

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

ORIGINAL APPLICATION NO. 552/1997

PRESENT: MR. MUKESH KUMAR GUPTA, MEMBER (J)

MR. M.K. MISHRA, MEMBER (A)

SUJAN KUMAR UKIL & 98 OTHERS

Vs.

1. Union of India, Service through General Manager, Eastern Railway, Fairlie Place, Calcutta-700 001.
2. Railway Board service through the Secretary, Rail Bhavan, New Delhi-110 001
3. The General Manager Eastern Railway, Fairlie Place Calcutta-700 001.
4. The Chief Personnel Officer Eastern Railway, Fairlie Place Calcutta-700 001.
5. The Financial Adviser & Chief Accounts Officer, Eastern Railway Fairlie Place, Calcutta-700 001.
6. The Executive Director Pay Commission-II, Railway Board Rail Bhavan, New Delhi-110 001.

For the Applicant : S.K. Dutta

For the Respondents : P.K. Arora

Heard On: 1.12.2004 : Date of Order: 4.2.2005

O R D E R

SHRI MUKESH KUMAR GUPTA, MEMBER (J)

The grievance raised in the present O.A is whether the applicants who were working as Clerk Gr. II and passed Appendix II-A examination prior to 1st June, 1981, but promoted on or after the said date are entitled to 3 advance increments or 4 advance increments.



2. 99 applicants in the present O.A working as Accounts Assistant in different offices in Eastern Railways have prayed for the following reliefs:

- (i) Leave under Rule 4(5)(a) of the CAT (Procedure) Rules, 1987 be given to the applicants to move this application jointly since the cause of action and the reliefs prayed for are identical in nature;
- (ii) to direct the respondents to cancel, withdraw and/or rescind the speaking order dated 3.4.97 as contained in Annexure-L hereof;
- (iii) to direct the respondents to accord the benefits of four advance increments in scale Rs. 330-560/- to the applicants who have passed the said Appendix-II examination in September 1980 and promoted after 1.6.81;
- (iv) to direct the respondents to extend the benefit of the judgement and order dated 12.1.90 of this Hon'ble Tribunal in TA No.148/88 (Kanti Ranjan Dasgupta & Ors. vs. Union of India & Ors.) which was duly confirmed by the Hon'ble Supreme Court of India being Annexures-D & F hereof;
- (v) to direct the respondents to pay all entitlements to the applicants from the date when other similarly circumstanced employees have been paid the same;
- (vi) to direct the respondents to implement the order dated 1.4.68 of the Railway Board in the case of the applicants as contained in Annexure-C hereof;
- (vii) to direct the respondents to produce the entire records of the case before the Hon'ble Tribunal for adjudication of the points at issue;
- (viii) And to pass such further or other order or orders as to this Hon'ble Tribunal may deem fit and proper."

3. Admitted facts of the case are as follows:

Vide Railway Board Circular dated 9th August, 1961, a policy decision was taken to grant incentive to those who passed Appendix II-A examination and promoted to the next post of Clerk Gr.I, in the form of 4 advance increments in the grade of Clerk Gr.I after normal

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fixation subject to a minimum of Rs. 150/-. In case of Clerk Gr.I promoted prior to 1st May, 1961, the pay was to be so refixed on 1st May, 1961 after taking into account the 4 advance increments or their existing pay whichever was more beneficial. Subsequent Railway Board Circular dated 1st April, 1968, made the said scheme more liberal and provided that the Clerk Gr.II/Typists who passed the Appendix II-A examination would be entitled to 3 advance increments in the pay scale of Rs. 110-180 with effect from 1st April, 1968. Those who qualify after the said date will be eligible for 3 advance increments from the date following the last date of the examination. On promotion as Clerk Gr.I under the aforesaid order the pay of such staff was to be regulated under the Railway Board's letter dated 9th August, 1961. Both the aforesaid Railway Board circulars were having the sanction of the President. After the Third Pay Commission recommendations were notified and implemented, Railway Board issued clarificatory letter dated 16th April, 1975 and stated that those Clerk Gr.II who qualified the examination after 1.1.1973 will not be allowed advance increment in the revised pay scale and similarly on their promotion to Clerk Gr.I they should not be given 4 advance increments in the revised pay scale. Following this clarification, Chief Accounts Officer/Admn., Eastern Railway, issued communication dated 1st August, 1975. The aforesaid clarificatory orders 16.4.1975 and 1.8.1974 were the subject matter in Writ Petition filed

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before the High Court of Calcutta being C.R. No.18671-W/75, which was transferred to this Bench and registered as T.A. No.148/1988, Kanti Ranjan Dasgupta and Others vs. Union of India. The contention raised in the said T.A was that the executive instructions could not be given retrospective effect and there was a confusion as to whether the clarificatory order dated 16.4.1975 had the approval of the President or not. After examining the said Railway Board's letter dated 9th August, 1961, 1st April, 1968, 16th April, 1975 and 1st August, 1975 vis-a-vis, the Third Pay Commission Recommendation, the said T.A was allowed vide order and judgement dated 12th January, 1990 and it was held that the consideration of the question of fixation of pay and grant of increments in case of persons who passed the Appendix II-A examination referred to in clarificatory order dated 16.4.1975 resulted in specific instruction only vide letter dated 30.10.1981, which was applicable to those who were holding the post of Clerk Gr.II as on 1st June, 1981 and passed Appendix II-A examination earlier but had not derived the benefit of advance increments under the old scheme. The said judgement in the aforesaid T.A was upheld by the Hon'ble Supreme Court vide order dated 9th December, 1994 in Civil Appeal No.963/1994 arising out of SLP Civil No.12443/90. The scheme of 4 advance increments was discontinued only with effect from 1st June, 1981 and was so noticed by the Hon'ble Supreme Court in the aforesaid Order. Thereafter, another O.A. by 72 Clerk Gr.II being O.A.

No.285/1995, Subhas Mitra & Ors. vs. Union of India & Ors. was filed, which was disposed of vide judgement and order dated 21st June, 1995 (Annexure-E) with a direction to respondents to dispose of the applicants representation dated 27th January, 1995 in the light of the observation made in T.A. No.148 of 1988. Thereafter 88 applicants in the present O.A filed O.A. No.1157/96 which was disposed of vide order dated 9th October, 1996 directing the respondents to treat the said O.A as a representation and pass a speaking and reasoned order within 6 months.

Pursuant to the aforesaid directions, vide communication dated 3rd April, 1997 (Anenxure-L), respondents considered the applicants representation but rejected the same stating that the competent authority had come to the conclusion that the applicants claim for grant of 4 advance increments on promotion after 1st June, 1981 was not permissible.

4. The present application challenges the aforesaid speaking order dated 3rd April, 1997 besides seeking direction to respondents to grant them 4 advance increments as they passed the said Appendix -IIA examination in September, 1980 though, promoted after 1st June, 1981. It is an admitted case of the parties that the applicants were granted 3 increments on passing the Appendix IIA examination in September, 1980 but were not granted the 4 advance increments as they had not



been promoted before 1st June, 1981. The contention raised by the applicants is that they were entitled to 4 advance increments instead of 3, as they had passed Appendix IIA examination, which was held in September 1980 and result of which were declared in January, 1981 and particularly when the Railway Board letter dated 9th August, 1961 and 1st April, 1968 were in operation upto 31st May, 1981. Merely because they could not be promoted prior to the said cut off date of 1st June, 1981 they cannot be deprived the 4 advance increments available under the aforesaid Railway Board's communications. It was further contended that it was not clear as to why the grant of 4 advance increments were denied to the applicant, which according to them is malafide and not bonafide act. It was further contended that the applicants were governed by the 1968 Circular and since the applicant had qualified the examination they cannot be deprived of the benefits available under the 1968 circular. It was also vehemently urged that the Railway Board's Circular dated 23rd January, 1996 had not got the approval of the President and mere executive instruction cannot over-ride the effect of earlier circulars. Moreover, a mere executive instruction cannot be allowed to withdraw the benefit which was already accrued to the applicants on passing Appendix - IIA examination in January 1981. Neither the Hon'ble Apex Court nor this Tribunal ever considered and tested the validity of 1981 or 1986 circulars.



5. The respondents contended that Railway Board vide circular dated 30.10.1981 (Annexure-R3) finally gave up the scheme of advance/incentive increments, as was available under earlier Railway Board's letter dated 9th August, 1961 and 1st April, 1968 and introduced a new scheme of incentive increments by way of grant of qualification pay of Rs.15/- per month in the scale of Rs. 260-400 with effect from 1st June, 1981 in consultation with the staff side of the National Council (JCM), which had the sanction of the President too. The new scheme of incentive was introduced with the Presidential sanction vide Railway Board's letter dated 21st March, 1984 to all eligible accounts staff who had passed the departmental examination during the intervening period from 1st January 1973 to 31st May, 1981 on notional basis and actual payment was to be made with effect from 1st June, 1981 only.

The respondents also contended that Railway Board issued circular dated 21st March, 1984 wherein the entire matter including the alleged anomalies arising as a result of grant of qualification pay of Rs.15/- to Clerk/Typist in the Accounts Department on passing Appendix II examination was considered in consultation with the Ministry of Finance, Department of Personnel and vide para-2 it was stated that: "Clerks Grade II/Typists who had qualified in App.II examination during the period from 1.1.73 to 31.5.81 may also be granted qualification pay of Rs. 15/- p.m. notionally

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w.e.f the date of passing the examination, the actual benefit being, however, admissible w.e.f 1.6.81. This qualification pay may be granted irrespective of the fact whether as on 1.6.81 such staff were holding the post of CGI or a higher post. In the case of those who were holding the posts of CGI as on 1.6.81 the qualification pay will be given as a separate element and the same will be taken into account for purposes of pay fixation on further promotion. As regards those who had been promoted to high posts prior to 1.6.81, the qualification pay may be granted on notional basis w.e.f the date of passing the examination and the same may be taken into account for the purpose of fixation of the pay in the higher post. However, for the period prior to 1.6.81 they will not be entitled to get arrears."

Further that subsequently Railway Board issued another letter dated 23rd January, 1996 and generalised the issue and further decided that Railways should regulate the pay of all staff of Accounts Department who had qualified Appendix II examination in the following manner:

" (1) In the case of those who qualified in the Appendix IIA Examination before 1.1.73 but were promoted after 1.1.73, their pay is to be fixed in the Revised Scale (Rs.260-400) effective from 1.1.73 including the three advance increments allowed in the authorised scale (Rs.110-180) and on promotion to CG-I in the scale of Rs. 330-560, the three advance increments in the scale of Rs.260-400 are to be withdrawn and four advance increments are to be allowed after normal fixation in the scale of Rs.330-560.

(2) For those who qualified in the Appendix-IIA Exam. after 1.1.1973 and were promoted prior to 1.6.81, three

advance increments are to be given in the scale Rs. 260-400 on their qualifying in the App.IIA Examination. These increments are to be withdrawn before fixing their pay on their promotion in the scale of Rs. 330-560 and four increments are to be granted in the scale Rs. 330-560 after normal fixation.

(3) In the case of those who qualified in the App.IIA Examination upto 31.5.1981 and were promoted on or after 1.6.81, three advance increments are to be given in the scale of Rs. 260-400 and these three advance increments are also to be reckoned while fixing the pay of such employees in the scale of Rs. 330-560 under normal Rules when they are promoted to that scale. In this case the benefit of granting four increments in the higher scale (Rs.330-560) is not admissible.

(4) For those who are given the benefit of advance increments as per sub-para (1) to (3) above, the qualification pay as introduced vide Board's letter No.PC-III/73/PS/Accts. Staff dated 30.10.81 is not to be granted either on notional or on actual basis.

(5) It is further clarified that since the above benefits are being granted on actual basis, the pensionary benefits will also be admissible on the pay so fixed.

(6) Those who qualified in the Appendix IIA Exam. on or after 1.6.81 will have to be given only the qualification pay introduced vide Board's letter No.PC-III/73/PS/Accounts Staff dt.30.10.81."

According to the applicants they come under sub para (3) of the aforesaid letter and being aggrieved with the same filed O.A. 1157/96, which was disposed vide order dated 9.10.1996. Pursuant to the directions in the aforesaid O.A, Railway Board considered the matter and issued letter dated 25th March, 1997 itself rejecting the applicants claim which was ultimately communicated to the applicants vide letter dated 3.4.1997. It was further contended that in total 198 persons had passed Appendix II-A examination in the year 1980 and only some of them were promoted to the post of Clerk Gr.I as per seniority before the crucial date i.e., 1st June, 1981

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and hence were allowed the benefit of 4 advance increments. Mere passing of examination do not confer any right on the other successful junior candidates like the present applicants to claim the benefit of 4 advance increments, particularly when a new scheme of qualification pay was introduced with effect from 1st June, 1981, which was also noticed by the Hon'ble Supreme Court in its order dated 9.12.1994 in Civil Appeal No.963/95. The respondents also pointed out that the Railway board letter dated 21.3.1984 as well as 30.10.1981 were issued in consultation with the Staff side in the National Council (JCM). Those of the successful candidates of 1980 Appendix II-A batch promoted before the crucial date i.e., 1.6.1981 were extended the benefit of 3 advance increments on their passing the examination and 4 advance increments on their promotion to the higher grade i.e., Clerk Gr.I before 1st June, 1981. Since the applicants though passed the examination before 1st June, 1981, but promoted subsequently they were allowed the benefit of 3 advance increments in the lower grade but are not entitled to the benefit of 4 advance increments in the higher grade on their promotion as they were promoted after 1st June, 1981.

6. We have heard learned counsel for the parties at length and perused the pleadings including written notes submitted by them.. It is an undisputed fact that the new scheme of qualification pay came to be

introduced w.e.f 1.6.1981, vide Railway Board Circular dated 30.10.1981, which had the Presidential sanction. Subsequently, another Railway Board Circular dated 21st march, 1984 was also issued, which too also had the Presidential sanction. A perusal of the relief clause as extracted herein above would show that the validity of the said Railway Board's circulars have not been impugned in the present case. Merely because this Bench had allowed T.A. No.148/88 which was upheld by the Hon'ble Supreme Court vide order and judgement dated 9th December, 1994 would not and cannot mean that the applicants are also entitled to the benefit of the said orders despite the fact that the Hon'ble Supreme Court in its order and judgement noticed that the benefit of 4 advance increment scheme was discontinued from the year 1981. Such being the fact, which are otherwise in the domain of policy decision of the executive Government are outside the purview of this Tribunal. On bestowing our careful consideration to the entire matter, we are of the considered view that the policy in existence as per the Railway Board's circulars dated 30.10.1981 as well as 21.3.1984 which are applicable and operational with effect from 1st June, 1981 do not entitle the applicants 4 advance increments as prayed for.

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