

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. /70/91
Tax No.

DATE OF DECISION 27th April 1998

Purshottam K. Patel **Petitioner**

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

Union of India and another **Respondent**

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

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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 ?

Purshottam K. Patel
Address: Cleaner Muccadam
Office of Carriage & Wagon Supdt.,
Western Railway
Rajkot.

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Applicant

Advocate: Mr. B.B.Gogia

Versus

1. Union of India
Owning & Representing
Western Railway
Through:
General Manager
Western Railway
Churchgate
Bombay- 400 020.

2. Divisional Railway Manager
Western Railway
Rajkot Division
Kothi Compound
Rajkot.

Respondents

Advocate: Mr. N.S.Shevde-

JUDGEMENT

IN

O.A./70/91

Dated 27th April 1998

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

The applicant was working as a Saloon Attendant in Rajkot Division from 21.9.1966 upto 15.9.1985. Subsequently, he was promoted to the level of Cleaner Muccadam. He contends that he also should be given the benefit of upgradation of scale as Saloon Attendant which was given to some others in compliance with the orders of the Tribunal as some of them are junior to him in the cadre of Saloon Attendants, at the relevant time.

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 7 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 Muccadam 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 Muccadam belong to non-artisan categories. 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 Muccadam and Saloon Attendants.

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

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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-2 granting the benefit 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 should be given same benefit. He further contends that the memorandum of Rajkot D.R.M. refers to the post of Cleaner Muccadam also. He brings out that one Chhaya who was functioning as a Cleaner Muccadam 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.

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 in the cadre of Saloon Attendants. He also brings out that one Chhaya who was functioning as a Cleaner Muccadam 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 Railways 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. To a query as to how he could approach the Tribunal in 1991 when the orders of upgradation were issued in September 1979 and subsequently got cancelled in 1981, he says that the applicant filed the O.A. once the pay was fixed in respect of the applicants in T.A. by order dated 3.11.89 and that as some of them are junior to the present applicant in the cadre of Saloon Attendants, 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

Muccadams 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 scales to Saloon Attendants and Cleaner Muccadams. In the joint meeting with the recognised Unions it was decided that category of Saloon Attendants and Cleaner Muccadams and Khalasi should not have been upgraded to Highly Skilled Grade-II and Grade-I. It was further decided 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 Muccadams 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 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 unilateraly 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 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

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regarded as belonging to Artisan category and consequently the benefit of upgradation was available to them. We cannot regard the after thought 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 ~~as~~ 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 1991 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

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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 in the cadre of Saloon Attendants 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. He also contends that one Chhaya who was functioning as a Cleaner Muccadam had filed an O.A. 37/89 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.

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8. It is pertinent to note that applicants in TA 1329 of 86 approached the Court when there was not much delay after issue of the letter from D.R.M. Rajkot dated 18.3.82 conveying the decision of the General Manager by his letter dated 22.9.81 that Cleaner Muccadam and Saloon Attendants are not eligible for upgradation. The present applicant wants the benefit of the circular dated 6.9.79 of the D.R.M. Rajkot which subsequently got cancelled by the G.M.'s letter. He has approached the Tribunal only in 1991. He was also not a Saloon Attendant from 15.8.85 and he ~~became~~ was functioning as Cleaner Muccadam in 1991. However in the case of Chhaya who was a Cleaner Muccadam the Railways Admn. had granted upgraded scale while disposing of his representation. While the present applicant has referred to the decision of the Railways in Chhaya's case, he has not brought out clearly regarding inter se seniority between himself and Chhaya.

9. In the circumstances, we direct the Railway Admn. to verify whether in January 1991 when the present O.A. was filed the present applicant was senior to Chhaya or to any other Cleaner Muccadam in Rajkot Division in the relevant seniority unit who had been granted the benefit of the upgraded scale. If it transpires that he is so senior, he should be given

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notionally the benefit of the upgraded scale with effect from date on which his junior got such scale at the level of Cleaner Muccadam and the actual financial benefits would be restricted from January 1991 when he filed the present O.A. This exercise should be completed within three months from the date of receipt of a copy of this order. No costs.

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

V.Ramakrishnan
27/4/1991
(V.Ramakrishnan)
Vice Chairman

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