

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.878 of 1997

Present: Hon'ble Mr. D. Purkayastha, Judicial Member

Hon'ble Mr. G. S. Maingi, Administrative Member

Mr. Husain Haider, S/o Late Mohammad
Sadiq, residing at 45, Dilkhusha St.
Calcutta-700 017

... Applicant

VS

1. Union of India, through the General
Manager, Eastern Railway, Fairlie Place,
Calcutta-700 001

2. The Chairman, Railway Board, Govt .
of India, Ministry of Railways, Rail
Bhavan, New Delhi

3. The Secretary (E), Railway Board,
Government of India, Ministry of
Railways, Rail Bhavan, New Delhi

4. The Chairman, Union Public Service
Commission, Dholpur House, New Delhi

5. The Financial Advisor & Chief
Accounts Officer, Eastern Railway,
Fairlie Place, Calcutta-700 001

6. Executive Director (Statistics &
Economics), Room No.406, Rail Bhavan,
New Delhi

... Respondents

For the Applicant(s): Mr. B. J. Bhowmik
Mr. G. Misra, counsel, Mr. B. V. Selt, Adv 2
Ms Nusrat Fatima, Adv.
For the Respondents : Mr. P. K. Arora, counsel

Heard on 28.9.1999

: : Date of order: 07/12/99

ORDER

D. Purkayastha, JM

The question is whether the applicant is entitled to get
the direction as sought for, to treat the service rendered by him
since 3.9.1985 to 31.1.1997 as Class-I, I.R.A.S. Officer and
thereafter to fix the arrear, notional benefits, stagnation
allowance etc. with effect on and from September, 1985 till
31.1.1997 in the grade of an IRAS, Indian Railway Accounts Service
Cadre belonging to Class I service in accordance with the

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directions of the Railway Board communicated vide letter No.E(GB)/77/1/112 dated 6.8.79 for notional placement in Accounts Cadre of Class I service.

2. The case of the applicant, in short, is that he has retired on superannuation with effect from 31.1.97 and he had suffered irreparable loss for long 18 years for not granting the benefit as sought for. According to the applicant, he was discharging the service as Group 'B' Officer on and from October, 1977 since he was selected as Group 'B' Officer by Eastern Railway and posted as Compilation officer on regular basis in the Statistical Branch of General Manager's office of the Eastern Railway and was given the pay scale of Rs.2000-3200 (RP) and his appointment was given against sanctioned post since Mr. M.L. Dasgupta Officiating Compilation Officer/CCC retired from service vide order dated 29.9.77, Annexure/A1 to the application. Thereafter on 14.8.82 the applicant was appointed on ad hoc basis vide office order dated 13.8.82 as Traffic Costing Officer in the scale of Rs.3000-4500 (RP) and the applicant officiated in the said post for continuous period without break for more than three years till 25.12.85⁸⁵ which would be apparent from the order marked Annexure/A2 to the application. Thereafter on 26.12.85⁸⁵ the applicant was transferred from Traffic Costing Department to the Statistical Department which is a similar post and officiated as Statistics and Analysis Officer in the same scale by an order dated 24.12.85. Such transfer from one Department to another was made in the interest of the Railway Authorities and the applicant had been discharging the duties smoothly to the satisfaction of the authorities and it is stated by the applicant that he was discharging his service as Group 'B' Officer on and from 1977 since 1985 was entitled to be governed in case of scale of pay as per concordance table, he was being deprived of such higher fixation of pay and was given simply charge allowance only of Rs.150/- p.m. in his junior scale of pay. This was in derogation to the concordance table as issued by the Board's

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letter dated 26.11.75. It is also stated by the applicant that he had completed eight years' regular service with effect from 1.10.77 and as per rule, he was eligible for being promoted as Group 'A'/ Junior Scale Officer in terms of the Railway Board's decision circulated vide letter dated 6.8.79 and stating such facts Deputy Chief Personnel Officer (G), Eastern Railway forwarded a confidential letter dated 13.1.87 referring the case of the applicant for allowing him promotion in accordance with the Board's decision to the Joint Director (Establishment). The Jt. Director (Establishment) vide his office memorandum dated 3.1.87 recommended for fixation of pay for senior scale under the normal rules from the date he completed 8 years' regular service in Group 'B'. Assistant Statistical Officers/ Assistant Compilation Officers have been notionally allocated to the Accounts Department for the purposes of absorption in Group 'A'/ Junior Scale in terms of the Board's circular dated 6.8.79. But the respondents did not consider his case and denied the scale, as claimed for and thereby he had made a representation to the authorities, but to no effect. Hence he has filed this application before this Tribunal.

3. The respondents have filed written statement denying the claim of the applicant. It is stated that the applicant was all along serving the Railway as Group 'B' Officer and records reveal that he retired as Group 'B' Officer and that he was not placed in Group 'A' in consultation with the Union Public Service Commission. In terms of the UPSC (Exemption from consultation) Regulations 1958 which are statutory regulations, appointment to Group 'A' Services can be made only in consultation with UPSC. It is also stated by the respondents that the Railway Board vide their letter dated 4.4.91 bearing No.88E(GC)12-10(Stat) upgraded the post of Statistical Officer to Sr. Statistical Officer in JA Grade. But the applicant could not be promoted to that post because he was only a group 'B' Officer and he had been serving in senior scale on ad hoc basis only. Therefore, according to the respondents, the

applicant cannot be granted the reliefs as sought for. It is also stated by the respondents that the applicant has been working in the capacity of Group 'B' Officer since 1977 and his promotion in 1982 in Sr. scale was only on ad hoc basis and as per rules and procedure prevalent at that time, he was given only charge allowance of Rs.150/- in addition to his Group 'B' pay. It is also stated by the respondents that the applicant's pay has been fixed in senior scale and the fact is that the concordance table as referred to above is applicable to the officers of Class I service in Railway, namely, IRAS, IRTS, IRSE, IRSEE, IRSME, IRSSE, IRSS and IRPS. It is not applicable to officers of Miscellaneous Departments of the Railway such as statistical Department where there is no junior scale. It is also stated that the Railway Board vide their letter dated 6.8.79 had notionally allocated the post of Asstt. Statistical Officer or the Asstt. Compilation Officer to the Accounts Department for the purpose of absorption to Class I/ Junior scale. But the incumbents of the Statistical Department, not drawn from any of the organized services on Railways would seek further promotion depending upon availability of higher grade posts in their own line only and the applicant had to seek further promotion in the statistical Department only. Since the applicant had completed 8 years' service in Group 'B' his pay in senior scale may be fixed under normal rules. It was also advised to interpolate the name of the applicant as per his seniority in Group 'B' in the list of eligible officers on Eastern Railway to be considered for absorption to Group A/ Jr. scale of IRAS. It was admitted by the respondents that one Shri R.N. Sharma was absorbed in Group A/ Junior Scale of IRAS on notional basis and hence was eligible for fixation of pay on promotion to senior scale of statistical officer in terms of the concordance table. The applicant was included in the list of Class II officers in the Accounts Department eligible as on 1.4.86 for consideration for absorption to Class I/ Junior Scale. His case was referred to UPSC

and the UPSC is also advised that it was not proposed to consider the applicant for promotion to Group A/ Junior scale of IRAS pending a final decision in the matter. The UPSC vide letter dated 12.9.88 did not agree to the inclusion of the name of the applicant for consideration for promotion to Group A/ Jr. scale of IRAS on the ground that there was no such provision in the Recruitment Rules of Indian Railways Accounts/ Service. The applicant was accordingly not considered for absorption to junior scale of IRAS on notional basis. It is stated by the respondents that in view of the UPSC's observations, the question of according Group B officers of Statistical Department notional placement in junior scale of IRAS was examined by the Railway Board again in consultation with the Zonal Railways. The UPSC was again advised by letter dated 30.11.89 that since the senior scale posts of statistical Compilation officer are very few in number, it was not feasible to constitute a separate cadre for them. The UPSC was also told that some of the Assistant Statistical/Assistant Compilation Officers, namely S/Shri R.N. Sharma (Central Railway), S.C. Sen (Northern Railway) and A. N. Sharma (Western Railway) have earlier been absorbed in Group A/ Junior scale of IRAS. The UPSC was, therefore, requested that the name of Shri H. Haider may be included in the seniority lists of eligible officers of Eastern Railway for absorption to Group A/junior scale of IRAS against the vacancies of 1986 and 1987 which were sent to UPSC vide Board's letter dated 14.3.89. The UPSC, however, advised vide confidential letter dated 26.12.89 that Shri Haider who is holding the post of Assistant Statistical Assistant Compilation officer was not eligible for consideration for promotion to Group A/ Junior scale of IRAS as per the existing Recruitment Rules. They further advised that in case it is proposed to make officers holding the posts of Assistant Statistical /Assistant Compilation officers eligible for promotion to junior scale of IRAS, the Ministry may examine the possibility of suitably amending the relevant

recruitment rules. After examining the matter in detail it was decided by the Railway Board to consider formation of a cadre consisting of EDP officers and Statistically / Compilation Officers. The Zonal Railways were advised vide letter dated 22.2.91 that pending formation of this cadre the posts of Sr. Statistical Compilation Officers may be filled through ad hoc appointment of Group 'B' Asstt. Statistical / Compilation Officers who have rendered at least three years' service in Group 'B' and that on their appointment to Sr. scale on ad hoc basis, such of them as have rendered 8 years non-fortuitous service in Group 'B' will draw senior scale pay and those who have not yet completed 8 years service will be given charge allowance as admissible. It was also clarified in Board's letter dated 6.8.79 that the names of the Group 'B' officers of Accounts Department for absorption in Group A/ Junior scale of IRAS. Recruitment Rules for EDP Department namely, the Indian Railways, Electronic Data Processing Department (Gazetted posts) Recruitment Rules, 1989 had been notified on 21-3/4/89. For the cadre of Statistical Officers, Recruitment Rules are yet to be finalised in consultation with UPSC. It is also stated that certain clarifications called for by the UPSC in this connection is under examination in consultation with the zonal Railways. Now since the applicant had superannuated on 31.3.1997, his name cannot be forwarded to UPSC for consideration, as a special case, for regular promotion to Group A/ senior scale in Statistical Department, even if such consideration as a special case is found to be warranted now.

4. Learned advocate for the applicant strenuously argued before us stating that there has been recommendation from the Deputy Director (Establishment), Railway Board to the General Manager clarifying the position. Despite that fact the respondents did not take any action in the matter for granting the pay scale attached to the post though the applicant had been allowed to officiate continuously for more than 17 years in the senior time

scale. And the learned advocate for the applicant also submits that the period of long continuous officiation of the applicant in the senior time scale for more than 17 years shall be treated as regular service for fixation of his pay scale in the senior time scale/JA grade. Moreover, he drawn our attention to the letter dated 4.4.91 bearing No.88E(GC)12-10(Stat) issued by the Railway Board by which the post of Statistical Officer in Jr. grade had been upgraded as Senior Statistical Officer in JA grade, and even after that benefit of pay scale was denied to the applicant for the purpose of fixation of his pay. He also relied on the judgment Hon'ble Supreme Court reported in AIR 1986 SC 638 (Narender Chadha and others vs. Union of India and others) and submitted that the actions of the respondents are arbitrary and illegal and he is entitled to get benefit of the pay scale, since he held the post for more than 17 years.

5. Learned Advocate for the respondents, on the other hand, contended that the Railway Board by a letter dated 4.4.91 upgraded the post of Statistical Officer to Senior Statistical Officer in JA Grade, but the applicant could not be promoted to that post because he was only a Group 'B' officer and he had been serving in senior scale only on ad hoc basis and since the applicant had been officiating on ad hoc basis in senior time scale, therefore, he cannot be granted the benefit of the scale in the matter of fixation as claimed in the application and the application is devoid of merit and liable to be dismissed. The learned advocate for the respondents further contended that the application is hopelessly barred by limitation since the claim of the applicant has been rejected by the authority by a letter dated 28.5.87, Annexure A/4 to the application. So, the cause of action for granting relief to the applicant arose in the year of 1987 and thereby the application cannot be entertained after a lapse of so many years. On the contrary, the learned advocate for the applicant contended that there is no dispute in this case that the

applicant had been working in the senior time scale for more than 17 years and the post was upgraded in the year of 1991. Subsequently, he made representation to the authority and the matter is still under consideration of the Department. So, the question of limitation, as raised by the respondents, is not sustainable.

6. We have considered the submissions of the leaned advocates of both the parties and gone through the records. It is found that the applicant retired on superannuation from service with effect from 31.1.1997 and it remains undisputed fact that the applicant was selected and promoted to Group 'B' post as Compilation Officer in September, 1977 and thereafter he was promoted in senior scale as Traffic Costing Officer (TCO) in August, 1982 on ad hoc basis since he belonged to miscellaneous cadre of Statistical Department. We find that the ground for refusal of fixation of pay in the senior pay scale, as claimed by the applicant, was that the applicant belonged to the miscellaneous cadre and he was appointed to officiate on ad hoc basis in senior scale. And accordingly the applicant was granted an allowance of Rs.150/- per month instead of fixation of pay in the senior pay scale under the Railway Board's instruction.

7. We find that due to exigency of service in the Department the applicant was promoted as Compilation Officer to officiate in 1977 after due selection and thereafter he had been promoted in the senior scale as TCO in the year 1982 on ad hoc basis; he was allowed to continue in the senior time scale on ad hoc basis till his retirement. We have gone through the D.O. letter dated 24.3.93 written to Shri Parthasarathy, Executive Director (Accounts), Ministry of Railways, Railway Board, New Delhi by Shri Sanyal, FA & CAO recommending the case of the applicant for consideration for granting the benefit of absorption to Group 'A' / Junior scale of IRAS. Moreover, it remains undisputed fact in this application that the post of Assistant Statistical Officer/

Assistant Compilation Officer had been notionally allocated to Accounts Department for the purpose of absorption in Group 'A' and for their further promotion after absorption in Group 'A' service which will depend upon the availability of higher grade post in their line and the non-availability of the higher grade post does not preclude consideration of the case of the applicant for appointment/ absorption to Group 'A' service at the level of junior scale. It is also admitted by the respondents that it was advised to interpolate the name of applicant as per his seniority in Group 'B' in the list of eligible officers to be considered for absorption to Group A/Jr. scale of IRAS and we find that after rejection of the proposal for inclusion of the name of the applicant for consideration for promotion to Group A/Jr. scale of IRAS in 1988 several correspondences were made by the Department for granting relief to the applicant. The justification given by the FA & CAO in the DO letter dated 24.3.93 for granting relief to the applicant is material one and moreover, the post of Asstt. Statistical Officer has been upgraded in the year of ¹⁹⁹¹~~1992~~, as per the averment made by the applicant and the applicant was holding the post till the date of retirement but was getting less pay in every month. So, the cause of action is surviving one. Since the matter is still under consideration of the respondents till the date of retirement of the applicant, thereby it cannot be said that the case of the applicant is barred by limitation. So, in view of the aforesaid circumstances we are of the view that the relief, as sought for by the applicant, cannot be rejected on the ground of limitation. Now it has to be considered whether the respondents are justified to refuse the benefit of the senior pay scale to the applicant even after upgradation of the post of senior statistical officer in JA grade. The applicant admittedly, had been officiated in the senior time scale for more than 17 years on ad hoc basis.

8. The legal effect of the continuous officiation in a particular post for a long period by an employee without any

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interruption or break of service was considered by the Hon'ble Apex Court in *Baleshwar Das v. State of U.P.*, reported in AIR 1981 SC 41. The same was again considered by the Hon'ble Apex Court in para 15 of the judgment reported in AIR 1984 SC 1527 in *G.P. Doval and others vs. Chief Secretary, Govt. of U.P. and others* for the purpose of consideration of seniority on officiating basis and the Hon'ble Apex Court in para 15 of the judgment held as follows:

"This view which we are taking is borne out by the decision of this Court in *Baleshwar Dass v. State of U.P.* (AIR 1981 SC 41) wherein this court observed that the principle which has received the sanction of this Court's pronouncement is that officiating service in a post for all practical purposes of seniority is as good as service on a regular basis. It may be permissible, within limits for Government to ignore officiating service and count only regular service when claims of seniority come before it, provided the rules in that regard are clear and categorical and do not admit of any ambiguity and cruelly arbitrary cut-off of long years of service do not take place or there is functionally and qualitatively, substantial difference in the service rendered in the two types of posts'. It was said that service rules will have to be reasonable, fair and not grossly unjust if they are to survive the test of Articles 14 and 16. It is thus well-settled that where officiating appointment is followed by confirmation unless a contrary rule is shown, the service rendered as officiating appointment cannot be ignored for reckoning length of continuous officiation for determining the place in the seniority list. Admittedly, that has not been done and the seniority list is drawn up from the date on which the approval/selection was made by the Public Service Commission in respect of each member of the service, which is clearly violative of Art. 16 and any seniority list drawn up on this invalid basis must be quashed."

The grievance of the applicant in the instant case is that he was officiating in a senior time scale, but benefit of that senior time scale has not been given to him. We find that the matter has been clarified by the Dy. Director (Establishment), Railway Board by writing a letter to the General Managers of Indian Railways by a letter dated 6.8.79 where it is envisaged that the post of Assistant Statistical Officer/ Asstt. Compilation Officer has been notionally allocated to the Accounts Department for the purpose of absorption in Class I/Junior scale. But further promotion after absorption in junior scale/Class I service will depend upon the availability of the higher post in their own line only. Therefore,

non-availability of the higher post does not preclude consideration of the case of the applicant for ^{granting senior time scale} ~~appointment~~ on ad hoc basis.

9. We have also considered the judgment of the Hon'ble Apex Court reported in AIR 1986 SC 638 in the case of Narender Chadha and others vs. Union of India and others wherein the Hon'ble Apex Court held that entire period of officiation of the promotees continuing in such posts for more than 15 years should be counted for seniority.

10. The applicant has been holding the post in senior time scale continuously and he continued the said scale till the date of his retirement without being reverted to the feeder post from which he had been promoted. So, in view of the aforesaid circumstances we find that the applicant has legitimate claim to get the benefit of fixation in the senior time scale on completion of 8 years' service from the date of appointment in the year of 1977, but that has been denied by the respondents. Moreover, we find that the post of Statistical has been upgraded with effect from ¹⁹⁹¹ ~~1992~~ and the applicant was holding the post on that date in the senior time scale. So, the applicant ought to have been given the benefit of scheme of the upgradation order too.

11. In view of our findings made above we allow the application. The respondents are directed to consider the case of the applicant for promotion to the post of Group A/JA Grade and notionally refix his pay in that senior time scale with effect from 1986 i.e., after completion of 8 years from the date of appointment in that scale within a period of three months from the date of communication of this order in the light of observation made above. No costs.

Corrected vide order dated 13-12-99.
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 (G. S. Maingi)

MEMBER (A)

12.7.98
11/12/99
 (D. Purkayastha)

MEMBER (J)