

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~NEW DELHI~~

O.A. No.613

1987

~~EXX No.~~

DATE OF DECISION 25.4.1991

Shri G.R.Dave,

Petitioner

Mr.K.K.Shah

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Mr.N.S.Shevde

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H.Trivedi

: Vice Chairman

The Hon'ble Mr. R.C.Bhatt

: Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *no*
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? *no*

(H)

Shri G.R.Dave,
Deputy Shop Superintendent,
PLR Shop, Engineering Workshop,
Western Railway, Sabarmati,
Ahmedabad.
Residing at 48, Girdharnagar,
Ahmedabad.

: Applicant

(Advocate: Mr.K.K.Shah)

Versus

1. Union of India,
Through:
General Manager,
Western Railway,
Churchgate, Bombay.
2. Deputy Chief Engineer(EW)
Engineering Workshop Office,
Western Railway,
Sabarmati, Ahmedabad.
3. Chief Engineer (E)
Western Railway,
Churchgate, Bombay.

: Respondents.

(Advocate: Mr. N.S.Shevde)

J U D G M E N T

O.A./613/87

Date 25.4.1991

Per: Hon'ble Mr. R.C.Bhatt

: Judicial Member

1. This application under Section 19 of the Administrative Tribunals Act, 1985 is filed by the applicant to obtain the reliefs of getting the pay of Junior Shop Superintendent (JSS) from 25.2.1984 in the scale of Rs.700-900/2000-3200 counting its arrears with interest and the scale of Rs.2375-3500 from 1.9.1985 and further directing the respondents - Western Railway to promote the applicant permanently or regularly on the post of Shop Superintendent (S.S.) in the scale of Rs.2375-3500 and to hold that the downgrading the post was illegal.

2. At the time of hearing of this application, the learned advocate for the applicant has not pressed the relief for promotion of the applicant to the post of

(A)

Shop Superintendent but has confined the applicant's case to the relief of payment of scale of J.S.S. from 25.2.1984 and scale of S.S. from 1.9.1987 and this appeal requires to be disposed of only on that limited relief. The applicant has ~~for~~ this relief based his claim mainly on the following three orders:-

Annexure A/8.

"No.E 839/2/3

Dy.CE(EW)'s Office,
Sabarmati,
dated 25.2.1984

OFFICE ORDER NO.56.

Sub:-Promotion - Reversion and transfer of
Class III staff - Engg.W/Shop - Sabarmati.

1. Shri H.P.Sharma, Offg. J.S.S. Scale Rs.700-900(R) working on adhoc basis in PLR Shop is transferred and posted in P.O. in the same scale and pay.
2. Shri G.R.Dave Offg. Chargeman scale Rs.550-750(R) working on adhoc basis in P.O. is transferred and posted in PLR shop in the same scale and pay.

This will have immediate effect"

Sd/-
25.2.1984
Dy.CE(EW)/SBI.

C/- JSS(PLR), PCP, CC(PB), HTK, SS Clerk for information and necessary action.

C/- WM, AWM I, II, III, AEN(T) for information

C/- AAO(W & S) SBI,

C/- Employees concerned.

C/- Hindi Translator.

C/- Secretary, WREU/WRMS."

Annexure-A/6

"No.E/839/4/4

Dy.CE(E/W)'s Office,
Sabarmati,
Date: 01/9/87

Office Order No.334

Sub: Promotion, Reversion and Transfer
of NG Class III Supervisory staff
PLR Group Engineering W/Shop, SBI.

Ref:-GM(E)CCG's letter No.E/E/261/2/2/11(L)
dt. 5/6/87.

...
The following orders are issued with immediate effect.

1. Shri M.B.Boriwal, Offg. Shop Supdt. scale Rs.2375-3500(RP) working under Sr.DEN(TR)ADI @ SBI is transferred to this Workshop in the same scale and pay with the element of the post of Shop Supdt. scale Rs.2375-3500(RP) sanctioned for the Sleeper Factory under GM(E)CCG's

letter under reference. He is posted in PLR Shop.

2. Shri G.R.Dave, Offg. Dy.SS scale Rs.2000-3200(RP) on adhoc working in PLR Shop is transferred to work under Sr.DEN(TR) ADI @ SBI in the same scale and pay with the element of the post of Dy.SS scale Rs.2000-3200(RP) sanctioned for this workshop.

This order will continue upto 31.10.87 till the retirement of Shri M.B.Boriwal, Offg. Shop Supdt. On retirement of Shri M.B.Boriwal, Offg. S.S. from 31.10.87 A.N., the post of Shop Supdt scale Rs.2375-3500 (RP) and Dy. SS scale Rs.2000-3200(RP) will be retransferred to their respective Units.

This has been approved by CBE vide CE/GCG's letter No.W 724/1 dated 12.8.87.

Sd/-
Dy.CE(E/W) SBI.

- C/- CBE/CCG for information with reference to his letter. quoted above.
- C/- Sr. DEB (TR)ADI @ SBI for information and necessary action .
- C/- WM AWM (PLR), (FBW), (TMS) APO(W), SAO (W & S) SBI. for information.
- C/- SS(MW) DY.SS(PLR), CTK(E)SBI, CC(PS), OS(G), for information.and necessary action.
- C/- Individual
- C/- Secretary, WREU/WRMS W/Shop Br. SBI for information
- C/- Case No.E/839/2/3."

Annexure A/7.

"No.E/839/2/3
Office Order No.426.

Dy.CE(E/W)'s Office
Sabarmati.
Date: 17.11.87

Sub:- Promotion, Reversion and Transfer
of NG Class III Supervisory Staff
PLB Group, Engineering W/Shop,
Sabarmati.

Ref:- This Office O.O. No.334 dt. 1/9/87.

...

On retirement of Shri M.B.Boriwal, Offg. Shop Supdt. (PLR) scale Rs.2375-3500(RP) from 31.10.87 A.N., the post of Shop Supdt. scale Rs.2375-3500 (RP) and Dy.SS scale Rs.2000-3200 (RP) are retransferred to their respective units from 1.11.87 i.e. Sleeper Factory SBI and Engineering Workshop, Sabarmati.

2. Shri G.R.Dave, Offg. Dy.SS scale Rs.2000-3200 (RP) on adhoc basis working in the Sleeper Factory SBI under Sr. DEB (Track) ADI @ SBI is continued to work as Dy.SS scale Rs.2000-3200 (RP) on adhoc basis by temporary down grading the post of Shop Supdt scale Rs.2375-3500(RP) available in Concrete Sleeper Factory/SBI with effect from 1/11/87.

Sd/-
Dy.CE(E/W) SBI.
17.11.87. "

3. The applicant was selected as a Chargeman in Western Railway in the grade Rs.425-500(R) vide office order No.62 dated 13.2.1979 (Annexure A) and was confirmed

as Chargeman in that scale on 29.1.1983 vide order dated 13.9.1989(Annexure A1). Thereafter he was promoted on adhoc basis as Chargeman in the scale of Rs.550-750 (R) as per office order No.19 dated 25.1.1982 (Annexure A/2) and was regularised as Chargeman Grade 'A' in that scale of Rs.550-750 (Annexure A/3) w.e.f. 23.7.1983. The position of the applicant in the seniority list in the grade Rs.425-500 on 1.12.1986 is shown in Annexure A/3. It is the case of the applicant that the post of Junior Shop Superintendent was in the scale of Rs.700-900 and on transfer of one Shri H.P.Sharma officiating J.S.S., the applicant was posted in his place. It is also the case of the applicant that even though he was regular and permanent in that grade of Rs.550-750 by virtue of letter dated 27.7.1983, the respondents deliberately and intentionally victimised the applicant by showing him as officiating chargeman in office order Annexure A/8. The learned advocate for the applicant ~~was~~ submitted that as the applicant was discharging the duty as J.S.S. in the grade of Rs.700-900 from 25.2.1984, he ought to have been paid that scale but respondents paid the scale of Rs.550-750 i.e. scale of chargeman. He submitted that by Annexure A/8 ~~that~~ the applicant was posted in the place of Shri H.B.Sharma and the applicant had to carry out some work of Shri H.B.Sharma after his transfer and was sharing the higher responsibility on his shoulder and hence he was entitled to the scale of Shri H.B.Sharma till he carried out that work on the basis of "Equal Pay for equal work". It is submitted that even though the applicant was not eligible for promotion to that post the respondents ought to have ~~been~~ paid ~~in~~ the scale of J.S.S. on the said principle of 'equal pay for equal work'.



4. The respondents in the written statement have denied that the applicant was posted to work as J.S.S. on transfer of Shri H.B.Sharma in scale of Rs.700-900. The contention of the respondents in the written statement is that by order dated 25.2.1984 (Annexure A/8) Shri H.B.Sharma officiating J.S.S. scale Rs.700-900 (R) working on adhoc basis in PLR shop was transferred and posted in P.O. in the same scale and pay and applicant who was working as officiating Chargeman scale Rs.550-750 (R) working on adhoc basis in P.O. was transferred and posted in PLR shop in the same scale and pay, that the applicant did not raise the issue for about 3 $\frac{1}{2}$ years but made representation dated 10th August, 1987 (Annexure A/5) for the first time claiming the benefit of higher pay on the basis of higher responsibility. It was contended that the claim of the applicant was baseless and illegal since he was not promoted by the said order. It is contended that the applicant's representation was replied vide mark Annexure R/1. The learned advocate for the respondents submitted that as the applicant was not promoted as J.S.S. in 1984 and as he was not discharging higher responsibility he was not entitled for higher pay and benefit available to Shri H.P.Sharma.

5. We have heard learned advocates on this point and we are unable to agree with the submission of learned advocate for the respondents that the applicant was not entitled to the higher pay scale which Mr.Sharma was getting though by order Annexure A/8 applicant was given the responsibility of Mr.Sharma. Reading Annexure A/8, it is clear that the applicant was posted in PLR shop in place of Mr.H.B.Sharma who was J.S.S. and the applicant had to work in place of Mr.Sharma. It is not in dispute that the pay scale of J.S.S. is higher than that of Chargeman. Thus, the applicant who was chargeman at the relevant point of time had to perform functions of H.B.Sharma.

(2)

in view of the order Annexure A/8, it means that he had to discharge higher responsibility of J.S.S. ~~and~~ We find that for shouldering higher responsibility and burden of J.S.S. the applicant's claim is legitimate on the well known principle "equal pay for equal work". Therefore, though applicant was not promoted as J.S.S. from 25.2.1984, he was entitled to the pay of J.S.S. during the period he worked in place of Shri Sharma. The mere fact that the applicant did not raise the said issue for pretty long period till he made representation on 10.8.1987 would not debar him from making lawful and legitimate claim. Learned advocate for the respondents submitted that in any case the applicant would not be entitled to get benefit of higher pay of J.S.S. for a period prior to 30.11.1986 as this application is filed on 30.11.1987. In our opinion, we are entitled to use our discretion in such case under Section 21(2) of Administrative Tribunals Act to give benefit of higher pay to the applicant for a period prior to 30.11.1986 but that will be not exceed period of three years prior to the date of the application meaning thereby that the applicant would not be entitled to get the benefit of this claim for a period prior to 30.11.1984. Having considered the facts of the case, we hold that this is a fit case in which benefit of the higher pay in the scale of Rs.700-900-2000-3200 i.e. scale of J.S.S. should be given to the applicant from 1.12.1984 till he worked in place of H.B.Sharma as per order Annexure A/8 dated 25.2.1984 and the applicant should be paid the difference of the amount that may be calculated accordingly.

6. Now we proceed to examine the claim of the applicant on the basis of office order No.334 dated 1.9.1987 produced at Annexure A/6 and the office order No.426 dated 17.11.87 produced at Annexure A/7. The applicant was promoted as Dy.S.S. on adhoc basis scale Rs.700-900 (R)/2000-3200 (RA) P.L.R. group vide order dated 27th March, 1987 (Annexure A/4).

(7)

7. Annexure A/6 reads as under :-

"No.E/839/4/4
Office Order No.334.

Dy.CE(E/W)'s Office
Sabarmati,
Dt.01/9/87.

Sub:-Promotion, Reversion and Transfer of
N.G. Class III Supervisory Staff PLR Group
Engineering W/Shop, SBI.

Ref:- GM(E) CCG's letter No.E/E/261/2/2/11(L)
dt. 5/6/1987.

The following orders are issued with immediate effect.

1. Shri M.B.Boriwal, Offg. Shop Supdt. scale Rs.2375-3500(RP) working under Sr.DEN (TR) ADI @ SBI is transferred to this Workshop in the same scale and pay with the element of the post of Shop Supdt. scale Rs.2375-3500(RP) sanctioned for the Sleeper Factory under GM(E) CCG's letter under reference. He is posted in PLR Shop.
2. Shri G.R.Dave, Offg. Dy. SS scale Rs.2000-3200(RP) on adhoc working in PLR Shop is transferred to work under Sr.DEN (TR)ADI @ SBI in the same scale and pay with the element of the post of Dy.SS Scale Rs.2000-3200(RP) sanctioned for this Workshop.

This order will continue upto 31.10.87 till the retirement of Shri M.B.Boriwal, Offg. Shop Supdt. On retirement of Shri M.B.Boriwal, Offg. Shop Supdt. from 31.10.87 A.N., the post of Shop Supdt. scale Rs.2375-3500 (RP) and Dy.S.S.scale Rs.2000-3200 (RP) will be retransferred to their respective Units.

This has been approved by CBE vide CE/CCG's letter No.W 724/1 dated 12.8.1987 .

Sd/-
Dy.CE(E/W) SBI

C/- CBE/CCG for information with reference to his letter quoted above.

C/- Sr.DEN (TR) ADI @ SBI for information and necessary action
C/- WM,AWM, (PLR), (FBWO, (TMS) APO(W), SAO(W & S) SBI for information.

C/-SS(MW) Dy.SS(PLR), CTK(E) SBI, CC(PB), OS(G), for information and necessary action.

C/- Individual.

C/- Secretary, WREU/WRMS W/Shop Br. SBI for information.

C/- Case No.E/839/2/3."

This was followed by the order Annexure A/7 dated 17.11.87.

"No.E/839/2/3
Office Order No.426.

Dy.CE(E/W)'s office,
Sabarmati.
Date:17.11.87

Sub:-Promotion, Reversion and Transfer of NG
Class III Supervisory Staff PLR Group,
Engineering W/Shop, Sabarmati.

Ref:- This office O.O. No.334 dt. 1/9/87.

On retirement of Shri M.B.Boriwal, Offg. Shop Supdt.(PLR) scale Rs.2375-3500(RP) from 31.10.87 A.N., the post of Shop Supdt. scale Rs.2375-3500(RP) and Dy. SS scale Rs.2000-3200(RP) are retransferred to their respective units from 1.11.87 i.e. Sleeper Factory SBI and Engineering Workshop, Sabarmati.

(14)

Shri G.R.Dave, Offg. Dy.SS scale Rs.2000-3200 (RP) on adhoc basis working in the Sleeper Factory SBI under Sr.DEN (Track) ADI @ SBI is continued to work as Dy.S.S. scale Rs.2000-3200 (RP) on adhoc basis by temporary down grading the post of Shop Supdt. scale Rs.2375-3500(RP) available in Concrete Sleeper Factory/SBI with effect from 1.11.1987

Sd/-

Dy.CE(E)/W 17.11.87

C/-Sr.DEN(TR) ADI @ SBI for information and necessary action.

C/-WM, AWMS(PLR, FBW, TMS, STR, SAO (W & S) SBI for information.

C/-SS (M/W) Dy.SS(PLR)/PO) Ch/man (PLR), Ch/man (TR), CTK (Eng.) SBI, OS(PB) (OS(G) for information.

C/- Secretary, WREU/WRMS W/Shop Br. SB for information."

7. The learned advocate for the applicant relying on these annexures A/6 and A/7 submitted that the applicant shouldered the higher responsibility of S.S. in place of Shri M.B.Borwal in the scale of Rs.2375-3500 from 1.9.1987 but was just paid the scale of Rs.2000-3200. He submitted that there is only one Shop Superintendent's post carrying the scale of Rs.2375-3500 which was technically down graded just to victimise the applicant in the scale of Rs.2000-3200 for a temporary period. He submitted that all the communications in the name of Shop Superintendent were being attended by the applicant, and he should be paid higher scale. He further submitted that the respondents ordered to continue the post till 31.10.1987 and the same was continued even after retirement of Shri M.B.Boriwal which means that the applicant had discharged the work of Shop Superintendent. According to the learned advocate for the applicant though the applicant has not been promoted from 1.11.1987 in the scale of Rs.2375-3500 as Shop Superintendent the claim of the applicant is for working on that post and there is no reason why the applicant should not be paid that scale on the principle "Equal Pay for Equal Work".

8. Learned advocate for the respondents submitted that applicant was not promoted to the post of S.S. by orders dated 1.9.1987 and 17.11.87 but was transferred in the same pay and scale and had to continue also the same post. He submitted that order Annexure A/6 dated 1.9.1987 shows

that Shri Boriwal officiating S.S. working under Sr.DEN(TR) ADI was transferred to workshop in the same scale and pay along with the element of the post of Dy.SS sanctioned for the Sleeper Factory and posted in PLR shop and the applicant who was officiating as Dy.SS. on adhoc basis working in PLR shop was transferred to work under Sr.DEN (TR) ADI in the same scale and pay with the element of the post of Dy.SS. scale Rs.2000-3200(RP) sanctioned for the workshop and the said order was continued upto 1.10.1987. He submitted that on retirement of Boriwal on 31.10.87, the post of S.S. and Dy.S.S. were to be retransferred to the respective units and accordingly on 1.11.1987 the posts were retransferred to the respective units and as per Annexure A/7 the applicant who was working as officiating Dy.S.S. on adhoc basis was continued to work as Dy.S.S. on adhoc basis by temporary down grading the post of S.S. w.e.f. 1.11.1987. He submitted that both the orders at Annexures A/6 and A/7 show that the applicant had to work in the post of Dy.S.S. He submitted that none of these orders indicated that the applicant had to work or function or discharge his duty as S.S. We find much substance in the submission of learned advocate for the respondents. The orders at Annexure A/6 and A/7 did not show that the applicant had to discharge his duty as S.S. but on the contrary it shows that he had to continue to work as Dy.S.S. In this view of the matter, it cannot be said that the applicant had discharged his duty, responsibility and functions as S.S. We, therefore, hold that the applicant has failed to establish that he was discharging higher responsibility as S.S. ~~xxxxxxx~~ from 1st September, 1987 onwards. In our view, the applicant having not shouldered the duty of S.S. from 1.9.1987, he would not be entitled to claim scale of the post of S.S. So far the temporary down grading the post of S.S. as mentioned in the said order is concerned, the learned advocate for the applicant submitted that it was made to victimise the applicant.

(16)

Except the bare allegation in the application on that point there is no material put before us by applicant to show that the action of the respondents in temporary down grading the post of S.S. was illegal or violative of any statutory rule. Hence, the applicant's grievance about victimisation has no substance and the claim of the applicant of difference on the basis of scale of S.S. from 1.9.87 cannot be allowed but shall have to be rejected.

9. No other point was urged before us by the learned advocate for the parties. Having considered the evidence on record and submissions made by the learned advocates and the conclusions arrived at as above, the application is partly allowed. Hence we pass the following order.

10. The application is partly allowed. The respondents No.2 & 3 are directed to pay the difference of the amount of salary to the applicant in the scale of J.S.S. Rs.700-900/2000-3200 from 1.12.1984 till the applicant worked in place of Shri H.B.Sharma as per Annexure A/8 dated 25.2.1984. The respondent Nos.2 & 3 to make the payment calculated on the above basis within four months from the date of the receipt of this order. The rest of the reliefs claimed by the applicant are rejected. Having regard to the facts of the case, we pass no orders as to costs.



(R.C.Bhatt)
Judicial Member



(P.H.Trivedi)
Vice Chairman