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(RESERVED)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ALLAHABAD, this the 17th day of December, 2008.

HON'BLE MR. A. K. GAUR, MEMBER- J
HON'BLE MRS. MANJULIKA GAUTAM, MEMBER-A

ORIGINAL APPLICATION NO. 06 OF 2007

1. Chhangoo Lal aged about 53 years son Shri Surajdeen, working as Storeman under S.E. (P.Way) North Central Railway, Fatehpur R/o House No.399 Jairam Nagar, near Rly. Gate No.50, P.O.- Fatehpur and District- Fatehpur.
2. Shri Niwas S/o Shri J.K. Singh, aged about 50 years, working as Storeman under S.E./ Works/ North Central Railway, Fatehpur.
3. Dhiraj Kumar S/o Shri Shyam Bihari Lal, aged about 56 years, working as Storeman under S.E. (P. Way)/ N.C. Railway, Fatehpur.
4. Mahesh Prasad Shukla S/o Shri Ganesh Prasad Shukla aged about 57 years, working as Storeman under D.E.N./ N.C. Railway, Fatehpur.
5. Babu Lal S/o Shri Mahabir aged about 53 years working as Storeman under S.S.E./ P.Way-I/ N.C. Railway, Kanpur.
6. Ramanand Singh S/o Shri Sukhdeo Singh aged about 53 years working as Storeman under S.E./ Works/ N.C. Railway, Fatehpur.
7. Awadh Bihari S/o Shri Onkar Nath Shukla aged about 56 years, working as Storeman under S.E./ Works/ N.C. Railway, Fatehpur.

.....Applicants.

V E R S U S

1. Union of India through, General Manager, N.C. Railway, Headquarters Office, Allahabad.
2. General Manager, N.C. Railway, Headquarters Office, Allahabad.
3. Divisional Railway Manager, N.C. Railway, Allahabad.
4. Sr. DEN ©, North Central Railway, Allahabad.
5. Secretary (Estt.), Railway Board, Rail Bhavan, New Delhi.

.....Respondents

Present for the Applicant:

Sri S. Ram

Sri A. Kumar

Present for the Respondents :

Sri A.K. Pandey

ORDER

Delivered : by Hon'ble Mr. A.K. Gaur, Member-J :

The applicants were working in Group 'D' category in Engineering Department of Allahabad Division of the then Northern Railway (now N.C. Railway) before they were promoted as Storeman after passing suitability test prescribed for the said post. A detailed chart showing all the applicants i.e. the date of appointment, date of birth and date of promotion as Storemen, has been filed as Annexure-A- to the OA. In view of the Railway Board's instructions issued in the year 1978-1979, the post of Storeman was abolished and all the Storeman were re-designated and upgraded as Material Checkers in grade of Rs.2750-4400 (RSRP) in accordance with Railway Board's letter dated 20.7.1979. It is alleged by the applicant that the said decision was implemented on all the Divisions of the Zonal Railways except on Allahabad Division. The post of Material Checker was upgraded to the post of Material Checking clerks and was placed in grade Rs.3050-4590 (RSRP). In an identical matter, some of the similarly situated employees of the Bridge department filed OA No.648/99 before Principal Bench of this Tribunal and the same was allowed vide judgment and order dated 3.4.2003. A copy of the judgment has been filed as Annexure-A-5. After coming to know of the said judgment the Storemen of Allahabad Division jointly made a representation to the Railway Administration to grant the similar benefit from the date of appointment of Storemen but when no heed was paid by the respondents they approached this Tribunal by filing the aforesaid OA claiming the following reliefs :-

- "(i) *The Hon'ble Tribunal may graciously be pleased to direct the respondent to give similar benefits to the applicants also which have been given to the applicants in O.A. No.648/99 i.e. regularizing the services of the*
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applicants as Material Checkers from the dates from which they were initially promoted as Storeman and thereafter upgraded them to the post of Material Checkers Grade Rs. 2750-4400 (RSRP and Material Checking Clerks Grade Rs. 3050-4590 (RSRP) respectively as per policy of Railway Board.

- (ii) *The Hon'ble Tribunal may further be pleased to give all consequential benefits of seniority, promotion, back wages etc.*

2. The grievance of the applicant is that as a result of cadre restructuring in 1993 and 2003, the benefit of up-gradation/promotion has been extended to all categories including Material Checkers/ Material Checking Clerks, except Storemen working in the Engineering Department of Allahabad Division and they are drawing the lower pay in the self-designed pay scale of Rs.2650-4000/- since long. The Railway Board issued directions vide letter dated 10.3.2004 directing the General Manager, Northern Railway to implement the Tribunal's order dated 22.1.2004 in CCP No.413/2003 arising out of O.A. No.648/99 - **Sukhdev Singh Vs. U.O.I. & Ors.** In a similar matter in OA No.133 of 1991 filed before Lucknow Bench of this Tribunal, the Tribunal directed by judgment and order dated 28.8.1992 to upgrade all the posts of Material Checkers to higher grade of Material Checking Clerks without requiring them to undergo written test or viva voce. In Civil Appeal No.3156 of 2005 arising out of SLP (C) No.22083/2003- **Badri Prasad and others Vs. Union of India & ors.**, the appeal filed by Railway Administration was dismissed by Hon'ble Supreme Court on 6.5.2005.

3. In the reply filed by the respondents, it is submitted that the OA has been filed after a long delay of about three years and the OA should be dismissed on the ground of delay alone. It is further alleged by the respondents that the applicants were promoted on the post of Storemen from the respective date as indicated in the reply and they are continuing

on the same post from the date of promotion as Storemen. The decision rendered by the Principal Bench of the Tribunal is subjudice in the higher Court so on this ground the applicants has no right to establish their claim.

4. In the rejoinder reply filed by the applicant, it is clearly mentioned that there is no apparent reason to discriminate the applicants on the face of record that benefit of the judgments as delivered vide order dated 6.5.2005 passed by the Hon'ble Supreme Court in **SLP (C) No.22083 of 2003 - Badri Prasad and others Vs. U.O.I. and Ors.** be not given to the applicant. The cause of action is a continuing wrong due to grant of less payment of salary to the applicants. The case of the applicants is similar and identical and similar benefit must be extended to them.

5. We have heard Shri Sudama Ram, counsel for the applicant and Shri A.K. Pandey, counsel for the respondents.

6. Learned counsel for the applicants has vehemently placed reliance on the following judgments in support of his case :-

1. 2003 (2) SLJ 124- Savita Rani and others Vs. Union Territory Chandigarh and others.
2. 1993 (23) ATC 461 - Sunilendu Chaudhary and others Vs. U.O.I. & ors.
3. 1996(32) ATC 347 - Sujit Kumar Ghosh & ors. Vs. U.O.I. & ors.
4. 2000(1) SLJ (CAT) 499 - Shri Ram Prasad Bhattacharya Vs. Union of India and others.

In order to buttress the contention that denial of similar benefits to the applicants of the judgment as well as denial of similar treatment of the instructions laid down by the Railway Board is a continuing wrong. Learned counsel for the applicant has also placed reliance on following decisions :-

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1. 1993 (23) ATC 266 - R.K. Agarwal (Dr. Vs. Union of India & ors.
2. 1985 SCC (L&S) 526 - Inder Pal Yadav & Ors. Vs. Union of India & ors.

The Hon'ble Supreme Court has held that "those who could not come to the court, need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by any one else at the hands of this court."

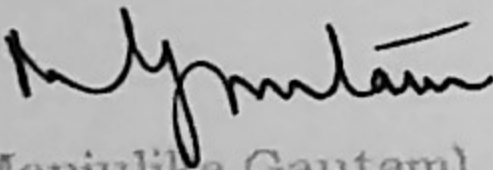
7. Having heard the parties counsel at length and having gone through the judgment of Hon'ble Supreme Court in the case of Badri Prasad (supra) and Full Bench decision of this Tribunal rendered in OA No.2315/97 in the case of **Kulwant Singh and ors. Vs. The General Manager, Northern Railways, New Delhi and Ors.** decided on 23.10.2001, we are firmly of the view that the applicants have been working as Storemen since long time and entitled to have their pay re-fixed from the relevant date, and the consequential benefits prayed for by them be given to them in accordance with the rules. Learned counsel for the applicant further contended that the question of delay should not create an impediment in grant of relief to the applicants and they deserves to get the benefit of the earlier judgment of Hon'ble Supreme Court and the judgment rendered by Principal Bench of the Tribunal and similar benefit may be extended to them. In support of the aforesaid contention, he placed reliance on the following decisions :-

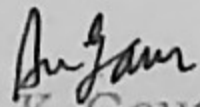
1. JT 1997 (7) SC 58- K.C. Sharma Vs. UOI & ors.
2. 1992 SCC (S&S) 80- G.C. Ghosh and Ors. Vs. UOI & ors.

8. Having heard the parties counsel, we are firmly of the view that since similar benefit has been granted by the Principal Bench of the

Tribunal in OA No.648/99, the grievance of the applicants might be redressed in case a direction is given to the competent authority to consider and decide the pending representation of the applicants Annexure-A-11 in the light of the decision rendered by the Principal Bench of the Tribunal in OA No.648/99 - **Sukhdeo Singh Vs. Union of India & ors** and in OA No.2315/97 - **Kulwant Singh and ors. Vs. The General Manager, Northern Railways, New Delhi and Ors.** decided on 23.10.2001 and also the decision of Hon'ble Supreme Court rendered in **SLP No.22083 of 2003 - Badri Prasad and others Vs. U.O.I. and Ors.**, and pass appropriate reasoned and speaking order by taking a pragmatic approach in the matter, within a period of three months from the date of receipt of copy of this order.

9. With the aforesaid observations, the OA is disposed of. No order as to costs.


(Manjulika Gautam)
Member (A)


(A.K. Gaur)
Member (J)

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