

Date of order : 22-12-2000

1. O.A. No. 113/96

1. Dau lal Joshi son of Shri Chetal Das Joshi
2. Ram Narain Vyas son of Shri Shri Kishan Vyas
3. Shri Niwas Sharma son of Shri Dhan Raj Sharma
4. Kuldeep Singh son of Shri Tara Singh
5. Radhey Shyam son of Shri Bhanwar Lal Sharma
6. Murlidhar Sharma son of Shri Mohan Lal Sharma
7. Mohan Lal Sharma son of Shri Ram Kumar Sharma
8. Yogendra Prakash son of Shri Kishori Lal, represented through his widow, Smt. Indra Sharma
9. Parso G. Tekwani son of Shri Gulu Mal
All retired and worked as Head Travelling Ticket Examiners, Northern Railway, Bikaner Division, Headquarter at Bikaner.
10. Smt. Sua Devi widow and legal heir of late Shri Bala Prakash son of Chand Mal.
11. Om Prakash Pathak son of Shri Hanuman Pathak
Retired and worked as Train Conductors, Northern Railway, Bikaner Division, Headquarter at Bikaner
12. Shiv Kumar Sharma son of Shri Gyarasi Ram, Head Ticket Collector, Bikaner Division, HQ at Bikaner.
13. Smt. Krishna widow and legal heir of late Shri Sohanlal Sharma son of Shri Kanhaiyalal Sharma and worked as Head Travelling Ticket Examiner, Hanumangarh Junction, Bikaner Division.
14. Smt. Kailash widow and legal heir of late Shri Bhisham Deo son of Shri Purushottam Dass, worked as Chief Inspector Tickets, Sirsa, Bikaner Division.
15. Mukut Bihari Lal son of Shri Gopal Singh Sharma, worked as Head Travelling Ticket Examiner, Ratangarh, Bikaner Division.
16. Smt. Geeta widow and legal heir of Shri Mohan Lal Bhund son of Shri Sanwarlal, worked as Head Travelling Ticket Collector, Ratangarh, Bikaner Division.
17. Atma Ram son of Shri Ram Chandra, worked as Train Conductor, Ratangarh, Bikaner Division.
18. Bhairon Singh son of Shri Dalu Singh, worked as Chief Inspector Tickets, Churu, Bikaner Division.
19. Rajendra Sharma son of Shri Kundan Lal worked as T.N.C.R, Hanumangarh.

... Applicants.



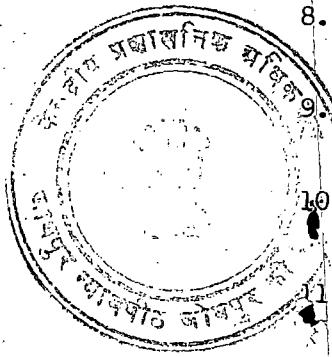
2. O.A. No. 255/96

Jai Bhagwan Sharma son of Shri Sant Ram Sharma, Retired Chief Inspector Tickets (C.I.T), resident of 32, Sohan Kothi, Bikaner, Pin Code - 334 001.

... Applicant.

3. O.A. No. 301/96

1. Shri Ram Saran Thareja son of Shri Chetan Das aged 62 years, working as HTTE, Northern Railway, Hanumangarh.
2. Shri Manglu Ram son of Shri Harkaran Ram aged 58 years, working as C.I.T., Northern Railway, Ratangarh.
3. Shri Rajender Kumar son of Shri Kundan Lal aged 58 years, working as C.I.T., Northern Railway, Jodhpur.
4. Shri Laxmi Narayan Sharma son of Shri Nath Lal Sharma aged 58 years, working as C.I.T., Northern Railway, Hanumangarh.
5. Shri Bhagwan Dass Mehta son of Shri Laxman Das aged 59 years, working as HTTE, Northern Railway, Sirsa.
6. Shri Ram Niwas Sharma son of Shri Dwan Chand aged 63 years, worked as HTTE, Northern Railway, Hanumangarh.
7. Shri Prem Nath Chawal son of Shri Keshu Dass aged 57 years, working as HTTE, Northern Railway, Hanumangarh.
8. Shri Ram Chander Jatau son of Shri Mangal Dass aged 57 years, working as....., Northern Railway, Hanumangarh.
9. Smt. Krishna Kumari w/o. late Bal Kishan aged 57 years, worked as C.I.T., Northern Railway, Hanumangarh.
10. Smt. Krishna Devi w/o. late Sohan Lal, worked as HTTE, Northern Railway, Hanumangarh.
11. Hari Ram Agarwal son of Shri Atma Ram Agarwal aged 62 years, worked as HTTE, Northern Railway, Hanumangarh.
12. Shri Shashi Bhusan Mudgil son of Shri Har Narain Sharma aged 57 years, working as CIT, Northern Railway, RTGH.
13. Shri Prakash Chander Bedi son of Shri Shyam Lal Bedi aged 68 years, worked as HTTE, Northern Railway, Sri Ganganagar.
14. Shri Chander Singh son of Shri Sagar Lal aged 59 years, worked as C.I.T., Northern Railway, Rewari
15. Shri Ram Babu son of Shri Girdhari Lal aged 61 years, worked as HTTE, Northern Railway, HMH.
16. Shri Roop Singh son of Shri Chuggan Singh aged 65 years, worked as C.I.T., Northern Railway, Hanumangarh.
17. Shri Raj Kumar Sharma son of Shri Raj Kumar Sharma aged 66



years, worked as TNCR, Northern Railway, Hanumangarh, Address : Laxmi Narain Sharma son of Shri Nath Lal Sharma, Plot No.3, Near Ram Sarnam Ashram, Hanumangarh.

... Applicants.

versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Bikaner Division, Bikaner.

... Respondents in all OAs

Mr. Dalip Singh Rajvi, Counsel for the applicants in OA No. 113/96
Mr. Y.K. Sharma, Counsel for the applicant in OA No. 255/96
Mr. J.K. Kaushik, Counsel for the applicants in OA No. 301/96
Mr. S. Jodha, Adv., Brief holder for Mr. Ravi Bhansali, Counsel for the respondents in OA No. 113/96
Mr. V.D. Vyas, Counsel for the respondents in OA Nos. 255/96 and 301/96.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman
Hon'ble Mr. Gopal Singh, Administrative Member

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

Since common question of facts and law arises in these applications, we propose to dispose all of them by this common judgement/order.

2. These applications are filed for a direction to the respondents to step up the pay of the applicants on par with others, whose pay has been stepped up by virtue of circular dated 22.04.66, based on the decision of the Railway Board, directing the stepping up of the salaries of the seniors as against the juniors. The applicants contended that after the merger of Ticket Collectors (TCs, for short) and Travelling Ticket Examiners (TTEs, for short) in one cadre, the present anomaly has

I
17

resulted and the persons junior to the applicants are getting more pay than the applicants. Therefore, the applicants are entitled to the same pay scale as has been received by the persons, who were junior to them. The applicants also contended that in similar circumstances, the Labour Court (Central), Jullundur, vide its order/award passed in Applications Nos. 663-C to 665-C of 1975 and the batch, directed the General Manager, Northern Railway, Ferozepur, to pay all the applicants therein the difference of pay as due under Section 33-C(2) of the Industrial Disputes Act, 1947. The same was confirmed by Hon'ble the Punjab & Haryana High Court at Chandigarh, vide its judgement and order dated 20.02.79 in Civil Writ Petition No. 269/1978. As against this, the matter was taken up before Hon'ble the Supreme Court in Civil Appeal Nos. 2272-98 of 1979 with SLP (C) Nos. 2978-3032 of 1980, and Hon'ble the Supreme Court, on the statement made by the learned Solicitor General appearing for the Government of India, that the claims of 27 respondents would be owned by the Government, disposed those SLPs leaving the question open to be considered in appropriate proceedings, and accordingly, 27 persons in those cases have been given stepping up of their pay. The applicants contended that the same benefits, they are also entitled to. The applicants also contended that other similarly situated persons had filed similar applications under Section 33-C (2) of the Industrial Disputes Act, 1947, before the Central Government Labour Court, New Delhi, and the said Court vide its order dated 31.05.84, passed an award in favour of the applicants and accordingly, the applicants were given benefit of stepping up of pay, directing the Divisional Superintendent, Northern Railway, Bikaner Division, Bikaner, to pay certain amounts to the 15 applicants therein. They further contended that some other similarly situated persons had instituted a Civil Suit No. 43/80 for the relief in question before the Additional Munsif & Judicial Magistrate No.2, Bikaner. The said Suit was dismissed against which the plaintiff therein preferred an appeal before the Additional Civil Judge in Appeal Decree No. 17/83 and said

appeal was allowed by decreeing the Suit, as prayed for. The said decree was challenged before Hon'ble the Hight Court of Rajasthan in S.B. Civil Second Appeal No. 79/84 and the said appeal has been admitted. But the stay against the said decree was not granted. They have also stated that vide order dated 11.09.86, the S.B. Civil Stay No. 44/84 in S.B. Civil Second Appeal No. 79/84, has been dismissed by rejecting the prayer for stay, subject to the condition that if the respondents were paid as per the decree of the lower appellate Court, the said amount could be recovered later by the Railway department, in case their appeal before Hon'ble the High Court succeeds. The applicants further stated that the plaintiffs (respondents) therein were given provisional benefit of stepping up of their pay subject to judgement of Hon'ble the High Court in the said Second Appeal. The applicants, therefore, contended that they are also entitled to the same benefits.

3. The applicants contended that this anamoly has arisen after the merger of TCs cadre and TTEs cadre and as a result, the juniors are getting more pay and pay scale than the applicants. If the juniors are given more pay than the applicants, there would be an hostile discrimination against the applicants. They also stated that combined seniority list of TCs and TTEs was prepared on 30.11.76 and the persons who were junior to the applicants in the combined seniority list, and those who came from the TTE side, started drawing more pay than that of the applicants. They stated that this was due to the fact that the TCs cadre prior to formation of the single cadre were given promotion on option as Senior Ticket Collector with the pay scale of Rs. 250-380 and after formation of single cadre, the TTEs were also given similar option, and as a result, TTEs got double option and accordingly, the juniors started getting more pay then their seniors. Inspite of the representations by the applicants, the department did not set right the anamoly, as a result, some of the applicants filed an application before

19

this Tribunal in OA No. 637/89 and this Tribunal, by overruling the objections of the respondents regarding limitation, directed the respondents to reexamine the case of the applicants in the light of the judgement of Hon'ble the High Court of Punjab and Haryana dated 20.02.79 passed in Civil Writ Petition No. 269/78 [Union of India & Anr. vs. S.R. Sethi and Anr.]. But without considering the case of the applicants properly, the respondents issued a letter dated 27.01.95 (Annexure A/2 in OA No.113/96) by observing that the applicant would not be entitled to the benefit of the judgement of Hon'ble High Court of Punjab and Haryana, and accordingly, they rejected the claims of the applicants. Though the applicant had filed a contempt Petition No. 105/94 (in OA No. 637/89) before this Tribunal, but this Tribunal disposed of the said C.P., stating that the matter requires to be considered afresh by the Tribunal and it was open to the applicants therein to prefer a separate O.A., challenging the order dated 27.01.95, and in these circumstances, the present O.As have been filed for the reliefs, as prayed for.

4. By filing counter, the respondents denied the case of the applicants. They have stated that on the recommendation of the 3rd Pay Commission, the Government issued a circular dated 1.1.83, directing the merger of TCs and TTEs of the pay scale at Rs. 150-240 (AS) and Rs. 150-240 (AS) into the revised scale of Rs. 330-560 (RS). Consequent upon the merger of 2 grades and introduction of the revised channel of promotion, it was decided by the Headquarter's office that the existing TCs in the grade of 330-560 (RS) should be considered for the post of TTEs grade Rs. 330-560 (RS) against the future vacancies. Accordingly, TCs grade Rs. 330-560 (RS), who were juniors to the applicants in the combined seniority list but were earlier promoted to grade Rs. 150-240 (AS) / 330-560(RS) as Senior T.C. Grade Rs. 150-240(AS) on the basis of their options given by them in their channel of promotions, and they were posted as TTE in the grade of Rs. 330-560 (RS) after 07.06.76. In these circumstances, the applicants' claim for fixation of their pay

equal to the pay of juniors in terms of Railway Board's letter dated 4.9.74, was not admissible as decided by the Headquarters. They further contended that it is not a case of double option. They also admitted that the staff mentioned in para 11 of the application were juniors in the combined seniority list, but they got promotions prior to 12.07.62, i.e., before the implementation of the revised channel of promotion from TC grade Rs. 60-130 (PS)/110-180 (AS) to STC grade Rs. 100-185 (PS)/150-240 (AS) as per their options. Later on, as a result of the acceptance of the recommendations of 3rd Pay Commission with effect from 1.1.73, and due to merger of grade of TCs and TTEs of Rs. 130-212 (AS) and Rs. 150-240 (AS) into one single grade of Rs. 330-560 (RS), the Headquarters' office had issued instructions vide letter dated 7.6.76 that all the TCs grade Rs. 330-560 (RS) be posted as TTEs in the future vacancies, and accordingly, some of the juniors to the applicants on option were promoted as Sr. Ticket Collectors in the grade of Rs. 150-240 (AS), and they were getting higher pay scale. The applicants did not exercise such option and they refused the promotions for stationary posts, i.e., STC/HTC, and as such they were not entitled to stepping up of their pay over and above certain persons, who according to the applicants, are junior to them. The respondents have further stated that the judgement passed by Hon'ble the Punjab and Haryana High Court is not helpful to the applicants. The respondents also stated that against the judgement and decree passed by the Additional Civil Judge, Bikaner, the matter is pending in the Hon'ble High Court of Rajasthan. They also stated that the judgement of Hon'ble Punjab and Haryana High Court at Chandigarh, could not be taken as laying down a correct law, as Hon'ble the Supreme Court has left that question open ~~xxxxxxxxxxxx~~ ~~xxxxxxxxxxxx~~ ~~xxxxxxxxxxxx~~ ~~xxxxxxxxxxxx~~ ~~xxxxxxxxxxxx~~ They have also contended that the judgement/decree of the Civil Court at Bikaner, did not attain finality, since the Second Appeal is still pending before Hon'ble the High Court of Rajasthan. Therefore, the applicants ~~are~~ not entitled to any relief in this case and they cannot challenge the order of the

respondents dated 27.01.95 vide Annexure A/2 (in OA No. 113/96). Accordingly, the respondents prayed for the rejection of these applications.

5. The learned counsel appearing on both sides reiterated the same what has been stated in the respective pleadings of the applicants and the respondents.

6. From the pleadings and the contentions on both the sides, it is clear that the entire controversy is in a narrow compass as to whether the applicants are entitled for their stepping up of pay on par with their juniors in the combined seniority list, after the merger of the posts of TCs and TTEs into one cadre.

7. It is not in dispute that the Civil Appellate Court at Bikaner, allowed the claims of certain persons, who were similarly situated like that of the applicants, and the said judgement/order is already challenged before Hon'ble the High Court of Rajasthan vide S.B. Civil Second Appeal No. 79/84. It is stated that an S.B. Civi Stay Petition No. 44/84 in S.B. Civil Second Appeal No. 79/84, ~~xxxxxxxxxxxxxx~~ in which Hon'ble High Court passed the order as under:-

"Certified copy of order dated 11.9.86 in S.B. Civil Stay No. 44/84 in S.B. Civil Second Appeal No. 79/84, pending in the High Court of judicature for Rajasthan at Jodhpur.

APPELLANTS/RESPONDENTS:

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Bikaner Division, Bikaner.

versus

RESPONDENTS/PLAINTIFFS

1. Sanwar Lal son of Shri Bhanwar Lal Travelling Ticket Examiner, Bikaner and 5 others.

Date of order : 11.09.86

Hon'ble Shri K.S. Lodha, J.

Mr. R.N. Mathur for the appellants.
Mr. M.R. Singhvi for the respondent.

The learned counsel for the parties state that the question involved in this appeal is still pending before the Hon'ble the Supreme Court in an appeal against the judgement of the Punjab and Haryana High Court, in these circumstances, it will be proper that the decision of this case is deferred till the decision by the Hon'ble Supreme Court of the aforesaid appeal.

So far as the stay matter is concerned, the learned counsel for the respondents states that in case the appeal succeeds, the respondents will have no objection if the amount paid to them in excess in pursuance of the order of the appellate Court is recovered from them. In these circumstances, in view of this submission the operation of the order under appeal need not be stayed.

The stay application is rejected.

The case may be put up for hearing after the decision of the Hon'ble Supreme Court. It will be for the learned counsel for the parties to inform this Court as soon as the appeal before the Supreme Court is decided.

Sd/- K.S. Lodha, J."

8. By reading the stay order, we find that Hon'ble High Court refused the stay with an observation that in case the amount was paid in pursuance of the order of the Appellate Court, the same could be recovered from the respondents-plaintiffs, if the appeal filed by the appellants- Union of India, succeeds. It is now stated that in pursuance of the said order of Hon'ble the High Court, the plaintiffs in that case were paid the excess amount as a provisional arrangement, subject to the judgement of Hon'ble the High Court to be passed in the Second Appeal.

9. The fact that these applicants and the respondents in S.B. Civil Second Appeal No. 79/84 are similarly situated, is not disputed. It is also not in dispute that some of the juniors in the combined seniority list (prepared after merger of TCs and TEEs cadres in single cadre) are getting higher pay scale than the applicants. But the defence of the respondents is that they were getting higher pay only because of the

1/23

options exercised by them for promotion and such options the applicants did not exercise. But we propose not to decide the relative merits of the claim of the applicants and other juniors at this stage on the basis of the judgement of Hon'ble Punjab and Haryana High Court, since that is the matter yet to be considered by Hon'ble the High Court of Rajasthan in S.B. Civil Second Appeal No. 79/84. It is also not in dispute that in pursuance of the statement made by the learned Solicitor General before Hon'ble the Supreme Court in Civil Appeal Nos. 2272-98 of 1979 with Special Leave Petition (C) Nos. 2978-3032 of 1980, 27 respondents therein got the benefit of stepping up of their pay. However, Hon'ble the Supreme Court disposed of those Civil Appeals on the statement made by the learned Solicitor General appearing for the appellants, leaving the question of law open to be considered in some other cases. The fact also remains on record that similar controversy is still pending before Hon'ble the High Court of Rajasthan in S.B. Civil Second Appeal No. 79/84. But the counsel appearing for the applicants contended that by virtue of the fact that the judgment decree passed by the Civil Appellate Court, Bikaner, is not stayed by Hon'ble the High Court of Rajasthan, and the plaintiffs therein were already given the benefit. The present applicants are being denied the same benefits for no fault on their part. From these contentions, it is clear that the plaintiffs before the Civil Appellate Court, Bikaner, are getting higher pay, causing heart-burn to the present applicants. The contentions of the learned counsel for the applicants is that the other persons similarly situated are getting benefits, though under provisional arrangement, and the same is denied to the present applicants and it is discriminatory. In our opinion, there is substance in this argument.

10. In view of the fact that the Government has already owned a liability of paying the difference of pay by according stepping-up of pay in respect of 27 persons as per the statement made by the Solicitor General before the Hon'ble Supreme Court, also in view of the fact that

similarly situated persons got the similar benefit before the Central Government Labour Court, New Delhi, vide Judgement and Order dated 31.5.84 and also in view of the fact that the respondents in S.B.C. Second Appeal No. 79/84, have been given such stepping-up as a provisional arrangement by taking necessary undertaking from them, we think it appropriate to direct the respondents to accord the same benefit to the present applicants after taking necessary bond or undertaking from them, as has been done in the case of the respondents in the Second Appeal pending before the Hon'ble High Court of Rajasthan. To deny such benefit at this stage, would cause hardship and also a discriminatory situation to the present applicants, consequently, violating the fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India. For the above reasons, we think it appropriate in the interest of justice and equity to pass the order as under :-

"These applications are disposed of with a direction to the respondents to accord the benefits regarding stepping up of their pay, as has been done in the case of the respondents in S.B. Civil Second Appeal No. 79/84, pending before Hon'ble the High Court of Rajasthan, on executing necessary undertaking or bond by the applicants also. In case the Second Appeal (supra) filed by the Union of India succeeds, respondents will be within their rights to recover the excess amount now paid by virtue of this order, in terms of the judgement to be passed by the Hon'ble High Court in the said Second Appeal No. 79/84. No costs."

sd/-
(GOPAL SINGH)
ADM. MEMBER

sd/-
(B.S. RAIKOTE)
VICE CHAIRMAN

प्रभाणित सही प्रतिलिपि
29/2/2000
प्रनुभाग अधिकारी (न्यायिक)
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर

El Cap
07/21

Reelcopy
Zelbst
2/20/2007