

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This The 20th Day Of May 2011)

Hon'ble Dr.K.B.S.Rajan, Member (J)
Hon'ble Mr. D.C. Lakha, Member (A)

Original Application No. 356 of 2006
(U/S 19, Administrative Tribunal Act, 1985)

1. Sushil Kumar Jaiswal S/o Late Shri Ram Kumar Jaiswal
Rambagh Jatepur North, Gorakhpur.
2. Vijay Kumar Srivastava S/o Late Shri G.N. Srivastava,
Shastri Nagar, Betia Hata, Gorakhpur.
3. Ved Prakash Sharma S/o Late Shri Vugal K. Shastri Medical
Railway Colony, Quarter No.257/B, N.E.Rly., Gorakhpur.
4. Ashok Kumar S/o Satya Prakash 556/L, Bichia, Railway
Colony, Gorakhpur.

..... Applicants

By Advocate: Shri Rakesh Verma

Versus

1. Union of India through Secretary, Railway Board, Rail
Bhawan, New Delhi.
2. General Manager, North Eastern Railway, Gorakhpur.
3. Chief Personnel Officer, North Eastern Railway,
Gorakhpur.

4. Chief Public Relation Officer, North Eastern Railway,
Gorakhpur.

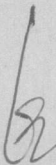
..... Respondents

By Advocate: Shri A.K. Sinha

ORDER

(Delivered by Hon'ble Dr.K.B.S.Rajan, Member (J))

1. The only question involved in this case is whether there is an element of direct recruitment in the hierarchy of Publicity Inspectors/Senior Publicity Inspectors. If the answer is in affirmative, the applicants have a case while if the answer is negative; the claim of the applicants has to be negative.
2. The petitioner Nos. 1 and 2, who are the Publicity Inspectors and the petitioner Nos.3 and 4, who are the senior Publicity Inspector and have been allowed pay-scale pursuant to the V C.P.C. in the scales of Rs.4500 - 7000/- and Rs.5500 - 9000/- respectively w.e.f. 01.01.1996. Despite the fact that upto IV C.P.C. the Publicity Inspectors and Senior Publicity Inspector were allowed the identical pay-scale at par with their counterparts viz. Commercial Inspector, Senior Commercial Inspectors/ Welfare Inspectors, Senior Welfare Inspectors/ Personnel Inspector and Senior personnel Inspector, while under the V CPC, these have been allowed the pay scale of Rs.5000 - 8000/- and Rs.5500 - 9000/- respectively by the V C.P.C. in the case of the applicants, the pay scales have been lower than the above scales..



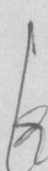
3. The Applicants moved a representation dated 24.12.1997 followed by another one on 11.01.1998 (Annexure A-3 & A-4). The matter was referred to anomaly Committee constituted under the 5th Pay Commission; the Committee rejected the claim on the ground that there is no direct recruitment component in the Recruitment Rules in respect of Publicity Inspector. Hence, this O.A.

4. Respondents have contested the O.A.. According to them, the 7th meeting of Department anomaly committee held on 03.05.2001 are as under:-

"In case of Publicity Inspectors, it was pointed out that in terms of extant orders of the Railway Board, posts of Publicity Inspector in the scales of Rs.4500 - 7000/- are filled up on the basis of Limited Departmental Competitive Examination from amongst Graduate Railway employees working in Group 'C'. Since there is no provision of direct recruitment of Graduates in the recruitment rules, demand for improvement in pay scales is not justified. The staff side mentioned that direct recruitment of Publicity Inspectors exists in Northern and South Central Railway. It was agreed that the position will be checked up from these Railways."

5. The anomaly committee rejected the claim of the applicant on the ground of absence of direct recruitment elements. Para-18 of the Counter Affidavit in this regard is reproduced as under:-

"18. That the posts of Publicity Inspectors in the scale of Rs.4500 - 7000/- are filled up on the basis of LDCE from amongst graduate employees working in Group 'C'. Since there is no provision of direct recruitment of Graduates in the recruitment rules for this grade, grant of improved pay scale of Rs.5000 - 8000/- is not tenable Direct recruitment



of graduates is there in level of Senior Publicity Inspector for which the scale of Rs.5000 -8000/- has been provided ”

6. Respondents have also stated that comparison with other posts cannot be made in this case.

7. In the Rejoinder Affidavit, the applicants have relied upon the decision by the Apex Court in the case of **Union of India v. Arun Jyoti Kundu** (CA No.2468 – 2469 of 2005 decided on 27.08.2007) and also **Union of India v. Indu Lal and Ors.**: AIR 2002 SC 2197.

8. Written arguments were permitted to be filed. Accordingly, counsel for the Applicant has filed the written submission which by and large has borrowed the contents from the O.A. itself.

9. Written submissions as also arguments advanced at the time of hearing have been kept in mind. Documents have also been perused.

10. Admittedly, the basic post i.e. Publicity Inspector Gr. 4,500 – 7,000 is filled partly by direct recruitment and partly by selection from amongst the serving railway staff of all the departments with the requisite qualification of Graduation with Hindi and English as elective subject with five years of railway service. As per A.V.C. the next higher post i.e. 50% of Sr. Publicity Inspector in the scale of Rs 5000 – 8000 is filled by way

of direct recruitment while the remaining 50% by way of promotion.

11. The hesitation of the Respondents in not acceding to the claim of the applicants is on account of the fact that there is no component of direct recruitment. It appears that the term of direct recruitment has been construed by the Department to mean 'direct recruitment from open market'. The same is not necessarily so. There could be direct recruitment to any post from amongst the sub-ordinate by holding limited departmental competitive examination. As for example, in the case of the Railway Traffic Apprentices, two main modes of filling up of vacancies are (a) by promotion and (b) Direct Recruitment. In so far as Direct Recruitment is concerned, it is partly from open market and partly from the departmental candidates through a Limited Departmental Competitive Examination. In this regard the observations of the Apex Court in the case of *Union of India v. M. Bhaskar*, (1996) 4 SCC 416 is relevant, wherein the Apex Court has stated as under:-

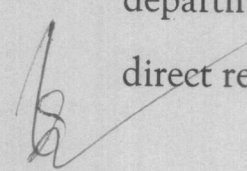
" This apart, the pre-1987 position was that in the Traffic and Commercial Departments, posts in the pay scale of Rs 1400-2300 were being filled up to the extent of 25% by direct recruits, of which 15% were from open market and 10% from Limited Departmental Competitive Examination; and the balance 75% by promotion from lower grade. Further, the term 'Apprentices' was being actually used to cover "direct recruits", as distinct from 'promotees'.

12. The question for consideration could be viewed from yet another angle. According to the applicants, it has not been admitted by the Respondents that in some other zones (North

South Central Railway) direct recruitment component is available in respect of Publicity Inspectors. As such, when in other zones the element of direct recruitment is admitted, there is no reason to hold otherwise in respect of North Eastern Railway. It has been held by the Apex Court in the case of **Abid Hussain v. Union of India**, (1987) 1 SCC 532, as under:-

It is not disputed that the Air-conditioned Coach-In-Charges-Attendants are being paid overtime allowances for extra duty hours exceeding 96 hours in two weeks in the Western Railway, Central Railway and Eastern Railway. There is no justification for denying overtime allowances on the same basis to the Air-conditioned Coach-In-Charges-Attendants in the Northern Railway. We accordingly direct the Union of India and the Railway Administration to pay with effect from July 1, 1984 the overtime allowances to the Air-conditioned Coach-In-Charges-Attendants working in the Northern Railway on the same basis on which the Air-conditioned Coach-In-Charges-Attendants in the other three Railways, referred to above, are paid. All arrears of such allowances up to date shall be paid as early as possible and in any event not later than four months from today. The benefit of this order shall be extended to all such employees including those who have retired and those who have not joined as petitioners herein.

13. Thus, though there may be different zones, the Railways is one and the policy emanated by the Railway Board should be applicable to all the Zones uniformly. As such, in order to harmoniously read the provisions obtaining in various zones, it has to be held that when in some other zones direct recruitment is provided for, for filling up of the vacancies in the grade of Publicity Inspectors, in the case Respondents herein the limited departmental competitive examination itself should be viewed as direct recruitment only.



14. There is no magic in the word 'direct recruitment'. Revision of pay scale is to be based on functional necessities and not as to whether there is an element of direct recruitment. And, when on the earlier occasions (previous Pay Commission recommendations), there has been parity in pay scale of the posts of Publicity Inspector/commercial Inspectors/Welfare Inspectors/Personnel Inspectors, and when in the V CPC the other four categories i.e. commercial Inspectors/Welfare Inspectors/Personnel Inspectors, the pay scale is Rs 5,000 - 8,000/- unless there is a deliberation and a conscious conclusion that such a pay parity need not be extended to the case of Publicity Inspector, affording a lower pay scale would not be justified. In the instance case, the anomalies committee has only tried to justify the difference in pay scale by stating there is no element of direct recruitment in the grade of publicity inspector. Source of recruitment cannot dictate the terms of pay scale for any post, vide *State of Kerala v. B. Renjith Kumar*, (2008) 12 SCC 219 wherein the Apex Court has held as under:-

18. In the present case, the respondents' claim before the High Court was confined to equal scale of pay to that of the District Judges. This was based on the fact that the respondents are discharging similar duties and functions in the administration of justice and their scale of pay was equal to that of District Judges till revision of pay scales of the judicial officers in the year 1998. The Industrial Tribunals are indisputably judicial tribunals manned by legal professionals who are eligible to be appointed as District Judges or Judges of the High Courts. The Presiding Officers are exercising judicial powers and duties under the ID Act, 1947 and their decisions are subject-matter of challenge before the High Court by way of writ petition. The only difference is their source of recruitment.

19. Looking to the nature of duties and functions of these respondents, we are of the opinion that there is no reason to treat them differently. Once these persons are already working for more than three decades discharging the same functions and duties, we see no reason why the same benefit should not be given to the respondents and other similarly situated Presiding Officers of the Tribunal who are the applicants before us in IA No. 2 of 2004.

15. Thus, when in the other comparable posts (which were earlier afforded the identical pay scale as of Publicity Inspector) higher pay scale is provided for, depriving an identical treatment in respect of the post held by the applicant on the mere ground that there is no direct recruitment component would be offending Article 14 of the Constitution. Such a distinction cannot be said to be an intelligible differentia to provide for different pay scale.

16. In view of the above, the O.A. is allowed. Respondents are directed to reconsider the case of the applicants in the light of the observation made above and arrive at a judicious decision for higher pay scale of 5000 - 8000/- to Publicity Inspector and 5,500 - 9,000 to the Senior Publicity Inspectors.. They may prescribe a specific date from which the higher pay scales would apply (or notional upto a specific date and actual thereafter), in case the financial burden (in respect of arrears of pay) becomes stupendously high, running into tens of lakhs or in crores. For financial implications have definite role in fixing a specific date in such cases, vide the Apex Court judgment in the case of *State of Punjab v. Amar Nath Goyal*, (2005) 6 SCC 754 wherein it has been held as under:-

32. The importance of considering financial implications, while providing benefits for employees, has been noted by this Court in numerous judgments including the following two cases. In *State of Rajasthan v. Amrit Lal Gandhi* (1997) 2SCC 342 this Court went so far as to note that:

"Financial impact of making the Regulations retrospective can be the sole consideration while fixing a cut-off date. In our opinion, it cannot be said that this cut-off date was fixed arbitrarily or without any reason. The High Court was clearly in error in allowing the writ petitions and substituting the date of 1-1-1986 for 1-1-1990."

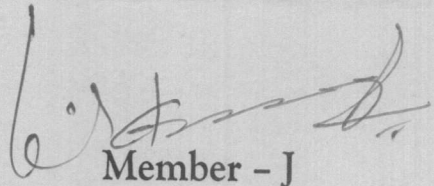
33. More recently, in *Veerasamy* (1999) 3 SCC 414 this Court observed that, financial constraints could be a valid ground for introducing a cut-off date while implementing a pension scheme on a revised basis. In that case, the pension scheme applied differently to persons who had retired from service before 1-7-1986, and those who were in employment on the said date. It was held that they could not be treated alike as they did not belong to one class and they formed separate classes.

17. This order may be complied with within a period of six months from the date of receipt of certified copy of this order.

No costs.



Member -A



Member - J

Sushil