

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.No.242/1998

Friday, this the 9th day of November, 2001.

CORAM:

HON'BLE MR JUSTICE B.N.SINGH NEELAM, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

1. Shri NG Kulkarni,
Assistant Operating Manager,
D.R.M. Office, Central Railway,
Solapur, and residing at
Solapur.
2. Shri Prafulla C Pant,
Assistant Transportation Manager
(Control), O/o the Chief Operating
Manager,
Central Railway, Mumbai,
CST, residing at:
113/4, Central Railway Officer's Colony,
Matunga, Mumbai-400 019. -Applicants

(By Advocate Mr DV Gangal)

Vs

1. The Union of India through
Secretary,
Ministry of Railways,
Railway Board, New Delhi.
2. The General Manager,
Central Railway,
Mumbai, CST-400 001. - Respondents

By Advocate Mr VS Malsurkar.

ORDER

SHRI T.N.T.NAYAR, ADMINISTRATIVE MEMBER

This joint application is filed by Shri N.G.Kulkarni,
Assistant Operating Manager, Office of the DRM, Central Railway,
Solapur and Shri Prafulla C Pant, Assistant Transportation
Manager(Control), Office of the Operating Manager, Central
Railway, Mumbai CST. Both belong to the Control Cadre of the
Railways since 1969 and seek the following reliefs:

2/

a) Direction to be issued to the respondents to implement the order of the Central Administrative Tribunal, Allahabad Bench in O.A.450/1990 dated 16.1.97.

b) Declaration that the benefit of the Central Administrative Tribunal, Allahabad Bench's order be granted to the applicant by granting them pay fixation and arrears with effect from 1.8.83 and also seniority from 1.8.83.

c) Declaration to the effect that the consequential pay fixation to the applicants to be re-done and the applicants be granted further pay fixation and arrears from December, 1988.

d) Declaration to the effect that the dates of promotion of the applicants to Class-II be advanced.

e) Direction to be issued to the respondents to notionally fix the pay of the applicants in the senior scale with effect from 1.1.98 at par with Shri S.B.Bharadwaj by quashing and setting aside the order dated 19.1.2000.

2. The material facts as revealed from the substantially amended O.A. can be briefly stated thus: The benefit of restructuring and the consequential seniority to the Control Cadre Officers vis-a-vis the Traffic Cadre Officers was the subject matter in O.A.No.450/90 filed by four applicants including the two applicants herein before the Central Administrative Tribunal, Allahabad Bench. The C.A.T., Allahabad Bench, following the directions of the Supreme Court consequent to further litigation during the interregnum, passed a final order dated 16.1.97 (A-1) upholding those applicants' claim substantially, though the two applicants herein did not get the benefit as they were not within the jurisdiction of the C.A.T.,

Allahabad Bench. Thereupon, the applicants filed this O.A. on 11.3.98. During the pendency of this O.A., the Railways filed Special Leave Petition against the C.A.T., Allahabad Bench's decision referred to above and the same was dismissed by the Supreme Court. After the disposal of the S.L.P. the Railway Board issued order dated 13.5.99 granting the benefit of restructuring to the applicants with effect from 1.8.83. Thus, admittedly, the main relief sought for by the applicants in the present O.A. has been granted to them by the respondents (see para 4.5 of the amended O.A.). In consonance with the ante-dated conferment of the benefit of restructuring from 1.1.84 to 1.8.83, the applicants' promotion to Group 'B' posts was also ante-dated and they are placed between Sl.Nos.22 and 23 as claimed by them just above Shri S.P.Bharadwaj - vide Annexure-8 and A-9 and para 4.6 of the amended O.A. Further, as per Annexure-10, they were promoted on ad hoc basis to Senior Scale with effect from 5.11.99, whereas their admitted junior, Shri S.P.Bharadwaj, had been promoted on ad hoc basis to Senior Scale on 1.1.98. The applicants made a representation on 15.11.99 for fixation of their pay at par with their junior Shri S.P.Bharadwaj with effect from 1.1.98. As per Annexure-11 communication dated 19.1.2000, the respondents rejected the same.(Para 47 of the O.A.) As per Para 227 (actually it is 228 -sic) of the Indian Railway Establishment Manual(IREM for short) the applicants were entitled to notional pay fixation with effect from the date of promotion of the junior Shri SP Bharadwaj (Para 4.8 of the O.A.). There being no distinction between ad hoc promotees, as per para 227, the applicants' right for notional pay fixation from 1.1.98 was undeniable. Further, there is no regular or direct promotion as such to Senior Scale.

It is initially for a period of 3 years. The applicants

seniority vis-a-vis Shri SP Bharadwaj having been accepted and implemented, notional fixation with effect from 1.1.98 was their legitimate right, according to the applicants.

3. The pleadings in the O.A. and the material documents annexued thereto have been explained further by the learned counsel Shri D.V.Gangal appearing for the applicants. It is pointed out by him that though several reliefs have been sought, the question of seniority has been decided in the applicants' favour by the Railway Board's order dated 13.5.99 thereby extending the substantial benefit held to be admissible by the C.A.T., Allahabad Bench. Most of the consequential benefits flowing therefrom also have been granted leaving only one grievance to be redressed yet. That grievance, according to the learned counsel, is that though the applicants' seniority above one Shri S.P.Bharadwaj was accepted and effectuated, the anomaly on account of the applicants' ad hoc placement in Senior Scale falling on a date later than that of the date on which the junior Shri S.P.Bharadwaj was granted such benefit (Senior Scale) on ad hoc basis, is yet to be removed. The applicants would be satisfied if that anomaly is removed and proper relief granted in order that the applicants get consequential benefits which would have an impact even on their pensions.

4. In the reply statement, however, the respondents have resisted the O.A. on the ground that the application suffers on account of the anomalies arising in the matter of determination of seniority in the light of the restructuring of the two cadres, viz, Traffic Cadre and the Control Cadre related to 1983. On merits also, the respondents oppose the application stating that there was no regular promotion to Senior Scale and that since it was only as an ad hoc measure that the junior Shri S.P.Bharadwaj was given his Senior Scale, the applicants' could

not claim any benefit on that score. Shri V.S.Masurkar, learned counsel for the respondents underscored the arguments in the reply statement and contended that the application was belated since the matter related to a question of seniority which arose in 1983 and that the applicants' claim was even otherwise unsustainable in view of the fact that there cannot be any vested claim arising out of a purely ad hoc arrangement.

5. We have perused the records with particular reference to the amended O.A., and other material on record. We have also considered the submissions made by the rival counsel. We notice that both the applicants in this case have since retired. As far as the numerous reliefs sought for are concerned, we find that admittedly the benefit of seniority arising out of restructuring of the Traffic and the Control Cadres held to be admissible to claimants placed similarly with the applicants as per C.A.T., Allahabad Bench's order in O.A.450/90 dated 16.1.97, was eventually extended to the applicants in this case also (note Annexure-9). Most of the consequential benefits have also been made available to the two applicants. That is a fact admitted by them. The only issue that now remains is that because of the ad hoc promotion of their immediate junior Shri S.P.Bharadwaj to Senior Scale with effect from 1.1.98 and because of their ad hoc promotion to the Senior Scale with effect from a subsequent date i.e. 18.11.99, they stand to lose in relation to their junior. This clearly is an anomaly in terms of para 228 of the IREM which deals with erroneous promotion. Thus, the main relief that survives is notional fixation of pay of the applicants in the Senior Scale with effect from 1.1.98 on par with the applicants' immediate junior Shri S.P.Bharadwaj by quashing and setting aside the order dated

19.1.2000(Annexure-11). It is necessary in this connection to extract the relevant portion of para 228 of the IREM which reads as follows:

"228. Erroneous Promotions (I) Sometimes due to administrative errors, staff are overlooked for promotion to higher grades could either be on account of wrong assignment of relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotion or some other reasons. Broadly, loss of seniority due to the administrative errors can be of two types:

i) Where a person has not been promoted at all because of administrative error, and

ii) Where a person has been promoted but not on the date from which he would have been promoted but for the administrative error.

Each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative error should on promotion be assigned correct seniority vis-a-vis their juniors already promoted, irrespective of the date of promotion. Pay in the higher grade on promotion mayu be fixed proforma at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on his account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts."

In our view, the applicants' seniority having been settled in the spirit of the C.A.T, Allahabad Bench's orders, all the consequential benefits and career advancement events should be regulated in harmony with that decision. Grant of Senior Scale to a junior cannot be written off as an ad hoc arrangement while the applicants who are his admitted seniors are kept on the sideline and watch the uneviable spectacle. It is nobody's case that a long settled matter has to be forcefully unsettled. In this case, nobody loses and significantly the applicants gain something due to themretired personnel now. It would have a recurring effect on their pensions.

6. In our considered view, therefore, the impugned A-11 order dated 19.1.2000 is liable to be set aside. Accordingly we set aside the impugned A-11 order and direct the respondents to allow the applicants notional fixation of their pay in Senior Scale with effect from the date on which Shri SP Bharadwaj was

allowed the benefit and further to grant them increment accordingly on notional basis and refix their pay as on the date of their retirement in line with such refixation with effect from 1.1.98. Any difference in pay on account of such refixation should be allowed to the applicants by way of arrears with effect from the actual date from which they started shouldering the responsibility as officers in Senior Scale i.e. 5.11.99. The applicants' retiral benefits and recurring pensions also should be regulated accordingly with all the consequential monetary benefits. The respondents are directed to carry out the above directions by issuing appropriate orders within a period of four months from the date of receipt of copy of this order.

7. The application is disposed of as above. The parties shall bear their respective costs.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



JUSTICE B.N. SINGH NEELAM
VICE CHAIRMAN

trs