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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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NEW BOMBAY BENCH

O.A. No.s. 176/86 & 184/87 198

~~XXXXXXXXXX~~

DATE OF DECISION 19.6.1989

Shri Om Prakash Khanna Petitioner

1. Shri G.S.Walia, Advocate in O.A.No.176/86

2. Applicant in person in Advocate for the Petitioner(s)
O.A.No.184/87

Versus

Union of India & Others. Respondent

Shri N.K.Srinivasan Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.B.Mujumdar, Member(J)

The Hon'ble Mr. M.Y.Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*

2. To be referred to the Reporter or not? *No*

3. Whether their Lordships wish to see the fair copy of the Judgement? *No*

4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

[Handwritten signature]

(12)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
NEW BOMBAY BENCH, NEW BOMBAY.

Original Applications No.176/86 & 184/87

Shri Om Prakash Khanna,
C/o G.S.Walia,
Advocate,
89/10, Western Railway Colony,
Matunga Road,
Bombay-400 019

.. Applicant
in
O.A.No.176/86
and O.A.No.184/87

V/s.

1. Union of India
through the Secretary,
Ministry of Law,
Aayakar Bhavan,
M.K.Road,
Bombay-400 020.

2. Secretary,
Railway Board,
Railway Bhavan,
New Delhi.

3. General Manager,
Western Railway,
Churchgate,
Bombay-400 020

.. Respondents
in O.A.No.176/86 &
O.A.No.184/87

Coram: Hon'ble Member(J), Shri M.B.Mujumdar,
Hon'ble Member(A), Shri M.Y.Priolkar.

Appearance:

1. Shri G.S. Walia,
Advocate for the
applicant.
2. Shri N.K.Srinivasan,
Advocate
for the respondents

JUDGMENT:-

Dated: 19.6.1989

(PER: Shri M.Y.Priolkar, Member(A))

O.A.No.176/86 is an application filed by the
Vice-President of Western Railway Group 'B'(formerly
Class II) Officers' Association and is stated to have

...2/-

been made on behalf of Class II Officers of Transportation(Traffic and Commercial) Department of Western Railway. The main reliefs sought are to fix the salary of Class II Officers who have been promoted to the Class I Senior Scale of Rs. 1100-1600 from the date they started looking after the duties of posts in that scale, and also to reckon their seniority in the cadre of Class II Officers on the basis of such date and consider such service as non-fortuitous for all purposes.

2. The same applicant in the same representative capacity has filed another application(registered as O.A.No.184/87) seeking identical reliefs as in the earlier application for all Class II Officers similarly placed and also praying for some other directions like posts in Class II scale of Rs. 650-1200 and Class I Junior scale of Rs. 700-1300 be identified and separately earmarked instead of being grouped together, regular selections for promotion be held within six months of the occurrence of the vacancies or promotees be deemed to be regularly selected after working for 18 months, common seniority be maintained of Group 'B' officers and direct recruits of Group 'A' junior scale on the basis of entry into the grade, etc. As the issues required to be determined in both these applications are more or less the same, we propose to deal with them together and dispose them of by a common order.

3. According to the applicant, between 1973 and 1982, he and 27 other officers were promoted from

Class III to Class II Gazetted Cadre, and the promotion was subject to a selection to be conducted by the respondents. The selection could not, however, be conducted for various reasons and, therefore, it is stated that the said officers were further promoted on ad hoc basis in senior scale of Class I in the grade of Rs. 1100-1600. (All pay scales indicated here are pre-Fourth Pay Commission Scales and Class I and Class II wherever mentioned mean Group 'A' and Group 'B'). The applicant's grievance is that though these officers were working as senior scale officers performing the same functions and duties as their regularised counter parts, these 28 officers have been paid only Rs. 150/- per month as charge allowance in addition to their pay as Class II officers.

4. The other main grievance of the applicant is that posts in Class I Junior Scale Rs. 700-1300 and those in Class II Scale Rs. 650-1200 are grouped together and there is no separate identification and earmarking of the posts in the respective grades. According to the applicant, in the Traffic and Commercial Departments of Western Railway, as on 1.1.1984, against the cadre strength of 38 posts of Class I Junior Scale (Rs. 700-1300), only 5 officers were actually working in that scale and the remaining 33 posts were virtually manned by Class II officers in the scale of Rs. 650-1200 without any additional remuneration. This is because on the same post of Assistant Commercial Superintendent, for example, when a Class II officer is posted, he is paid in Rs. 650-1200 scale, but when a Class I Junior Scale Officer is posted, he is paid in ...4/-

the scale of Rs. 700-1300.

5. A number of Supreme Court and other judgments were cited on behalf of the applicant in support of his contention that the differentiation in pay made between Class II Officers regularly promoted to Class I Senior Scale and those detailed to look after the duties of such senior scale posts and also between Class I and Class II officers manning similar posts was violative of the principle of equal pay for equal work. Certain other judgments were cited on behalf of the respondents in support of their submission that the differentiation made is fully justified and legally valid and cannot be considered as discriminatory.

6. In Randhir Singh v. Union of India (A.I.R. 1982 SC 829) Supreme Court has observed that the principle of equal pay for equal work may be properly applied to cases of unequal scales of pay based on no classification or irrational classification, though those drawing different scales of pay do identical work under the same employer, and, further that a classification based on higher qualifications, which may be either academic qualification or experience, — based on length of service, could be reasonably sustained. The entire dispute in O.A.No.176/86, therefore, boils down to the question whether the denial of full pay normally admissible on promotion to such officers as are merely detailed to look after duties of Class I Senior Scale posts because of non-completion of even three years of regular service in Class II may be considered to be based on a rational classification.

7. To appreciate the rival contentions, it would be necessary to know broadly the structure of the management cadre of the Indian Railways. This consists of Class I and Class II Gazetted Officers. Class I cadre consists of officers in junior scale, senior scale, junior administrative, senior administrative and still higher grades. Class II cadre consists of Assistant Officers at the base level of management. The entire Class II cadre is manned by personnel promoted from the subordinate Class III cadre by a process of selection on the basis of merit. Recruitment is made to Class I at the initial level viz. the junior scale. Class II Officers also enter Class I at the level of junior scale. Quotas have been prescribed in the Recruitment Rules for direct recruitment as also promotion of Class II. In the applicant's department, direct recruitment through UPSC is made against 60% of the vacancies and the remaining 40% is filled by promotion of Class II officers.

8. Under the statutory Recruitment Rules, (Exhibit II of the written statement of respondents in O.A.No. 176/86) only junior scale Class I officers are entitled to be promoted to senior scale after four years service in Class I junior scale. A Class II officer has no title under these Rules for promotion to Class I senior scale without first becoming a Class I junior scale officer. Class II officers are considered for promotion to Class I senior scale on ad hoc basis after 3 years of regular service in Class II. Officers working in Class II on ad hoc basis are not eligible to be considered for promotion to Class I senior scale

as they are basically Class III employees. But in situations where they are detailed to look after the duties of Class I senior scale posts, they are paid only a charge allowance of Rs. 150/- in addition to the pay in the existing Class II scale (Railway Board's letter dated 20.6.1980 - Exhibit-I of the written statement of respondents). This is done by invoking the provisions of Rule 2029 of Railway Establishment Code, Volume-II (corresponding to FR 35 applicable to employees in other Central Government department).

9. It will thus be observed that a Class II Officer has to render 3 years of service before he gains eligibility for promotion to Junior Class I scale. 4 years of service are required for a Class I Junior Scale officer to gain eligibility for promotion to senior scale. Thus, as against the requirement of 7 years cumulatively, Class II officers are considered for ad hoc promotion to Class I senior scale after 3 years of non-fortuitious service in Class II wherever Class I junior scale officers are not available. On such ad hoc promotions, they are allowed to draw pay in Class I senior scale as admissible under the Rules. It is only in situations where Class II officers having not even 3 years of non-fortuitious service in Class II are detailed to look after the duties of Class I senior scale posts that they are paid a charge allowance of Rs. 150/- per month in addition to pay in Class II. It appears to us that this provision is fair and equitable. Of course, as observed by Supreme Court in V.T. Khangada v. Reserve Bank of India (ATR 1982 SC 917), "No scheme governing service matters can be fool proof and some

section or the other of the employees is bound to feel aggrieved on the score of its expectations being falsified or remaining to be fulfilled.". But whether it will be violative of the principle of equal pay for equal work would have to be considered in the light of the various relevant judicial pronouncements.

10. Shri G.S.Walia, learned advocate for the applicant cited the following Supreme Court judgments in support of his contention that it is illegal to pay the applicant differently from the regularly promoted officers merely for the reason that the applicant has not put in the prescribed minimum 3 years regular service in Class II:-

- (i) Randhir Singh v. Union of India (AIR 1982 SC 829)
- (ii) D.S.Nakara v. Union of India (1983 SCC-1&S 145)
- (iii) P.Savita & Others v. Union of India (AIR 1985 SC 1124)
- (iv) Surinder Singh v. Engineer-in-Chief, CPWD (AIR 1986 SC 584)
- (v) Dhirendra Chamoli v. State of U.P. (AIR 1986 SC 1726)

11. But after going through all these judgments, we find that none ^{of these} can be considered to cover the facts of the case before us. In none of these cases decided by the Supreme Court the differentiation in pay scales was sought to be made on the ground of non-fulfilment of or relaxation in prescribed qualifications like academic qualifications or minimum length of service in the lower scale, as in the present case, which alone could justify such differentiation being considered to be based on a rational classification.

12. Shri G.S.Walia also relied heavily on the judgment of this Bench of the Tribunal delivered on 24.8.1987 in Tr.Applications No.125 and 126 of 1986. These cases related to equation of the posts of Staff Nurse and Projectionist in the Union Territory of Dadra and Nagar Haveli with the corresponding posts in the other Union Territories. It was not the case of the respondents therein that the lower pay scales were justified by either lower academic qualifications or less experience being prescribed. It has been observed in the judgment on this case that though these posts were found to be identical in all respects,"... It has not been explained satisfactorily to us as to how these two posts of Staff Nurse and Projectionist in Dadra and Nagar Haveli came to be equated on a lower pay scale, as compared to similar posts in other Union Territories..". These facts are thus distinguishable from the case before us where there exists a rational classification is as much as a distinct categorisation has been made of officers who are detailed to look after duties of senior scale Class I posts, for the reason that unlike those who are promoted, they do not have the minimum 3 years regular service in Class II.

13. Paying the applicants in their existing scale plus a charge allowance instead of in the higher scale will not, in our view, be violative of the principle of equal pay for equal work, as this restriction on pay is based on a rational classification, namely, non-completion of even 3 years of regular service in Group-B. Undoubtedly, the length of service in a particular scale is an important element in determining

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the remuneration of an employee. Were this not so, there would be hardly any justification for the incremental scales of pay depending on the duration of an officer's service. Evidently, even regularly appointed officers in Class I Senior Scale of Rs. 1100-1600 will be drawing anywhere between Rs. 1100 to Rs. 1600 depending on their length of service in that scale but it is not anybody's contention that it violates the principle of equal pay for equal work. Further, this restriction is not only with reference to Class II officers but Class I junior scale officers appointed to senior scale before completion of four years of service are also allowed to draw only a charge allowance of Rs. 150/-. The logic apparently is that the standard of performance or the quality of output of officers who are better academically qualified or better experienced would be superior to that of those who are not as well qualified or experienced, and a differentiation in remuneration on that basis cannot be considered as discriminatory. We, hold, therefore, that limiting the pay of such officers as do not have even 3 years of regular service in Class II but are asked to look after the duties of Class I Senior Scale posts, to their pay in the existing scale plus charge allowance is a reasonable restriction based on a rational classification and cannot be considered as arbitrary or discriminatory.

14. All Class II officers whose pay is thus restricted are permitted to draw pay in Class I senior scale after completing 3 years of regular service in Class II. We agree, however, that the applicant has a justifiable grievance that regular promotions of Class II

officers are delayed considerably due to delay in holding selections by the Railway administration. But we do not think that it will be desirable for us to give a direction to the respondents, as prayed for by the applicant, to conduct selections for promoting persons to Class II and Class I within six months of the occurrence of vacancies. As explained by the respondents, the delay in the selection was due to certain disputes pending in Law Courts. It is, therefore, not possible also to direct, as prayed for by the applicant, that in case no selection is held or is delayed, and the promotee officer is put to work for more than 18 months he be treated to have been deemed regularly selected. Still, we earnestly hope, that it will be possible for the Railway administration to streamline their procedures and conduct the selection within a reasonable period from the occurrence of vacancies.

15. The second main issue raised by the applicant which is regarding Class I junior scale and Class II officers being paid differently for the same duties and responsibilities is comparatively easy to decide as this is prevalent in almost all departments of the Central Government and considerable case law has been built up on this subject over the past twenty five years. Successive Pay Commissions have also deliberated on this issue and recommended continuance of the system.

16. In the judgment of the Constitution Bench of the Supreme Court in the case of K.M. Bakshi v. Union of India (AIR 1962 SC 1139), it was held that Article 14 of the Constitution cannot be said to be violated where the

pay scales of Class I and Class II Income Tax Officers are different though they do the same kind of work. In *Randhir Singh v. Union of India* (AIR 1982 SC 839) which we have already quoted earlier, Supreme Court further observed as under:-

"...It is well known that there can be and there are different grades in a service with varying qualifications for entry into a particular grade, the higher grade often being a promotional avenue for officers of the lower grade. The higher qualifications for the higher grade which may be either academic qualifications or experience based on length of service, reasonably sustain the classification of the officers into two grades with different scales of pay..."

17. The principle has been further reiterated by the Supreme Court in a recent judgment cited by the respondents (1988 (2) SLR 721), with the following observation:-

"...The same amount of physical work may entail different quality of work, some more sensitive, some requiring more fact, some less - it varies from nature and culture of employment. The problem about equal pay cannot always be translated into a mathematical formula. If it has a rational nexus with the object to be sought for, as reiterated before, a certain amount of value judgement of the administrative authorities who are charged with fixing the pay scale has to be left with them and it cannot be interfered with by the Court unless it is demonstrated that either it is irrational or based on no basis or arrived mala fide either in law or in fact..."

18. The learned counsel for the respondents also brought to our notice a judgment of September 1986 of the Central Administrative Tribunal, Hyderabad Bench. In this case filed by four Class II Officers working in South Central Railway, the prayer inter alia was to

declare the discriminatory classification maintained in the Union Railways in the category of Assistant Officers, as between directly recruited Class I Officers and officers promoted thereto from Class III category in the matter of pay and promotion, regular and officiating, to Class I Senior Scale as void abinito, unconstitutional, without jurisdiction and illegal. After considering the various Supreme Court decisions on the subject, the Hyderabad Bench of the Tribunal held as under:-

"...In the light of the observations made by the Supreme Court in the aforesaid decision vis-a-vis the decision rendered by the Constitution Bench of the Supreme Court in Kishori Mohanlal Bakshi's case, given the facts of the case, we have to follow the decision in Kishori Mohanlal Bakshi's case. Viewed from this angle, the classification of the the Railway Service into Class I and Class II and fixation of different pay scales for them cannot, therefore, be held violative of Article 14 of the Constitution of India..."

We are in respectful agreement with this finding of the Hyderabad Bench of this Tribunal.

19. The applicant has contended that the Bombay Bench of the Tribunal in Original Application No.279/86 on 19.8.1987 has given a judgment which is contrary to the judgment given by the Hyderabad Bench. But after going through this judgment, we do not consider that it will apply to the present case. What was challenged in the earlier case before this Bench was the constitutionality of the Railway Board's instructions dated 19/31-12-1985 directing that in making ad hoc promotions to the senior scale, junior scale Class I officers with a minimum of three years service should be

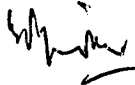
considered for promotion to the senior scale in preference to Group 'B' Officers, even if the Group 'B' officers have rendered over three years of service in Group 'B'. These instructions of the Railway Board were set aside in the judgment with the direction that for ad hoc promotions to the senior scale posts, eligible junior scale Class I officers and Class II Officers should be considered by allotating vacancies as far as possible in ratio of 60% and 40%. This judgment is, therefore, of no help to the applicant in the present case before us.

20. In fact, Shri G.S.Walia, the learned counsel for the applicant in O.A.No.176/86 fairly conceded that in view of the Supreme Court's decisions on the subject he will not press for any other relief prayed for in that application except for the full additional pay admissible on promotion, instead of only a charge allowance. But the applicant, who argued in person in O.A.No.184/87, persisted with all other prayers also. On the basis of the foregoing discussions, we have to reject the two main prayers of the applicant, namely, full additional pay of Class I senior scale instead of a charge allowance and parity with junior scale Class I officers while manning similar posts. All the other prayers are related to and flow from these main prayers and are also consequently rejected. The respondents had also opposed these applications on technical grounds of limitation and representative capacity of the applicant. But since we are not granting any of the reliefs prayed for by the applicant, on merits, we do not propose to go into these technicalities.

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21. In result, both the applications (O.A.No. 176/86 and O.A.No.184/87) are dismissed but with no order as to costs.



(M.Y. Priolkar)
Member(A)



(M.B. Mujumdar)
Member(J)