

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 799/92

Date of Decision: 03/10/97

V.K.Misra & Anr.

Applicant.

Shri R.S.Tulaskar for Shri G.K.Masand
Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.G.Rege

Advocate for
Respondent(s)

CORAM:

Justice
Hon'ble Shri/R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri. P.P.Srivastava, Member (A)

(1) To be referred to the Reporter or not? **No**

(2) Whether it needs to be circulated to other Benches of the Tribunal? **No**


(P.P.SRIVASTAVA)
MEMBER (A)


(R.G.VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

DA.NO.799/92

this the 3rd day of October 1997

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri P.P.Srivastava, Member (A)

Virendra Kumar Misra,
R/o R.B.I./47/7-8,
Central Railway Staff Quarters,
Sion, Bombay 400 022.

Mohd.Yusuf Khan,
R/o Dayabhai Chawl,
Dadiseth Road,
Near Bombay Talkies,
Malad (West), Bombay.

By Advocate Shri R.S.Tulaskar
for Shri G.K.Masand

... Applicants

V/S.

Union of India through

1. The Chairman,
Railway Board,
Rail Bhavan,
New Delhi.
2. The General Manager,
Central Railway, Bombay V.T.

By Advocate Shri V.G.Rege,
C.G.S.C.

... Respondents

O R D E R

(Per: Shri P.P.Srivastava, Member (A))

The applicants are the employees of the Central Railway. They appeared for the selection for filling up the post of Commercial Inspectors. The written test was conducted on 23.5.1982 and both the applicants passed the written test. The applicants then appeared for interview on 23.9.1985 and the applicants were selected finally on 27.4.1987.



The applicants thereafter were sent for training on 3.7.1987 and after completion of training were posted as Commercial Inspectors on 13.4.1989. The applicants were posted in the Grade of Rs.455-700(RS) which is equivalent to Rs.1400-2300(RPS). The applicants further stated that the grade of the applicants' post was enhanced to Rs.1600-2660 w.e.f. 15.5.1987. The applicants have further submitted that since the policy of giving higher grade of Rs.1600-2660 was came into force from 15.5.1987 and since the applicants were already under-going training for the same post from 4.5.1987, the applicants should have been granted this scale. The applicants have brought out that in terms of sub-para xii of Para 2 of Railway Board's letter dated 15.5.1987 which is placed at Exhibit-'D', the applicants were kept out of the provisions of this letter and were not granted the pay scale of Rs.1600-2660. This Para reads as under :-

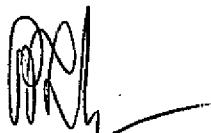
"xii. Apprentices already under training will be absorbed only in scale Rs.455-700(RS)/1400-2300(RP) or 470-750(RS)/1400-2600(RP), as the case may be for which they have been recruited."

2. The applicants have further brought out that this policy of administration was challenged by the Traffic Inspectors of Southern Railway in OA.NO.322/88 and OA.NO.488/87 before the Madras Bench of the Tribunal.



The Tribunal gave the judgement in favour of the Traffic Inspectors of Southern Railway, who were similarly placed like the applicants, on 4.12.1989. The applicants have brought out that SLP brought out against this decision was also dismissed by the Hon'ble Supreme Court. In view of the Madras Bench decision had become final, the applicants submitted a representation for granting them scale of Rs.1600-2660 and the seniority in that grade from 13.4.1989, the date they were posted to work. Since the respondent administration have not implemented the judgement of the Madras Bench, they approached this Tribunal in this OA. for granting the same relief that the applicants should be given the higher grade of Rs.1600-2660 w.e.f. 13.4.1989 and the arrears with effect from that date, as well as to grant them seniority in that grade from 13.4.1989.

3. The respondents have submitted a written reply wherein it has been brought out that the policy of the administration was to make the recruitment for higher grade Rs.1600-2660 in terms of their letter dated 15.5.1987 and the same letter is not applicable in the case of the applicants. The respondents have brought out that the different Benches of the Tribunal have given differing judgement in this connection and they have brought out that in TA.NO.172/88 the Hyderabad Bench of the Tribunal had taken a contrary view to that taken by the Madras Bench. The respondent administration has also brought out that the decision of the Principal Bench in OA.NO.



2053/88 dated 27.11.1990 was also same as that of Madras Bench. The respondents have also brought out that OA. NO.920/88 on the similar issue filed in Mumbai decision Bench went against the applicants in that OA. Therefore, since the issue was not finally settled, the Railway Ministry had filed an SLP in the Hon'ble Supreme Court and the whole issue was heard by the Hon'ble Supreme Court in Civil Appeal No.5410/92 and other similar appeals.

4. Both the counsels have brought to our notice that the issue has been finally decided by the Hon'ble Supreme Court by their decision which is reported in (1996) 4 SCC 416, Union of India & Ors. vs. M. Bhaskar & Ors. The learned counsel for the respondent administration has argued that since the issue was before the Hon'ble Supreme Court, the OA. was kept pending in this Tribunal. The Ld. counsel for the respondent administration has further argued that since the matter has been decided in favour of the administration, the present application does not survive.

5. Learned counsel for the applicant has argued that although the judgement has been given by the Hon'ble Supreme Court in favour of the administration in that SLP, the ratio of the Hon'ble Supreme Court judgement is not applicable in the facts and circumstances of the present OA.



6. Learned counsel for the applicant has brought out two distinct arguments to support his contention. Firstly, 1d. counsel for the applicant has argued that the applicants although appeared in the test in 1982 have been appointed in 1989 and since the new pay scale has come into force from 1987, the applicants would be entitled to new pay scale as they started serving after 1987 when the new scale, i.e. Rs.1600-2660 has come into force. However, we find that this issue is squarely dealt with by the Hon'ble Supreme Court in Para 13 which reads as under :-

"13. As to the last document, we would say that the same is inconsequential inasmuch as the Principal had only forwarded the representation. Though it is correct that the respondents were called for training from 1989, that is not enough to distinguish their case from other respondents inasmuch as they had come to be recruited pursuant to an advertisement of January 1985; and so, they have to be treated as pre-1987 apprentices. What has been stated in sub-para (xii) cannot be taken in isolation; that has to be understood along with other provisions contained in the memorandum. If this were to be so done, we do not think if we would be justified in treating these respondents differently from other pre-1987 apprentices because they were called for training in 1989. We have taken this view because it is known that at times there are no vacancies in training schools and so the training programme has to be spread out. We, therefore, reject the contention advanced on behalf of these respondents by Shri Das."



From the above para, it is quite apparent that the argument advanced by the 1d. counsel for the applicant is not tenable and is incorrect on the face itself as the issue has been squarely dealt with by the Hon'ble Supreme Court.

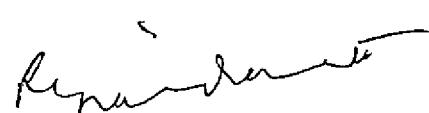
7. The other argument advanced by the 1d. counsel for the applicant is/in the Rule 125 meant for Traffic Apprentices and Rule 130 meant for Commercial Apprentices, there is a difference in the pay scale. The pay scale of Traffic Apprentice is Rs.1400-2600 and Rs.1600-2660 only while the pay scale of Commercial Apprentice is/Rs.1600-2660. On the basis of this, the 1d. counsel for the applicant has advanced the argument that may be for of Rs.1400-2300 the Traffic Apprentice the grade/is still valid but for the Commercial Apprentice the grade cannot be Rs.1600-2660 less than 1/ and therefore the present applicants who are Commercial Apprentices should be entitled to the grade of Rs.1600-2600. This argument is required to be rejected because the Hon'ble Supreme Court in their judgement/not made any difference while dealing of commercial & traffic apprentices. with the case. It is apparent from Paras 5 & 6 of the judgement of Hon'ble Supreme Court that for both Commercial Apprentices and Traffic Apprentices that of in cases like/the applicants, the pay scale of Rs.1600-2660 cannot be granted.



8. In view of the above, we are satisfied that the Hon'ble Supreme Court judgement quoted above squarely covers the case of the applicants. Since the Hon'ble Supreme Court has held that the case of those Commercial Apprentices like the applicants who are the applicants in this OA, cannot be granted the pay scale of Rs.1600-2660, the applicants' claim liable to be /Accordingly, is/rejected. OA.NO. 799/92 is dismissed with no orders as to costs.



(P.P.SRIVASTAVA)
MEMBER (A)



R.G. Vaidyanatha
(R.G.VAIDYANATHA)
VICE CHAIRMAN

mrj.