

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1063 of 1993

Date of Decision: *28th NOVEMBER 97*

R B Shinde & 42 ors Applicant.

Mr. S M Pillai Advocate for
Applicant.

Versus

UOI & ORS Respondent(s)

Mr. S.C. Dhawan Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, V.C.

Hon'ble Shri. P.P. Srivastava, M(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*

V.C. / M(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING No.6
PREScot ROAD, MUMBAI 400001

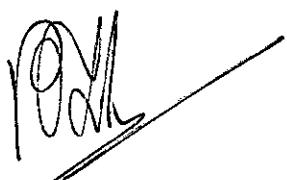
O.A.No. 1063 OF 1993

DATED : THIS 28th DAY OF NOVEMBER, 1997

CORAM : Hon. Shri Justice R G Vaidyanatha, V.C.
Hon. Shri P P Srivastava, Member(A)

1. R B SHINDE
2. K G TEKAN
3. G C ELAVIA
4. T G SOMAYA
5. A V PARAB
6. P D NAIK
7. S G SANKPAL
8. Y H SAWANT
9. R B NIKALE
10. M M SHAIK
11. A A SHAIK
12. J S NARKAR
13. S S NIKAM
14. R P SELVAM
15. M K NAIR
16. P B GAIKWAD
17. P S RAUT
18. N P KHAKHAR
19. MRS. R R PATRE
20. MRS. A V NAIR
21. V.G. PARAB
22. MRS. M T KAMBLE
23. MRS. S M SALIAN
24. S D SAVARKAR
25. MRS. A S BHIDE
26. V G GUPTE
27. W A PAREIRA
28. S A TEMKAR
29. A B LONE
30. P R FEDRE
31. N V MANKANI
32. S C RISBUD
33. J C LOHANA
34. MRS. K M ASRANI
35. S M JAGIASI
36. S V KULKARNI
37. MRS. R R ALAMELU
38. MRS. S S KULKARNI
39. MRS. R K SHAMIAN
40. MRS. HINGORANI
41. R. VASUDEVAN
42. N K DODEJA
43. MRS. M. VISWANATHAN

Sr.No.1 to 3 are Data
Processing Superintendents:
Sr.No. 4 and 5 are Senior
Console Operators;



Sr.No. 6 is input-output
Superintendent;
Sr.No. 7 to 13 are General
Supervisors;
Sr.No. 14 to 17 are Junior
Console Operators;
Sr.No. 18 to 33 are Senior
Data Entry Operators;
Sr.No. 34 to 42 are Junior
Data Entry Operators and
Sr.No. 43 is a Console
Superintendent in Electronic
Data Processing Centre,
Central Railway at CST
Mumbai 400001
(By Adv. Mr. S N Pillai)

..Applicants

V/s.

Union of India through
the General Manager
Central Railway
CST Mumbai 400001
(By Adv. Mr. S C Dhawan)

..Respondents

ORDER

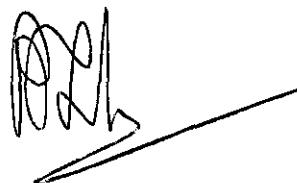
[Per: P P Srivastava, Member(A)]

1. The applicants in this O.A. are working in the Electronic Data Processing center (EDPC) with the Central Railway. They were initially working in the Ministerial cadre as Clerks when they were drafted to work in the EDPC as punch operators. The applicants have submitted that the staff of EDPC consist of punch operators, punch room supervisor, general supervisor, data processing superintendents, input-output superintendents, console operators etc. The Punch room staff constituting of all these categories would continue to be classified as Ministerial staff for all purposes in the matter of service conditions. The applicants have annexed letter dated 26.3.70 as Annexure A-2 to the O.A. by which the respondent administration had decided that the Punch Room



staff will continue to be counted for purpose of seniority, promotion etc., in their parent units i.e., in the clerical cadre of their original unit. The applicants have further brought out that the Railway Board vide order dated 18.6.81 issued order regarding restructuring of Ministerial cadre of non-Accounts department other than personnel. In this order 20% of the posts were kept in the lowest grade and 80% of the posts were kept in the higher grades. The lowest grade of clerk was in the grade Rs.260-400 and the higher grades were 330-560 to 7000-900. The applicants have brought out that this upgradation for the Ministerial staff was not implemented by the respondents in the case of Punch Room while implementing the same in other Ministerial cadres of the central Railway. Applicants have further submitted that the respondents reviewed percentage distribution of posts in Punch Room cadre on 16.11.1984 and implemented the percentage of 80% : 20% upgradation from 1.1.1984. The applicants claim is that this order with effect from 1.1.1984 should be implemented with effect from 1.10.1980 in case of the applicants as has been done in the case of other Ministerial staff vide their letter dated 18.6.80.

2. The applicants have further submitted that the South-Central Railway EDPC staff approached the High Court of Andhra Pradesh at Hyderabad by filing a writ

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petition No.5125 of 1984 which came to be transferred to Hyderabad Bench of the Tribunal and was renumbered as Transferred Application No.65/87 for implementing the Railway Board's order dated 18.6.81 from 1.10.1980 in the case of EDPC staff. The applicants submitted that the Hyderabad Bench of the Tribunal vide its judgment dated 7.9.89 granted the relief to the EDPC staff of the South Central Railway. The operative portion of the judgment reads as under:

"We, therefore, direct the respondents to fix the pay of the applicants by giving them the upgradation benefit from 1.10.1980. They will be eligible for arrears of pay from 1.1.1984 only after giving them this benefit, and not for arrears from 1.10.1980 to 1.1.1984."

The applicants have submitted that the Special Leave Petition filed by the Respondent administration against the judgment of the Hyderabad Bench of the Tribunal has been dismissed on 10.5.90. The applicants have further submitted that they approached the Respondent administration for implementing the Hyderabad Bench Judgement and grant them upgradation in the ratio of 80% : 20% in the EDPC in all the zonal railways vide their letter dated 6.2.1990. Thereafter the All India Railwaymen Federation approached the Respondents on 24.2.90 for implementing the ratio of 80% : 20% and give them upgradation from 1.10.1980. The request of the applicants through their Federation has been turn down by

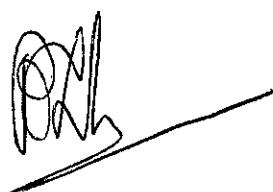
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the respondent administration vide their letter dated 24.6.92. Aggrieved by this reply of the respondent administration, Annexure A-1, the applicants have approached this Tribunal and they have sought the relief that the judgment of the Hyderabad Bench of the CAT should be implemented in the case of the applicants and they should be given the 80% : 20% with effect from 1.10.1980 and pay them the arrears. The letter dated 24.2.90, Annexure A-1 reads as under:

"I am directed to refer to your letter No.AIRF/364(52) dated 1.6.1990 regarding refixation of pay of EDP Staff in the restructured cadre on the basis of 80:20 with retrospective effect from 1.10.1980 as per the judgment of Hyderabad bench of CAT.

" The categories of EDP Staff and Ministerial Staff were separated when upgradation orders were issued in 1979. After the issue of 1984 upgradation order No.PCIII/84/UPG/9 dated 16.11.1984 the EDP Staff is even better placed than the Clerical Staff. Hence the two can't be compared at any stage after separation. The court's judgement is being implemented only for petitioners."

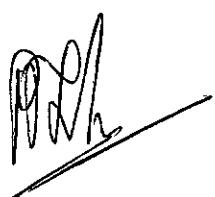
3. The applicants have submitted that in view of the Hyderabad Bench judgment the issue stands settled and they are entitled to the relief which has been granted to the staff of the South Central Railway. In fact the Respondents should have implemented the order after the SLP was dismissed, but they have not done so and therefore the applicants had to come to the Tribunal for seeking the relief.

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4. The respondent administration has filed a reply. The plea of the respondent administration is, that the applicants are not entitled to the relief as they have come to the Tribunal for an issue which was decided in the year 1984 and although the Hyderabad Bench has given a decision in favour of some of the applicants and the order of the Hyderabad bench has been implemented in favour of the applicants in that O.A. the relief granted therein cannot be generalised as the same is against the circular of the Railway Board which was not brought to the notice of the Tribunal at the time when the Hyderabad bench decided the issue. The respondent administration has contended that as brought out in the Railway Board letter dated 24.6.92 the Ministerial staff were separated from the EDP staff by issuance of upgradation order in the year 1979. The respondent administration has brought out specifically letter dated 31.8.1979 which is placed as Exhibit 6 to the reply wherein a separate percentage of upgradation was granted to the EDP staff. The letter reads as under:

"The Committee of the Departmental Council of the Ministry of Railways under the schemes of Joint Consultative machinery, reviewed the service conditions of the Key Punch Operators Gr.I and Grade II working at Data Processing Centres. After due consideration of the recommendations of the said Committee, the Ministry of Railway have decided that the distribution of posts of Key Punch Operators Gr.I (Rs. 330-560) and Gr.II (Rs.260-400) should be 60% and 40% respectively."

The respondents, therefore, argue that in view of the specific percentage sanctioned by the Ministry of

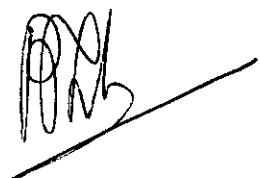


Railways for the Punch Room operators the percentage which is granted to the Ministerial staff would not be applicable to the Punch Room Operators. The learned counsel for the respondents has argued that this letter was never brought to the notice of the Hon'ble Tribunal at Hyderabad and has not been quashed by the Tribunal.

5. Counsel for the respondents has also argued that the advantage of the decision of Hyderabad Bench of the Tribunal cannot be granted to the applicants in the present case.

6. The learned counsel for the respondents referred to the Hon. Supreme Court judgment in the case of BHOOP SINGH Vs. UNION OF INDIA, AIR 1992 SC 1414, for the proposition that the issued considered and decided by the Tribunal in a similar case would not entitle the petitioners to claim the relief even after allowing the delay. The Hon. Supreme Court has held that the delayed approach would not give claim to the petitioner only on the basis that similar relief has been granted to some others. The Hon. Supreme Court has observed in para 7 of the judgment as under:

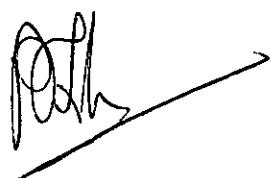
"7. It is expected of a Government servant who has a legitimate claim to approach the Court for the relief he seeks within a reasonable period, assuming no fixed period of limitation applies. This is necessary to avoid dislocating the

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administrative set up after it has been functioning on a certain basis for years. During the interregnum those who have been working gain more experience and acquire rights which cannot be defeated casually by collateral entry of a person at a higher point without benefit of actual experience during the period of his absence when he chose to remain silent for years before making the claim. Apart from the consequential benefits of reinstatement without actually working, the impact on the administrative set up and on other employees is a strong reason to decline consideration of a stale claim unless the delay is satisfactorily explained and is not attributable to the claimant. This is a material fact to be given due weight while considering the argument of discrimination in the present case for deciding whether the petitioner is in the same class as those who challenged their dismissal several years earlier and were consequently granted the relief of reinstatement. In our opinion, the lapse of a much longer unexplained period of several years in the case of the petitioner is a strong reason not to classify him with the other dismissed constables who approached the court earlier and got reinstatement."

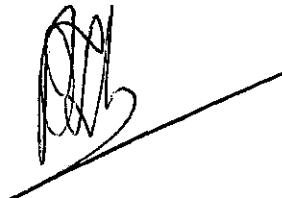
Counsel for the respondents has argued that the applicants were given the upgradation on the ratio of 60:40 in the year 1979 and they have accepted the same and have come to challenge the same only after the Hyderabad Bench of the Tribunal granted the relief to some of the applicants similarly placed. The claim is therefore barred by delays and latches as well as on the ground that it will upset the existing set up after a long period.

7. Counsel for the respondents has also argued that on merits also the applicants claim is not sustainable as the percentage in the case of the EDPC to which the

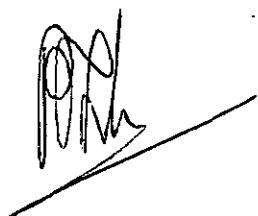


applicants now belong has been improved further and the lowest two grades corresponding to the grade of Rs.260-400 and 330-560 have been eliminated from the cadre of EDPC. The respondent administration has issued order dated 16.11.1984 (Exhibit R-4) in the case of applicants, which shows that EDPC staff is better placed than the clerical staff. Counsel for the respondents has also argued that the structure is required to be modified on the basis of work requirements and since the work of applicants in the EDPC is different than that of the Ministerial staff the percentage of posts in various grades is required to be made on the basis of work requirement. In view of this, the post of junior Punch Operator in the grade Rs.260-400 are required to be progressively worked and placed in the scale of Rs.330-560. Counsel for the respondents has therefore argued that the decision of the Hyderabad Bench cannot be applied as that decision has not considered specific order of the Railway Board giving upgradation to the EDPC staff in the ratio of 60:40 vide letter dated 31.8.79. It is further contended that since this letter has not been quashed by the Hyderabad Bench by its judgment it cannot be followed in this case.

8. We have heard the counsel for both the sides. The issue involved in this OA is whether the applicants would be entitled to the relief granted by the Hyderabad Bench

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in its judgment, SLP against which has been dismissed by the Hon. Supreme Court. It is seen that the administration has denied the claim vide their letter dated 24.6.92. It is also seen that letter dated 31.8.79 by which the administration had taken a decision to give the percentage of 60:40 was not brought to the notice of the Hyderabad Bench of the Tribunal and the Tribunal proceeded on the ground that the percentages which were applicable to the Ministerial staff are also applicable to the EDPC staff. The cause of action for the applicants in the present case arose in 1979 when the percentage to the EDPC was granted in the ratio of 60:40 instead of 80:20 as was given to the Ministerial staff. The applicants in the present OA have approached the Tribunal after the judgment of the Hyderabad Bench of the Tribunal i.e., after the grade Rs.260-400 was completely eliminated from the cadre of Punch Room after 1984 upgradation. We are of the view that the applicants cannot be given the benefit of Hyderabad Bench of the Tribunal decision as they have approached the Tribunal after a long lapse of time after the cause of action arose. Simply because some people have got relief from the decision of the Hyderabad Bench is not sufficient to apply that decision in the case of the applicants. We are taking this view especially in view of the fact that the Hyderabad Bench of the Tribunal was not seized with the issue and it has not considered the Railway Board

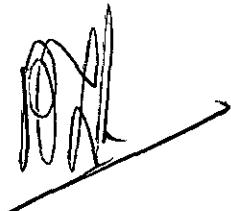
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Letter dated 31.8.79 by which the EDPC staff were given the percentage of 60:40 for 330-560 and 240-400 as the said letter was not brought to the notice of the Tribunal.

9. The applicants have brought to our notice a Division Bench judgment of Jodhpur Bench of the Tribunal reported in 1992(3)(CAT) AISLD 416, ABDUL SHAKDOOR & ORS. Vs. UNION OF INDIA & ORS, wherein it has been held that a decision of one bench of the Tribunal has binding nature on all other Benches unless set aside on review or by Supreme Court.

10. The respondents have argued that decision relied upon by the learned counsel for the applicant is not applicable in the present case as the order by which the EDPC staff specifically the Punch Room Operators were granted the percentage of 60:40 vide railway administration letter dated 31.8.79 has not been struck down by the Hyderabad Bench of the Tribunal.

11. We are inclined to accept the argument of the learned counsel for the respondents and the ratio laid down by the Hon. Supreme Court in BHOOP SINGH's case (supra) and hold that the applicants cannot claim the relief after a long time on the basis of the Hyderabad Bench of the Tribunal. We are also conscious of the fact

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that the grade in which the applicants are seeking higher percentage i.e., the lowest grade of Rs.260-400 is not available in the EDPC.

12. We therefore do not see any reason to interfere with the order of the Railway administration dated 24.6.92 by which the applicants have been denied the percentage of 80:20 with retrospective effect from 1.10.1980. The O.A. is disposed of with no order as to costs.



(P.P. Srivastava)

Member (A)



Re�ardment
28/11/92
(R.G. Vaidyanatha)

Vice Chairman

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