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CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

LUCKNOW

O.A. No. 133/91

Har Dutt Sharma and others

Applicants

versus

Union of India & others

Respondents.

Shri A.K.Chaturvedi Counsel for applicant

Shri B.K.Shukla Counsel for the respondents.

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Hon. Mr. Justice U.C.Srivastava, V.C.

Hon. Mr. K. Obayya, Adm. Member.

(Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicants, nine in number who were working as Material Checkers, though initially working as Khalasis, in the Northern Railway, having been appointed as such in the month of April to June, 1977, have approached this Tribunal praying that the order dated 15.4.91, by which their representation has been rejected, may be quashed and the respondents may be directed to implement the Railway Board's letter dated 16.8.1978 including the difference of salary and the respondents may be directed to prepare a common seniority list of material checkers and material clerks w.e.f. 1.1.1973, as material checkers and Material clerks are at par in the pay scale and status with effect from 1.1.73 and the applicants may also be promoted with effect from the date the persons junior to them have been promoted.

2. The applicants 1 to 3 were promoted in April to June 1977 and the applicants 4 to 7 were promoted in September, 1985, and the applicants 8 & 9 were promoted in 1989 i.e. within these <sup>nine</sup> applicants only 3 were promoted before 1978. Vide letter dated 24.10.72 the Railway Board after meeting of Joint Consultative Machinery laid down the criteria and pay scales of pay of Food Issuers, Coal Checkers, Stores Issuers, Material Checking clerks, Tool Checkers etc and criteria for determining the scale of pay of staff dealing with stores matters in departments other than stores, variously designated as Clerk, Coal Issuers/ Railway Board Clerk etc, was reviewed and decided that the staff of the above categories performing any two of the seven items of duties listed in paragraph 1(IV) of the Board's letter dated 27.12.63 should be placed in the grade of Rs 110-180 wherever they have hitherto been allotted only Rs 105-135. The Railway Board, vide letter dated 22.5.74 conveyed its decision which was given after consulting the organised labour that the posts of Material Clerks grade Rs 110-180 (AS) upgraded in terms of their letter No. PC-69/FE-4/1 dated 24/26.10.1972 should be filled, as a special case by the existing staff in grade Rs 105-135 (AS) on the basis of seniority cum suitability (emphasis supplied). The pay scale of Material Checkers upto 31st December, 1972 was Rs 105-132 and with effect from 1st January, 1973 the pay scale was Rs 225-308 which was later on revised to Rs 825-1200 with effect from 1.1.86 whereas the Material Clerks were in the pay scale of Rs 110-180 upto 31.12.72 and Rs 260-400 with effect from 1.1.1973 which was later on revised to Rs 950-1500 with effect from 1.1.1986.

The applicants were paid salary with effect from 1.1.73 in the pay scale of Rs 225-308 while in pursuance of the Railway Board letter dated 16.8.78 they were entitled for the pay scale of Rs 260-400 and consequently they were entitled for the pay scale of Rs 950-1500.

letter dt.

The applicants' grievance is that 16.8.78 which Divisions has been implemented in all the Railways, is not being implemented so far as the applicants of this Division are concerned. The promotion from Material Checkers to Material Clerks should be done after the issue of the said Railway Board letter as both are same with effect from 1.1.73, which provides for a common seniority list and no common seniority list has yet been prepared. The letter dated 16.8.78, the interpretation of which is the subject matter of this Application is as follows:

"As a result of discussion in the PNM meeting between the Railway Board and the AIRF held on 10/11.4.1978 the Railway Ministry have revised the question of fixation of pay of incumbents of the posts of Material Checkers upgraded as Material clerks in terms of the orders contained in Bd's letter No. PC-62/PS-E/SS-I dt. 27.9.62 and No. P.C-6/F.4/1 dt.

26.10.72. It has been decided in supersession of all the previous clarifications on the subject that the pay of the incumbents of the posts of Material Checkers, Tool Checkers etc. upgraded as Material Clerks, scale Rs 110-180 (AS) Rs 260-400 (RS) as per the orders aforescribed, should be refixed proforma under Rule 2016-A (R-22-C) no arrears on this account, however

being paid for the period prior to 1st August 1978.

Cases where ever payments had occurred in terms of instructions on the subject in vogue earlier will not proposed irrespective of whether whether such every payments were waived off or they were recover<sup>ed</sup> full or in part of they are still to be regularised."

According to the applicant, the two posts have been made equivalent and upgradation is automatic and that excluded any suitability test while according to the respondents the pay scale of both has been made equal but the designation one can get only after passing the suitability test, as has been mentioned in the Railway Board Circular, referred to above. Thus, according to the applicant prior to 16.8.78 promotion to the post of Material clerk was to the post of Senior Clerk and after this letter the post of Material Checker was upgraded to the post of Material Clerk and no promotion process was to be adopted thereafter. Promotion is to be made on the basis of seniority subject to rejection of unfit. The reason which led the applicants to approach this Tribunal is holding of examination, which includes the name of the applicants. The applicants represented against the same and thereafter the selection was cancelled vide letter dated 11.1.91 but as the selection of the post of Senior Clerk ~~was~~ excluding the Material Checkers was going to be held the applicants represented against the same. The applicants have approached this Tribunal. According to them several persons junior to them have been promoted as Senior clerks arbitrarily and illegally. The applicants filed O.A.No. 68/91 Hardutt Sharma and

8 others versus Union of India & others'. On 6.3.91 the Tribunal directed to decide the representation of the applicants which has been rejected whereafter, they have approached the Tribunal again.

3. According to the respondents, the selection process is must and without undergoing selection process, one cannot be made Material Clerk and as per Railway Board letter dated 16.8.78 only three Material Checkers i.e. Sri Purai Ram, Har Dutt Shama and Shitla Deen was eligible to be promoted as Material Clerk but the benefit of upgradation could not be extended to them as they failed to qualify the suitability tests conducted. According to the respondents only 3 of the applicants could be given fixation of pay as per Railway Board letter dated 16.8.78, incase they would have qualified in test, so far as others are concerned as they became material checkers thereafter they were not entitled to the benefit of the same. The respondents have also relied on the General Manager's letter dated 6.1.92 which has clarified the position ~~wide~~ that construction department cannot do so and no regular promotions in Construction organization and that in terms of para 189 of Railway Establishment Manual promotion of group C should be made through selection.

4. The respondents have explained that promotion has been given to those who have passed the suitability test. Parties have not given any instances before passing suitability the benefit has been given to any person, similarly placed in this division or in any other division. Letter of 1978 which provides for suitability test has not been over ruled. The Railway Board circular of 1978 provides for pay scale of both Material Clerks and Material Checkers to be the same and for drawing up a common seniority list.

The said circular makes it clear that the Railway Ministry has revised the question of fixation of pay and it also makes it clear that the post of Material Checker has been upgraded as Material Clerk, in terms of order contained in Board's letters dated 27.9.63 and 26.10.72. It has been decided in supersession of all the previous clarifications on the subject that the pay of the incumbents of the posts of Material Checkers, Tool Checkers etc. upgraded as Material Clerks, scale Rs 110-180 to Rs 260-400. Thus the upgradation has been made, even then the incumbent will have to pass the suitability test. Vide letter dated 27.9.63 it was decided that staff categories mentioned in the said letter should be placed in one particular grade of 110-180 instead of 105-135 as Material Checkers, Tool Checkers etc and similarly the letter of 1974 provides a grade better of Material Clerks 110-180, in terms of Board's letter dated 26.10.72 to be fixed as a special case by the existing staff in the grade of Rs 105-135 on the basis of seniority/suitability. ~~Vide~~ letter of 1978 grade of 105-135 has also been revised in the grade of 110-180. After this letter the Railway Board vide letter dated 19.10.78 indicated that the engagement of material clerks which arose thereafter Maintenance vacancies were to be filled in by including those posts in the ministerial cadre i.e. 66 2/3% by direct recruitment and 33 1/3% by promotion from suitable categories. The only modification made by the Board in favour of Material Checkers, Tool

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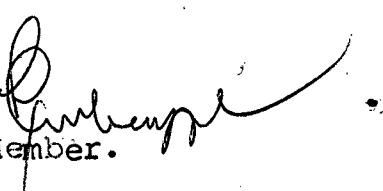
Checkers etc. in the grade Rs. 105-135(AS) is that such of them as have put in 5 years of service in grade Rs. 105-135 and above (including broken periods) may be subjected to a test and such of them as pass the test may be adjusted against the promotion quota of 33 1/3% as per Board's letter dated 16.2.1976.

5. The stand of applicants is that after circular of 16.8.1978, earlier circulars stood superseded. The applicants are entitled to pay scale of material clerk with effect from 1.1.1973 or the date of promotion to the post of material Checker whichever is later. No selection process is required as the same is not stipulated in letter dated 16.8.78. In the clarification dated 16.10.78 there is no reference to letter dated 16.8.78. The position is that the placement in the same grade of 110-180 took place in 1972. The letter dated 25.4.74 provided for seniority cum suitability for existing staff for upgradation. The previous clarifications were superseded vide letter dated 16.8.78 regarding fixation of pay scale without arrears. The clarificatory letter dated 19th October provided for certain qualification and conditions ~~including~~ including 5 years of service. The upgradation and equalisation of pay scale coupled with suitability creates <sup>analogous</sup> <sup>incongruous</sup> ~~anamalous~~ and ~~illegible~~ portion when upgradation and equalisation has been done without any condition and qualification and in supersession of previous circular in respect thereof the earlier condition of suitability defeats the very object

sought to be achieved. It is a different matter that apart from different seniority of Material Clerks and Material Checkers so upgraded will have to be fixed. Those who were holding the post and grade from before, may ~~block~~ rank senior to those who attained the grade and nomenclature subsequently. This may ~~be~~ not apply in respect of those who became material checkers in their right subsequently, that is not by upgradation.

In the case of S.K. Kaul and others vs. Secretary to the Government of India (1989 Supp.(1) S.C.C. 147, the posts of Monitor in All India Radio upgraded and made equivalent to the posts in central Information Service Grade IV pursuant to report of working group in regard to nature/ performed by Monitor it was held that upgradation was legal and valid. The posts of Monitors in All India Radio were re-designated as Sub Editors(Monitoring) and pay was enhanced to that of grade IV of Central Information Service (CIS) vide order dated 29th June, 1968. The redesignated posts were actually in C.I.S. Grade IV only by notification dated 9th May, 1972 by amending relevant Schedule as required by Service Rules. It was held that interse seniority of the Monitor so inducted was rightly fixed on the approval of Department of Personnel and U.P.S.C. with effect from June, 29, 1968 when the posts of Monitors became equivalent to Grade IV posts in C.I.S. instead of with effect from 9th May, 1972. The amendment of Schedule on a subsequent date would not affect the factual position

Applying the said principle as laid down in this case the applicants are entitled to count their seniority from the date they were so upgraded and placed in the same pay scale and their seniority will be counted from that date. Those Material Clerks before that date, obviously will rank senior to them but those who became Material Checkers subsequently to their gradation and placement in the same scale, will rank junior to them and accordingly this application is allowed to the extent that the order dated 19.4.91 is quashed and the respondents are directed to prepare a fresh seniority list in accordance with law and in the light of the observations made above, within a period of three months from the date of receipt of a copy of this judgment and give promotions to the applicants in accordance with their seniority and placement without requiring them to undergo written test or viva-voce for the post of Material Clerks. No order as to costs.



Adm Member.



Vice Chairman

Shakeel /

Lucknow: Dated 28/8/92