

CENTRAL ADMINISTRATIVE TRIBUNAL  
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 1204/95/199

Date of Decision: 12-09-96

Anilkumar Tiwari & Ors.

Petitioner/s

Shri G.K.Masand.

Advocate for the  
Petitioner/s

V/s.

Union of India & Anr.

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)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH.

Original Application No. 1204/95.

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

Pronounced, this the 12<sup>th</sup> day of Sept 1996.

1. Anilkumar Tiwari,  
Siri Srinarayan Niwas,  
Behind Milind Nagar,  
Igatpuri.
2. V.Purshotam,  
A/12, 3rd floor,  
Pandse Nagar,  
Dombivli (East).
3. OmPrakash Mehta,  
272, Lucky House,  
66/67, S.B.S. 5th Fort,  
Bombay - 400 001.

... Applicants.

(By Advocate Shri G.K.Masand).

V/s.

1. Union of India  
through General Manager,  
Central Railway,  
Bombay V.T.
2. Divisional Railway Manager,  
Central Railway, Bombay  
Division,  
Bombay V.T.

... Respondents.

(By Advocate Shri S.C.Dhawan).

O R D E R

(Per Shri M.R.Kolhatkar, Member(A))

In this O.A. the applicants claim the relief of stepping up of pay with reference to their juniors viz. S/Shri B.R.Ambekar, M.J.Ramtekar and N.S.Khade who belong to SC community and who were promoted on ad-hoc basis while in the lower grade Rs.330-560 and who ~~continued~~ continued to get the benefit of that ad-hoc promotion by way of higher pay even in the revised grade of Rs.1400-2300.

2. The applicants are working in the scale of Rs.1400-2300 as Head Travelling Ticket Examiners. The applicant No.1 was appointed in the feeder grade of Rs.260-400 in July, 1974, promoted to the next grade of Rs.330-560 in the year 1981 and further promoted to the grade Rs.1400-2300 from 8.6.1990. The corresponding dates in respect of applicant No.2 are 3.7.1974, 1981 and 6.3.1990 and in the case of applicant No.3 are 23.5.1974, 1981 and 8.6.1990. Their seniority positions are 302 and 305 and 308. The three employees with whom the applicants compare their case were promoted against the reserved quota on regular basis from 8.6.1990, but even earlier, they were promoted to the higher grade in the year 1985 on ad hoc basis and have been working in the said grade since then. They have also ~~having~~ drawn increments in the above grade since 1985. They were regularised along with the applicants on 8.6.1990. and therefore pay had to be protected as they were already drawing higher salary in the same grade. It is not disputed that they are junior to the applicants, their seniority being 346, 347 and 348. The contention of the respondents is that the applicants belong to the general community and therefore they cannot compare themselves with candidates belonging to reserved community and that in any case the applicants did not protest in 1985 and therefore the O.A. is time barred.

3. The applicants are claiming relief under Indian Railway Establishment Manual Rule 1316 corresponding to F.R. 22-C. The applicants contend that the respondents have propounded a preposterous proposition that the applicants belonging to general community have to compare their case only with Railway servants belonging to general community and that they cannot compare their case with Railway servants belonging to reserved community. The applicants contend that their case is fully covered by the relevant Railway Rule <sup>1316</sup> corresponding to F.R. 22-C and they are entitled to relief.

4. It is well settled that before granting relief of stepping up, the fulfilment of the following conditions is a pre-requisite :

- "(a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;
- (b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;
- (c) The anomaly should be directly as a result of the application of F.R. 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer."

The condition 'c' states that the anomaly is directly as a result of application of F.R. 22-C or corresponding <sup>1316</sup> Railway Rule. The example given is that even in the

lower post the junior officer drew from time to time the higher rate of pay than the senior by virtue of the above provision to step up the pay of the senior officer. It is evident that the grant of advance increment is only an illustration of the general proposition that the anomaly should be directly as a result of application of F.R. 22-C. <sup>(Rly Rule 1316)</sup> In this case the anomaly between the applicants and the railway employee with whom they compare their case has arisen not directly as a result of application of Railway Rule 1316, but it has arisen because of the separate provisions relating to reservations for SC and ST even in the matter of ad-hoc promotions. In this connection the counsel for the respondents in-vited my attention to Chapter 10, apparently of Indian Railway Establishment Manual, on the subject of ad-hoc promotions, the relevant portions of the same read as below :

"10.1. Pending selection/suitability test if ad hoc promotions are required to be made, the following guidelines should be followed to ensure that the claims of staff belonging to Scheduled Caste/Scheduled Tribe are also duly considered :-

(i) Ad hoc promotions should be considered only against vacancies in excess of 45 days.

(ii) In cases where reservation orders for Scheduled Caste/Scheduled Tribe are applicable to vacancies for periods in excess of 45 days all the vacancies should be placed on the appropriate roster, and the number of vacancies falling to the share of Scheduled Caste/Scheduled Tribe if vacancies were to be filled on regular basis should first be identified.

(iii) Since ad hoc promotions are made on the basis of seniority-cum-fitness, all the Scheduled Caste/Scheduled Tribe candidates covered in the relevant seniority list within the total number of vacancies against which ad hoc promotions are to be made, should be considered in the order of their general seniority, in the principle of seniority-cum-suitability and if they are not adjudged unfit they should be promoted on ad hoc basis.

(iv) If, however, the number of Scheduled Caste/Scheduled Tribe candidates found fit within the range of actual vacancies is less than the number of vacancies identified as falling to their share if the vacancies were filled on a regular basis vide (ii) above, then additional Scheduled Caste/Scheduled Tribe candidates to the extent required should be located by going down the seniority list provided they are eligible and found fit for such ad hoc promotions.

(vi) When the number of Scheduled Caste/Scheduled Tribe candidates found fit are less even after considering the additional Scheduled Caste/Scheduled Tribe candidates by going down the seniority list, then the number of vacancies reserved for them, in that case formal de-reservation by the competent authority and carry forward of reservations is not required before the post is filled by 'others' on ad hoc basis.

(b) On confirmation in the service or post after the expiry of the period of probation, the pay of the railway servant shall be fixed in the time scale of the service or post in accordance with the provisions of the Rule 1313 (FR 22) or Rule 1316 (FR.22C) as the case may be:

The general proposition laid down is that the claims of the staff belonging to SC/ST are to be considered even in the matter of ad hoc promotions and detailed Rules including rules relating to pay fixation are laid down as above. It is, therefore, clear that the anomaly has arisen not as a result of operation of Railway Rule 1316 but as a result of <sup>operation of a set of</sup> separate

rules relating to reservation for SC's/ST's in the matter of ad hoc promotions. I am therefore, of the view that the third condition not having been fulfilled the applicants are not entitled to the relief claimed. The O.A. is therefore of no merit. The O.A. is dismissed with no order as to costs.

*M.R. Kolhatkar*

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(M.R. KOLHATKAR)  
MEMBER (A)

B.