

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 572/93

Transfer Application No.

Date of Decision

13-10-95

R.N.Udupa & Ors.

Petitioner/s

Shri G.S.Walia.

Advocate for
the Petitioners

Versus

Union of India & Anr.

Respondent/s

Advocate for
the Respondents

CORAM :

Hon'ble Shri. M.R.Kolhatkar, Member(A).

Hon'ble Shri.

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to other Benches of the Tribunal ?

MR Kolhatkar
(M.R.KOLHATKAR)
MEMBER(A).

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, BOMBAY.

Original Application No.572/93.

R.N.Udupa & Ors.

... Applicants.

V/s.

Union of India & Anr.

... Respondents.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

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Appearances:-

Applicants by Shri G.S.Walia.
None for the Respondents.

JUDGMENT :-

(Per Shri M.R.Kolhatkar, Member(A)) Dt. 13-10-95

In this application, the applicants are retired Railway employees. The application was filed on 8.6.1993 and the dates of superannuation of the applicants are as below:

1. R.N.Udupa	31.12.1987
2. N.D.Memon	30.06.1987
3. G.R.Sharma	30.04.1990
4. Mrs.V.M.Fernandes	30.04.1993 "

The applicants joined the service of the Western Railway as Stenographers. What they have impugned is the letter dt. 22.2.1993 from the Western Railway Headquarters Office informing them that the request regarding stepping up of their pay similar to the case of Shri K.V.Govindan and others has been examined in detail and it is advised that the same is not in order and hence cannot be accepted. The relief which was given to Shri K.V.Govindan was in its turn based on the decision of this Tribunal in O.A. No.470/88 K.V.Govindan V/s. UOI & Ors. decided on 22.8.1991. In that case, the question involved was relating to stepping up of the pay under Rule 2018 B of the Indian

Railway Establishment Code, Vol-II which corresponds to F.R. 22 (C). For appreciation of the question involved it would be useful to set out the avenues of promotion ^{to} Stenographers prior to 1978 as below :

"Rs.330-560	.. Recruitment grade (Selection)
Rs.425-700	.. Selection
Rs.550-750	.. Non-selection
Rs.550-900	.. Selection
Rs.650-960	.. Selection "

The Railway Board had taken a decision on 28.7.1978 which appears at page 18 (Exhibit 'B') the same is reproduced below:

"Sub: Creation of posts of Stenographers in non-Secretariat organisations in the grade of Rs.550-900.

...

The question of improving the pay-scales for Stenographers in the non-Secretariat organisations attached to HOD Level II and above was under discussion in a Committee of the National Council (JCM).

2. After further consideration of the matter, the President is pleased to decide that the pay scale of Rs.550-25-750-EB-30-900 may be allotted to the posts of Stenographers attached to Addl.HODs and HODs on the Zonal Railways, Production Units and other Railway Organisations drawing pay in the scale Rs.2250-125/2-2500 and above

3. The scale of pay Rs.550-900 may be introduced wherever admissible in the Railways, Production Units and other Railway organisations by adjusting the present sanctioned strength of the posts of Stenographers. These posts of Stenographers in the pay scale of Rs.550-900 will be filled by promotion amongst Stenographers in the pay scale of Rs.550-750 on the basis of seniority-cum-fitness."

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In Govindam's the applicants were directly promoted to the pay scale Rs.550-900 without being promoted in the intervening grade of Rs.550-750 because the number of posts in that grade was very limited. The anomalous situation arises because of the fact that the juniors who had first touched pay scale of Rs.550-750 got the benefit of one increment and therefore, got their pay fixed at higher level than their seniors

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xxxxxxxxx whereas the juniors who were promoted to higher pay scale of Rs.550-900 after touching the pay scale of Rs.550-750 got the benefit of one increment ; the seniors in the scale of Rs.450-700 who were directly promoted to the higher scale of Rs.550-750 got a lower fixation of pay, compared to their juniors; though the pay of these junior employees in the grade of Rs.425-700 was lower than the pay of the seniors in the same grade. In this connection, the Railway Board in their letter No.PC/67/PP/13 dt. 27.7.1967 issued a clarification on the point as to how the pay of an employee is to be fixed when he is simultaneously promoted to two different posts carrying higher responsibility :

- "(i) He should be deemed to have been promoted first to the lower post (Rs.350-475) and pay fixed under Rule 2018-B(FR 22C) R.II provided it is certified that he would have held this post for a period not less than 22 days but for his promotion to the higher post.
- (ii) He should subsequently be promoted to the higher post (Rs.425-575) and pay fixed under Rule 2018-B (FR 22-C) R.II with reference to the pay arrived at in (i) above."

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It was also contented Govindan's case that, whereas, in the Central Railway the benefit of the Railway Board instructions dt. 27.7.1967 was allowed to the senior employees in their pay fixation, such a benefit was not extended to the concerned staff by the Western Railway. In view of this, the Railway Board instructions dt. 27.7.1967 and the Central Railway action cited before it, the Tribunal in Govindan's case granted the relief, meaning thereby that the applicants are entitled to fixation of pay under Rule 2018B on the basis of their deemed promotion in the intermediate grade of Rs.550-750 with consequential benefits resulting therefrom. The Tribunal quashed the impugned order dt. 14.8.1987, but the same is not available.

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2. The applicant has also amended the O.A. vide M.P. No.1306/94 and the same was allowed. Through this amendment the applicants have sought to compare their case with one S.N.Marar who is their junior. The seniority position as per the available grading list being as below :

"1. Mrs.V.M.Fernandes	: Sl.No. 43
2. Shri N.D.Memon	: Sl.No. 48
3. Shri G.R.Sharma	: Sl.No. 52
4. Shri R.N.Udupa	: Sl.No. 64
5. Shri S.N.Marar	: Sl.No. 73. "

According to the applicant Shri S.N.Marar was promoted from the scale of Rs.425-700 to the scale of Rs.550-900 on ad hoc basis w.e.f. 25.9.1980. The said ad hoc promotion was subsequently regularised on 6.2.1981. Applicant No.3 had made a representation relating to the promotion of Shri S.N.Marar on 23.12.1991. It is further pointed out that Shri Govindan had also represented to the Respondents relating to Shri Marar getting more pay than himself because Shri Govindan was senior to Shri Marar. Thus through the amendment the applicants have sought to compare their case with the case of ^{one} specific employee viz. Shri S.N.Marar and the relief sought viz. fixation of the pay under Rule 2018 B in terms of the judgment in Govindan's case is sought to be made referable, to the date on which Shri Marar began to get higher pay scale.

3. The respondents have opposed the O.A. firstly on the ground of limitation. On merits according to them the Railway Board had decided to allow the improved pay scale of Rs.550-750 to stenographers whose pay scales attached to HODs and Level II HODs were required to be upgraded, resulting in reduction in the number of

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posts in the scale of Rs.550-750. As a result of the above reduction some of the Stenographers in the scale of Rs.425-700 became eligible to be promoted directly to the scale of Rs.550-900. According to respondents such promotions are permissible in terms of Railway Board's instructions dt. 26.11.1979 which is reproduced below:

"It has been decided by the Ministry of Railways that the posts of Stenographers in grade Rs.550-900(RS) may be classified as 'Selection' to be filled in from amongst Stenographers in grade Rs.425-700(RS) and Rs.550-750(RS) may be classified as 'Non-selection'."

The Respondents contend that the Railway Board's circular dt. 26.11.1979 was not brought to the notice of the Tribunal. Moreover, there is also a Judgment of the CAT at Madras dt. 19.6.1987 in O.A. No.324/85 and 343/86. In this Judgment it was observed as below:

"The second contention of the Respondents that an anomaly is created because there are two avenues from which appointment to the scale of Rs.550-900 are made, one category of candidates who progress in stages get additional benefit, as compared to those who get a direct jump from 425-700, hardly convinces us. A person getting appointed from the scale of Rs.425-700 to Rs.550-900 skips the intermediate scale and gets a good jump and that should compensate him for not getting the benefit of another fixation which would have accrued to him if he had gone through the intermediate scale. Such a person gets the benefit of seniority as well as in the highest scale sooner as compared to those who go through the intermediate scale. These are compensations for the loss of benefit of pay fixation in the intermediate stage."

Thus the CAT Madras had not permitted stepping up of pay benefit to the seniors directly promoted from the grade Rs.425-700 to Rs.550-900 vis-a-vis the

juniors who came to the grade Rs.550-900 through the intermediary grade of Rs.550-750. It is further contended that the Railway Board under their letter dt. 30.4.1984 has issued clear directions that stenos promoted from scale Rs.550-750 to 550-900 are not required to be given fixation under Rule 2018(b) because their duties and responsibilities do not change.

4. Regarding applicability the Board's letter dt. 27.7.1967 referred to by the applicants, it is applicable only to the cases where the promotion is permissible only by intermediary grade. In the instant case Board had permitted promotion directly from the scale Rs.425-700 to the scale of Rs.550-900 and as such it was not obligatory to first promote to the intermediary grade and thereafter promote to the next higher grade.

5. So far as the comparison in the Central Railway is concerned, it is contended that policy authority making (viz.) Railway Board have stated vide D.O. No.E(M&A)II/78 PS-3/5 Part A dt. 29.3.1993 that the intention of Board's letter dt. 26.11.1979 is not to give the benefit of double fixation to those directly who are promoted from Rs.425-700 to 550-900. According to the respondents it may be that the juniors may for some time get a higher pay scale, but the employee who is promoted to the scale Rs.550-900 gets the seniority benefit in the scale of Rs.550-900 as also in further increments in the scale, whereas, an employee who has continued to be junior will draw increment only in the time scale Rs.550-750.

6. With reference to the amendments made to the O.A. it is contended that there is no provision to fix the pay on deemed promotion. The pay of the

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applicant on promotion from the grade Rs.425-700, Rs.550-900 was fixed under FR 22(C) directly as per rules due to the reason that the applicants got accelerated promotion skipping the intermediary grade whereas the juniors were first promoted to the grade Rs.550-750 and then to Gr.Rs.550-900, thus getting double benefit of FR-22C fixation. Regarding Shri Marar it is contended that Shri Marar's promotion was purely ad hoc on local basis and the order promoting him states that he willnot be eligible for any right of permanent promotion or grade.

7. We have already noted that the applicants are all retired employees. Normally the benefit of pay fixation is given to the serving employees so as to serve as an incentive. This consideration does not apply to retired employees. The respondents have also contended that they were not able to point out to the Tribunal when it decided Govindan's case ~~dated 26-11-79~~ Railway Board's circular dated ~~26-11-79~~ through oversight so also the differing judgment of the CAT Madras in O.A.No.324/85 and 346/86 could not be brought to the notice of the Tribunal. While these submissions may be valid so far as they go, we feel that we are bound by the ratio of Govindan's judgment which was a judgment rendered by the then V.C. in relation to employees who belong to the same cadre. It has also come on record that Shri Marar with whom the applicants compare their case is junior to all the applicants. We also note that Govindan's judgment heavily relied on the allegation of discrimination between Central Railway and *Western Railway* to which the respondents have

no satisfactory answer. Under the circumstances we are of the view that while we may not necessarily agree with Govindan's judgment, we are ~~xxxxx~~ constrained to follow the same as a matter of judicial discipline. We are therefore inclined to allow the application and direct that the applicants are entitled to fixation of pay under Rule 2018(b) on the basis of deemed promotion in the intermediate grade of Rs.550-750 and to all consequential benefits resulting therefrom in terms of this Tribunal's earlier judgment dated 22-3-1991. The pay fixation of the applicants be done notionally with reference to Shri Marar's case and to the extent the applicants have retired from service they should also get the benefit of refixation of their pension if any. They would be also entitled to arrears of pension. However, their entitlement to arrears if any of the pension and to arrears of salary especially in the case of applicant No.4 who retired only recently is restricted to one year prior to the date of filing of this application which is 8-6-1993.

8. There will be no order as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
Member (A)

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