

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 291/2000

Date of Decision : 7th July 2003

S.K.Jain & Ors.

Applicant

Shri M.S.Ramamurthy

Advocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondents

Shri V.S.Masurkar


Advocate for the
Respondents

CORAM :

The Hon'ble Shri Kuldip Singh, Member (J)

The Hon'ble Shri Shanker Prasad, Member (A)

- (i) To be referred to the reporter or not ?
- (ii) Whether it needs to be circulated to other
Benches of the Tribunal ?
- (iii) Library


(KULDIP SINGH)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.291/2000

Dated this the 7th day of July 2003.

CORAM : Hon'ble Shri Kuldip Singh, Member (J)

Hon'ble Shri Shankar Prasad, Member (A)

1. S.K.Jain
2. S.M.Joshi
3. K.K.Sivasankaran
4. D.U.Gautam
5. V.G.Patankar
6. K.P.Ramesh
7. B.A.Bakshi
8. A.K.Gurav
9. Sudhakar Chandratre
10. Ms. Geeta Garecia
11. R.L.Dias
12. A.N.Devnani
13. S.K.Nair
14. Sunil Ghume
15. Kandan Mudaliar
16. Mukesh Adhvaryu

...Applicants

All are working as Chief
Transit Inspector in the
Transit Cell, Western
Railway, Churchgate,
Mumbai.

By Advocate Shri M.S.Ramamurthy

vs.

1. Union of India
through the General Manager,
Western Railway, Churchgate,
Mumbai.
2. The Member (Staff),
Ministry of Railways,
Railway Board, Rail Bhawan,
New Delhi.
3. The Secretary,
Railway Board,
Ministry of Railways,
Rail Bhawan, New Delhi.
4. The Executive Director,
Pay Commission (II),
Ministry of Railways,
Rail Bhawan, New Delhi.
5. The General Manager (E),
Western Railway,
Churchgate, Mumbai.

...Respondents

By Advocate Shri V.S.Masurkar

O R D E R

{Per : Shri Kuldip Singh, Member (J)}

This is a joint application filed by 16 persons who are presently posted in the Transit Cell of Headquarters of Western Railway.

2. It is submitted that earlier it was called as SQT Section. In the year 1957 it was transferred to Commercial Department. In 1966 the post of this cell was merged with Commercial Department. There designation was also changed as Commercial Inspector (Transit).

3. However, the control of this cell was again put under Operating Department in 1967. The posts were also transferred to Operating Department.

4. In 1971, on the basis of workstudy, Transit Cell was formed which had 3 posts of Road Van Inspectors, 4 Transit Inspectors and 1 Sr. Transit Inspector. From 1.12.1979 this Section is alleged to again transferred and put under the control of Chief Commercial Superintendent.

5. The applicants further alleged that on being transferred to Operating Department on 1.12.1967, Transit Inspectors were placed in higher scale than Commercial Inspectors on formation of Transit Cell in 1971.

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6. The grievance of the applicants started when after 1971 cadre of Commercial Clerks was restructured/upgraded two or three times, but no restructuring was done in the cadre of Transit Cell.

7. After the III Pay Commission, the pay grades in the Commercial Department had gone higher than their counterparts in the Transit Cell.

8. Further re-structuring was done in 1984 for Commercial Inspector which was also not given to Transit Cell.

9. A petition is alleged to have been filed before Hon'ble Gujrat High Court wherein directions were passed to give hearings to applicants for grant of restructuring at par with Commercial department. Director Estt. had passed an order thereon after giving hearing.

10. Thereafter, one of the retired employees filed a petition before the CAT, Ahmedabad. The Tribunal also directed that the matter should be considered at the level of Director to consider appropriate relief. However, no relief was given. The applicants again represented through Union also for being treated at par with Commercial Inspectors for the benefit of re-structuring/upgradation.

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11. It is also pointed out that in other Railway the work is being looked after by Commercial Inspectors who are enjoying the benefit of re-structuring. The General Manager, Western Railway is also stated to have recommended the case of the applicants for applying proper scales of pay and proper percentage to Transit Cell cadre.

12. Ultimately, Railway Board did not accept the claim of petitioners and stated that the duties of Transit Inspectors are not akin to the duties of Commercial Inspectors and Mode of filling vacancies also differ. Whereas the applicants are still insisting that prior to formation of Transit cell the applicants were working as Commercial Inspectors. As such, they are entitled to the same restructuring benefit.

13. The applicants further say that they were left out of the restructuring order dated 27.1.1993. However, they represented the matter to the administration who referred the matter to the Board. Board in their letter dated 16.12.1993 directed the Western Railway to extend restructuring benefits as given to Commercial Clerks from 1.3.1993 on the basis of instructions issued by the Director in 1984. Accordingly, the cadre of Transit Cell was given percentage distribution. The applicants further state that they were even discriminated against implementation of the Vth Pay Commission Report. Though they were given restructuring/upgradation benefits as applicable to Commercial Clerks on the basis of the Speaking Orders issued by Director, Establishment, Railway Board, special revised grades of Rs.5500-

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9000 and Rs.5000-8000 given to specified categories of Chief Commercial Clerks in pre-revised grade Rs.1600-2600 and Head Commercial Clerks in pre-revised grade of Rs.1400-2300 were not given to Sr.Transit Inspectors in pre-revised grade of Rs.1600-2600 and Transit Inspectors in grade of Rs.1400-2300. Rather, they were put at the lower standard replacement grade of Rs.5000-8000 and Rs.4500-7000 respectively.

14. The applicants made a representation and on their representation, Western Railway sought clarification from the Board but no reply was received. Another representation was sent to Executive Director, Pay Commission. But the Board through a letter dated 3.1.2000 turned down even to set right the anomalies in the grades of Sr.Transit Inspectors/Transit Inspectors vis-a-vis Chief Commercial Clerks/head Commercial Clerks. A legal notice is also alleged to have been sent to the respondents. Therefore, they stated that the applicants have been deprived of their prospects in their career. The applicants therefore state that instead of considering the case on merits as directed by CAT Ahmedabad Bench in OA.NO.582/87, the Board has adopted a vindictive attitude towards the applicants. Thus, the applicants pray that the order of the Railway Board dated 22.1.1999 and 3.1.2000 rejecting the claims of the applicants for extending the benefits on par with the Commercial Inspectors of the Commercial Department be declared arbitrary, unjust and violative of Articles 14 and 16 of the Constitution of India. Same be set aside and quashed and directions may be given to the respondents to issue confirmation for redesignating the Transit Inspectors as Commercial Inspectors (Transit) as sought for by the Western Railway and extend restructuring benefits to them as extended to the Commercial Inspectors with retrospective effect.

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15. The respondents have contested the OA. The respondents in their reply pleaded that the applicants want the policy decision of the Railways to be changed to suit their needs and such a grievance cannot be gone into by this Tribunal and therefore the OA. be dismissed in limine. The respondents have also taken a objection that since the applicants have prayed for reliefs w.e.f. 1.3.1993 and the OA. has been filed on 24.3.2000, therefore, there is inordinate delay in filing this OA. So on this ground also the OA. is liable to be dismissed.

16. It is further submitted that in the year 1971 the Western Railway decided to set up an independent organisation known as Transit Cell at Headquarters Office and a revised cadre of the staff for the new set up was sanctioned. A Notification dated 16.10.1971 was issued detailing the details about revised cadre wherein it was clearly stipulated that once an employee accepts promotion in the Transit Cell, he will not be allowed any promotion in his parent branch and he will have to seek further advancement in the Transit Cell according to the avenue of promotion.

17. It is further stated that duties of both the Commercial Inspectors and Transit Inspectors are totally different and distinct in the nature as per Ex.R-1 & R-2. It is further submitted that Transit Cell is totally independent cell and distinct from the Commercial Cell and the applicants cannot compare themselves with the Commercial Inspectors. They further submitted that various Pay Commissions have given different

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recommendations in different categories of posts in regard to pay scales from pre-revised to revised scale of pay and as a result of recommendations of the Pay Commission, the pay scales of Transit Inspectors have been revised in a different manner than that of Commercial Inspectors. It is further submitted that as per the Railway Board order dated 25.10.1985, the restructuring benefit was allowed to Transit cell w.e.f.1.1.1984 as applicable to the Commercial Clerks. It is further stated that Railway administration has forwarded a proposal for considering the Transit Cell staff to that of Commercial Inspectors but the proposal has been turned down by the Railway Board as per Ex.R-3 & R-4.

18. It is further submitted that the Railway Board had extended the benefit of restructuring w.e.f. 1.3.1993 to the Transit Cell staff as per Ex.R-5 but this is a policy decision and the same cannot be questioned in judicial review and according to this policy decision the percentage distribution was allowed to be applicable at par with Commercial Clerks. The same cannot be challenged. As regards the fixation of pay in the Railway Service Rules, 1997 for the Transit Cell Staff, a proposal was sent to Railway Board but the said proposal was rejected by the competent authority vide their order dated 3.1.2000. It is also stated that a proposal was received by the Railway Board from the Railway for redesignating the Transit Inspector as Commercial Inspectors so that they get the benefit of cadre percentage under restructuring scheme w.e.f.1.3.1993 at par with Commercial Inspectors. But the Board after considering did not accept the proposal. It is stated that none of the grounds of challenge the policy decision is available to the applicants.

Law

19. We have heard the learned counsel for the parties and gone through the record.

20. As regards the creation of Transit Cell is concerned, the applicants themselves have annexed as Ex.'O' which is at page 114 of the Paper Book. A perusal of the same would go to show that the Transit Cell was set up separately from Commercial Inspectors and it has also provided that how the avenue of promotion for the Transit Cell was available to the Sr. Transit Inspectors and Transit Inspectors. It appears that at the time of initial recruitment to the Transit Cell for the various cadres, the applicants came to the cell itself by getting promotion also but thereafter, restructuring was ordered. Since similar benefits were not given to them as given to Commercial Clerks and Commercial Inspectors, so the grievances of the applicant have surfaced.

21. Now the question arises that whether after accepting the change of cadre from Commercial Clerks/Commercial Inspectors to that of Transit Clerks and Transit Inspectors, can the applicants claim parity at par with their counter parts in the Commercial Department. The respondents have placed on record the duties of both the Commercial Clerks and Commercial Inspectors as well as of Transit Clerks and Transit Inspectors as per Ex.R-1 & R-2. A perusal of the same would go to show that there is large amount of ^{various} ~~various~~ duties of Commercial Inspectors and Commercial Clerks in the Transit Cell. The Transit Cell Inspectors are to

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deal with the staff in the field like Yard Masters, Station Masters, Chief Luggage Clerks etc. whereas the Commercial Inspectors are to deal with arbitration cases, they have to deal with Court cases. They have also to deal with claims settlement work and claim prevention work. Thus, it shows that Transit Inspectors are primarily for being carried out one place to another place whereas the Commercial Inspectors are to look after various other duties which involved even dealing of arbitration cases and court cases. So their duties are not at all even similar to that of Commercial Inspectors.

22. As regards the restructuring is concerned, that is also a policy decision of the Railway Board and as per respondents, the restructuring was allowed in the Transit Cell in the year 1984 and then again on 1.3.1993 as per Ex.R-5. At what percentage the restructuring is to be done, that decision is to be taken by the administration which is a policy matter which cannot be challenged before this Tribunal.

23. Though the Railway Administration of Western Railway had also put up a case before the Board for merger of Transit Cell into a Commercial Cell as this Transit Cell is unique only on the Western Railway and the Western Railways were also directed to fall in line with other Railways and explore feasibility of merging the cadre of Transit cell with some other appropriate cadre taking into account the duties and responsibilities of the staff concerned as advised by the Joint Director Pay Commission Railway Board but the said proposal also not found feasible by the Railway Board. This again is a policy matter with cannot be assailed.

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24. As regards challenge to restructuring as given to the Transit Cell in the year 1993 is concerned, the same had given in the year 1993 and the applicant should have been filed OA. then within time but the OA. was filed on 24.3.2000 and on that count also the OA. suffers from delay and laches and the same cannot be allowed.

25. The applicants have also relied upon the report of Shri P.T.Thiruvengadam, the then Director Establishment, Railway Board New Delhi and submitted that despite that the same has not been made applicable. But in our opinion, since the applicant has raised this issue before the Ahmedabad Bench of the Tribunal by one of the retired Member of the Transit Cell which was merely that a further hearing may be given for the same grievances which were raised in the said OA. and are also similar in the present OA. Representations were also made to the Railway Board and the railway Board had raised certain queries to the Western Railway and asked the Western Railway to furnish detailed reply which was also replied but the Board ultimately did not accept the claim of the petitioners and stated that the duties of Transit Inspectors are not akin to the duties of Commercial Inspectors and Mode of filling vacancies also differ and as we have already held that the duties of Transit Cell are not akin to the duties of Commercial Inspectors, so the Railway Board has justification to deny the benefits to the applicants. Thus, we find that the applicants who had been litigating for this purpose for quite

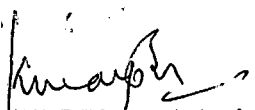
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some time, there case is rightly been dealt with by the Railway Board and as their duties are definitely different from those of Commercial Inspectors, they have no right to claim parity with them.

26. For the reasons stated above, we find that the OA. has no merit and accordingly the OA. is dismissed. No order as to costs.


(SHANKAR PRASAD)

MEMBER (A)


(KULDIP SINGH)

MEMBER (J)

mrj.