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OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

Allahabad : Dated this 30th day of August, 2001.

CORAM :-

Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiuddin, J.M.

I. Original Application No.830 of 1999.

S.R.L. Srivastava S/o Late Shri Parmhans
Lal Srivastava, R/o 55A/236, Bhawapur,
Allahabad.

(Sri Rakesh Verma, Advocate)

..... Applicant

Versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. Shri N.A. Khan, Working as Commercial Superintendent, (Booking), Northern Railway, Lucknow.
4. Shri AK Srivastava, Working as Commercial Superintendent, (Coaching), Varanasi Town Booking Office, Varanasi.
5. Shri Parvej Khan, Working as Commercial Superintendent, (Booking), S.P.T.M. Northern Railway, Varanasi.
6. Shri S.K. Srivastava, Working as Commercial Superintendent, (Parcel), Northern Railway, Lucknow.

(Sri VK Srivastava/Sri Prashant Mathur, Advocates)

..... Respondents

A N D

II. Original Application No.903 of 1999.

1. Dhaneshwar Ram S/o Late Shri Algu Yadav, R/o 17-A, A.E.N. Colony, Northern Railway, Varanasi.

2. Hans Raj Yadav S/o Late Shri Ram Khelawan Yadav,
Resident of C-33-65-1, Acharya Dev Nagar,
Chanduwa, Chittopur, Varanasi.

(Sri Rakesh Verma, Advocate)

..... Applicants

versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. Shri N.A. Khan, Working as Commercial Superintendent (Booking), Lucknow.
4. Shri A.K. Srivastava, Commercial Superintendent (Coaching) Varanasi Town Booking Office, Varanasi.
5. Shri Parvej Khan, Working as Commercial Superintendent (Booking), S.P.T.M., Northern Railway, Varanasi.
6. Shri S.K. Srivastava, Commercial Superintendent (Parcel), Northern Railway, Lucknow.

(Sri VK Srivastava/Sri Prashant Mathur, Advocates)

..... Respondents

O R D E R (O_r_a_l)

By Hon'ble Mr. S. Dayal, A.M.

Heard learned counsel for the parties in this OA as well as OA No.903/1999 and pass common orders in these two OAs.

2. The applicant in OA No.830/1999 has prayed for a direction to the respondent no.2 to revert the respondent nos.3 to 6 from pay scale of Rs.1600-2600 to that of Rs.1400-2300^l and to refix their seniority placing the petitioner in the scale of Rs.1600-2660 with all consequential benefits of promotion of higher pay scale of Rs.2000-3200 including the refixation of seniority in the aforesaid scale. In OA No.903/1999

two applicants have come with the same prayer.

3. Since these two OAs relate to the same issues, have been heard together and we have passed a common order.

4. The facts are that the applicants were aggrieved by non-implementation of the judgement of the Apex Court in the case of Union of India & Ors Vs. M. Bhaskar & Ors reported in 1996(4) SCC 416. The said judgement was not implemented by the official respondents because because of order passed in SLP No.3/1997 on 08-11-1997 for Mandamus of status quo with regard to reversion in rank and pay scale. Therefore, the decision in these OAs were kept in abeyance till final directions of the Apex Court were received.

5. The applicability of the judgement of the Apex Court in UOI & Ors Vs. M. Bhaskar & Ors (supra) has been challenged on the ground that it was made to apply even to the cases which have been finally decided by other courts some of which have been confirmed by the Apex Court itself by a Bench of three learned judges.

6. Learned counsel for the applicant has now brought the judgement in E.S.P. Rajaram & Ors Vs. UOI & Ors reported in JT 2001 (1) SC 573 through MA No.3376/2001 in these two cases and prayed that the OA be decided in the light of the judgement of the Constitutional Bench of the Apex Court in case of E.S.P. Rajaram & Ors (Supra).

7. We find that the controversy stands resolved. The Apex Court has found the judgement in M. Bhaskar case to be correct and warranting no interference. The Apex Court has laid down that the judgement shall be applicable even to those cases which had become final. The Apex Court has laid down the following with regard to the cases which have become final :-

"22. From the conspectus of the views expressed in the decided cases noted above it is clear that this Court has invoked the power vested under Section 142 of the Constitution in different types of cases involving different fact situations for doing complete justice between the parties.

23. In the case on hand the controversy relates to the scale of pay admissible for Traffic Apprentices in the Railways appointed prior to the cut-off date. The controversy in its very nature is one which applies to all such employees of the Railways; it is not a controversy which is confined to some individual employees or a section of the employees. If the judgement of the Tribunal which had taken a view contrary to the ratio laid down by judgement of this Court in M. Bhaskar's case (supra) was allowed to stand then the resultant position would have been that some Traffic Apprentices who were parties in those cases would have gained an unfair and undeserved advantage over other employees who are or were holding the same post. Such enviable position would not only have been *per se* discriminatory but could have resulted in a situation which is undesirable for a cadre of large number of employees in a big establishment like that of the Indian Railways. To avoid such a situation this Court made the observations in paragraph 17 of the judgement. At the cost of repetition we may reiterate that since the main plank of argument of the appellants was that since they were not parties in the case they had no opportunity to place their case before this Court made the observations in paragraph 17 of the judgement as aforementioned. We specifically asked the learned counsel appearing for the parties to place the argument in support of their challenge to the observations made by this Court on merits. No point of substance assailing the observations on merits could be placed by them. The only contention made in that regard was some of the employees who were given benefit in the judgements of the CAT have got further promotions and they may lose the benefit of such promotion in case the observations made in paragraph 17 of the judgement are allowed to stand as it is. We are not impressed by the contention raised. If some employees were unjustly and improperly granted a higher scale of pay and on that basis were given promotion to a higher post then the basis of such promotion being on a non-existent; the superstructure built on such foundation should not be allowed to stand. This is absolutely necessary for the sake of maintaining equality and fair play with the other similarly placed employees. However, in our considered view, it will be just and fair to clarify that any amount drawn by such employees either ~~on~~ the basic post (Traffic Apprentice) or in a promotional post will not be required to be refunded by the employee concerned as a consequence of this judgement. This position also follows as a necessary corollary from the observations made by the Court in paragraph 18 of the judgement in M. Bhaskar's case (Supra)."

8. Learned counsel for the applicants also prays that the order dated 10-7-1996 passed by Headquarters

Office, Baroda House, New Delhi should now be made

applicable in the light of the judgement of the Apex Court.

9. The compliance of the judgement of the Apex Court will have to be done by the Railway Board in the light of the orders of the Apex Court in the case of E.S.P Rajaram & Ors (*supra*).

10. We dispose of the applications before us with direction to the respondents to comply with the judgement of the Apex Court in the case of E.S.P. Raja Ram & Ors Vs. UOI & Ors in terms of the law laid down in the said case. No costs.

Darwinkel *Shah*
Member (J) Member (A)

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