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# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW BOMBAY BENCH

O.A. No. 619 of 1987 198  
 T.A. No.

DATE OF DECISION 15.10.1991

N.N. Mehta and others

Petitioner

Sri G.S. Walia

Advocate for the Petitioner(s)

Versus

Union of India and others

Respondent

Sri Ramamurthy

Advocate for the Respondent

### CORAM

The Hon'ble Mr. Justice U.C. Srivastava, V.C.

The Hon'ble Mr. Mr. M.Y. Priolkar A.M.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *y*
2. To be referred to the Reporter or not ? *u*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *u*
4. Whether in needs to be circulated to other Benches of the Tribunal ? *u*

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, BOMBAY BENCH.

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Registration O.A. No. 619 of 1987

N.N. Mehta and others     ...     ...     ...     Applicants.

Versus

Union of India, through General Manager  
Western Railway, Churchgate, Bombay and others     ...     Respondents.

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Court :- Hon'ble Mr. Justice U.C. Srivastava, V.C.  
Hon'ble Mr. M.Y. Priolkar, Member (A)

Appearances :- Counsel for the Applicants Sri G.S. Walia.  
Counsel for the Respondents Sri Ramamurthy.

Oral Judgment :-

(By Hon'ble Mr. Justice, U.C. Srivastava, V.C.) Dt: 15.10.1991.

The applicants have approached to this Tribunal against their non-promotion to the upgraded post in the scale of Rs. 550-750 notwithstanding the facts that vacancies were available which has resulted in wrong fixation of pay and loss of emoluments in an arbitrary decision.

2. The applicants were working as Motorman in the Western Railway in Bombay Division. In pursuance of the recommendation of 4th Pay Commission, the pay scale of Motorman is Rs. 1600-2600. The post of Motorman was originally in the pay scale of Rs. 550-750 but vide Railway Board's letter dated 21.12.1983 issued by the Divisional Railway Manager's letter dated 21.3.1984 created 46 posts of Motorman in the selection grade of Scale Rs. 550-750 and thereby giving benefit to Senior Motormen. The Railway Board vide its letter dated 25.6.1985 in pursuance of the Divisional Railway Manager's letter dated 23.8.1985 ordered restructuring of the cadre of Motorman wherein it has been laid down that the restructuring certain cadres have been under consideration in consultation with the staff side and the Ministry of Railways have decided with the approval of the president to restructure certain categories of Group- C & D and for the purpose of restructuring the cadre strength as on 1.1.1984 which would

include Rest Giver and Leave Reserve Posts. It is further provided that the staff selected and posted against the additional higher grade posts as a result of restructuring will have their pay fixed under Rule-2018 (B) of the Fundamental Rules w.e.f. 1.1.1984 on proforma basis and correct payment w.e.f. 1.1.1985. The benefits of fixation will be applicable to the resultant vacancies which arose from the restructuring. It is also provided in para 4.3. of the said letter that the benefit of retrospective effect of the fixation from 1.1.1984 and current payment from 1.1.1985 will not be applicable to such of those employees who are promoted against the vacancies existing on the date of restructuring, and such employees will be granted benefits only from the date of promotion as per normal rules. Nor para 5.1 provided that the existing classification of the posts covered by these restructuring orders as 'selection' and 'non-selection' as the case may be remained unchanged. However, for the purpose of implementation of these orders for a individual railway servant becomes due for promotion to only one grade above, the grade post held by him at present on regular basis and such higher grade post is classified as selection post. The existing selection procedure will stand modified in such cases to extent for the selection grade post only on scrutiny of service record.

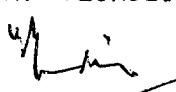
3. Leaving aside the disputed fact, the factual position of the case is that the Railway Board vide its letter dated 25.6.1985 decided to upgrade 50% posts of Motorman to the scale of Rs. 550-750 w.e.f. 1.1.1984. Accordingly the cadre of Motorman was restructured as Under:

<u>Existing Cadre</u>	<u>Revised Cadre</u>
M/Man Scale Rs. 550-750 (R) = 46	M/Man Scale Rs. 550-750 (R) = 121
"" " Rs. 550-750 (R) = 196	"" Rs. 550-750 = 121
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Now the Railway Board vide its letter dated 25.6.1985 ordered restructuring of cadre of Motorman from 1.1.1984 whereby 75 posts of Motorman were upgraded to scale of Rs. 550-750 by converting equal number of posts from Scale of Rs. 550-750. The total number of posts of Motorman in scale of Rs. 550-750 became 121 i.e. 46 + 75. Now on account of the above said two upgradation due to creation of 46 selection posts and 75 upgraded post there resulted an anomaly the pay of the 46 Sr. Motorman got less pay than that of the 75 upgraded Motorman. To mitigate this anomaly, the pay of the 46 Sr. Motorman were stepped up and their pay was fixed at Rs. 750, from the date the pay of one Junior Motorman Shri A.P. Fernandes has been fixed at Rs. 750 vide letter dated 27.10.1986 from 1.1.1984.

4. Now the grievance of the applicant is that out of 121 posts of motorman, 46 Sr. Motormen in scale of Rs. 550-750 are adjusted against the restructuring posts and their pay fixed at Rs. 750/- The restructuring can be implemented only in the matter of fixation of their pay scale but the respondents have failed to do so, and further they wants to grant benefit of promotion in the upgraded posts and fixation of pay from the date of occurrence of the vacancies in the said upgraded posts and give benefit of fixation and Rule 2018-B prior to the implementation of 4th Pay Commission Scale w.e.f. 1.1.1986. Now the contention of the applicant is that the vacancy which were so created, will be covered will be covered by the chain/resultant vacancy arises from restructuring as mentioned in para-4.1. Now as the matter of fact, the interpretation which has been sought under para-4.1 speaks that the rules of fixation of pay will be applicable to the Chain/resultant vacancies which arose from the restructuring. Para-4.1 is to be read with para-4.3 which provides that current payment will be made from 1.1.1985 and the fixation will be w.e.f. 1.1.1984 to those employees who were promoted against the vacancies existing on the date of restructuring and not were for

some administrative reasons. It was actually implemented and under para-4.3 they will be granted benefits only from the date of promotion as per normal rules, and this makes it clear that the persons like the applicant were to get benefits only from the date of promotion as per normal rules. It is one time exception and the restructuring process of 121 vacancies were included in it. It was not a continuous process i.e. at every point of time, 121 persons are to get benefit of that scale and vacancies which were caused by retirement of the employees are to be filled from others who were not covered under 50% restructuring scheme. An emphasis was drawn by the learned counsel for the applicant in a case of Prof. C.D. Tase Vs. University of Bombay and others, 1989 Supreme Court Cases (L&S)370, It was a case of two consecutive revisions. It was held by the Hon'ble Supreme Court that the appellant placed in second revised scale due to lapse on the part of college authorities, while others similarly circumstanced given benefit of the first revision before fixing pay in the second revised scale. But this case will not be applicable to the instant case because it is not the case of fixation by the authorities in two scales but what has been done is restructuring one in which benefit was given to the 50% employees. In the result, we dismiss this application with the above observations without any order as to the costs.

  
Member (A)

Bombay Bench  
(n.o.u.)

  
Vice-Chairman

18.10.91