

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR**

Original Application No. 23/1997

Dated this the 23rd day of September, 2011

CORAM

HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER

HON'BLE MR. SUDHIR KUMAR, ADMINISTRATIVE MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL

1. Ashuthosh Sharma S/o Shri Ramnathji Sharma,
At present working as Station Superintendent,
Railway Station, Western Railway, Abu Road.

2. Dharmendra Ojha, S/o Shri R.C. Ojha,
Working at Station Superintendent,
Railway Station, Western Railway, Bhilari.

3. Surgyan Singh Meena S/o Shri Ranjeet Mal,
Working as Station Superintendent, Railway Station,
Rana Pratap Nagar.

4. Tej Kumar Sidhu S/o Shri V.K. Siddhu,
Working as Station Superintendent,
Railway Station, Candala Port.

....Applicants

(By Advocate Mr. Surendra Singh)

Vs.

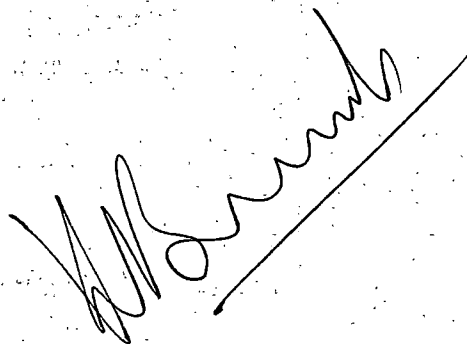
1. The Union of India, through General Manager,
(P), Western Railway, Headquarter Office,
Church Gate, Mumbai.

2. The Divisional Railway Manager,
Ajmer Division, Western Railway,
Ajmer.

... Respondents

(By Advocate Mr. Salil Trivedi)

This application having been heard finally, the Tribunal on 23.9.2011
delivered the following:

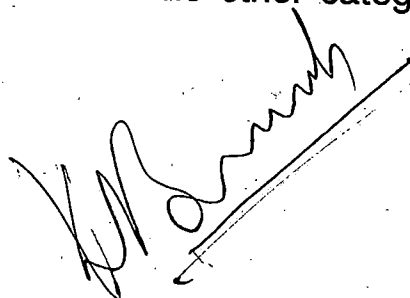


ORDER

HON'BLE DR. K.B.SURESH, JUDICIAL MEMBER

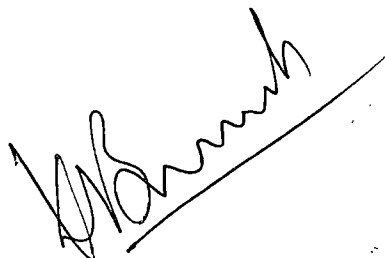
Judicial review is designed to prevent the excess and abuse of power and the neglect of duty by public authorities. In the past there was a clear test for determining the limits of the court's jurisdiction: "power" meant legal power conferred by Act of Parliament. Subject to the special rules governing individual remedies, it was only necessary to ascertain that the power was statutory before invoking the aid of the court. Nor was it difficult to distinguish public authorities from other recipients of statutory powers such as commercial companies and trustees. If the power was granted for governmental purposes, its exercise was controllable by the remedies of administrative law. The same could likewise be said of duties. The scope of judicial review was therefore defined.

2. The law has been driven from these familiar moorings by the impetus of expanding judicial review, which has been extended to two kinds of non-statutory action. One is where bodies which are unquestionably governmental do things for which no statutory power is necessary, such as issuing circulars or other forms of information. Examples have already been given to show how the courts will entertain actions disputing statements of law, and even of policy, in government statements and circulars, although mere statements and circulars in themselves have no legal effect. The other category is



where judicial review is extended to bodies which by the traditional test, would not be subject to judicial review and which in some cases, fall outside the sphere of government altogether. A variety of commercial, professional, sporting and other activities are regulated by powerful bodies which are devoid of statutory status and may yet have an effective monopoly. In their willingness to recognize the realities of executive power and in their desire to prevent its abuse the courts have undertaken to review the decisions of a number of such bodies, while in other cases they have refused. The limits of this new jurisdiction have been explored in a series of judgments and they are by no means certain especially since Article 309 permits such transitory initiatives, and, intended to deliver full effect to satisfactory public policy, this seems to be blessed by adjudication.

3. The issue in a nutshell would be the applicants who had been appointed in a higher pay scale of Rs. 455-700 vide Annexure.A5 have brought in a case of others who were drawing Rs. 425-640 and the clubbing together of these into a single pay scale of Rs. 1400-2300 had pre judicially affected them. But specific determination and investigation itself found that this clubbing together which happened with effect from 1.1.1986, is not the crux of the matter. All the applicants claim as though this clubbing together has somehow affected them. But the Annexure.A1 has mentioned only Rs. 1400-2300 and Rs. 1600-2660 as the matter in contention as between pre

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and post 15.5.1987 selectees and not the wrong induction of another pay scale into the issue. The relief canvassed is for quashment of Anenxure.A1 and A2 which in fact had granted a benefit of non-recovery of extra money paid, even though the Hon'ble Apex Court had specifically denied it. There were no other specific reliefs claimed for by the applicants we are not elaborating on factual matrix since the earlier order has canvassed it.

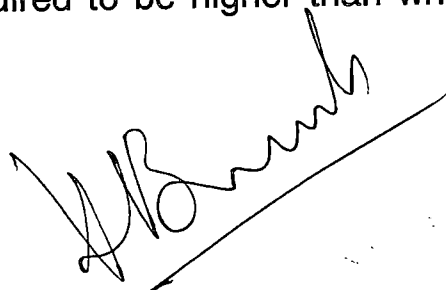
4. On remand from the High Court since we could not find any distinguishing difference between the two judgments of the Hon'ble Apex Court in Bhaskar's case and Rajaram's case, we had vide order dated 3.5.2011 specifically directed the applicants to point out the distinctive difference to us as they seems to have obtained a remand on the basis of such distinction. Even though they were unable to point it out we heard the matter in full and in extenso and since the matter was remanded back from the High Court on the above ground that there might be some distinctive difference between the judgments of the Hon'ble Apex Court and as it appeared from the Judgment of the High Court that M.Bhaskar's judgment has been supplanted by the Rajaram Judgment, we had requested the learned counsel to submit a written submission also as an elaboration of his arguments, which on 9.5.2011 he had done.

5. The case as unfolded in the OA and the written submission is that on 30.8.1989 an appointment letter was issued, The benefit of

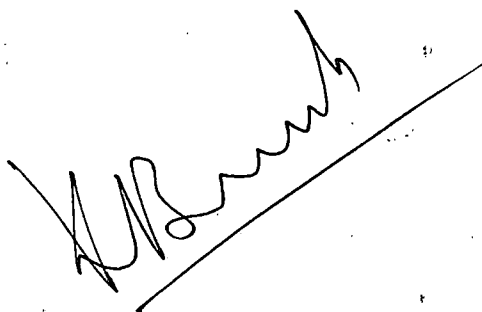
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the circular dated 15.5.1987 was extended to the applicants also vide the judgment of the Tribunal in Jaipur in OA 537/1992. Subsequently they were given promotions based on the foundation of the order in OA 537/1992. But then this benefit as granted to them was conditional and subject to the result of the SLP which the Railways had moved before the Hon'ble Apex Court. Apparently similar matters were raised before the Hon'ble Apex Court, and these were heard and which resulted in the judgment of the Apex Court in Union of India and others Vs. M.Bhaskar and others, reported in 1996(4) SCC 416. The Apex Court categorically held that the entitlement of the memorandum dated 15.5.1987 was only meant for the Traffic Apprentices of Higher Grade (Grade II) and not for all grades of Traffic Apprentices. It held that Rule 1-A of the Indian Railway Establishment Code had come to be made pursuant to the power conferred under proviso to Article 309 and having stated that the recruitment to the lowest grade will be made in accordance with the instructions laid down by the Railway Board from time to time, the rule itself permitted the Railway Board to issue necessary instructions, and therefore Memorandum of 1987 is valid.

6. Crucial matter according to the Hon'ble Apex Court was that recruitment of Apprentices was to man the post of Station Masters and Yard Masters and the standard of examination for those to be recruited after 15.5.1987 was required to be higher than which was

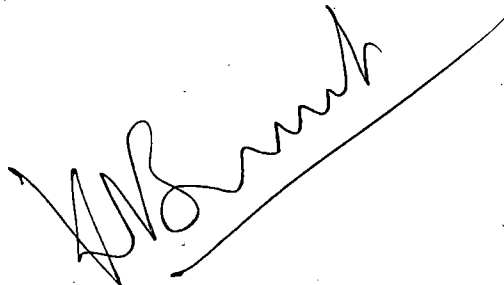
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prevailing and therefore giving them higher pay scale, or reducing their period of training from 3 to 2 years could not be arbitrary or unreasonable. It also clearly stated what is the difference between pre-1987 Apprentices or post-1987 Apprentices. It specifically stated that persons recruited under pre-1987 advertisement although called for training in 1989 as in the case of applicants were not post-1987 Apprentices, and were therefore not entitled to the higher scale of Rs. 1600-2660. Therefore validly and properly the applicants had been reverted. The applicants lament in their written submission that the reversion was without a show cause notice to them and which denied them an opportunity of being heard. Then it is to be remembered that the promotion was conditional on the decision of the Apex Court and though even before accepting the promotion they knew very well that it was subject to Apex Court's decision. When conditions have been prescribed for enhancement of possibility, and when the conditions change, it goes into operation immediately, and without any notice, and no notice is required in this respect. The moment the Hon'ble Apex Court passed the judgment it became operational and binding on all concerned, and since the applicants had taken the benefit of judicial interdiction and intervention when the tables turned on them, they became subject to the full operation of the judgment. Therefore, there was no need to issue them with a show cause notice.

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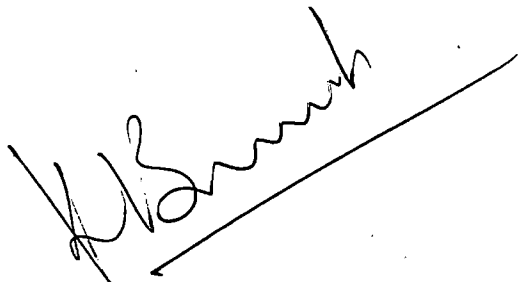
7. Annexure.A2 on the other hand is a notice issued extending benefits to them which the Hon'ble Supreme Court had categorically said and denied to them but the Railways respondents had extended to them. Therefore since the matter is covered fully and to the n'th degree by the findings of the Hon'ble Apex Court, it is binding on the Tribunal, being a subordinate adjudicatory body and the OA was dismissed. The Review Application canvassed a view of Annexure A8 to have some relevance. As noted earlier Annexure.A8 canvassed the view that when those persons in Rs. 425 pay scale were clubbed together with Rs. 455 pay scale these latter persons must have a pre-eminent seniority en bloc. That has nothing to do with the present controversy. That had happened on 1.1.1986. The present controversy is not that, but only whether the pre-1987 selectees and post-1987 selectees should have a parity in consideration. The Apex Court having held that the post-1987 selectees being found possessing of a higher quality, they are entitled to the higher prescribed pay and facilities. The clubbing together forming part of Vth Pay Commission Report and the Annexure.A8 has nothing to do with the present controversy. This can be probably seen as a veil being pulled over the fact finding mission of an adjudicatory body. It needlessly and deliberately confused the issue as though Annexure.A8 has a probative value which it does not. It concerns something which is beyond the scope



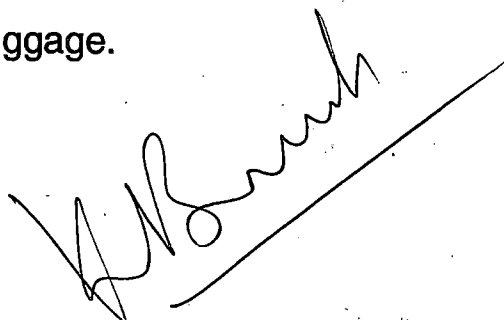
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and pale of the issue at hand. That being so the Review Application was also dismissed. Thereupon the applicants approached the Hon'ble High Court with a Writ Petition, and in the interregnum of the continuance of the Writ Petition, the Hon'ble Apex Court had issued a judgment in the case of Rajaram. Since the Hon'ble High Court stipulated that there might be supplantation of M.Bhaskar judgment by Rajaram judgment which according to the High Court was a Constitution Bench judgment, we had examined the matter in extensor, and with painstaking effort.

8. In fact the constitution Bench upheld M.Bhaskar case and also held that even when on the basis of the benefit of the judgment of C.A.T. anybody had been further promoted, they will lose the benefit of such promotions. Directions were given in Bhaskar's judgment not to recover the amount from those in whose favour the judgments had been given in CAT. That also now did not find favour with by the Hon'ble Apex Court. In fact the Hon'ble Apex Court held that if some employees were unjustly and improperly granted the higher scale of pay and on that basis given promotion to the higher post, then the basis of such promotion being non-existent, the superstructure of building on such non-existent foundations should not be allowed to stand. The Apex Court held that this is particularly necessary for the sake of maintaining equality and fairplay with the other similarly placed employees. But as a necessary corollary the amount need



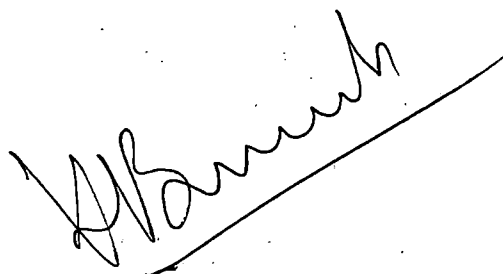
not be required to be refunded. Other than this, there is no difference at all between the two judgments of the Hon'ble Apex Court. In any case the non-requirement of refund had been clarified by Anenxure.A2. Therefore, there is no cause at all for the applicants to contend and object to. Prior to the issuance of the Railway Board's letter dated 15.5.1987, which has been upheld by the Hon'ble Apex Court in the case of Union of India & Ors. Vs. M. Bhaskar & Ors. (Supra). In respect of promotion of Commercial Clerks, 25% of the vacancies of Commercial Supervisors/Booking, Commercial Supervisors/Parcel, Commercial Supervisor/ Goods, and Commercial Supervisor/ Luggage, were to be filled up 10% by a departmental competitive examination in respect of Graduates of Commercial Department other than Ministerial, who are below 40 years of age, and who had qualified the promotional course P28 A& B from ZTS/Ch. And 15% of the vacancies of Commercial Supervisors were to be filled up by direct recruitment from open market through RRB with graduate qualification, and only the remaining 75% of the vacancies were to be filled up through a process of selection, by conduct of written test and viva voce test and passing the pre-requisite course from the Zonal Training School, Chandausi, (ZTS/CH) or among the Head Commercial Clerks/Booking Clerks/Commercial, Clerks Parcel, Head Commercial Clerks/ Goods Guards and Commercial Clerks/ Luggage.



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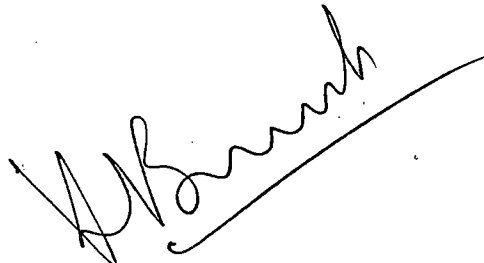
9. In respect of the promotion channel of Commercial Inspectors, as given in the Table reproduced in para 35 above, 15% of the vacancies were to be filled up by direct recruitment of graduates through RRB as Commercial Apprentices, after qualifying the prescribed training course (T-13) from ZTS Zonal Training School, Chandausi, and 10% of the posts were to be filled up by a departmental competitive examination from among the non-ministerial staff of commercial department who were graduates and were below 40 years of age, and had qualified the promotional course P 28 A & B (pre-requisite) from ZTS/Ch and only the remaining 75% of the supervisory vacancies in the grade Rs. 1600-2660/- were to be filled up on the basis of non-selection by seniority-cum-suitability from among the Commercial Inspectors in the lower grade of Rs. 1400-2300/-.

10. Even though such being the clear indications in the case, the applicants seem to have engaged two adjudicatory bodies in needless litigational exercises even after Rajaram's judgment has come out. We have to assume that Rajaram Judgment was projected in such a way that it had actually appeared to have supplanted Bhaskar's judgment even though factually it is not so. That is the reason why specially we required the learned counsel for the applicants to address us through written submissions on the distinction between these two judgments at the initial stage itself, and



the applicability of such distinction by a specific order, even though he was unable to do it. The basis of the remand by the Hon'ble High Court was the perceived/alleged distinction and difference between these two judgments, as if the earlier judgment had been supplanted by the latter, and since the earlier Bhaskar's judgment was the basis of the Tribunal's judgment, and that having been apparently and allegedly transposed and supplanted by the later judgment in Rajaram's case the High Court therefore remanded the matter for reconsideration. We had heard in extenso the matter, including the Annexure.A6,A8 and other connected matters which we have now found are without any basis. We cannot but reflect sadly on the way proceedings have been manipulated by the applicants resulting in a lengthy process. What could have been achieved by the applicants is not clear. Whether or not they will be continuing on the basis of the interim order on the promotional post despite the orders of the Hon'ble Apex Court is not clear, but surely there must be some reason for needless strengthening and protraction of proceedings by taking up frivolous contentions, and that too outside the pale of the construction of the pleadings itself. Needless confusion reigned and it took painful efforts to sift the grain from the chaff.

11. Therefore, we declare that there is no difference at all between M.Bhaskar judgment and Rajaram Judgment, and both are complementary and supplementary to each other, and follow in the



same stream essentially and fundamentally. We further declare that Annexure.A8 has nothing to do with the contentions in the matter and may have been brought in in the course of reasoning as a confusing element . We declare and hold that following the Apex Court Judgment which dissolved a conditional benefit, and which condition was known to all those who enjoyed such benefit, it can be withdrawn at any time and it is to be rightly so, following the higher standard of compliance required of the Hon'ble Apex Court's orders, and therefore, and even otherwise also, no notice is required to be given to the applicants in the circumstances of the case.

12. On these cumulative findings and declarations, the OA fails. We have found that the applicants have, by raising frivolous contentions, which had no probative value or focus or content, had played truant with the adjudicatory process of two institutions. Time spent by this Tribunal, and the Hon'ble High Court on these cases could have been profitably utilized to resolve the grievances of many other poor litigants. Therefore the OA is dismissed, with costs of Rs. 5,000/- per applicant which, will be around half a month's salary of theirs as on today. In the result, the OA is dismissed with total cost of Rs. One lakh.

Dated this the 23rd day of September, 2011


SUDHIR KUMAR
ADMINISTRATIVE MEMBER


DR. K.B. SURESH
JUDICIAL MEMBER

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