counsel Sri Alok Chatterjee and Sri H.B.Singh & Sri R. S. Sharma)

Versus

1. Union of India through Ministry of Railway, Rail Bhawan, New Delhi.
2. The Divisional Railway Manager, N.R.Allahabad.
3. The Divisional Engineer (General), Northern Railway, D.R.M.Office, Allahabad.

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4. The Divisional Personnel Officer, Northern Railway, D.R.M. Office, Allahabad.

....Respondents.

(THROUGH COUNSEL SRI A.K.GAUR)

ORDER

(By Hon. Mr. T. L. Verma, Member-J)

This application under Section 19 of the Administrative Tribunals Act, 1985 has been filed for issuing a direction to the respondents to declare the result of the Viva-Voce test of the applicants held on 7.4.1993 and to regularise their services as Material Checking Clerk and fix their seniority at appropriate places as per rule. The applicants have sought further direction to the respondents to implement letter No. 561-E/85-132-Pt.VII EIID dated 20.12.1978 and letter No. E(P&A) II-78/FE4-1 dated 16.8.1978 and upgrade the applicants to the scale of Rs. 950-1500 and also pay arrears of pay.

2. The case of the applicants briefly stated are that they are ~~applicants~~ at present working as Material Checking Clerk (MCC for short) in the grade of Rs. 825-1200 for last 6-20 years. The designation of the Material Checkers grade Rs.225-308 was changed to Material Checking Clerk Grade Rs.260-400 vide Railway Board's letter No.E(P&A)-II-78/F.E.-4-1 dated 16.8.1978. The posts of Material Checkers, Tool Checkers etc. were upgraded as Material Clerk in the scale of Rs.260-400 vide Railway

Board's Letter dated 28.12.1978 (Annexure-CA-1). The further case of the applicants is that the Divisional Personnel Officer, Northern Railway, Allahabad issued circular No. 441/E/55/Pt. III Engg/55 dated 3.12.92 (Annexure-A-2) to all A. Ens. of the Allahabad Division ^{Calling 29 adhrc Mees} including the applicants for Viva-Voce Test to be held on 4.1.1993 for regularisation of their services. The Viva-Voce test, however, could not be held on 4.1.1993 and the same was subsequently held on 7.4.1993. The applicants appeared at the said test. The respondents, however, have not declared the result of the test.

3. It has been contended that the applicants are entitled to be promoted as Material Checking Clerk Grade Rs.950-1500 in view of Railway Board's letter dated 25.4.1974 and 24.10.1992 (Annexure-A-4).

4. The grievance of the applicants is that the persons who are junior to the applicants and were working on a lower grade have been upgraded to the pay-scale of Rs.950-1500 on the post of Clerks in the year 1984-85 itself. The applicants who stand in a much better position have been arbitrarily ignored for such upgradation in contravention of the provisions of the Articles 14 and 16 of the Constitution of India. The representations submitted by the applicants for their upgradation to Scale Rs. 950-1500/- and for declaring the result have failed to evoke any response from the respondents hence this application for the reliefss mentioned above.

5. The respondents have contested the claim of the applicants. In the counter-affidavit filed on their behalf, it has been stated that the applicants are working as Material Checking Clerk purely on temporary and adhoc basis. The further case of the respondents is that the Railway Board's instruction required upgradation of post of Material Checking Clerk grade ^{according} to the prescribed norms. It has also been stated that Railway Board's letters and circulars of the Deputy Chief Engineer dated 25.9.1992 were given to the Chief Engineer (Construction) and others and not to the open lines and divisions. It has been admitted that the Viva-Voce test was held on 07.4.1993 only for regularisation of adhoc promotion as Material Checking Clerk grade Rs.825-1200(RPS), ~~Rs.825-1200~~ and not for promotion to grade Rs.950-1500/- . It has also been alleged that no person junior to the applicants have been promoted and appointed to grade Rs. 950-1500/- on the post of Office Clerk as alleged.

6. We have heard the learned counsel for the parties and perused the record carefully. In the course of arguments, the learned counsel for the applicant submitted that post of MCCs have been abolished by upgrading that posts to grade Rs.950-1500 with effect from 1.10.1972, vide Railway Board's instructions contained in Annexure-A-1. Annexure-A.1 is letter dated 28.12.1978 on the

subject of fixation of pay of Material Checkers upgraded
as Material Checking Clerks^{vide} Order dated 28.12.1978,
Railway Board's letter dated 10.8.1978 was sent to
concerned authorities for confirmation and necessary
action. Railway Board's letter dated 10.8.1978
reads as follows :-

"As a result of discussions in the P.N.M.
meeting between the Railway Board and the
AIRF held on 10/11.4.1978, the Railway
Ministry have reviewed the question of
fixation of pay of the incumbents of the
posts of Material Checkers upgraded as
Material Clerks in terms of the orders
contained in Boards' letter No. PC-62/PS-5/SS
-I dated 27.9.63 and No. PC.-6/FE-4/I
dated 26.10.1972. It has been decided
in supersession of all the previous
clarifications on the subject that the
pay of the incumbents of the posts of
Material Checkers, Took Checkers etc.
upgraded as Material Clerks, scale Rs.110-
180 /Rs.260-400(RS), as per the orders
aforesaid, should be refixed proformal
as per rule 2018-B(FR-22-C), ; no arrears
on this account , however, being paid for the
period prior to 1st August 1978.

2. Cases where overpayments had occurred in
terms of instructions on subject in vogue
earlier will not be re-opened irrespective
of whether such payments were waived
or they were recovered in full or in part
or they still to be regularised.

3."

We have perused the above letter and we are unable to agree with the contention of the learned counsel for the applicants that the applicants stand automatically upgraded to scale Rs. 950-1500 ^{afoursand} by virtue of the instructions issued in the letter.

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7. The respondents ^{may} have taken a decision to upgrade the post of Material Checkers to that of the Material Clerks. That, however, does not imply that such of the Material Checkers who were holding the said post on the date the decision to upgrade the post was taken, would automatically be upgraded. The incumbents seeking upgradation have to fulfil certain conditions ~~as~~ such as putting ^{of} in minimum years of service and clearing the prescribed test. The averments either in the O.A. or the Rejoinder-Affidavit do not indicate whether the applicants have cleared the prescribed test for their upgradation to scale Rs.950-1500. All that has been averred is that the applicants were called for Viva-Voce test and 3.12.92 by Circular dated 3.12.1992 ~~/for regularisation of~~ their services. ~~and x Circular dated x 15 x 1992 x~~

Though the applicants claimed to have appeared at the said test the result has not been declared so far. This has not been disputed. Letter dated 3.12.1992 as well as letter dated 15.5.1993 clearly indicate that the Viva-Voce test was held for regularisation of M.C.s. in the pay-scale of Rs.825-1200. The applicants admittedly had been appointed as Material Checkers purely on temporary and adhoc basis. We are, therefore, inclined to accept

the contention of the learned counsel for the respondents that the said Viva-Voce test was held in 1993, has nothing to do with the upgradation of the applicants to grade Rs. 950-1500.

8. The learned counsel for the applicants has relied on the decision rendered by a bench of the Administrative Tribunal Lucknow in O.A.No.133 of 1991 in support of his argument that the applicants will be deemed to have been upgraded to scale Rs.950-1500 by virtue of instructions contained in Railway Board's letter dated 24.10.1972. Copy of the Railway Board's letter dated 24.10.1972 has not been annexed to the petition. We are, therefore, not in a position to hold that all Material Checkers have been upgraded to scale Rs.950-1500 pursuant to the directions issued in the said letter. We have, however, perused the judgement rendered by the Lucknow Bench of the Administrative Tribunal in O.A.No.133 of 1991. The controversy involved in the said case was whether ~~the date of appointment~~ ^{as to} ~~from which date~~ the monitory benefits should be allowed to the Material Checkers upgraded to Scale Rs. 950-1500 and from which date seniority ^{should be reckoned} in the said cadre. The Tribunal by order dated 28.8.1992 has held that the monitory benefits shall be admissible to them from the date of regularisation of their service in Scale Rs.950-1500 but, for determining their seniority, the date of their appointment as Material Checkers shall be reckoned. It would thus, appear the judgement relied upon by the learned counsel for the applicant ^{is of no help}

It was next argued that in terms of Railway Board's letter dated 25.4.1974 and 24.10.1972 competent authority / ordered that the post of Material Checking clerk in grade Rs.825-110 may be filled as Material Checking Clerk in the grade of Rs.950-1500. In pursuance of the aforesaid order Dy. Chief Engineer gave benefit of grade rupees 950-1500 to the Material Checkin clerk working in Engineering department of Construction Unit. Applicants who are working in Open line in the same capacity have, however, been deprived of the said benefit. This, it was submitted amounts to discrimination. The above directions as is apparent from the letter referred to above was issued to those who were working in Construction Unit. The applicants, it is not in dispute, are working as Material Checking Clerks in Open line. There is no material before us to show that these applicant and the material checkers working in the Construction Unit are borne on common seniority and these applicants are placed and assigned seniority position over the Material Checker of the Construction Units , but have been given the benefit of scale Rs.950-1500 in pursuance to the above directions so as to indicate that person junior to the applicants have been permitted pay scale of Rs.950-1500

9. From the aforesaid letter referred to above and relied upon by the learned counsel for the applicants , it is absolutely clear that upgradation was being made against the normal grade workcharged posts. There is neither any averment in the O.A. nor to show that any such post was created in the Open line, where the applicants are working

nor there is any material before us to suggest the same. The applicants, therefore, cannot claim any parity with those in the Construction Unit to be upgraded against the normal grade on the basis of letter dated 25.9.1992.

10. In the facts and circumstances of the case, we find that the applicants have failed to make out a case for issuing direction to upgrade them to scale of pay Rs.950-1500. The fact however remains that the applicants having worked on the post of Material Checking Clerk for various period ranging 6 years to 20 years, they deserve to be upgraded to scale of Rs.950 -1500 after clearing the prescribed test. We, therefore, dispose of this application with the direction to the respondents to consider the applicants for upgradation to grade Rs.950-1500 as by holding the required test and when vacancy is available. Recruitment from the Open market on the post of Material Checking clerk will not be resorted to unless the applicants are upgraded on the said post or they become ineligible after exhausting the maximum number of chances available under rules for such upgradation. There will be no order as to cost.

J. R. M.
Member (J)

W. S.
Member (A)