

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 920/89

Transfer Application No:-

DATE OF DECISION 20-8-93

Shri H.K.Kapoor Petitioner

Shri M.S.Ramamurthy Advocate for the Petitioners

Versus

Union of India Through Western Respondent
Rly. & 4 Ors.

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

CORAM:

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

The Hon'ble Shri Smt. L.Swaminathan, Member(J)

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

(M.Y.Priolkar)
Member(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY

(11)

O.A. 920/89

Shri H.K.Kapoor,
Bombay

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Applicant

vs

Union of India
Through Western Rly.
& 4 Ors.

..

Respondents

Coram: Hon'ble Mr. M.Y.Priolkar, Member(A)
Hon'ble Smt. L.Swaminathan, Member(J)

Appearance:

Dated 20-8-93

Mr. M.S.Ramamurthy for the
applicant.

Mr. N.K.Srinivasan for the
respondents.

Oral Judgement

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

The grievance of the applicant in this case is that his name has not been included in the panel published on 19-11-86 for the post of Law Assistant.

2. By notification dated 12-1-84, applications were invited for the post of Law Assistant in Western Railway in grade of Rs. 550-750. Employees with minimum of 5 years service and having degree in Law were eligible for this post irrespective of the department in which they were working. They were required to give their service particulars in a prescribed proforma. One column in this was the date from which working in scale of Rs.330-560 on regular basis and another the date from which working in the scale of Rs. 425-640 or 425-700 or 455-700 on regular basis. These 3 grades are stated to have been merged subsequently in one common grade in pursuance of the pay commission's recommendations, namely Rs.1600-2600. The applicant who applied in response to this notification qualified in the written examination held on 22-7-1985 and appeared in the viva voce held on 16-10-1986.

It is not disputed that the marks for seniority in this selection were to be given on the basis of the formula indicated in the Railway Board's letter dated 15-9-69 and the ~~Ranking~~ ^{Ranking} of the candidates placed in the panel was to be done on the basis of the principle laid down in Rule 320 of Indian Railway Establishment Manual Vol.I (Revised Edition 1989). There was restructuring of certain groups of C & D categories of the Railway staff ordered by the Railway Board's letter dated 29-7-83. In Railway Board's further letter dated 19-7-87 addressed to the General Manager's of all Indian Railways, it was clarified that in cases of promotion arising from this restructuring order, the date of entry in the grade will be treated as 1-8-83 and although the staff placed in the revised grade will have the benefit of proforma fixation from 1-8-82, they will be eligible to draw pay in the higher scale from 1-8-83. The main controversy arising in this case is that for the purpose of allotting marks for seniority under letter dated 18-9-69, two lower grades namely 425-640 and 425-700 have been treated as comparable grades by the Railway administration whereas for the purpose of drawing the final panel in terms of Rule 320 of the Railway Establishment Manual, these two grades have not been treated as equivalent grades. The applicant was promoted by order dated 5-6-86 and the order states that Rs. 440/- is payable to him from 1-8-83. The second point of dispute is that the respondents have given him seniority in the scale of Rs.425-640 only with effect from 1-1-84, whereas the applicant claims it from 1-8-1982.

3. Although in the Original Application, the applicant had claimed relief against all the private respondents

namely respondents 2, 3, 4 & 5, the learned counsel for the applicant stated today that he does not claim ^{any relief} ~~viz-a-viz~~ respondent No. 2 O.P.Khurana, since Khurana had been promoted retrospectively from 1-1-84 to a higher grade namely Rs.455-700. The remaining 3 respondents namely Awasti, Chitnis and Dhuri all belong to clerical cadres whereas the applicant is a direct recruit in the grade of Assistant Station Master in the operational cadre.

The learned counsel for the applicant contended that the two grades, namely Rs. 425-640 and 425-700 should be treated as equivalent for the purpose of Rule 320 of the Railway Establishment Manual. According to him, the notice inviting applications for selection to this post asked for particulars in one column regarding length of service either in Gr.Rs.425-640 or 425-700 or 455-700 which is a clear indication that all these 3 scales are to be treated as equivalent grades. Further, these 3 grades were merged into one as per the 4th Pay Commission's recommendations from 1-1-86 which also suggests that there were only marginal differences in ~~these~~ 3 scales and therefore they should have been treated as equivalent. We are not much impressed by this argument. The fact ~~were~~ that information about service particulars in these 3 pay scales was sought in a single column in the proforma for application or that Pay Commission has subsequently merged these 3 different scales into one common scale will not constitute conclusive proof that these 3 scales were intended to be equivalent. We do find merit, however, in the other two arguments advanced by the learned counsel for the applicant namely, that the respondents themselves have treated the 2 scales Rs. 425-640 and Rs. 425-700 as comparable scales for the purpose of assessing the

seniority marks, and secondly that for the applicant who is in the operational cadre the next higher scale after Rs. 330-560 is Rs. 425-640 whereas for the respondents 3 to 5 who are in the clerical cadre, the next higher scale is Rs. 425-700 after the scale of Rs. 330-560.

4. There are three components of a pay scale namely, the minimum of scale, rate of increment and the maximum of the scale. In these 2 scales of pay of Rs. 425-640 and Rs. 425-700, the minimum and the rate of increment are the same and only the maximum of the scale is marginally different. Further, the learned counsel for the respondents could not show us any rules or instructions under which they have taken the 2 grades, viz Rs. 425-640 and Rs. 425-700 as comparable for the purpose of assessment of seniority marks. They have not however, treated them as equivalent for the purpose of relative seniority to be determined under rule 320 of the Establishment Manual. In these circumstances, we have no hesitation in holding that the scales of Rs. 425-640 and Rs. 425-700 should have also been treated as equivalent grades by the respondents for determining the relative seniority of the candidates for the purpose of preparation of the panel for the post of Law Assistant.

5. The second point of dispute is about the seniority of the applicant in the equivalent grade. According to the learned counsel for the applicant, the applicant was promoted in the grade of Rs. 425-640 under the restructuring of the cadres from 1-8-1982 and had been allowed proforma fixation of pay from 1-8-82 by the letter dated 5-6-86 of the Kota Divisional Office of the Western Railway with arrears payable from 1-8-83.

On behalf of the applicant, it was further contended that he has been drawing the pay of Rs. 440/- on 1-1-84 which if worked backwards, comes to the minimum in the grade of Rs. 425-700 from 1-8-82.

He states that he actually drew pay of Rs. 440/- from 1-8-83 which he was allowed under this letter. According to the applicant, he had also submitted representations in which he had mentioned that he had been drawing pay of Rs. 440/- from 1-8-83.

We have seen the service book of the applicant.

It is seen from the service book he has been given pay of Rs.440/- from 1-1-84. In the last pay certificate dated 3-8-86, which is annexed to the reply of the respondents, it is stated that he had been drawing Rs.485/- from 1-8-86 which again, if worked backwards, with the rate of increment of Rs.15, comes to Rs.425 from 1-8-82. It is, therefore, clear that as per Railway Board's letter dated 13-7-1987, the applicant will be entitled to seniority from 1-8-83 and not from 1-1-82 as claimed by the applicant and also not from 1-1-84 as contended by the respondents.

It is stated that respondents 3 to 5 have been promoted to equivalent posts from 1-1-84, whereas the applicant is promoted from 1-8-83. If so, the applicant will have to be placed higher in the panel than the respondents 3 to 5 under Rule 320 of Railway Establishment Manual. We direct accordingly that the placement of the applicant in the panel in pursuance of the selection to the post of Law Asstt. conducted in 1985 and 1986 shall be on the basis that the two grades namely Rs. 425-640 and Rs. 425-700 are equivalent

grades and that the applicant's seniority in the grade
Rs. 425-640 will be with effect from 1-8-1983.

The applicant shall be entitled to consequential benefits
by way of arrears of salary as well as seniority.

No order as to costs. //

Swamini
(Smt. L. Swaminathan)

Member(J)

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(M.Y. Priolkar)

Member(A)

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