

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 23<sup>rd</sup> day of Aug. 2002.

Original Application No. 595 of 1999.

C O R A M :- Hon'ble Maj. Gen. K.K. Sriyastava, AM  
Hon'ble Mr. A.K. Bhatnagar, JM

Kuldeep Kumar a/a 38 years S/o Sri Bhagwan Das  
R/o B-30, Ashok Nagar Extension, Patrakar Colony,  
Allahabad.

.....Applicant

Counsel for the applicant :- Sri H. Zaidi *AW*  
*At Sr. A. Kumar*

V E R S U S

1. Union of India through the Secretary (Establishment),  
Railway Board, New Delhi.
2. General Manager (P), Northern Railway,  
Baroda House, New Delhi.
3. Officer on Special Duty (P), North Central Railway,  
Allahabad.
4. Divisional Railway Manager (P), Northern Railway,  
Allahabad.

.....Respondents

Counsel for the respondents :- Sri A. Tripathi

O R D E R

(By Hon'ble Mr. A.K. Bhatnagar, Member- J.)

Through this O.A the applicant has challenged  
his reversion as a Commercial Clerk to the grade of  
Rs. 1400-2300 from the grade of 1600-2660 in which he  
was placed in pursuance of the order of this Tribunal  
in O.A No. 1176/91 passed on 03.07.1992. He has also  
mentioned that as a result of his wrongful reversion *he*  
was illegally deprived of appearing for the selection

*AW*

for the Chief Coaching Supervisor in the grade of 6500-10,500/-. Amongst the reliefs claimed, apart from setting aside his reversion order, is also the refund of the so called excess payment made to him, which has been recovered after his reversion.

2. Heard Sri Arvind Kumar, learned counsel for the applicant and Sri A. Tripathi for the respondents.

3. The learned counsel for the applicant submitted that the reversion of the applicant, in the light of Hon'ble Supreme Court interim order dated 08.11.1997 in Special Leave Petition (C) No. 5373/97 against the judgment of this Tribunal <sup>Madras</sup> Bench in O.A No. 1096/96 that the status quo with regard to reversion in rank and reduction in pay scale be maintained, is illegal because the matter is sub-judice. Besides reverting the applicant without giving any opportunity is against the principles of natural justice.

4. The learned counsel for the applicant submitted that though the order of reversion is dated 02.01.1998, the respondents have ordered for recovery from the back date i.e. 29.05.1997. The applicant having been recruited after 15.05.1987 is entitled to the benefits of higher pay scales in terms of Para 2 (xii) and (xiii) of Railway Board Circular dated 15.05.1987 (annexure- 6). The learned counsel also submitted that the case of the applicant is distinguishable from the case before Apex Court in Civil Appeal No. 5410/92 U.O.I and Ors. Vs. M. Bhaskar and Ors 1996 SCC (L&S) 967 as the applicant's training was held and the <sup>panel</sup> ~~penal~~ was declared much after 15.05.1987. The action of the respondents is violative of Articles 14, 16, 21 and 300A of the Constitution of India. In support of his claim, the applicant has cited

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the case of Karnail Singh Suri in Para 4.18 of the OA, who though similarly appointed, got fixed in higher scale.

5. Resisting the claim of the applicant Sri A. Tripathi, the learned counsel for the respondents submitted that Railway Recruitment Board (in short R.R.B) issued notification to fill vacancies <sup>in the</sup> 85-86. Exam was held on 08.03.1987 and, therefore, <sup>in the</sup> applicant <sup>is</sup> cannot be treated as post 15.05.1987 appointee. He cannot get the benefit of circular dated 15.05.1987. The respondent's counsel submitted that the recovery of excess payment has been made on implementation of the order of Hon'ble Supreme Court in M. Bhaskar's case (Supra). The learned counsel submitted that at no stage there has been violation of principles of natural justice. The case of Karnail Singh cited by the applicant in Para 4.18 is distinguishable from that of the applicant. Karnail Singh was appointed on compassionate grounds whereas the applicant has been recruited and appointed through RRB.

6. We have heard counsel for the parties, considered their submissions and closely perused records and pleadings.

7. We find force in the submission of the respondents who have stated that the case of Karnail Singh Suri cannot help the applicant because the two are not on the same footing as Karnail Singh Suri was appointed under <sup>as</sup> special <sup>dispensation</sup> ~~dispensation~~ on compassionate grounds under existing rules vide Railway Board Letter No. E (NG) II/84/RC-3/15 (AIRF) dated 15.05.1987. We see no reason to doubt this statement and, therefore, applicant gets no relief because of his comparison with Karnail Singh Suri's case.

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8. The respondents' most important averment denying applicant's claim is that this matter was adjudicated by several benches of CAT and they mostly granted the benefit of the scale of 1600-2660 to the class of officials to which the applicant belonged, but the matter went to the Supreme Court and the Apex Court in its judgment in Civil Appeal No. 5410 of 1992 dated 06.05.1996 laid down the law in such matters. The judgment set aside the orders of those Tribunals which had held that pre 1987 appointees had become entitled to the higher pay scale by virtue of the memorandum of 15.05.1987, were entitled to the scale of 1600-2660. It has, therefore, been argued by the respondents that the higher scale of 1600-2660 granted to applicant by virtue of the order of this Bench was rightly annulled on the strength of the later ruling by the Supreme Court. The applicant has argued that the Apex Court judgment was challenged before the Constitution Bench where the matter is still pending that the Hon'ble Supreme Court was pleased to direct the parties to the S.L.P to maintain the status quo. We are afraid that the status quo order of the Hon'ble Supreme Court applies only to the parties who challenged the order and not all similarly placed persons. No doubt, if the persons who went in S.L.P before the Constitution Bench succeed the applicant will also be entitled to the same benefits. However, in absence of any stay order in favour of the applicant, we are constrained to agree with the action taken by the respondents in reverting the applicant to the grade of 1400-2300.

9. The Apex Court also ruled that :-

"Despite the aforesaid conclusion of our, we are of the view that the recovery of the amount already paid because of the aforesaid judgments of the

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Tribunals would cause hardship to the concerned respondents/appellants and, therefore, direct the Union of India and its officers not to recover the amount already paid. This part of our order shall apply (1) to the respondents/appellants who are before this Court; and (2) to that pre 1987 Apprentice in whose favour judgment has been delivered by any CAT and which had become final either because no appeal was carried to two court or, if carried, the same was dismissed. This benefit would be available to no other. "

10. Applying the principle enunciated by the Apex Court, since the benefit of the higher scale of 1600-2660 was extended to the applicant by virtue of an order of the CAT, the recovery of the 'excess payment' should not be made. We, therefore, direct that the 'excess payment' recovered from the applicant should be refunded.

11. In the circumstances, the O.A is partially allowed. The reversion order of the applicant to the scale of 1400-2300 is upheld, being in <sup>the</sup> conformity <sup>with</sup> the judgment of the Apex Court in Civil Appeal No. 1410 of 1992 dated 06.05.1996. However, the respondents are directed to refund the recovery made against the excess paid to him by virtue of the order of this Tribunal.

12. There shall be no order as to costs.

  
Member- J.

  
Member- A.

/Anand/