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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 328 & 329 OF 1987.
~~T.A. No.~~

DATE OF DECISION 23.9.1988

SHRI MULCHAND S. SHARMA & ANR. Petitioner s.

MR. S.K.JHAVERI FOR MR.K.S.JHAVERI Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondent s.

MR. N.S. SHEVDE Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal. *Yes*

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O.A.No. 328/87.

1. Shri Mulchand Shivdayal Sharma,
Senior Goods Clerk,
(Retired)
112, Sarvottamnagar,
Near Railway Colony,
Sabarmati, Ahmedabad.

O.A.No. 329/87.

2. Shri Prabodhrai Mangalram Raval,
Senior Goods Clerk, (Retired),
1, Jal Sabar, Society,
Dharamnagar,
Mahadev Road, Sabarmati,
Ahmedabad.

.... Petitioners

(Advocate: Mr. S.K.Jhaveri for
Mr. K.S. Jhaveri)

Versus.

1. Union of India, through
General Manager,
Western Railway,
Churchgate, Bombay.
2. Divisional Railway Manager,
Western Railways,
Baroda Division having its
office at Pratapnagar,
Vadodara.
3. Sr.Divisional Commercial Supdt.,
Western Railway,
Baroda Division,
Pratapnagar, Vadodara.
4. Sr.Divisional Personnel Officer,
Western Railway,
Baroda Division,
Pratapnagar, Vadodara.

.... Respondents.

(Advocate: Mr.N.S.Shevde)

J U D G M E N T

O.A.NO. 328 OF 1987

&

O.A.NO. 329 OF 1987

Date: 23.9.1988.

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

The petitioners viz; (i) Shri Mulchand S. Sharma
(petitioner in O.A.No. 328/87) and (ii) Shri P.M.Raval
(petitioner in O.A.No. 329/87), both retired railway

employee of the Western Railway, have filed the application under section 19 of the Administrative Tribunals Act, 1985 for redressal of their grievance against non-implementation and denial of the benefits of promotion by way of upgradation in terms of the directives issued under the Railway Board's circular No. PC III/80/UPG/19 dated 20th December 1983.

2. The petitioner No.1, Shri Mulchand S. Sharma (retired w.e.f. 31st October 1985), who was working as Senior Goods Clerk in the scale of Rs.330-560(R) claimed that he was entitled to get promotion to the grade of Rs. 425-640(R) with effect from 1st January 1984 as per his seniority, as similarly situated persons in Bhavnagar Division were given immediate effect vide office order dated 28th April 1984 (Annexure -II). He therefore prayed that the respondents-railway administration be directed to refix the pay in grade of Rs. 425-640 and pay the difference of the salary and other consequential benefits, leave salary etc. from 1st January, 1984 upto 31st October 1985, and also arrears of pension on the basis of refixation of his pay.

3. The petitioner Shri P.M.Raval (retired w.e.f. 31.1.85) also working as Senior Goods Clerk in the grade of Rs.330-560(R) made similar claim on the same grounds. However he further alleged that he was entitled to claim further promotion to the grade of Rs. 455-700 and it being a selection grade he had appeared in the written test in terms of the aforesaid circular and having passed the same he was placed at Sr.No.74 in the memorandum (Annexure-III) dated 17.11.84 but due to inordinate delay ~~viva-voce~~ was not held till 4th February 1985, in violation

of the directives issued by the Railway Board. He therefore prayed that the respondents be directed to refix his pay in both the promotional grades i.e., Rs. 425-640(R) and Rs. 455-700(R) w.e.f. 1st January 1984 and the payment of all consequential benefits including salary, leave salary and arrears of pension, gratuity etc.

4. When both the matters came up for hearing Mr. S.K.Jhaveri for Mr. K.S.Jhaveri and Mr.N.S.Shevde, the learned counsel for the petitioners and the respondents respectively, were heard. The materials placed on record are perused and considered. As identical issues are raised for consideration, both the matters are heard together and they are being decided by rendering a common judgment.

5. The grievance of the petitioners is that even though the respondents authorities were ordered to implement the instructions contained in the circular in granting benefits of upgradation and promotion within three months from the date of the issuance of the orders, the Divisional Railway Manager, under whom the petitioners are working, committed an inordinate delay in not passing the suitable orders and violated the instructions contained in circular and thereby denied their due benefits admissible to them. According to them, the employees who were similarly situated and working in different division (Bhavnagar Division) under the Railway Administration were given immediate promotion within three months i.e., before 30th April, 1984 and thus they are discriminated and accordingly, inaction on the part of the Respondents in denying the benefits to the petitioner is violative of article 14 & 16 of the Constitution of India.

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6. The stand of the respondents, in their counter, is that the time of three months stipulated in the railway board was directory and the viva-voce, was not to be held ^{for} the applicants alone, but for 182 employees and the procedure as well as the quantum of work involved therein, took sometime as generally happens in selection process. According to them, as the applicant (Shri P.M.Raval) had not pass in the selection, he was not entitled to promotion to the post of Chief Goods Clerk in scale Rs. 455-700(R). However according to them, both the petitioners are held to be entitled to fixation of pay in scale Rs. 425-640(R), only for retirement benefits, as per Railway Board's letter dated 20.12.83 and no arrears are to be paid to them. Alongwith their counter they have produced the orders contained in memorandum dated 7.10.87 allowing the benefit of promotion as HGC grade Rs.425-640(R) with effect from 1.1.84 and notional proforma fixation of pay in the case of the applicants for the purpose of retirement benefits only. The said order reads as under :-

No.EC/839/4/8/Pt.II.
Memorandum:

Sub : Promotion, Reversion and Transfer - HGC
scale Rs. 425-640(R) - Comm.Deptt.-BRC Divn.

In terms of Rly.Bd.'s letter No.PC/III/85/UPG/15 dt. 22-8-86 circulated under GM(E)CCG's letter No. EP/830/0 (Restructuring) dt.9-9-86 (P.S.No.212/86) the following two retired employees are allowed the benefit of promotion as HGC scale Rs.425-640(R) w.e.f. 1-1-84 against chain in resultant vacancies as under:

They are eligible for proforma fixation of pay from 1-1-84. The pay thus fixed notionally will be counted for the purpose of calculation of retirement benefits only.

PI(Settlement) will please arrange accordingly.

Sr.No.	Name S/Shri.	Position as on 1-1-84.
1.	Mulchand Sharma.	Design. Stn. Scale. Sr.AGC ASV 350-560(R)
2.	P.M. Raval.	" KKF "

Revised position as on 1-1-84.	Pay fixed on proforma on 1-1-84 as HGC.
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Design.	Stn.	Scale.		
HGC	ASV	425-640(R)	545/-	1-1-84
"	KKF	"	560/-	1-1-85
- - - - -	- - - - -	- - - - -	580/-	1-1-84
			600/-	1-1-85

Remarks.

Retired on 31-10-85
Retired on 31-1-85

Sd/-
For DCS(E) BRC.

7. Before dealing with the points raised by the learned counsel for the parties it will be useful to relate to the railway board's circular No.PC III/80/UPG/19 dated 20.12.83 (Annexure I). The relevant and material portions thereof are reproduced as below :-

Cadre review and restructuring of non-gazetted cadres.

Arising out of a demand made by the Staff Side in the Departmental Council (Railways) of the Joint Consultative Machinery, the Ministry of Railways have decided that the following Group 'C' categories should be restructured as indicated in the enclosed annexure:

- i) Controller (Traffic Department)
- ii) Commercial Clerks/Weigh Bridge Clerks
- iii) Ticket Checking Staff
- iv) Enquiry-cum Reservation Clerks
- v) Train Clerks
- vi) Staff of Data Processing Centre
- vii) Traffic/Movement Inspectors.

2. For the purpose of restructuring, the cadre strength as on 1.1.1984 will be taken into account and will include Rest Giver and leave Reserve posts.

3. Staff selected and posted against the additional higher grade posts as a result of restructuring will have their pay fixed under Rule 2318-B(FR-22C) RII with effect from 1.1.1984.

4.1 The existing classification of the posts covered by these restructuring orders, as "Selection" and "Non-selection" as the case may be, remains unchanged. However, for the purpose of implementation of these orders, if an individual railway servant becomes due for promotion to only one grade above the grade of the post held by him, at present, on a regular basis, and such higher grade post is classified as a "Selection" post, the existing selection procedure will stand modified in such a case to the extent that the selection will be based only on scrutiny of service records without holding any written and/or viva voce test. Naturally, under this procedure, the categorisation as 'Outstanding' will not exist.

4.3 The relaxation in selection procedure as aforesaid will, in any case, be applicable only to the vacancies existing as on 31.12.1983 and orders in regard to reservation for SC/ST will continue to apply while filling up additional vacancies in the higher grades arising as a result of restructuring.

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8. While implementing these orders specific instructions given in the foot-note under each category in the enclosed Annexure should be strictly and carefully adhered to.

9. The Board desire that restructuring and posting of staff after due process of selection should be completed within a period of three months from the date of issue of these instruction positively and compliance reported to the Board.

8. Admittedly, the post of HGC grade Rs. 425-640(R) is a non-selection post, whereas the post of Chief Goods Clerk grade Rs. 455-700 is a selection one. Evidently, in the case of the petitioners their first promotion was to the scale of Rs. 425-640(R) which was a non-selection post. As per the directives contained in the aforesaid circular such and other benefits as stipulated therein were required to be allowed with effect from 1.1.84. It is significant to note that the Board has desired that the benefits of restructuring and posting of staff and the benefits attached to them is made available with effect from 1.1.84. It is in this context a mandate was issued by the authority concerned that all the due process of selection should be completed within a period of three months from the date of issuance (20-12-83) of the instructions (i.e. before 20.3.1984). Over and above, the concerned authorities were expected to implement the entire scheme of upgradation within a stipulated period of three months and the instructions were required to be complied with by positive action and they were obliged to submit their report to the Board by 30.4.84. Thus, there is no room for any doubt to understand that the entire scheme of upgradation as envisaged under the circular was a time bound programme required to be implemented strictly within three months from the date of the issuance of the order. In otherwords, no lapses were required to be

shown by the competent authority in implementing the directives. The entire machinery of granting benefits of restructuring was required to be completed and the benefits were required to be extended with effect from 1.1.1984.

9. Bearing in mind the important of the directives issued by the railway board, the competent authority of Bhavnagar Division passed two separate orders, (Annexure II) & (III) on 28.4.1984. By virtue of Annexure II, 32 employees, who were holding the scale of Rs. 330-560 like the petitioners, were given provisional promotion to officiate in the scale Rs. 425-640 with effect from 1.1.84 against the upgraded post; whereas Annexure III relates to 19 employees who were entitled to second promotion to the scale of Rs. 455-700.

10. It is true, the competent authority of Bhavnagar Division had issued the orders of promotion on provisional basis but in passing such orders due regard was given in according the benefits to the employees and ^{to comply} strict adherence to the time stipulated under the circular. The petitioners were working under Baroda Division. It is significant to note that no report or other materials whatsoever has been produced on record to show as to how the competent authority of the Baroda Division dealt in the matter of implementation of the directives issued under the circular issued by the Railway Board. Evidently, this is a glaring instance of the lapses on the part of the authorities whereby bonafide employees are deprived of the benefits admissible under the scheme envisaged by the Railway Board. An attempt was made

by Mr. Shevde during the course of his arguments that the orders issued by the authorities of Bhavnagar Division were rather irregular. Barring the bald statement of Mr. Shevde, in this regard there is nothing on record, even to suggest that any higher authority dis-approved of the action of the authorities of Bhavnagar Division in granting all the required benefits to the employees concerned and that too even the time prescribed under the circular.

11. Admittedly, both the petitioners are now held entitled to promotion to the post in the scale of Rs. 425-640. During the pendency of the proceedings of this application this right of the petitioners have been recognised. However, no real benefits have been given to them as the order dated 7.10.87, only speaks about notional proforma fixation for the purposes of calculation of retirement benefits only. This is sheer act of injustice done to the petitioner. On the basis of the instructions contained in Railway Board's letter dated 22.8.86, the only reason assigned for denying of actual benefits, is that they had not worked on the said post. This could hardly be a valid ground. In M.K.Jani V/s. State of Gujarat & Ors. (1984 G.L.H. 856), it was held (in similar though not identical circumstances) that having recognised the lien of the petitioner on the said post, (which was upgraded) the respondents can not deny the benefits of higher pay scale of Rs. 650-1200 from 1.1.73 and the respondents have not denied that the petitioner is not having his lien on the said post and no other reason has been shown for not conferring upon the petitioner the benefit accruing to him except the fact that the petitioner has not actually worked on that

post prior to 1.6.77." In the instant case also, the fact that the petitioners were entitled to promotion as a result of upgradation to the scale of Rs. 425-640 with effect from 1.1.84 is not at all in dispute. Moreover, employees similarly situated in Bhavnagar Division have been awarded such benefits of promotion and they have gained monetary benefits with effect from 1.1.84. Hence there would be no valid reason to refuse such benefits of fixation of pay in the scale of Rs. 425-640(R) with effect from 1.1.84, in the case of the petitioners and they would be also entitled to arrears of pay from that date and in my opinion they would be also entitled to the arrears of pay from that date.

12. Now, with regard to the plea of the petitioners Shri P.M. Raval (petitioner in O.A.No. 329/87) that even though he did appear at the examination for the selection to the post of Chief Goods Clerk scale Rs. 455-700 held for the purpose in terms of the circular in question and having passed the same he was entitled to be promoted to the said post with effect from the stipulated date. According to him, viva voce for selection was inordinately delayed after the declaration of the result vide memorandum dated 17.11.84 and it was held just four days after his retirement. According to the petitioner, when he was entitled to such promotion and qualified for the same, it was unjust on the part of the respondents to deny such promotional benefits which are given to his juniors under the orders dated 6.12.85 (Annexure IV). According to him, his name was already shown in the said order, but somehow other his name has been scored off. He has also pointed out the instance of

discrimination as an illustration, by referring the case of Shri V.B.Bhatt, whose name appears at Sr.No.1 in order dated 28.4.84, Annexure II. He was also holding the scale of Rs. 330-560 and was given double promotion on the same day, firstly, he was given promotion to the scale of 425-640 with effect from 1.1.84 and he was granted second promotion under orders of the same day, Annexure III, wherein his name is shown at Sr.No.9 as a person who has been awarded promotion in the scale of Rs. 455-700 with effect from 1.1.84 in terms of the circular in question. Obviously, when such benefits are given to two similarly situated persons in the administration of the Government, an employee like the petitioner can not be discriminated. Inequality of opportunity of promotion, though not unconstitutional per se, must be justified on the strength of rational criteria correlated to the object for which the difference is made. In case of State of Mysore V/s. Krishna Murthy & Ors. (A.I.R. 1973 S.C. 1146) it was held as under :-

In the case of Government servants, the object of such a difference must be presumed to be a selection of the most competent from amongst those possessing qualifications and backgrounds entitling them to be considered as members of one class. In some cases, quotas may have to be fixed between what are different classes or sources for promotion on grounds of public policy. If, on the facts of a particular case, the classes to be considered are really different, inequality of opportunity in promotional chances may be justifiable. On the contrary, if the facts of a particular case disclose no such rational distinction between members of what is found to be really a single class, no class distinctions can be made in selecting the best. Articles 14 and 16 (1) of the Constitution must be held to be violated when members of one class are not even considered for promotion.

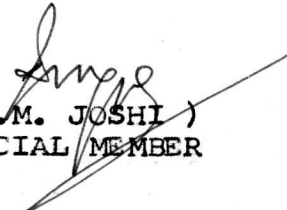
13. The contention of the respondents is that the petitioner Shri P.M. Raval was not entitled to the

promotion to the post of Chief Goods Clerk scale Rs. 455-700, as he had not passed in the selection. This seems to be a factual error. As a matter of fact, he had passed in the written test held for the selection of the said post as his name is shown at Sr.No. 74 in the memorandum dated 17.11.84 (Annexure IV) as a candidate who had passed the written test held for the purpose and he was duly informed that he had to keep himself in readiness for viva-voce. The fact that he could not appear at the viva voce test ^{was} entirely due to lapses on the part of the authorities of the Railway Administration for which he can not be allowed to suffer. In the circumstances, he ought to have been considered for promotion in terms of the circular when he had qualified himself for the purpose. If any credit or weightage is given to the matters like abilities of literacy and control during viva voce test, having regard to all the facts and circumstances, he should be treated to have possessed the same, as nothing is shown adversely against him.

14. It is true, the power to promote an officer belongs to the executive and the judicial power may control for review Government action but can not extend to acting as if it were the executive. The Court may issue direction but leave it to the executive to carry it out. The judiciary can not promote or demote officials but may demolish a bad order of Government or order reconsideration, on correct principles. (see State of Mysore V/s. C.R.Seshadri, A.I.R. 1974 S.C. 460). In view of the aforesaid discussion, I have no hesitation in holding that the respondents-authorities have committed a serious error in not extending the benefits of

promotion as envisaged under the circular as referred to above. Inaction on the part of the respondents in not considering the case for promotion of the petitioner, Shri P.M.Raval, is bad in law and therefore can not be sustained.

15. In this view of the matter, I find that the stand taken by the respondents is held to be without any merit and both the applications deserve to be allowed. Accordingly, the respondents are directed that both the petitioners should be given the benefit of fixation of pay in the scale of Rs. 425-640(R) with effect from 1.1.84 and they would be entitled to the arrears of pay from the said date with all the consequential benefits. Further in the case of Mr. P.M.Raval (petitioner in O.A.No.329/87), the respondents are directed to reconsider the case of his promotion on correct principles and if necessary by treating him as having fulfilled the requirement of viva-voce as observed above and if found fit for promotion, he may be given all the consequential benefits. The petitioners are also awarded the costs, of this application, which are quantified at Rs. 500/- each.


(P.M. JOSHI)
JUDICIAL MEMBER