

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 65 /94/199

Date of Decision: 16-08-96

Selvaraj John & Anr.

Petitioner/s

Shri L.M.Nerlekar.

Advocate for the
Petitioner/s

V/s.

Union of India.

Respondent/s

Shri S.C.Dhawan.

Advocate for the
Respondent/s

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 ? ☒

M.R. Kolhatkar

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

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH.

Original Application No.65/94.

pronounced, this the 16th day of August 1996.

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

1. Selvaraj John,
B/25, IIIrd Floor,
Govind Co-operative Housing
Society, G.Gupte Road,
Dombivli (West).
2. Chalyal Kunjupillay Prasannan,
Sundarabai Samant Nagar,
5/99, Near Canara Engineering
Company, Pant Nagar,
Ghatkopar(E),
Bombay - 400 075.
(By Advocate Shri L.M.Nerlekar)
V/s.

... Applicants.

Union of India through
The Divisional Railway Manager,
Central Railway,
Bombay V.T.

... Respondent.

(By Advocate Shri S.C.Dhavan,CGSC)

O R D E R

¶ Per Shri M.R.Kolhatkar, Member(A) ¶

In this O.A. filed under section 19 of the
Administrative Tribunals Act, the facts are as below.

The applicant started as Casual Labour under Respondent
(Executive Engineer, Dadar) in 1978. There are two ^{applicants}
and ^{the} (some of) dates are different and therefore the
same are shown in the statement below as compiled :

Particulars	Applicant No.1	Applicant No.2
1. Casual Labour	10.03.78	07.08.78
2. MRCL	01.01.83	17.07.81

...2.

Particulars	Applicant No.1	Applicant No.2
3. Absorbed as permanent Casual Labour.	23.01.85	01.04.85
4. Appointed to officiate on ad-hoc basis as Stores Issuer in the grade Rs.825-1200.	12.06.85	12.06.85
5. Reverted from the officiation.	15.10.93	15.10.93

2. The contention of the applicants is that by the letter dated 7.12.1990 (at Annexure-'A') there are 29 names in which applicant No.2 is at Sl.No.27 and applicant No.1 is at Sl.No.29 and the first 12 employees were declared eligible for fixation in the higher grade of Rs.950-1500 with retrospective effect viz. 1.1.1986 i.e. the date from which pay scales were revised in terms of IVth Pay Commission. Subsequently, by the letter dt. 22.11.1990 (at Annexure - 'B'), it is stated that the sanction for operation of remaining posts in the above cadre in the scale of Rs.950-1500 w.e.f. 1.1.1986 has been received, this is made subject to the following :

- (1) that the concerned employees are performing any two of the seven items of the duties listed in paragraph 1 (IV) of Railway Board's letter dt. 27.9.1963;
- (2) selection in the regular selection which is being held in due course of time.

The applicants contend that there was no other condition to be fulfilled for upgradation of the posts held by them to the higher scale of Rs.950-1500. It is noted that Sl.No.13 to 29 are working on ad-hoc basis or officiating capacity, but so long as they were selected in regular selection they were entitled to be given the higher grade.

However, by subsequent letter dt. 19.3.1993 only 12 additional employees working on ad -hoc basis in the grade Rs.825-1200 were made eligible to the benefit of fixation in the grade Rs.950-1500 w.e.f. 1.1.1986. It this list the names of the applicants are not to be found. A representation was made on 22.4.1993 by the applicant to the respondent, but there was no reply. The applicants have pointed out that a proposal was sent by the Loco Foreman in relation to the applicants on 4.3.1986 (at page 16). It is stated in this proposal that Shri S.John Applicant No.1 has been put to officiate as Store Issuer in a clear vacancy. It is further stated that Applicant No.2 Shri C.K.Prasannan has been put to officiate as Store issuer in a vacancy arisen out of unauthorised absence of the regular incumbent.

3. The applicants have, therefore, claimed the relief of grant of pay scale of Rs.950-1500 w.e.f. 1.1.1986 with 12% interest.

4. The respondents have opposed the O.A. The Respondents contend that the applicants were put to work on local officiating ^{basis} in the post of Store Issuer without ^{and} the prior approval of the Competent Authority by order ^{they were reverted} dt. 16.10.1993 and that the applicants have suppressed ^{reversion} the fact of from the Tribunal. The respondents contend that applicants have not challenged the order of reversion and even otherwise, as they are claiming payment of a

...4.

particular salary scale from 1.1.1986, therefore, the O.A. is barred by limitation. It is further contended that the post of Store Issuer is a selection post and the applicants ~~have~~ not so far been selected to the said post. The applicants do not fulfil the requisite condition of completing three years' service from the date of regularisation. They were regularised on 23.1.1985 and 1.4.1985 respectively and they could not have been put to officiating promotion till completion of three years. When the applicant No.1 had started officiating, he had completed only four months plus a few days from the date of regularisation and the applicant No.2 had put in only two months and a few days from the date of regularisation when he started officiating. The Respondents further contend that, in any case, as on 1.1.1986 there were only 24 posts remaining for upgradation. There was no sanction for operating more than 24 posts and the remaining persons ^{who} were wrongly working in excess on local officiating basis over and above in the sanctioned posts of Store Issuer were reverted. According to the respondents, therefore, the applicants are not entitled to any relief.

5. The counsel for the applicant relies on following case law.

(1) Supreme Court Judgment in H.L.Trehan and others V/s. Union of India & Others (1989 SCC (L&S) 246). This lays down that any alteration in conditions of service prejudicially affecting the employees cannot be effected without affording opportunity of a

and
predecisional hearing to the employees/would be
arbitrary and violative of Article 14.

(2) CAT, Jabalpur Judgment in Sunil Kumar Namdeo and others V/s. Union of India & Others (1991(2) AISLJ CAT 361). It deals with effect of mistake of government. Ad-hoc employees through mistake were given benefit of LTC, GIS, GPF etc. like regular employees for years. The Tribunal held that the mistake cannot take away the right conferred and the consequences of mistake should devolve on the authorities.

(3) Punjab & Haryana High Court Judgment in Bhanwar Singh V/s. State of Haryana and others (1991 LAB. I.C. 2394), in which it has held that the denial of predecisional hearing violates principles of natural justice.

6. On the other hand, the counsel for respondent relied on the CAT, Madras Bench decision in N.Segaran (1995(1)ATJ 343) V/s. Union of India & Ors., in which it was laid down that the wrong pay fixation is to be challenged within the period of limitation.

7. In my view, ^{the law laid down in} N.Segaran's case is no longer a good law in view of the Supreme Court Judgment regarding pay fixation in M.R.Gupta's case. The present ^{however} case is not that of wrong pay fixation, but it is that of payment of salary in a particular pay scale (Rs.950-1500) when the applicants have actually done the work in terms of Railway Board's instructions and when

the applicants were led to believe that they will be fixed in the higher pay scale of Rs.950-1500 (vide Annexure - 'B' letter dt. 22.11.1990). The facts in Jabalpur Bench Judgment were ^{slightly} different because there the question was that of termination of employment and the Tribunal held that the temporary servants cannot be terminated solely on the ground that they have not been cleared by the Staff Selection Commission. The Supreme Court Judgment in H.L.Trehan & Ors. also relates a different issue viz. to compliance with the principles of natural justice and lays down that the failure to afford predecisional hearing inspite of statutory provision to take decision 'duly', was ~~arbitrary~~ arbitrary and a mere post decisional ^{held} hearing to the aggrieved persons was also to be ineffective.

8. As rightly pointed out by the respondents, the applicants have not challenged their reversion w.e.f. 16.10.1993. The short question for decision therefore is whether for the period from 1.1.1986 till they were reverted viz. 15.10.1993, are the applicants entitled to draw their salary in the higher grade of Rs.950-1500. It appears to me that the letter dt. 22.11.1990, which says that incumbents from Sl.No.13 to 29 ^{be continued in the grade} would be subject to selection in the regular selection which is being held in due course of time gave rise to legitimate expectations to the applicants that they would be given the pay scale of Rs.950-1500 with retrospective effect on their being regularly selected.

Nothing is said regarding whether such a selection took place or not. It is not denied that the applicants had actually worked in the posts and it is not disputed that the applicants did ~~not~~ perform two of the seven items of duties listed in the Railway Boards letter dt.27.9.63. It may be that the applicants were not entitled to be promoted on ad hoc basis under the rules because they had not even completed three years of service from the date of regularisation. But if so, the case for being given higher grade after completion of three years of service viz. 23.1.1988 in the case of applicant No.1 and 1.4.1988 in the case of applicant No.2 does deserve to be considered. I am therefore, of the view that the applicants are entitled to draw their salary in the higher pay scale of Rs.950-1500 from these dates up to the date of reversion. The O.A. was filed on 10th December, 1993 and therefore, the applicants would be entitled to the arrears^{for} one year prior to the date of filing of the application. The O.A. is, therefore, disposed of by passing the following order.

O R D E R

The O.A. is partly allowed. The Respondents are directed to pay the salary to the applicants in the relevant scale of Rs.950-1500 from the dates viz.23.1.1988 and 1.4.1988 till the date of reversion. ~~The new fixation~~
~~shall be according to the~~ The notional pay fixation

may be done for the period from 23.1.1988 and 1.4.1988 and the arrears of salary for the period from 10th December, 1992 till the period of 15.10.1993 be paid to the employees. payment be made to the applicants within three months from the date of communication of the order. There would be no order as to costs.

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

B.