

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 461/90
~~REX NO.~~

DATE OF DECISION 27th April 1998

A.V.Raman _____ **Petitioner**

Mr. B.B.Gogia _____ **Advocate for the Petitioner [s]**
Versus

Union of India & another _____ **Respondent**

Mr. N.S.Shevde _____ **Advocate for the Respondent [s]**

CORAM

The Hon'ble Mr. V.Ramakrishnan, Vice Chairman

The Hon'ble Mr. P.C.Kannan, Member (J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lerdships wish to see the fair copy of the Judgment ?
4. Whether It needs to be circulated to other Benches of the Tribunal ? ✓

A.V.Raman
Coaching Depol Officer
Meter Guage, Railway St.
Ahmedabad.

Add: Block No.599
Room No.4, Rajpur-Hirpur Railway
Colony, Maninagar
Ahmedabad-8.

Applicant

Advocate: Mr. B.B.Gogia

Versus

1. Union of India
Through: General Manager
Western Railway
Churchgate
Bombay.

2. Divisional Railway Manager
Western Railway
Kothi Compound
Rajkot.

Respondents

Advocate: Mr. N.S.Shevde-

JUDGEMENT

IN

O.A. 461/90

Dated 27th April 1998

Per Hon'ble Mr. V.Ramakrishnan, Vice Chairman:

The applicant a Saloon Attendant at the relevant time in the Rajkot Division of Western Railway is aggrieved by the stand of the Railway Admn. in not extending to him the benefits of the grant of higher pay scale which was given to some other Saloon Attendants in compliance with the orders of the Tribunal. He has in particular challenged the decision dated 10.5.90 as at Annexure A-5 to the effect that the upgraded posts had ceased to exist as soon as the posts were vacated by the Saloon Attendants who obtained favourable orders from the

Tribunal.

2. The Railway Board decided^{that} as per the interim report of the Railway Workers Classification Tribunal 1976 regarding classification of skilled posts that in all establishments employing artisan staff on the Indian Railways, the distribution of skilled posts of artisans in the highly skilled Grade-I- highly skilled Grade-II and the skilled grade will be in the ratio of 20:25:55. This was communicated by the Railway Board Circular dated 24.8.1978. On receipt of this, the DRM Rajkot proceeded to issue a memorandum dated 6.9.79 as at Annexure A-1 under which he accorded sanction to the upgradation of three posts of Saloon Attendants in the scale of Highly Skilled Grade-I and four posts in the grade of Highly Skilled Grade-II. He also accorded sanction to the upgradation in the category of Cleaner Mukadam to 6 posts in highly skilled grade-I and 7 posts in highly skilled grade-II. Subsequently, ^{in Sept 1981} headquarters of the Western Railway held that the action of the DRM was a mistake, as Saloon Attendants and Cleaner Mukadam belong^{to} ~~to~~ non-artisan categories. ^{18.3.82} The D.R.M. Rajkot then issued a letter dated 22.3.81 bringing out this stand and cancelled the upgradation to Grade-I and Grade-II in respect of the categories of Cleaner Mukadam and Saloon Attendants.

Consequent to cancellation of the earlier memorandum issued by D.R.M. in respect of Saloon Attendants and Cleaner Mukadams some of the Saloon Attendants of Rajkot office had approached the Civil

Court Rajkot challenging this action. This case was transferred to the Tribunal on the constitution of the C.A.T. and was transferred to this Bench and was numbered as TA/1329/86. The Tribunal by its orders dated 15.6.88 held that the petitioners in that T.A. were entitled to the pay scale of the upgraded posts and these orders eventually came to be implemented by the Railways and a memorandum was issued by Division Office, Rajkot dated 3.11.89 as at Annexure A-3 granting the benefit of to the applicants in the T.A. However, it was made clear in that memorandum that no other employees shall have the right to occupy posts of Highly Skilled Grade-I and Grade-II. The present applicant claims that he is senior to some of the applicants in OA/1329/86 and he approached the Railways for granting him the upgraded scale. It was turned down by the impugned letter dated 15.5.90 as at Annexure A-5 which held that such upgradation was personal to the applicants in the T.A. and cannot be given to others. This order is challenged in the present O.A.

3. We have heard Mr. Gogia for the applicant and Mr. Shevde for the respondents.

4. Mr. Gogia says that once the Tribunal had held that the applicants in TA/1329 of 86 should be given the benefit of upgradation in terms of memorandum of the D.R.M., Rajkot dated 6.9.79 the same should have been extended to all those who are in line for consideration from that period till

September 1981 when the General Manager cancelled that memorandum. He further contends that the present applicant is senior to some of the applicants in TA/1329 of 86. To a query as to how he could approach the Tribunal in 1990 when the orders of upgradation were issued in September 1979 and subsequently got cancelled in 1981, he says that the applicant's cause of action arose once the pay was fixed in respect of the applicants in the T.A. by order dated 3.11.89 and that as some of them are junior to the present applicant, the same benefit cannot be denied to him.

5. Shri Shevde Standing Counsel resists the O.A. He says that the action of the Rajkot Division was clearly a mistake as Saloon Attendants and Cleaner Mukadams cannot be taken as Artisan category. This mistake came to light when similar employees in other divisions put in their claims. The Headquarters office arranged a joint meeting with the recognised Unions and accordingly the G.M. issued an order in 1981 cancelling that part of the memorandum dated 6.9.79 which gave the benefit of upgraded p scales to Saloon Attendants and Cleaner Mukadams. In the joint meeting with the recognised Unions it was decided that category of Saloon Attendants and Cleaner Mukadams and Khalasi should not have been upgraded to Highly Skilled Grade-II and Grade-I. It was further decided ~~in this meeting~~ that while the Tribunal's orders in TA 1329 of 86 are to be complied with in respect of the applicants therein, the same benefit

cannot be continued for others. He also submits that the category of Saloon Attendants and Cleaner Mukadams were given option for further avenue to some other categories. The present applicant had not exercised any such option and cannot seek to get the benefit which was erroneously extended by the D.R.M. Rajkot.

6. We have carefully considered ^{the} submissions of both sides.

We may reproduce part of the judgement of the Tribunal dated 15.6.88 while disposing the T.A. 1329 of 1986:-

"5. The plea that Saloon Attendants' post is not an artisan post but belongs to non-artisan category is a plea which appeals to common sense. However, the fact stands that in 6.9.79 a memorandum was issued upgrading these posts to the pay scale of Highly Skilled Grade I and Grade II. We do not have the benefit of the circular dated 30.1.81 by which the classification of Saloon Attendants to non-artisan category w.e.f. 1.4.78 was done but we greatly doubt whether by giving it retrospective effect, the benefit of upgradation could be unilaterally taken away if it had accrued as a right already. Similarly we are not impressed by the arguments that the respondents held meetings jointly with the trade unions and as the petitioners were members of the trade unions, the decision to take the posts of Saloon Attendants out of the category of artisan could be said to be made with

consent of the petitioners ~~fix~~ and, therefore, the effect thereof is of estopping the petitioners from making their claim. Agreements with the unions done, may be made but they cannot extinguish the rights under service condition accruing to individual servants, far less can they be regarded as estopping such railway servants from pleading them. The plea that other promotion avenues are available to the Saloon Attendants cannot also come in the way of the petitioners successfully claiming the benefits of upgradation. No doubt the respondents can classify and re-classify the posts as belonging to artisan or non-artisan category for good reasons and in situations in which there is no discrimination. In this case, however, the limited point for consideration is whether from 1979 to 1981 a situation had arisen in which Saloon Attendants were regarded as belonging to Artisan category and consequently the benefit of upgradation was available to them. We cannot regard the after thoughts causing retrospective cancellation of the earlier orders of granting upgradation to have any validity. Such orders might have prospective effect but cannot take away the right of upgradation if it had already accrued to the petitioner".

It is seen from this that the Tribunal had gone on the basis that with the issue of the order of 6.9.79 till its cancellation in 1981 a right for upgradation had accrued to the applicants therein. It is possible to take a view that the orders sanctioning upgradation may not itself confer any automatic right

to the employees and such right can be said to accrue only when there is a formal order appointing them to the higher scales. Again there is some substance in the contention that the D.R.M.'s action was erroneous and when it came to the notice of the G.M. he had cancelled that order. As such the action of the Railways cannot be termed wholly as an after-thought. The Railways however have implemented the directions of the Tribunal in that T.A. in respect of the applicants therein.

7. The present applicant has approached the Tribunal in 1990 and seeks to get the benefit of memorandum dated 6.9.79 which was cancelled by the G.M. in September 1981. The mere fact that he filed an O.A. after coming to know that similarly situated persons got some relief is not sufficient ground to condone the delay. We may in this connection refer to the decision of the Hon'ble Supreme Court in State of Karnataka and Others vs. S.M. Kotrayya and others (1996) 6 Supreme Court Cases 267. The Head Note reads as follows:-

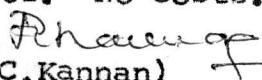
"Service Law- Administrative Tribunals Act, 1985- S. 21- Condonation of delay- Grounds for- The mere fact that the applicants filed the belated application immediately after coming to know that in similar claims relief had been granted by the Tribunal, held, not a proper explanation to justify condonation of delay- The explanation must relate to failure to avail the remedy within the limitation period- Limitation."

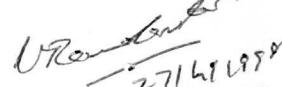
Mr.Gogia however contends that the present applicant is senior to some of the applicants in T.A. whose pay was fixed at a higher level by the order dated 3.11.89 and it would not be fair to deny him the same benefit.

8. We take note of the fact that one Chhaya who was functioning as a Cleaner Mukadam had filed an O.A. 87/89 seeking the upgraded scale. In that O.A., the Tribunal had directed the Railways to dispose of the pending representation. The Railway Admn. had disposed of the representation on 4.2.94 where they decided to give the benefit of appropriate higher scale as per seniority to Chhaya also.

9. In the totality of circumstances it would be equitable to give some relief to the present applicant if he is senior to any of the applicants in the T.A. who were granted the upgraded scale. Keeping in view the facts and circumstances of the case and also the fact that the present applicant has approached the Tribunal only in 1990, we direct the Railway Admn. to verify whether the present applicant is senior to any of the applicants in TA/1329 of 86 and if so, they shall grant him the benefit of upgraded scale on par with such junior notionally. However, the actual financial benefits will be admissible only from August 1990 when the present O.A. was filed. This exercise shall be completed within three months from the date of receipt of a copy of this order.

10. With the above direction, O.A. is finally disposed of. No costs.


(P.C. Kannan)
Member(J)
pmr


(V. Ramakrishnan)
Vice Chairman

Serial Number of the Application

OA/461/90

I N D E X

Sl.No	Date of Paper or Date of filing	Description of paper	Part to which the paper belongs	Remarks Page No.
-------	--	-------------------------	------------------------------------	---------------------

1. 05.07.85 Application A 1 to 21

2. 05.07.85 Reply by Respts. A 22 to 31

3. 05.07.85 Rejoinder in-
Affidavit A 32 to 38

4. 05.07.85 OA/468/95 A 39 to 67

B 39 to 67