

XN

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH AT JODHPUR**

Original Application Number 469/2011

Date of decision: 23-11-2012

[Reserved on 06.09.2012]

**CORAM**

**HON'BLE MR. G. GEORGE PARACKEN, JUDICIAL MEMBER  
HON'BLE MR. B.K. SINHA, ADMINISTRATIVE MEMBER**

- 1- Bhairon Singh S/o Shri Dalu Singh worked as Chief Inspector Tickets, Churu, Bikaner Division.
- 2- Ram Niwas Sharma S/o Shri Dhanraj Sharma retired and worked as Head Travelling Ticket Examiners, Northern Railway, Bikaner Division, H.Q. Bikaner.
- 3- Mohan Lal Sharma S/o Shri Ram Kumar Sharma retired and worked as Head Travelling Ticket Examiner, Northern Railway, Bikaner Division, HQ., Bikaner.
- 4- Rajendra Sharma S/o Shri Kundan Lal worked as T.N.C.R., Hanumangarh.
- 5- Yogendra Prakash S/o Shri Kishore Lal, represented through his widow Smt. Indra Sharma retired and worked as Head Travelling Ticket Examiner, Northern Railway, Bikaner Division, HQ, Bikaner.
- 6- Kuldeep Singh S/o Shri Tara Singh retired and worked as Head Travelling Ticket Examiner, Northern Railway, Bikaner Division, HQ., Bikaner.
- 7- Smt. Kailash Widow and heir of Late Shri Bhisham Deo S/o Shri Pushottam Das, worked as Chief Inspector Tickets, Sirsa, Bikaner Division.

XG

8- Dau Lal Joshi S/o Shri Chetal Das Joshi retired and worked as Head Travelling Ticket Examiner, Northern Railway, Bikaner Division, HQ Bikaner.

9- Jai Bhagwan Sharma S/o Shri Sant Ram Sharma retired Chief Inspector Tickets, Northern Railway, R/o 32, Solhan Kothi, Bikaner.

10- Shiv Kumar Sharma S/o Shri Gyarasi Ram Head Ticket Collector, Bikaner Division, HQ., Bikaner.

11- Atma Ram S/o Shri Ram Chandra worked as Train Conductor, Ratangarh, Bikaner Division.

12- Murlidhar Sharma S/o Shri Mohan Lal Sharma retired and worked as Head Travelling Ticket Examiner, Northern Railway, Bikaner Division, HQ, Bikaner.

13- Smt. Janki W/o Late Shri Parso G. Tekwani.

14- Smt. Geeta Widow and legal heir of Shri Mohan Lal Bhund S/o Shri Sanwar Lal worked as Head Travelling Ticket Collector, Ratangarh, Bikaner Division.

15- Radheyshyam S/o Bhanwar Lal Sharma, retired and worked as Head Travelling Ticket Examiner, Northern Railway, Bikaner Division, HQ., Bikaner.

.....Applicants

(By Advocate Mr. D.S.Rajvi)

Vs.

1. Union of India through the General Manager Northern West Railway, Jaipur
2. The Divisional Railway Manager, Northern West Railway, Bikaner Division, Bikaner.
3. The Divisional Railway Manager, Northern West Railway, Bikaner Division, Bikaner.

.....Respondents

(By Advocate Mr. Kamal Dave)

## ORDER

[PER B.K.SINHA, ADMINISTRATIVE MEMBER]

The instant OA has been filed not against any particular order but, has been filed for a direction to the respondents to pay arrears of salary and other consequential benefits pursuant to the judgment dated 22.12.2000 passed by this Tribunal from the date it became due with compound Interest @ 18% per annum.

2. The applicants have sought the following relief(s):

- (a) *By an appropriate writ, order or direction the applicants may kindly be permitted to maintain the joint original application.*
- (b) *By an appropriate writ, order or direction, the respondents may kindly be directed to pay arrears of salary and all other consequential benefits pursuant to the judgment dated 22.12.2000 passed by this Hon'ble Court from the date it became due with compound interest @ 18% per annum.*
- (c) *Any other appropriate order or relief which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of this may also kindly be passed in favour of the humble applicant.*

*Case of the applicants :*

3. The applicants are retired employees of the Railways. This is the third round of litigation that they have been through. The earlier application OA 637/1989 filed before this Tribunal ended up with a direction vide the order dated 04.11.1993 to decide the matter in the light of judgment passed by the Hon'ble High Court of Punjab and Haryana in *Union of India and others Vs. S.R. Setti and others* (1979(3) SLR 601). Since the order was not complied with, applicants filed contempt petition No.94/1994, which was dismissed with liberty to applicants to file a fresh original application. The applicants then filed OA 113/1996 and OA 255/1996 which were decided by this Tribunal vide order dated 22.12.2000 directing the respondents "to accord the benefits regarding stepping up of their pay, as has been done in the case of the

respondents in SB 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 judgment to be passed by the Hon'ble High Court in the said Second Appeal No.79/84. No costs." The respondents took the matter up before the Hon'ble High Court vide DBCWP Nos.3826/2001 and 3838/2001 which were dismissed by a common order dated 6.5.2010[A2]. Following this the applicants filed a contempt petition in conclusion of which the Tribunal directed to file an MA which they have filed as MA 27/2001 and 34/2001. In the meantime the respondents made part compliance of the order dated 22.12.2000 but omitted to pay arrears of salary as a result of stepping up of their salary and the interest thereon. The MA 27/2001 & 34/2001 were disposed of giving liberty to file fresh OA. Hence, the applicants have filed the present OA for the aforesaid reliefs. Applicants submit that similarly situated persons were granted the same benefits while singling out the applicants which amounts to a discrimination. They further submit that since the writ petition filed against the final order dated 22.12.1990 was dismissed by the Hon'ble High Court, the respondents are duty bound not only to pay the arrears and comply with the judgment but also to pay compound interest @ 18% per annum.

*Stand of the respondents:*

4. The respondents have filed a reply to the OA and have opposed the prayers. They have stated that on account of options exercised by Ticket

Xg/

Collector Grade 110-180 (AS) juniors who opted for advancement towards category Ticket Collector were promoted to grade Rs. 150-240 earlier than the incumbents who opted for TTE Grade 130-212 (AS) as the vacancies in the grade of TC 150-240 (AS) occurred earlier resulting in early promotion of persons who opted for the same. Applicants who opted for advancement towards category TTE cannot nurse grievances with the advancement of those who opted for the stream of ticket Collectors irrespective of the fact that they happened to be junior to them. The condition for stepping up requires that both the junior and senior employees should belong to same cadre and post in which they have been promoted or appointed and the anomaly should be directly as a result of the application of Rule 2018-B (FR 22C). They have referred to the order of the Principal Bench in Full Bench in OA 1711/1992 dated 25.7.2011 and stated that the Full Bench order is binding on the Benches of the Tribunal. The Hon'ble Full Bench held as under:

*"the fact remains that junior persons were promoted in the cadre of HTC as per the procedure/rule in vogue after qualifying the written test thus had become member of that cadre from earlier date as against the senior persons/applicants who had not exercised option to be promoted to the post of HTC and also had not qualified the written test for the said post (rather exercised option for promotion in another cadre of TTE) and have admittedly being promoted after 1988 in accordance with the 1988 Rules/ instructions thus become member of the cadre at a later stage. Thus, according to us applicants could not have been assigned seniority over and above junior persons appointed in the cadre of TTE from an earlier date."*

5. The respondents further state that in this case the stepping up has not become final creating any right for the applicants and the only prayer is to implement the earlier judgment. The dismissal of writ petition does not make the status of applicant different. As per the direction the applicants became

entitled for stepping up of pay on furnishing requisite undertaking, which the respondents have done granting arrears without consequential benefits. But they are not eligible for consequential benefits as the applicants cannot claim anything beyond what has been allowed by the Tribunal. The respondents, therefore, prays for dismissal of this OA.

**Facts in issue:**

6. After having carefully perused the documents adduced by the parties and having listened through the arguments submitted by the respective counsels, the only fact-in-issue that emerges for consideration is, whether the respondents should be directed to pay the arrears of salary and all other consequential benefits pursuant to the judgment passed on 22.12.2000 by this Tribunal in OA No. 113/1996 from the due date with compound interest @ 18% p.a.? In order to determine this issue, it is necessary to delve into the brief genesis of the case.

7. Prior to 12.7.1962, the Ticket Collectors working in the Grade of Rs. 110-210 (AS) were given option to opt either for the category of Ticket Collector Grade 150-240 (AS) or for Travelling Ticket Examiner Grade Rs. 130-212 (AS). It was in a way choice between quick career advancement to higher stage and availing of extra perks that were associated with the post of TTEs. The Ticket Collectors who opted in exercise of the above available options were promoted either as Ticket Collector Grade Rs. 150-240 (AS) or Travelling Ticket Examiner Grade Rs. 130-212 (AS) subject to the occurrence of vacancies in the respective categories as per the channel of promotion. On account of the above available options exercised by the Ticket Collectors

Grade Rs. 110-210 (AS), who were relatively juniors, were promoted in the Grade of Rs. 150-240 earlier than the incumbents who had opted for Travelling Ticket Examiner Grade Rs. 130-212 (AS). As the vacancies in the grade of Ticket Collectors Grade Rs. 150-240 (AS) occurred earlier resulting in such early promotion to those who had opted for such grade. The applicants who had opted for advancement towards category of Travelling Ticket Examiner found themselves lagging behind their counterparts who had opted for the post of Ticket Collectors. It is this lack of parity which has given rise to the instant series of litigation. Both grades i.e. of Ticket Collectors and Travelling Ticket Examiner merged into a single grade of Rs. 330-560 as a consequence of the implementation of the report of the 3<sup>rd</sup> Pay Commission. As mentioned earlier, despite having an opportunity to opt for a higher grade of Ticket Collector Rs. 150-240, the applicants had opted for a lower grade of Travelling Ticket Examiner grade Rs. 130-212 being fully aware that their advancement to be confined to the respective opted grade. This conscious decision was taken as per the response given to the benefits due to certain benefits available to the Travelling Ticket Examiners including that of travelling allowances which is not available to the Ticket Collectors who perform stationary duties. It had been made clear at that point of time that once the Railway extended opportunity of option, the employees had to forego the travelling allowance and other fringe benefits for a higher grade or vice versa.

8. The applicants came before this Tribunal vide OA No. 113/1996 contending that the merger of the Ticket Collectors with the Travelling

Ticket Examiners in one cadre had given rise to an anomalous situation where, persons junior to the applicants were getting more pay than the applicants, therefore, the applicants are entitled to the same pay scale as was being received by the persons junior to them. The applicants also contended that the Labour Court (Central), Jullundur, vide its order/award passed in Application 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. This order had been subsequently confirmed by the Hon'ble Punjab and Haryana High Court at Chandigarh, vide its judgment dated 20.02.1979 in Civil Writ Petition No. 269/1978. The respondents organization went in for SLP 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 of 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 now claim the same benefits as had been given to other similarly situated persons before the Labour Court which passed an Award in favour of the applicants. Similarly, it appears that a Suit had also been instituted before the Munsif and Judicial Magistrate No. 2, Bikaner, who had dismissed the same. The Additional Civil Judge in appeal decree No. 17/83, allowed the appeal by decreeing the Suit. It was further challenged before the Hon'ble High Court of Rajasthan vide S.B.Civil Second Appeal No. 79/84 which was

75

admitted but, no stay order was granted. As per the decree of the lower court, the said amount could be recovered later by the Railway Department in the case that their appeal pending before the Hon'ble Court succeeds. A DB of this Tribunal in the above OA, considered the fact that the Government had already taken a liability of paying the difference of pay to grant stepping of pay in respect of 27 persons as per the statement made by the Solicitor General before the Hon'ble Supreme Court and also the fact that similarly situated persons were getting similar benefits and that the respondents in the S.B.Civil II Appeal No. 17/84 has been given similar stepping up as a provisional appointment by taking necessary undertaking from them. This Tribunal passed the order as under:-

"10. .... 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 judgment to be passed by the Hon'ble High Court in the said Second Appeal No. 79/84. No costs."

9. The respondents organization implemented the order of this Tribunal with the following directives vide order dated 14.10.2010 :



"You and other's have also filed court case for stepping up of pay (S/Shri Dau Lal Joshi, Ex. CIT, Ram Saran Thareja, Ex. TTE and Jai Bhagwan, Ex. CIT OA No. 113/96 or 255/96 or 301/96 and Hon'ble High Court JU DBCWP No. 3826/01 or 3827/01 or 3828/01) and in compliance of

Hon'ble CAT/JU order dated 22.12.2000 your pay is also stepped up equal to your junior who was promoted as Ticket Collector.

Your stepping up of pay is provisional subject to final outcome of S.B.Civil second appeal No. 79/84 and 80/84 pending in Hon'ble High Court/JU.

If Railways S.B. second appeal No. 79/84 and 80/84 is decided in favour of Railways then you will be personally responsible to repay the amount paid to you to the railway administration failing which legal action may be taken against you.

Format of the bond is also enclosed herewith and the same is to be filled and be executed on Rs. 100/- Non judicial stamp paper. The bond is required to be attested by notary public. On receipt of the bond duly filled in all respect further action for stepping up of your pay and payment of arrear will be taken as per Hon'ble court judgement.

This will be provisional subject to the judgement pending in the Hon'ble court as mentioned above"

10. The applicants, thereupon, filed a Contempt Application against the non-compliance of the orders of this Tribunal vide CA No. 27/2001 and 34/2001, which was disposed of by this Tribunal vide order dated 12.7.2011.

The Tribunal while disposing of the same has observed as under:-

"2. The crux of the matter now in consideration is that whether the word "consequences", which arise in the matter must have said to be canvassed in the jurisdiction of contempt. Absolutism of limits of the parameters is the degree of consideration in such circumstances. Therefore, while not granting opportunity to the applicant to go ahead with the contempt proceedings now initiated, we grant him a liberty to approach afresh before this Tribunal or any other forum where he deems to agitate the matter of additional word of consequences in the order passed by the Tribunal earlier. This we do as the efflux of time had made the order of the Tribunal unworkable, as consequences was not considered at that time, when the order was passed, and after 15 years, it may require a re-look."

11. The OA No. 1711/92 was remanded to Division Bench of this Tribunal which in turn, made a reference to Full Bench which answered the question of

incumbents having exercised options for different categories against the available advancement for the post of Ticket Collector and the question of seniority of merger of the same, in view of the Recommendation of the III Central Pay Commission. The Full Bench considered the issue and held in its order under para Nos. 9, 10, 11, 12 and 13 as under :-

"9. Thus, this Tribunal in Dharam Bir Singh Yadav's case (*supra*) has given a categorical finding that the applicants who had opted for promotion only to the post of HTTE in the grade of Rs. 425-640 and not opted to the post of HTCR in the same grade, cannot challenge promotion of such employees who have been promoted as HTCR on the basis of the option exercised by them.

10. The grievance raised in the case of V.K. Malik (*supra*) was also regarding promotion of the junior persons on the post of Head Ticket Collector in the grade of Rs. 425-640 vis-à-vis applicants who were admittedly seniors but have not exercised option to the said category but had exercised option to the category of Supervisor TTE in terms of the Rules / instructions of 1975, which grievance of the applicants was considered in the light of Rule of 1988, which does not provide for exercise of option and prescribed for separate procedure for the purpose of promotion / selection, in para-7, has made the following observations :

"7. We accordingly direct that the respondents will, in case, the applicants have been promoted to the post of HTC in accordance with 1988 rules, determine their seniority in a manner that they are placed senior to those who were juniors to them as TTE but were promoted earlier because of the exercise of the option. Their further movement to the post of Supervisor TTE and thereafter will also be determined accordingly and they will be given consequential benefits of seniority in the succeeding grade to which they might be promoted. Application is thus partially allowed with the above directions."

11. According to us, such a direction in V.K. Malik's case (*supra*) given by the Tribunal was not legally permissible inasmuch as the so called junior persons were promoted in the cadre of HTC in terms of 1975 instructions/rules, as senior persons like applicants had not opted for promotion to

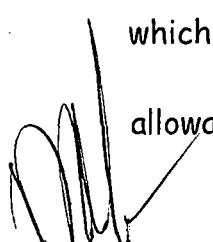
28

that category but, had exercised option for the category of TTE and thus, could not be promoted. The fact remains that the junior persons were promoted in the cadre of HTC as per the procedure/rule in vogue after qualifying the written test thus had become members of that cadre from earlier date as against the senior persons / applicants who had not exercised option to be promoted to the post of HTC and also had not qualified the written test for the said post (rather exercised option for promotion in another cadre of TTE) and have admittedly been promoted after 1988 in accordance with the 1988 rules/instructions thus become member of the cadre at a later stage.

12. Thus, according to us, applicants could not have been assigned seniority over and above junior persons appointed in the cadre of TTE from an earlier date. It is settled law that seniority cannot be assigned retrospectively when a person has not even borne on the cadre. The matter can also be looked from another angle. The seniority in a particular cadre is a consequential relief, which is dependent on the promotion / appointment of an employee in that cadre. We fail to understand how the persons who were promoted subsequently in the cadre of HTC in accordance with the subsequent rules of 1988 could have been assigned higher seniority over and above persons who were promoted earlier to the applicants in terms of 1975 Scheme / Rules. Thus, we are of the view that the judgment rendered by this Tribunal in the case of V. K. Malik (*supra*) has not laid down a good law. We agree with the finding given by this Tribunal in Dharam Bir Singh Yadav's case (*supra*) which is also applicable in the instant case.

13. In view of what has been stated above the reference is answered accordingly and the OA shall stand dismissed. No costs."

12. The clear and categorical findings of the Full Bench does not leave the issue in hand, under doubt any longer. It is quite clear that one cannot eat his cake and keep it too. Having once deliberately opted for a lower scale knowingly well the seniority thereof and the finding that the other stream which had opted for the higher scale but, which was without travelling allowance and fringe the benefits cannot demand parity for the same. The



The applicants must abide by the consequences of their own options and there is no changing horses in the midway. The pay parity given to the other incumbents being cited by the applicants is subject to the decision by the Hon'ble High Court and is liable to be realized. We do not find any logic in extending these consequential benefits in view of these categorical findings of the Full Bench of the Central Administrative Tribunal. On the other hand, it will further complicate the matter and the realization of the same is likely to become a nightmarish exercise. Hence, we have no other option except to disallow the O.A. without there being any order as to costs.

(B.K. SINHA)  
Member (A)

(G. GEORGE PARACKEN)  
Member (J)

mehta