

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
OA 1319 OF 1996

Present : Hon'ble Mr. D. Purakayastha, Judicial Member
Hon'ble Mr. G. S. Maingi, Administrative Member

1. Suresh Ch. Das
2. Chunilal Nandy
3. Dani Prasad
4. Purnendu Sekhar Mondal
5. Md. Latif Ansari
6. Bhagawan Prasad Singh
7. Pulin Kumar Roy
8. Ajit Singha Roy
9. Dhirendra Narayan Roy
10. Amarendra Nath Bhattacharjee
11. Jiban Ratan Sinha
12. Haridas Saha
13. Jyotilal Chowdhury
14. Lakhpati Singh
15. Jainarayan Singh
16. Ajit Kumar Guha Thakurta

VS

1. Union of India through the
General Manager, S.E.Rly.
Garden Reach, Calcutta-43
2. The General Manager,
S.E.Rly. Garden Reach, Calcutta
3. The Chief Personnel Officer,
S.E.Rly. Garden Reach, Calcutta
4. The Chief Operating Supdt.
S.E.Rly. Garden Reach, Calcutta
5. The Div. Rly. Manager,
S.E.Rly. Adra
6. Sr. Div. Personnel Officer,
S.E.Rly. Adra
7. Sr. Div. Operation Manager,
S.E.Rly. Adra
8. The Railway Board,
through Chairman, Railway Bhavan,
New Delhi-110 001.

..... Respondents

For the petitioners : Mr. S.K.Dutta, Counsel

For the respondents : Mr. S.Chowdhury, Counsel

Heard on : 14.7.2000 : Order : 4.8.2000

O R D E R

G.S.Maingi, A.M.:

This application has been filed Shri Suresh Chandra Das and 15 others against the order dated 16.5.1996 passed by the Chief Personnel Officer, S.E.Railway, Calcutta (annexure-A9).

2. The reliefs claimed by the applicants in their application are as follows :-

a) To quash and/or set aside the letter No. E/O/G/ASM/Court Case/OA 22/1996 dated 16.5.96 issued by the Chief Personnel Officer, S.E.Rly.

b) To direct the respondents to apply alternative II of Rly. Board's circular No. PC 111/80/UPG/19 dt. 29.7.83 as has been applied to the cadre of SMs vide its judgement pronounced in Civil Appeal No. 2054/90 treating it as a separate cadre in respect of pre-1993 optees from the cadre of SM and further directing the respondents to extend other benefits as had been extended to SM optees including the persons who entered service in the grade of Rs. 330-560/-.

c) To direct the respondents to give all consequential benefits to the applicant and fix their seniority in the combined seniority list of ASM/SM taking into consideration the length of service since the date of entry into regular service as ASM in scale Rs. 330-560/- which is the initial ^{esame} post and grade where all ASM/SM optees had to be appointed at the time of entering into the railway service in terms of para 321 of the IREM.

3. As the matter was being vigorously pursued by the applicants and other railway employees employed as ASM and SM, it was taken up before the Hon'ble Supreme Court by some of them in Civil Appeal No. 2054 of 1990 decided on 30th April 1990 and the present case has been argued and has to be decided on the basis of the aforesaid decision of the Hon'ble Supreme Court. In order to understand the grievance of the petitioners, it is necessary to state very briefly the facts in ^{esame}

the beginning. In 1983, the Rly. Board had introduced a scheme through its circular letter No. PCIII/80/UPG/19 dated 29/7/83 under the heading "Restructuring of certain Group C & D cadres". It was stated in para 2 of the said circular that the pay of the staff, who had been promoted in the normal course to higher grades during the period 1.8.82 and 31.7.83 would be stepped up under the normal rules with reference to the pay of their juniors, whose pay was fixed under the aforesaid orders July 1983. There was a detailed order in this regard and para 9 of the circular specifically mentioned that in the category of ASMs/SMs (vide item No. 24 of the Annexure) the restructuring proposals are in two separate groups depending upon whether the existing cadres for SMs/ASMs are separate or combined. The revised percentages prescribed for this category will accordingly be allotted, depending upon whether the existing cadre structure is a combined one or a separate one, since different practices are in vogue in the different zonal railways.

4. Item No. 24 of the annexure to the letter dt. 29/7/83 contained a chart showing the combined cadre of Station Masters/Asst. Station Masters and it had showed two alternatives in respect of channel of promotion which have been annexed at Annexure-A1 to the OA.

5. It is observed from the judgement of the apex court in the case of S.B.Sarkar & Ors -vs- Union of India & Ors, reported in 1990(14) ATC 707 relating to Civil Appeal No. 2054 of 1990 referred to above, that it was the contention of the Chief Personnel Officer, S.E.Rly. in an affidavit filed before the Hon'ble apex court, that there was a combined cadre of ASMs/SMs in the S.E.Rly. prior to July 1983. According to the judgement of the Hon'ble apex court in para 9, the claim of the Railway Administration that the cadre of ASM/SM was a combined cadre in the S.E.Rly was not substantiated by any document, letter or order and on the other hand, from the letter dated May 10, 1984 issued by the Addl. District Pay Commissioner to General Manager, the existence of separate cadres of ASM and SM were recognised.

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6. This was a case where a contempt proceeding against the railways was initiated by the Hon'ble Apex Court in which case a cost of Rs. 5000/- was imposed on the Rly. Administration as is evident from the judgement of Contempt Petition No. 130-195 of 1991 in Civil Appeal No. 2054/90 decided on 14.5.93 and reproduced in 1993(24) ATC 761. Even earlier also in Civil Appeal No. 2054 by an interlocutory order (supra) a cost of Rs. 5000/- was imposed upon the respondents. This clearly shows that very serious view has been taken by the Hon'ble Supreme Court in the matter. There is no doubt after going through the judgement of the apex court in question that the cadres of ASM and SM were treated as separate cadres by the Hon'ble Supreme Court for the period prior to July 1983.

7. The two alternatives given by the railway authorities with the proposal of restructuring under circular dated 29.7.1983 are :-

Alternative-I was applicable to the combined cadre of SM/ASM whereas Alternative-II was applicable to the separate cadres of SM/ASM. No doubt that upto the level of Station Superintendent, the scale of pay in both the alternatives was common.

8. The Chief Personnel Officer, S.E.Rly. issued a circular bearing No. E/G/G/ASM/Court Case/0A22-1996 dated 16.5.96 (annexure-A9) in compliance with the judgement of the Calcutta Bench Tribunal in OA 22 of 1996 stated inter alia the followings. This letter was addressed to the present applicants :-

" You had been promoted as ASM in scale Rs. 205-280/(AS)/Rs.425-640/-(RS) before 31.7.1985. Some of you had also been promoted as ASM in scale Rs. 455-700/-(RS) as per seniority on or before 31.7.1983. So it may be concluded that you had exercised options for promotion to the "ASM" channel of promotion. Accordingly you were promoted and you accepted the promotion to "ASM".

..... the respondent authorities shall grant promotional benefit to these 204/206 SMS who had exercised

—SJM

option before 1983 in the same manner as it would have been available to them if option had not been abolished in accordance with the earlier procedure provided they fulfilled the other requirements."

9. In this circular, the Chief Personnel Officer has made a mention of the order of the Hon'ble apex court in contempt petition arising out of Civil Appeal No. 2054/90 dt. 14.5.93 (supra) which stated :-

"We, therefore, direct opposite parties to implement the order of this Court in respect of 204/206 employees by applying Alternative-II to them for purpose of determining their placement and promotions."

10. The order of the Hon'ble Supreme Court was very clear that Alternative-II given in the Rly. Board's circular dt. 29.7.83 must apply to those Station masters and Asst. Station masters who were borne on the separate cadres as against Alternative I which was applicable to the combined cadre of these two categories of staff. The Chief Personnel Officer has further stated in para 2 of his letter dt. 16.5.96 that -

".....the percentage prescribed in Alternative-II in Est. Srl. No. 160/83 has been applied to SMs and SM optees and promotions are being made."

11. As the present applicants were not the optees for "SMs" channel of promotion, therefore, they were not similarly circumstanced employees as claimed by them and at any previous stage they had not claimed exercising of option for "SM" channel and in the end the Chief Personnel Officer has stated that the applicants were not eligible to be extended the benefits of the apex court's decision in Civil Appeal No. 2054/90 and the Hon'ble CAT/Calcutta's judgement in TA 370/87 and also the decision in CCP No. 113/93.

12. The case came up for hearing on several dates and it was heard ultimately on 14.7.2000 when Mr. S.K.Dutta, 1d. advocate leading Mr. A.B.Ghosh, 1d. advocate appeared on behalf of the applicants and Mr. *____*

S. Chowdhury, 1d. advocate appeared on behalf of the respondents.

13. The respondents have filed a reply on 24.1.2000 although a number of opportunities were given to them to file reply. This reply was verified by the Divisional Personnel Officer, who stated that he knew the facts of the case and was competent to verify the reply on behalf of the respondents and he was duly authorised to do so. It is observed in this connection that the Div. Personnel Officer is not one of the respondents. No authorisation was produced on behalf of other respondents that he had been authorised to give reply on their behalf. There are 8 respondents in this OA. But this officer is not one of them and he had not produced any authorisation on behalf of other respondents to file the reply and also to verify the same.

14. The reply clearly shows that no annexures was attached to it and no attempt was made to explain the case of the respondents to the Tribunal. It can be seen that the respondents placed reliance on the following documents which were not produced either with the reply or during the course of hearing on 14.7.2000 :-

- i) Memo No. ER/192/ASM/Option dt. 15.1.75
- ii) Estt. Srl. No. 300/63
- iii) Letter No. E/L/11/Class/Policy/Discussion/Pt.1/Estt.

Srl. No. 163/83 dt. 22.9.93

- iv) Alternative-1 (combined cadre of ASM and SM) communicated by the Rly. Board in the Estt. Srl. No. 160/83 which was to be followed by the railway.

- v) CAT/CAL judgement in TA 370/87

15. After hearing was concluded, the 1d. counsel for the respondents was asked to supply the documents on the basis of which the reply was based and despite giving several chances, he did not supply those documents and accordingly the OA has been taken up for decision on the basis of documents available on record.

16. We must point out that no assistance came through either directly by the officers of the respondents or by their 1d. counsel.

17. We may also point out that the applicants have also failed to

produce certain documents relied on in para 4(d), 4(h), 4(j) and 4(l). They have produced certain documents for the perusal of the Tribunal during the course of hearing.

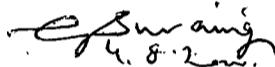
18. The case was argued vehemently by Mr. S.K.Dutta, 1d. counsel for the petitioners and he stressed that Alternative No. (2) of the Circular of the Rly. Board dt. 29.7.83 would apply to the applicants. Hon'ble Supreme Court in their judgement in Civil Appeal No. 2054/90 pronounced on 30.4.90 (supra) has held that the cadre of SMs was a separate cadre from the cadre of ASMs and that those SMs who had exercised option before 1983 must be granted promotional benefit in the same manner as it would have been if option had not been abolished in accordance with the earlier procedure, provided they fulfilled the other requirements. In other words, the benefit of Alternative II would be applicable to them in view of existence of two separate cadres of SM and ASM.

19. The applicants have filed a rejoinder on 10.7.2000 along with which they had attached an annexures being annexure-A10 which contains certain comments of the DRM(P)/Adra as also a letter of the said DRM(P)/Adra addressed to the CPO (Admn.), S.E.Rly. Calcutta. This letter is dated 13.2.97 whereas the OA was filed on 13.9.96. In that view of the matter, this letter cannot be considered by us.

20. We have considered the matter carefully and have gone through the various judgements of the Hon'ble Supreme Court, the Calcutta High Court and Calcutta Bench of the Tribunal. Being guided by the judgement of the Hon'ble Supreme Court, we have no hesitation in holding that the ASMs cadre has to be treated as a separate cadre for the period prior to July 1983 in view of the fact that SMs cadre had already been treated as separate cadre under the aforesaid decision of the Hon'ble Supreme Court and given necessary benefits. In this view of the matter, we hold that the ASMs has to be treated as a separate and distinct cadre. Their exercising option on initial appointment is not relevant in view of the observation of the Hon'ble Supreme Court as mentioned above.

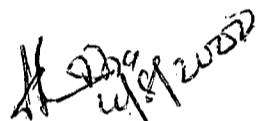
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21. After careful consideration of the matter from all its aspects, we find that in view of the fact that the cadre of ASMs being treated as separate cadre prior to 1983, they would be covered under Alternative (2) of the Rly. Board's circular dt. 29.7.83 bearing Estt. Sl. No. 160/83 dt. 2.8.83 of the S.E.Rly. We as such set aside the order of the Chief Personnel Officer, S.E.Rly. dt. 16.5.96 and direct the respondents to take necessary steps to treat all the applicants (out of which it appears 9 have already retired) being holder of separate cadre and consequential benefits be given to them accordingly within a period of next four months from the date of communication of this order. No costs.



(G.S. MAINGI)

MEMBER(A)



(D. PURAKAYASTHA)

MEMBER(J)