

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.:

737/97

Dated this

the

7th

day of

August,

2003.

Mohan Mokiramani & anr.

Applicants

(By Advocate Shri G.S. Walia)

Advocate for the
Applicant

VERSUS

Union of India & ors.

Respondents.

(By Advocate Shri V.S. Masurkar)

Advocate for the
Respondents.

CORAM : Hon'ble Shri A.S. Sanghavi - Member (J)

Hon'ble Shri Shankar Prasad - Member (A)

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

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

(iii) Library.

NO

Sh

(Shankar Prasad)
MEMBER (A).

OS*

MUMBAI BENCH:

Dated this

the

7

day of August, 2003

Coram: Hon'ble Mr.A.S.Sanghvi

Hon'ble Mr. Shankar Prasad - Member (J)

O.A. 737 of 1997

1. Mohan Motiramani,
Station Superintendent,
Andheri Railway Station,
Mumbai Division,
Western Railway,
Mumbai - 400 056.

Versus

1. Union of India
through the General Manager,
Western Railway, Churchgate,
Mumbai - 400 020.

Divisional Rail Manager,
Western Railway, Mumbai Division,
Mumbai - 400 008.

Senior Divisional Operating
Manager, (E), Mumbai Central,
Mumbai - 400 008.

Shri Madhusudan Desai,
Station Manager, Western Railway,
Andheri Station, Mumbai.

Shri M.L.Bhagarkar,
Station Manager,
Western Railway, Bandra.

Shri J.B.Lohakare,
Station Manager,
Western Railway, Vasai Road,
Mumbai.

(By Advocate Shr V.S.Masurkar) - Respondents

...2/-

O R D E R

By Hon'ble Mr. Shankar Prasad, Member (A) -

Aggrieved by the Order dated 10.2.1997, which is the show cause notice for revision of seniority pursuant to decision of Apex Court, order dated 28.5.1997 refixing seniority and the order dated 10.7.1997 in continuation of earlier letter ^{by the applicant} has preferred the present OA.

2. The case of applicants in brief as set out in the OA is that applicants were initially recruited as ASMs. At the relevant point of time both the applicants applied for 10% LDCE posts of Traffic Apprentices. They along with others were declared successful in the panel declared on 27.7.1984 for vacancies upto 1984-85. The applicants were sent for training, ^{on} successful completion of training and being found suitable for SM/ASM category they were posted as ASM in the grade of Rs.455-700(R)/Rs.1400-2300 (RS 1986). During the intervening period the respondents introduced revised pay scales merging grades of ASMs in the scale of Rs.425-640/Rs.455-700/- and issuing the order dated 15.5.1987 in respect of Traffic Apprentices. His erstwhile juniors in the ASM grade of Rs.425-640/- were given pay scales of Rs.455-700/- because of revision of pay scales retrospectively from 1.1.1986.

The further case of applicants is that the order dated 15.5.1987 was challenged by them before the High Court in OA 510 of 1989. They succeeded and the SLP against the said order was dismissed. Their pay was fixed in the scale of Rs.1600-2660/and ^{by}

....3/-

they were given further promotions. Pursuant to the decision of the Apex Court in Union of India & others Vs. M.Bhaskaran, 1996

(1) SC SLJ 141, the seniority is to be refixed. *They stated in their order*

"7. From the aforesaid, it is clear that the memorandum of 1987 was really not one of revision of pay of the Traffic/Commercial Apprentices, as has been understood by those Tribunals who have conceded the higher pay scale. The higher pay scale was really meant for the Traffic/Commercial Inspectors of higher grade. Mrs.Sharda Devi's effort to satisfy is that the higher pay scale was really a revision on the basis

As there was no regular selection in the scale of Rs.455-700/- after 1984, the applicants' seniority should be fixed in accordance with Rule 305 of IREM and he is entitled to seniority below Shri B.B.Sonawane. While preparing the merged list on 1.1.1986, because of revision of pay scales, the applicants should have been placed before ASM's in the scale of Rs.425-640/-.

The earlier decision in favour of the applicants cannot be re-opened after the subsequent decision. This issue has been re-agitated and the case of E.S.P Rajararam & others Vs. Union of India & others, 2001 SCC (L&S) 352 is pending in the Supreme Court. The decision in Shri V.D.Kamble's case is not applicable to him as no SLP was preferred against the said order. The respondent vide its order dated 28.5.1987 refixed their seniority along with Shri V.D.Kamble. Shri Kamble was given the benefit of order dated 28.5.1997 but the applicant was reverted further to a lower scale.

The applicant sought for the following reliefs -

(a) To call for the record pertaining to the issuance of the order dated 10.2.1997 and 10.7.1997 and after examining the legality and validity of the same, the Hon'ble Court be pleased to quash and set aside the order dated 10.2.1997 and 10.7.1997 and 28.5.1997 being Exhibit A-1, A-2 and A-17 herein above. *An*

....4/-

(b) To hold and declare that the applicants are entitled to the seniority in the Grade of Rs.1400-2300/above persons who are drawing Rs.425-640/before the Fourth Pay Commission as the applicants were promoted in the grade of Rs.455-700/- before the Fourth Pay Commission.

(c) To hold and declare that the applicants are entitled for the seniority below Shri B.B.Sonawane as the applicants were promoted in the grade of Rs.455-700/- in the very next panel.

(d) To hold and declare that the judgment of the Supreme Court is not applicable to the applicants.

(e) To declare that the applicants cannot be reverted more than one stage below as applicants have got the benefit of one grade higher by the judgment of this Tribunal i.e. Rs.1600-2660/in place of Rs.1400-2300/-.

(f) To hold and declare the reversion of the applicants to two stages below after having officiated for more than 18 months illegal and against the provision of law.

3. The case of respondents as set out in the OA was that the action had been taken as per the decision in Bhaskaran's case and therefore the application does not disclose any cause of action. *ls*

...5/-

The applicants have different causes of action and cannot file a common OA. The order dated 10.2.1997 and 10.7.1997 deals with many persons and thus this is not maintainable.

The applicants were never promoted in the pay scale of Rs.455-700/- and his pay was never fixed in that scale. The applicants were placed in the pay scale of Rs.1400-2300/w.e.f.3.8.1987.

4. The applicant had also sought interim relief. The same was rejected vide order dated 16.1.1998 in view of the Apex Court's decision in Bhaskaran's case (supra).

5. MP 166/01 was filed by the applicants on 9.11.2001 to implead three private respondents. It was allowed on 22.2.2002. However, no amendment to OA was carried out.

The learned lawyer on behalf of the applicant was also asked to produce the seniority list prior to 1986 and post-1986 to appreciate the issue.

6. However, at the time of hearing the learned lawyer on behalf of the applicants gave up all claims except relief 8 (b) regarding seniority. The applicants gave up the claim on the basis of the case being distinguishable from decision in Bhaskaran's case. His arguments can be summed up as follows- *Am*

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(a) The DRM (E)'s letter of 25.6.1997 has fixed the seniority correctly and the same has been rejected without assigning reasons.

(b) The applicants were selected against a vacancy of 1984-85. Their rights accrue to them against the vacancy of that year and the retrospective fixation of pay of ASMs in the pay scale of Rs.1400-2300/- w.e.f. 1.1.1986 cannot prejudice his rights. The decision of a Three Judge Bench of Apex Court in U.P.Singh Vs. State of Bihar, 1995 (1) SC SLJ 27 refers.

(c) His seniority should have been fixed as per IREM 302.

(d) The Mumbai Bench decision dated 5.11.2001 in OA 188 of 2001 (V.G.Nair Vs. Union of India & others) regarding Commercial Apprentice refers.

The decision of Mumbai Bench in OA 105/97, 106/97, 107/97 refers.

(e) As the matter relates to policy the non-joinder of parties does not vitiate the OA as per Shrivastava's case.

7. The arguments of Shri V.S.Masurkar on behalf of respondents may be summarised as follows - *S.*

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(a) After the decision of the Constitution Bench in Rajaram's case, the Bhaskaran's case, the applicants raise different aspects relating to conditions of service of ~~this~~ pre-1987 training Apprentices absorbed after May, 1987.

(b) Shri V.D.Kamble who was also affected by the said exercise had also filed an OA claiming similar benefits. The Tribunal refused to grant benefits of seniority etc. Paras 8 & 9 of the discussion refers.

(c) In view of these judgments the Tribunal should reject this OA.

(d) Even though private respondents have been impleaded there is no specific pleading vis-a-vis them. Even though it has been argued that the applicant is not distinguishing his case the pleadings have not been modified.

(e) The applicants were appointed in August, 1987 and the merger took place w.e.f. 1.1.1986 in terms of the recommendation of the Pay Commission.

(f) On merits a draft seniority list was published in 1989 in which the applicants had been shown junior to persons who were placed in the scale of Rs.1400-2300/- on 1.1.1986. There was no protest from applicants in the period stipulated in Para 321 of IREM. *h*

The present exercise was carried out in accordance with Apex Court's decision in Bhaskaran's case (supra). The letter were issued pursuant to this decision.

8. The following facts relating to revision of pay scales are clear from OA 188/2001 (supra) and the same is reproduced as follows -

"3. Respondents have contested the case by filing their reply stating that the two grades viz. Rs.425-640/- and Rs.455-700/- were merged in a single revised grade of Rs.1400-2300/- w.e.f. 25.9.1986 on the recommendation of the Fourth Pay Commission and the Railway Board vide their letter dated 5.2.1987 directed that till such time a decision is taken as to whether the above post is to be classified as selection post or non-selection post, promotion from the existing lower scale of pay to existing higher scale of pay should not be made till further orders. The Railway Board vide their letter dated 5.2.1987 further decided that the revised classification in the merged grade will be effective from 25.9.1986 and any promotion in the said grade will be as per the revised classification....."

9. The Railway Board Circular dated 15.5.1987 on the recruitment of Traffic & Commercial Apprentices is as follows -

"i) The Scheme of recruitment of Traffic and Commercial Apprentices should continue.

ii) In future, the recruitment of these Apprentices should be made to grade Rs.550-750/1600-2660 (RP). Traffic Apprentices absorbed in the cadre of Section Controllers in scale Rs. 470-750/1400-2600(RP) will be fixed at starting pay of Rs. 1600/- on absorption. The recruitment of Traffic Apprentices may be suitably staggered in view of sub-para (viii) below.

viii) In future the period of training for Traffic Apprentices also will be two years as against three years as is the case at present. *Am*

....9/-

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.

xiii) No recruitment in scale Rs.455-700 (RS /1400-2300 (RP) will henceforth be made except to the extent panels have already been received by Railway Administration from the Railway Recruitment Boards in the case of open market quota and panels have already published in the case of departmental quota."

10. The Apex Court in M.Bhaskaran's case (supra) was considering the questions regarding (a) purport of circular and (b) the validity of the same. It held -

"7. From the aforesaid it is clear the memorandum of 1987 was really not one of revision of pay of the Traffic/Commercial Apprentices, as has been understood by those Tribunals who have conceded the higher grade. Mrs.Sharda Devi's effort to satisfy us that the higher pay scale was a revision on the basis of what finds place in para 2 (ii) of the 1987 memorandum is founded on misapprehension in as much the inclusion in that sub para that "Traffic Apprentices absorbed in the cadre of Section Controllers in scale of Rs.470-750/1400-2600 (RP) will be fixed at starting pay of Rs.1600 pm on absorption", does not mean that these Section Controllers were given the pay scale of Rs.1600-2600, as urged by the learned counsel. All that was conveyed by this statement was that the Section Controllers, even though getting the revised scale of Rs.1400-2600, their starting pay would be Rs.1600. This was so required according to Shri Malhotra appearing for the appellant because the Trained Apprentices could become eligible for the post of Section Controller only when having two years Yard's experience in the grade of Rs.455-700. It is this pay scale which had become on revision Rs.1400-2300 the unrevised pay scale of Section Controller was Rs.470-750, which on revision became Rs.1400-2600. So what has been stated in para 2 (ii) does not support the case of the respondent that the memorandum of 1987 really dealt with the revision of pay of all the Traffic/Commercial Apprentices.

8. We, therefore hold that the Tribunal which allowed the benefit of pay scale of Rs.1600-2660 to all the Traffic/Commercial Apprentices irrespective of the grade of the posts held by them not only misunderstood the memorandum of 1987, but this conceived the provisions relating to the recruitment and promotion of these Apprentices as finding place in the Establishment Manual. *bn*

Indeed somehow or other they were oblivious of what has found place in the Manual in this regard.

18. Despite the aforesaid conclusion of ours, we are of the view that the recovery of the amount already paid because of the aforesaid judgment of the Tribunals would cause hardship to the concerned respondents/appellants and, therefore, direct the Union of India and its officers not to recover the amount already paid. This part of our order shall apply (1) to the respondents/appellants who are before this Court; and (2) to the pre-1987 Apprentice in whose favour judgment has been delivered by any CAT and which had become final either because no appeal was carried to this Court, or, if carried, the same was dismissed. This benefit would be available to no other."

11. The Constitution Bench in E.S.P.Rajaram (supra) affirmed the earlier decision. It also observed in Paras 17 and 23 held as follows -

"17. In the case of Union Carbide Corporation Vs. Union of India, a Constitution Bench of this Court dealing with power of the apex Court to withdraw unto itself cases pending in the District Court at Bhopal, considered the scope and ambit of the power vested in the Court under Article 142 of the Constitution. In Para 60 of the judgment it was observed (SCC p 626).

"Any limited interpretation of the expression 'cause or matter' having regard to the wide and sweeping powers under Article 136 which 142 (1) seeks to effectuate, limiting it only to the short compass of the actual dispute before the Court and not to what might necessarily and reasonably be connected with or related to such matter in such a way that their withdrawal to the Apex Court would enable the Court to do 'complete justice', would stultify the very wide constitutional powers. Take, for instance, a case where in interlocutory order in a matrimonial cause pending in the trial court comes up before the apex Court. The parties agree to have the main matter itself either decided on the merits or disposed of by a compromise. If the argument is correct this court would be powerless to withdraw the main matter and dispose of finally even if it be on consent of both sides. Take also a similar situation where some criminal proceedings are also pending between the litigating spouses. If

all disputes are settled, can the court not call up to itself the connected criminal litigation for a final disposal? If matters are disposed of by consent of the parties, can anyone of them later turn around and say that the apex Court's order was a nullity as one without jurisdiction and that the consent does not confer jurisdiction? This is not the way in which jurisdiction with such wide constitutional powers is to be construed. While it is neither possible nor advisable to enumerate exhaustively the multitudinous ways in which such situation may present themselves before the Court where the Court with the aid of powers under Article 142 (1) could bring about a finality in the matters, it is common experience that day in and day out that such matters are taken up and decided in this Court. It is true that mere practice, however long, will not legitimise issues of jurisdiction. But the argument, pushed to its logical conclusions, would mean that when an interlocutory appeal comes up before this Court by special leave, even with the consent of the parties, the main matter cannot be finally disposed of by this Court as such a step would imply an impermissible transfer of the main matter. Such technicalities do not belong to the content and interpretation of constitutional powers."

In Para 23, it held as follows:-

"23. In the case on hand the controversy relates to the scale of pay admissible for Traffic Apprentices in the Railways appointed prior to the cut of date. The controversy in its very nature is one which applies to all such employees of the Railways; it is not a controversy which is confined to some individual employees or a section of the employees. If the judgment of the Tribunal which has taken a view contrary to the ratio laid down by judgment of this Court in M.Bhaskaran's case was allowed to stand then the resultant position would have been that some Traffic Apprentices who were parties in those cases would have gained an unfair and undeserved advantage over other employees who are or were holding the same post. Such enviable position would not only have been per se discriminatory but could have resulted in a situation which is undesirable for a cadre of large number of employees in a big establishment like that of the Indian Railways. To avoid such a situation this Court made the observations in *Dr*

para 17 of the judgment. At the cost of repetition we may reiterate that since the main plank of argument of the appellants was that since they were not parties in the case they had no opportunity to place their case before this Court made the observation in para 17 of the judgment as aforesaid and we specifically asked the learned counsel appearing for the parties to place the arguments in support of their challenge to the observations made by this Court on merits. No point of substance assailing the observations on merits could be placed by them. The only contention made in that regard was that some of the employees who were given benefit in the judgments of CAT have got further promotions and they may lose the benefit of such promotion in case the observations made in para 17 of the judgment are allowed to stand as it is. We are not impressed by the contention raised. If some employees were unjustly and improperly granted a higher scale of pay and on that basis were given promotion to a higher post then the basis of such promotion being non-existent; the superstructure built on such foundation should not be allowed to stand. This is absolutely necessary for the sake of maintaining equality and fair play with the other similarly placed employees. However, in our considered view, it will be just and fair to clarify that any amount drawn by such employees either in the basis post (Traffic Apprentice) or in a promotional post will not be required to be refunded by the employee concerned as a consequence of this judgment. This position also follows as a necessary corollary from the observations made by this Court in Para 18 of the Judgment in M.Bhaskaran's case."

12. Shri V.D.Kamble's pay scales and seniority was also affected pursuant to the said exercise by the same order dated 28.5.1997 and had asked for quashing of the same. The Tribunal in OA 664 of 1997 decided on 21.9.2001 negated the various pleas. The Tribunal held -

"10. It is to be seen from the aforesaid judgment that all the contentions raised by the applicant in the present case have been answered in no uncertain terms in the judgement. The applicant's contention that his training commenced after the order of 15.5.1987 and therefore, he is entitled to the scale of Rs. 1600 - 2660 also does not hold good. A

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11. We are bound by the judgement of the Constitution Bench and therefore, the applicant's case needs to be dismissed and is dismissed accordingly without any order as to costs."

13. The notice dated 10.2.1997 issued by the DRM's Office enunciated the following principle -

".....According to the Supreme Court's judgment, seniority of the Traffic Apprentices to be reckoned based on their joining in scale Rs.1400-2300 (RP) and their further promotion to be regulated in scale Rs.1600-2660 (RP) and Rs.2000-3200 (RP) and not on the basis of proforma promotion given to them in scale of Rs.1600-2660 (RP)."

yet fixed the seniority by showing the date of entry in scale of Rs.1400-2300/- as 27.7.1984.

The order dated 28.5.1997 followed the following principle -

".....According to the Supreme Court's Judgment seniority of the above mentioned Traffic Apprentices to be reckoned based on their joining in scale Rs.1400-2300 (RP) and their further promotion to be regulated in scale of Rs.1600-2660 (RP) and Rs.2000-3200 (RP) and not on the basis of proforma promotion given to them in scale Rs.1600-2660 (RP).

In view of the above, the proforma seniority given in scale Rs.1600-2660 (RP) and seniority and promotion in scale Rs.2000-3200 (RP) and Rs.2375-3500 (RP) is cancelled and revised seniority on the basis of their original absorption in scale Rs.1400-2300 (RP) is assigned as under vide No.E/T/1030/2 Vol.II dated 28.8.1985."

The same DRM (E) vide his letter dated 25.6.1997 informed
General Manager (E) as follows -

".....Therefore S/Shri Jitendra R.Singh and Mohan Metiramani on their absorption as SM scale Rs.1400-2300 *sn*

...14/-

(RP) on 3.8.87 are assigned seniority below Shri S.K.Kamble who was promoted to scale Rs.455-700 (R)/1400-2300 (RP) on 30.12.83 and above Shri Imamali Sayed who was promoted to scale Rs.425-640 (RP)/1400-2300 (RP) on 16.2.84."

Thereafter the letter dated 10.7.1997 was issued.

"In view of the above proforma seniority and promotion given in scale of Rs.1600-2660/- (RP) and Rs.2000-3200 (RP) is cancelled and revised seniority on the basis of their original absorption in scale of Rs.1400-2300 (RP) is assigned as under:-

Seniority position in scale of Rs.1400-2300 (RP) as well as in scale Rs.1600-2660 (RP) as under -

S.No.	Name	Designation
(I)		
1.	Shri Mukadam Shamsuddin	SM/DDR
2.	Shri J.R.Singh	SS/BVI
3.	Shri M.D.Patel	SM/VDH
4.	Shri Raffiq Billimori	SM/CCG
(II)		
1.	Shri Raffiq Billmeria	SM/CCG
2.	Shri Mohan Motiramani	SS/ADH
3.	Shri Mahesh Shroti	SM/PLG"

The Apex Court in Para 5 of Bhaskaran's judgment (supra) has held that Apprentices in case of Traffic/Commercial Apprentices means direct recruits. Chapter 4 of IREM (1989) given the revised pay scales. It appears from entries in Sl. No.405 that there were three grades - Rs.330-560, 425-640, 455-700 in ASM scale and which were revised to Rs.1200-2040, Rs.1400-2300 *As*

and Rs.1400-2300/- respectively. Chapter 5 provides for percentage of posts fixed for various categories. Paragraph 509 provides that in ASM/SM combined cadre the number of posts in these two scales of Rs.1200-2040 and Rs.1400-2300 will be 10% and 87%. Thus Rs.1400-2300 is not the initial recruitment grade. IREM 302 provides that in case of posts filled by promotion and direct recruitment the criterion for determination of seniority in case of direct recruits will be date of joining of working post after due process. IREM 303 (A) provides that where candidates recruited through Railway Recruitment Board or other sources are sent for initial training to training schools seniority will be as per result of examination held at the end of training before posting. Para 305 relates to candidates who cannot join immediately.

In the instant case the panel was declared on 27.7.1984. After the successful completion of 33 1/2 months training the applicant was posted in Rs.455-700/-/Rs.1400-2300 on 3.8.1987.

We also note that revised pay rules merging the two grades were notified before 5.2.1987 and the two scales merged w.e.f. 25.9.1987.

15. The respondents have also produced the seniority list dated 31.1.1989 in respect of Class III Staff of Transport department in the scale of Rs.1400-2300. The said seniority list

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also states the principles on the basis of which seniority has been assigned. The name of applicant no.1 and applicant no.2 are at serial nos.393 and 376 respectively. The date of entry in the grade of Rs.455-700/1400-2300 is shown as 3.8.1987 and 10.9.1984 respectively. The date of confirmation in this grade is officiating and 1.5.1988.

It is clear from above that applicant no.2 has been given some other benefit perhaps because of earlier officiating promotions.

The limited point is that this has not been challenged in the one month period prescribed under para 321 of the IREM.

16. The key facts in the case of Uday Pratap Singh Vs. State of Bihar, 1995 (1) SC SLJ 27 was that the applicants were appointed in May, 1974 while the decision to merge the junior and senior branches retrospectively w.e.f. 1.4.1974 was taken on 2.11.1975 by an executive order. In the instant case of ASM merger is notified at a date earlier than 3.8.1987. Hence this decision is distinguishable.

17. The decision in OA 105/97 and the other two OAs has been delivered on 6.9.2000 i.e. before the decision of Constitution Bench. In any case the direction is for consideration of representatiuon only.


.....17/-

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18. The applicant has also relied on OA 188/2001. This OA was filed against giving of ante-dated promotions to private respondents. He has relied on lines in paragraph 3 setting out respondents case.

"The seniority of CIs was to be as per instructions contained in circular letter dated 13.4.1989. Accordingly, all divisions except Bhopal and Jhansi fixed the seniority of CIs correctly below staff working in the grade of Rs.455-700 and above Rs.425-640."

The circular of 13.4.89 has the following paragraph -

"Their seniority position in the seniority list of Commercial Inspector/Commercial Clerk be fixed above Rs.425-640/(Rs.1400-2300) from the date of their posting as Commercial Inspector 455-700/1400-2300 on the division."

This was a statement on behalf of Railway administration. This circular has been issued before the decision of Apex Court in Bhaskar's case and the Constitution Bench. The underlined portion also indicates that seniority has to be reckoned from the date of posting. This matter of seniority was also not before the Tribunal.

Hence this decision is of no avail.

19. In view of what has been discussed above, there is no merit in the this OA. The OA is dismissed. No costs.

Shankar Prasad
(Shankar Prasad)
Member (A)

A. S. Sanghvi
(A.S.Sanghvi)
Member (J)

mf

14.8.2005