

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH  
ALLAHABAD**

(THIS THE 31<sup>st</sup> DAY OF March, 2011)

PRESENT:

**HON'BLE DR. K.B.S. RAJAN, MEMBER-J**  
**HON'BLE MR. S.N. SHUKLA, MEMBER-A**

**ORIGINAL APPLICATION NO. 1429 OF 2002**  
(U/s, 19 Administrative Tribunal Act. 1985)

MA no 1214 of 2011 allowed  
corrected copy to be carried out  
by 1/1 Smt Kunti Devi Srivastava  
9/18/2011

- 1/1 Smt Kunti Devi Srivastava widow of late Shri S.R.L. Srivastava R/o 55-A/236 Bhawapur Allahabad.
- 1/2. Pankaj Kumar Srivastava S/o late Shri S.R.L. Srivastava R/o 55-A/236 Bhawapur Allahabad.
- 1/3. Vivek Kumar Srivastava S/o Late Shri S.R.L. Srivastava R/o 55-A/236 Bhawapur Allahabad.
- 1/\* (See below) . . . . . Applicants

By Advocate: Shri Rakesh Verma.

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 A.K. 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.
- 7.

By Advocate: Shri D.S. Shukla.  
Shri V.K. Srivastava.

. . . . . Respondents

- 2. Dhaneshwar Ram, S/o late Shri Atgu Yadav, R/o 17-A, AE.N. Colony, N.Py, Varanasi.
- 3. Hans Raj Yadav, S/o late Shri Ram Khelawan Yadav, R/o C-33-65-1, Acharya Dev Nogar, Chanduwa, Chittoor, Varanasi.

**ORDER**

(DELIVERED BY:- HON'BLE DR. K.B.S. RAJAN, MEMBER-J)

Perpetuation of a mistake, which results in an unintended benefit to one and encroachment upon the vested rights of another, cannot be permitted. This case is a concrete example of the same.

2. Brief facts as contained in the O.A.:

(a) Applicant No. 1 is Commercial Apprentice appointed prior to 1987 and at present he is working as Commercial Superintendent (Coaching) in the pay scale of Rs. 1600-2660 with effect from 1.3.1993. Applicant has now retired from service. Applicant No. 2 and 3 are Commercial Apprentice appointed prior to 1987 and at present were working as Commercial Superintendent (Parcel) and Commercial Superintendent (Booking) in the pay scale of Rs. 2000-3200 with effect from 29.6.1995 and 25.5.1995 respectively. Applicant Nos. 2 and 3 have also by now retired. Similarly, respondent No. 3, 4, 5 and 6 are also Commercial Apprentice appointed prior to 1987 and at present are working as Commercial Superintendent (Booking) Commercial Superintendent (Coaching), Commercial Superintendent (Booking) and Commercial Superintendent (Parcel) in the pay scale of Rs. 2000-3200. Even at the time of promotion of the applicant in the aforesaid pay scale of Rs. 1600-2660, the respondent No. 3 to 6 were working in the next lower pay scale of Rs. 1400-2300.

(b) The Railway Board issued a Circular No. E(NG)II-84/E-3(AIFR) dated 15.5.1987 prescribing therein that 25% of the vacancies in the grade of Rs. 1600-2660 Traffic/Commercial Apprentices will be filled in by the recruitment of Commercial

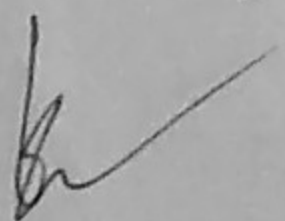
Apprentices of which 10% will be by direct recruitment from open market through the Railway Recruitment Board and 15% on the basis of limited departmental competitive examination.

(c) A few persons working in the pay scale of Rs. 1400-2300 filed OA No. 69 of 1991 before the Bangalore Bench claiming the benefit of higher pay scale of Rs. 1600-2660 under the provisions of the aforesaid circular dated 15.5.1987. Few others approached the Ernakulam Bench and challenged the legality and validity of the aforesaid memorandum on the ground that Railway Board's Memorandum dated 15.5.1987 being in the nature of Administrative instruction, could not change the provisions of the Railway Establishment Manual which were statutory in nature. Several similar cases were also filed before the different benches of this Hon'ble Tribunal. The Bangalore Bench vide its judgment dated 9.8.1992 passed in OA No. 69 of 1991, allowed the claim of the petitioner and granted the higher pay scale of Rs. 1600-2660 for Commercial Apprentices in pursuance of the Memorandum dated 15.5.1987. Other Benches of the Tribunal except the Ernakulam Bench which declared the aforesaid memorandum as invalid, allowed the claim of the petitioners on higher pay scale of Rs. 1600-2660 in pursuance of the aforesaid Railway Board Memorandum dated 15.5.1987.

(d) In pursuance of the judgment of the Bangalore Bench and the present Respondent No. 3 to 6 although they were pre 15.5.1987 Commercial Apprentices were granted the benefit of higher pay scale of Rs. 1600-2660 under the aforesaid Railway Board's Memorandum dated 15.5.1987 respectively with effect from 15.7.1987. While the petitioners were granted pay scale of Rs.

1600-2660 as per their normal channel of promotion with effect from 1.3.1993. Respondent No. 3 to 6 got it with effect from 15.7.1987. Thus respondent No. 1 and 2 placed them over and above than the petitioners in the seniority list of Rs. 1600-2660 and therefore, the petitioners became junior than ;the respondent No. 3 to 6 in the aforesaid pay scale. As a result thereof, the Respondent no 3 to 6 were further granted promotion to the next higher pay scale of Rs. 2000-3200 with effect from 16.9.1993 (Respondent No. 3) and with effect from 4.9.1993 (Respondent No. 4, 5 and 6).

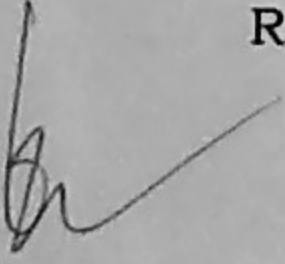
(e) The Judgment of the Bangalore Bench dated 9.8.1992 passed in OA No. 69 of 1991 including the judgment of other benches were implemented by the respondent No. 1 and 2 but at the same time an SLP was filed before Hon'ble Supreme Court of India being Civil Appeal No. 5410 of 1992 . Union of India and others Vs. M. Bhaskar and others. The Hon'ble Supreme Court set aside the judgment of Ernakulam Bench declared the aforesaid memorandum dated 15.5.1987 as invalid. The Hon'ble Supreme Court also set aside the judgments of those Tribunal including the judgment of Bangalore Bench which held that the pre 19987 Traffic/Commercial Apprentice become entitled to the higher pay scale of Rs. 1600-2660 under the provisions of the Memorandum of Railway Board dated 15.5.1987 and the contrary view taken by the same Bench, was affirmed. Hon'ble Supreme Court has held that the new rule of the promotion as laid down in the Memorandum dated 15.5.1987 shall take effect from 15.5.1987 and those persons recruited prior to 1987, shall not get the benefit of the



aforesaid memorandum and the benefit of the Memorandum shall be available only to the post 15.5.1987 Apprentices.

(f) After the aforesaid judgment, Respondent No. 1 issued a letter dated 10.7.1996 to the DRMs of all the Sub Divisions including the Lucknow Division with the direction to implement the aforesaid judgment of the Hon'ble Supreme Court of India reverting all the Traffic/Commercial Apprentices who got the benefit of grade of Rs. 1600-2660 as per CAT's judgment by Challenging Railway Board's letter No. E(NG)II/84/RC-III(AIRF) dated 15.5.1987. In spite of the aforesaid letter from the respondent No. 1, the respondent No. 2 has not yet taken any action against the Respondent No. 3 to 6 in reverting them from the pay scale of Rs. 1600-2660 to that of Rs. 1400-2300 and refixing their seniority accordingly.

(g) Thus, the petitioners are still being treated as junior than the Respondent No. 3 to 6 in spite of the aforesaid Supreme Court judgment and the respondent No. 3 to 6 are enjoying the benefit of higher pay scale and also they are going to be promoted to the next higher post earlier than the petitioners. The petitioners filed OA No. 830 of 1999 S.R.L. Srivastava Vs. Union of India & others and OA No. 903/1999 Dhaneshwar Ram & another Vs. Union of India & others wherein this Hon'ble Tribunal was pleased to issue notices to the respondents to file their counter. The Respondents, however, by means of a Misc. Application brought into the knowledge of this Hon'ble Tribunal the fact that the matter was referred to the Constitutional Bench of the Hon'ble Supreme Court in S.S.P. Raja Ram & Other's case by a three Judges Bench vide order dated



6.11.1997 with the direction to maintain status-quo in the mean time with regard to reversion in rank and reduction in pay scales.

(h) The constitutional Bench of the Hon'ble Supreme Court decided the aforesaid case of E.S.P. Raja Ram and others vide judgment dated 10.1.2001. The Hon'ble Supreme Court found that the judgment in M. Bhaskar's case be brought and warranting no interference and has further held that the judgment in M. Bhaskar's case shall be applicable only to those cases, which have become final as would be seen in paragraph No. 22 and 23 of the aforesaid judgment of the Constitutional Bench of the Hon'ble Supreme Court (Annexure - A-XI). Hon'ble Supreme Court has been pleased to further hold that the aforesaid memorandum is applicable for the Traffic/Commercial Inspectors of higher grade (Grade II) and not for all grades of Traffic/Commercial Apprentices. Respondents passed the impugned order dated 29.5.2002 in a half hearted manner.

(i) By Means of the impugned order although they have reverted the private respondent No. 3 to 6 but not have given benefit to the petitioners for which they become entitled as per their case. The petitioners are suffering in the matter of their seniority as they have been treated as junior than the respondent No. 3 to 6 on account of grant of the aforesaid benefit of higher pay scale with effect from 15.7.1987.

3. Claim of the petitioners is that when the private respondents have been reverted and their seniority has been refixed and thereby they now stood at the same place, where they were earlier before getting the benefit fo circular dated 15.5.1987, the petitioners

should be given the consequential benefits by giving benefit of promotion on the next higher pay scale of Rs. 2000-3200 including re-fixation of seniority in the aforesaid pay scale arising out from the impugned order as well as in pursuance of the judgment of Constitutional Bench of the Hon'ble Supreme Court of India in ESP Raja Ram's case.

4. In this O.A. the applicant has prayed for following reliefs:-

“(i) to issue a writ, order or direction in the nature of Mandamus direction the respondents to grant consequential benefit of promotion of higher pay scale of Rs. 2000-3200 including the re-fixation of seniority in the aforesaid pay scale as a necessary consequence arising out from the impugned order as well as in pursuance of the judgment of constitutional Bench of the Hon'ble Supreme Court of India in E.S.P. Raja Ram's case within a period as may be stipulated by this Hon'ble Tribunal.”

5. Respondents have contested the O.A. and their version is as under:-

“while disposing of the case, the Hon'ble Supreme Court with a view to avoid hardships to the such persons in para 18 of the judgment of M.Hasker clearly observed that the railway authorities shall not recover the amount already paid to these employees, Accordingly, the railway authorities have given the appropriate placement to those persons in the lower pay scale.

Hon'ble Supreme Court in the case of E.S.P. Rajaram Vs. Union of India & others reported in (2001) 2 SC 186 has clearly held that the decision in M.Basker's case was taken after complete analysis of the provisions of the Indian Railway Establishment Code

and Indian Railway Establishment Manual and in the light of general principle of law relating to recruitment, there was no error in the decision and the same warranted no interference."

6. The applicant has filed his rejoinder in which he had reiterated the contention as contained in the O.A.

7. Written arguments were also permitted to be filed.

8. We have considered the case in detail. The Apex court in

*Union of India v. M. Bhaskar*, (1996) 4 SCC 416, has stated as under:-

3. The broad contents of the memorandum may be noted. It brought about some changes in the recruitment of Traffic/Commercial Apprentices — one of the changes being that on and from 15-5-1987 the recruitment of these apprentices would be made in the pay scale of Rs 1600-2660 (this scale earlier was Rs 1400-2300) and, instead of all the posts being filled up by promotions, ratio of promotees was made 75%, and of the remaining 25%, 10% were required to come through Railway Recruitment Boards and 15% on the basis of Limited Departmental Competitive Examination. The pre-1987 apprentices laid their claim for the higher scale of pay on the basis of 1987 memorandum; and it is this claim which has come to be allowed by the majority of the CATs.

4. ...

5. To decide the controversy, it would be apposite to apprise ourselves as to what was the procedure of recruitment before the memorandum in question; and what was really meant by the word 'Apprentices'. We have put this aspect at the forefront because the Tribunals, who have granted the benefit of higher pay scale, have done so, with respect, without applying their mind to the relevant provisions of the Indian Railway Establishment Manual, hereinafter the Manual, dealing with the recruitment of (1) Traffic <sup>419</sup>Apprentices; and (2) Commercial Apprentices. Rule 123 of 1968 edition of the Manual deals with recruitment of Traffic Apprentices and Rule 127 with Commercial Apprentices. It is apparent from this Manual that the posts to be held by Traffic Apprentices before 1987 were of: (1) Assistant Station Masters; (2) Assistant Yard Masters; (3) Traffic Inspectors; and (4) Section Controller (in the scale of Rs 1400-2600). Insofar as Commercial Apprentices are concerned, these posts were of: (1) Assistant Claims Inspectors/Supervisors; (2) Assistant Commercial Inspectors; (3) Assistant Rates Inspectors (Goods

and Coaching); and (4) Other Inspectors for outdoor duties. This apart, the pre-1987 position was that in the Traffic and Commercial Departments, posts in the pay scale of Rs 1400-2300 were being filled up to the extent of 25% by direct recruits, of which 15% were from open market and 10% from Limited Departmental Competitive Examination; and the balance 75% by promotion from lower grade. Further, the term 'Apprentices' was being actually used to cover "direct recruits", as distinct from 'promotees'. Another thing to be noted, which again missed the Tribunals in question, is that when the pay scale of Rs 1400-2300 was being paid to Traffic/Commercial Apprentices, the higher pay scale of Rs 1600-2660 was being paid to those who were in a higher grade.

..... it is clear that the memorandum of 1987 was really not one of revision of pay of the Traffic/Commercial Apprentices, as has been understood by those Tribunals who have conceded the higher pay scale. The higher pay scale was really meant for the Traffic/Commercial Inspectors of higher grade. Mrs Sharda Devi's effort to satisfy us that the higher pay scale was really a revision on the basis of what finds place in para 2(ii) of the 1987 memorandum is founded on misapprehension inasmuch the <sup>420</sup> mention in that sub-para that "Traffic Apprentices absorbed in the cadre of Section Controllers in scale of Rs 470-750/1400-2600 (RP) will be fixed at starting pay of Rs 1600 on absorption", does not mean that these Section Controllers were given the pay scale of Rs 1600-2660, as urged by the learned counsel. All that was conveyed by this statement was that the Section Controllers, even though getting the revised scale of Rs 1400-2600, their starting pay would be Rs 1600.

This was so required, according to Shri Malhotra appearing for the appellant, because the trained apprentices could become eligible for the post of Section Controller only after having two years' Yard experience in the grade of Rs 455-700. It is this pay scale which had become on revision Rs 1400-2300; the unrevised pay scale of Section Controller was Rs 470-750, which on revision became Rs 1400-2600. So, what has been stated in para 2(ii) does not support the case of the respondents that the memorandum of 1987 really dealt with the revision of pay of all the Traffic/Commercial Apprentices.

**8.** We, therefore, hold that the Tribunals which allowed the benefit of pay scale of Rs 1600-2660 to all the Traffic/Commercial Apprentices irrespective of the grade of the posts held by them, not only misunderstood the memorandum of 1987, but misconceived the provisions relating to the recruitment and promotion of these apprentices as finding place in the Establishment Manual. Indeed, somehow or other they were oblivious of what has found place in the Manual in this regard.

Conclusion

(43)

**17.** All the appeals, therefore, stand disposed of by setting aside the judgments of those tribunals which have held that the pre-1987 Traffic/Commercial Apprentices had become entitled to the higher pay scale of Rs 1600-2660 by the force of memorandum of 15-5-1987. Contrary view taken is affirmed. We also set aside the judgment of the Ernakulam Bench which declared the memorandum as invalid; so too of the Patna Bench in appeal @ SLP (C) No. 15438 of 1994 qua Respondent 1. We also state that cases of Respondents 2 to 4 in appeals @ SLPs (C) Nos. 2533-35 of 1994 do not stand on different footing.

**18.** Despite the aforesaid conclusion of ours, we are of the view that the recovery of the amount already paid because of the aforesaid judgments of the Tribunals would cause hardship to the respondents/appellants concerned 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 had been delivered by any CAT and which had become final either because no appeal was carried to this Court or, if carried, the same was dismissed. This benefit would be available to no other.

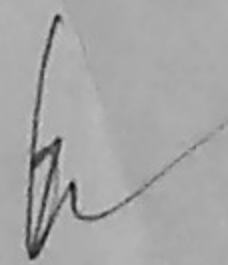
The above has been approved in the Constitution Bench case of **E.S.P. Rajaram v. Union of India, (2001) 2 SCC 186** as under:-

*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 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 in 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 judgment.*

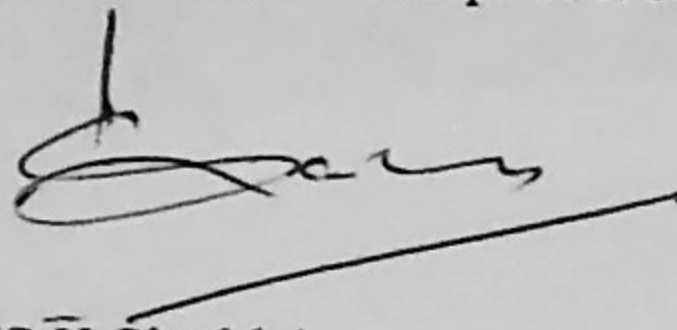
9. The above decision is clear in that in the event of any one having been fixed the higher pay scale, they have to face reversion in pay scale but no recovery shall be effected. Again, none could be allowed to get the benefit of the unintended higher pay scale in respect of seniority much less promotion based on such in unintended seniority. Here exactly is the grievance of the applicants. They would not have any grudge as to higher pay having been granted to the private respondents, but certainly when the private respondents have stolen a march over the applicants in

matter of seniority on the basis of erroneous fixation of pay scale to the private respondents, the chances of promotion of the applicants would have certainly depleted which is the cause of concern. Today the applicants have all but retired. Their claim for promotion is not to have the fixation of pay and drawal of arrears. Their claim is only to the extent of notional fixation of pay for the purpose of pension and other terminal benefits. For, they have not physically worked in the higher post. Under these circumstances, all that could be done is to reschedule the seniority of the applicant and consider their case for promotion to the higher post carrying the pay scale of Rs 2000 - 3200 from the date the private respondents had been granted the higher pay scale and from that stage, to work out the notional fixation of pay upto the time of superannuation of the applicants which would reflect the last pay drawn, and the said pay on the last month would be the basis for working out the pension and other terminal benefits. By this method, the private respondents would not be affected but the applicants would be rendered full justice.

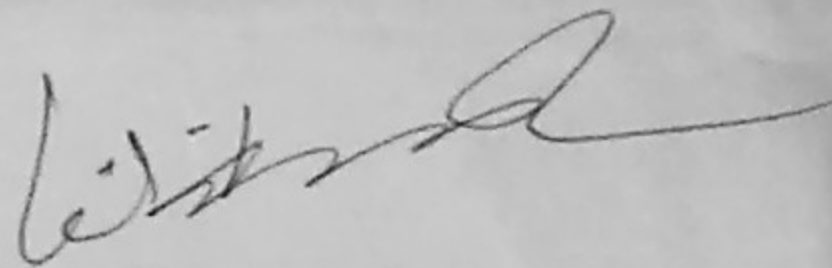
10. In view of the above, the O.A. is disposed of with a direction to the respondents to consider the case of the applicant for promotion to the level of Rs 2000 - 3200 from the date the private respondents had been promoted and work out the basic pay by adding annual increments as per law and the pay drawn on the last month of their service would determine the extent of pension and other terminal benefits. The applicants would be entitled to arrears of pension and difference in the terminal benefits arising out of such calculation.



11. Time limit calendared for this purpose is four months from the date of receipt of a copy of this order. No cost.



(S.N. Shukla)  
**Member (A)**



(Dr. K.B.S. Rajan)  
**Member (J)**

Shashi