

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A.NO. 132 of 91
~~**TVA NO.**~~

27th
 DATE OF DECISION April 1998

John Santamaria 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 Lordships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ? ✓

John Santamaria
Polisher
Office of Carriage & Wagon Supdt.,
Western Railway
Rajkot.

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

Dated ^{27th} April 1998

O.A. 132 of 91

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

The applicant was serving as Saloon Attendant in Rajkot Division from April 1978 to April 1988. When he was posted as Polisher at his own request. He is aggrieved by the stand of the Railway Admn. in not extending to him the benefit of the higher pay scale which was given to some other Saloon Attendants in compliance with the orders of the Tribunal. In particular, he has challenged the letter dated 15.10.90 as at Annexure A-4 which

rejects his representation dated 28.8.90 as at Annexure A-3 seeking this benefit.

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 Muccadam to 6 posts in highly skilled grade-I and 7 posts in the highly skilled grade-II. Subsequently, ^{in Sep 1981} headquarters of the Western Railway held ⁱⁿ that the action of the D.R.M. was a mistake, as Saloon Attendants and Cleaner Muccadam belong to non-artisan categories. The D.R M. Rajkot then issued a letter dated ^{18.3.82} ~~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 e 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 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} that 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 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 applicant represented on 28.8.1990 seeking the benefit of the upgraded scale of Saloon Attendants from 1979 upto April 1988 when he was redesignated as Polisher. He had contended in that representation that two of ~~the~~ the applicants in T.A.1329/86 namely S/s. Roopchand and Jayems Simon were junior to him in the cadre of Saloon Attendants. The Railway Admn. rejected the representation by their letter dated 15.10.90 as at Annexure A-4 which is impugned 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 in the cadre of Saloon Attendants. To a query as to how he could approach the Tribunal in 1991 when the orders of upgradation were issued in Sept. 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 the T.A. by order dated 3.11.89 and that as some of them are junior to the present applicants in the cadre of Saloon Attendants ~~or the cleaner muccadams~~ the same benefit cannot be denied to ^{him} ~~them~~. Mr. Gogia says that the applicant's pay in the cadre of Saloon Attendants should be refixed in the upgraded scale upto April 1988 and he should be allowed to carry forward the higher pay on his posting as Polisher.

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 brings out that the applicant at his own request was appointed as Polisher in April 1988 as is seen from the D.R.M. Rajkot's letter dated 18.4.88 Annexure R-2. The cadre of Polisher is not one of the categories which got the benefit of upgradation as per the D.R.M. Rajkot's sanctioning letter dated 6.9.79. Mr. Shevde says that the applicant is therefore not entitled to relief sought for.

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 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 Φ .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 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. in ^{the} ~~case~~ ^{cadre} of Saloon Attendants whose pay was fixed at a higher level by the order dated 3.11.89 and it would not be fair to deny ~~him~~ ^{him} ~~them~~ the same benefit for the period he ~~they~~ functioned as Saloon Attendant.

8. As has been brought out earlier, the fact that some other persons had approached the Court and got

favourable orders cannot be a proper explanation to justify condonation of delay. However, if the applicant had continued as a Saloon Attendant and if some of his juniors had got the benefit of the upgraded scale we could have considered granting him the benefit notionally from the date his juniors got the benefit and the actual financial benefit from the date of the filing of the present O.A. However, in the present case, the applicant is no longer in the cadre of Saloon Attendants, ^{when he filed his O/A and} there is no question of any of his juniors in the cadre of Saloon Attendants getting more pay than him as he had moved over to a different category. We also take note of the fact that the category of Poliser is not one of the categories which was sanctioned the upgraded scale by the D.R.M.'s letter dated 6.9.79. The applicant had approached the Tribunal after coming to know of the orders of the Tribunal in 1329 of 86 which was disposed of on 15.6.88. When the judgement in that case was rendered he had already moved over in April 1988 to the category of Poliser. No satisfactory explanation is forthcoming as to why he approached only in 1990 to seek the benefit in terms of order issued in September 1979 which got subsequently cancelled in September 1981. The fact that some other Saloon Attendants got the benefit by the order dated 3.11.89 as at Annexure A-2 does not give him a fresh right to seek this relief particularly when he was

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no longer in the cadre of Saloon Attendants from April 1988.

9. In the circumstances, we hold that the application is devoid of merit and dismiss the same with no orders as to cost.

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

V. Ramakrishnan
27/6/1988
(V. Ramakrishnan)
Vice Chairman

pmr