

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 1078/1998

Date of Decision: 4.12.2002

Shri R.K. Madavi & Ors.

Applicant(s)

Shri J.M. Tanpure.

Advocate for Applicants

Versus

Union of India & Another.

Respondents

Shri Suresh Kumar.

Advocate for Respondents

CORAM:

HON'BLE SMT. LAKSHMI SWAMINATHAN. VICE CHAIRMAN (J)
HON'BLE SMT. SHANTA SHAstry. . . MEMBER (A)

1. To be referred to the reporter or not? ✓
2. Whether it needs to be circulated to other x Benches of the Tribunal?
3. Library. ✓

Shanta ✓
(SMT. SHANTA SHAstry)

MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH : MUMBAI

ORIGINAL APPLICATION NO. 1078/1998
THIS, THE 04TH DAY OF NOVEMBER 2002

DECEMBER

CORAM:

HON'BLE SMT. LAKSHMI SWAMINATHAN. VICE CHAIRMAN (J)
HON'BLE SMT. SHANTA SHAstry. MEMBER (A)

1. Shri R.K. Madavi,
Senior Ticket Collector,
Talegaon Railway Station,
R/o 14A/3, Kadolkar Colony,
Talegaon Dabhade, Tal-Maval,
Dist-Pune.
2. Shri V.N. Jambhale,
Junior Ticket Collector,
Pune Railway Station, R/o
RB-II, F-6, Railway Qtrs,
Tadiwalla road, Pune-411 004.
3. Shri D.V. Kulkarni,
Junior Ticket Collector, Pune
Railway Station, R/o 788 Somwar Peth,
Talegaon Dabhade, Tal-Maval, Dist-
Pune-410 506.
4. Shri R.E. Gurav, Junior Ticket
Collector, Dehu Road,
Railway Station, R/o Nalband
Galli, Talegaon Dabhade,
Tal-Maval, Dist-Pune.

By Advocate Shri J.M. Tanpure.

Versus

1. The Union of India,
represented by the
General Manager, Central Railway,
Mumbai.
2. The Divisional Railway Manager
(Personnel), Central Railway,
Mumbai Division,
C.S.T., Mumbai. . . Respondents

By Advocate Shri Suresh Kumar.

O R D E R
Hon'ble Smt. Shanta Shastry. Member (A)

The applicants were working in Telegraphic Signaller cadre. After being found surplus on account of the winding up of the Telegraphic Department, the applicants were absorbed in the Ticker Collector's cadre in the pay scale of Rs.950-1500 as against the higher pay scale in which they were working.

2. The applicants being aggrieved by the placement in lower pay scale, have approached this Tribunal for a declaration that they are entitled to be placed and treated, for all purposes in the scales of Rs.1400-2300 for applicant NO.1 and Rs.1200-2040 for other applicants (pre revised scale). The applicants have also sought arrears from March, 1997 with 18% interest. They have also demanded a cost of Rs.10,000/-.

3. The brief facts are, the applicant No.1 was working as Head Signaller grade in the scale of Rs.1400-2300. The remaining applicants were working in the senior signaller's grade in the pay scale of Rs.1200-2040 under the respondents. They were declared as surplus in the category of Railway Telegraphic Signaller due to the policy of Railways to wind up telegraphic department. The Railway Administration vide their letter dated 22.02.1996 called for applications from all the affected signallers to exercise their option for the posts of Guard, ASM, Commercial Clerk,

M

Ticket Collector, TNC, ECRC etc., for being absorbed in such posts.

4. The applicants submit that they opted for the cadre of Ticket Collector. They were accordingly absorbed in the grade of Ticket Collector. Thereafter, they were transferred to Lonawala in March, 1997. The applicants submit that they had been afforded pay protection in their previous pay scale.

5. However, by the letter dated 28.11.1996 the applicants were placed in the lower grade of Rs.950-1500 resulting in heavy financial loss along with deprival of promotional prospects according to them.

6. The applicants, therefore, made a joint representation on 07.11.1997, 14.01.1997, 04.5.1998 and 23.9.1997 requesting the respondents to reexamine their cases and to afford them pay protection in the subsequent post of Senior and Junior Ticket Collectors but their request was turned down. The applicants submit that the issue of pay protection was also dealt by National Railway Mazdoor Union, Lonawala in the meeting held on 23.10.1997. There also, their request was turned down.

7. The contention of the applicants is that when they were drawing higher pay scales, to withdraw the



...4.

same and to place them in the lower pay scale is illegal and violative of Article 14 and 16 of the Constitution of India. According to them, it is the accepted principle of law that when one department of Government is closed down, such employees of that Department have to be absorbed in other departments by affording them pay protection. The applicants had clearly given a conditional option. Further, the applicants point out that the respondents had absorbed Ex-grain shop employees in various departments by protecting their pay and grade in which they were working before their absorption on being declared surplus. Therefore, the respondents cannot discriminate in respect of the present applicants.

8. The respondents have filed their written statement and have taken the preliminary objection that the application is barred by limitation, delay and laches.

9. The respondents have also opposed the joint application on the ground that applicant No.1 being in a higher pay scale than applicants No.2 to 4, has no case for filing a joint application and on this ground also the application is not maintainable.

10. According to the respondents, the applicants were offered an option when they were found surplus on

h

...5.

account of the winding up of the Telegraphic Department by issuing the letter dated 22.02.1992 calling for applications from the Telegraphic Signallers to be absorbed in the category of Guard, ASM, Commercial Clerk, Ticket Collector, TNC, ECRC. These posts are initial recruitment grades. The pay scale of ASM and ECRC was Rs.1200-2040 and the grades of Guard, though in the pay scale of Rs.950-1500 are entitled for 30% NPA above the basic pay. All the other categories are in the scale of Rs.950-1500. The applicants gave their option for the post of TC which is in the scale of Rs.950-1500. Having therefore, opted for the post of TC, the applicants are stopped from claiming higher post in the grade of Rs.1200-2040. They had not opted for the posts which were offered to them in the pay scale of Rs.1200-2040 for the reasons best known to them. In fact, even when the applicants were appointed as TC by letter dated 28.8.1996 the applicants did not challenge their pay scale. Thus, reasonable opportunity was given to them to choose any of the posts mentioned in the offer letter. They were also sent for training on 30.4.1996. After the training, they were posted by letter dated 28.11.1996.

11. On absorption, the pay of the applicants was fixed as per the Railway Board's letter dated 23.9.1992 dealing with protection of pay of surplus staff when absorbed in lower administrative posts. According to

h

...6.

the aforesaid letter it was decided that "the pay of the surplus staff on absorption in the lower alternative post shall be fixed at the stage equivalent to the pay drawn by them in the post from which he has been rendered surplus and if there is no such post available in the scale of new post held by him, at the stage next below, the difference of pay to be treated as personal pay to be absorbed in future increments. However, this shall be subject to the condition that the pay so fixed should not exceed the maximum of the scale of the pay of the post in which the surplus staff is being absorbed." Pay protection shall not be extended whether despite availability of a post in a matching pay scale, to the persons redeployed/ readjusted in a post carrying a lower pay scale on his own request. Thus, in the case of the applicants their pay was fixed at the maximum of the scale of Rs.950-1500, therefore, there was no question of pay protection. The respondents also have pointed out that the post in which the applicants were working were abolished and they have been rendered surplus, they cannot now be sent back to the parent cadre as no post exists for the applicants.

12. The respondents have also denied that the applicants had opted for the category of Ticket Collector in the grades of Rs.1400-2300 and Rs.1200-2040. The applicants have given option for the Ticket Collector cadre and they were absorbed in the

grade of Rs.950-1500. The applicants' request for protection was rejected and therefore, the respondents have denied that the applicants' pay was protected.

13. The applicants in turn drew the attention of this court to a letter dated 20.8.1999 from the Railway Board on pay protection to staff who joined a lower post on their own request. It was clarified in this letter that in terms of the extant rules "in the case of an employee holding a higher post on regular basis and who had completed a minimum period of 24 months in the higher post and if he seeks transfer on his own request to a lower post, fixation of his pay in the lower grade shall be done at the stage equal to the pay drawn by him in the higher post subject to the maximum of the lower post not being exceeded. In case, there is no such stage in the lower grade equal to the pay being drawn by the employee in the higher post, his pay in the lower grade will be fixed at the stage next below the pay being drawn in the higher post and the difference will be paid as personal pay to be absorbed in future increments." On this basis the applicants contend that they should have been granted pay protection.

14. The applicants raised a further contention that similarly placed employees in Western Railway were granted pay protection on their being absorbed elsewhere. This is discriminatory. The applicants have

relied on a judgment of the Hon'ble Supreme Court in Abid Hussein & Others etc. Vs. Union of India & Others, AIR 1987 SC 359 (a copy of which was produced at the time of hearing). In the aforesaid case, overtime allowance was paid to attendants in charge of Air Conditioned Coach in Western and Central Railways but not to those in the Northern Railways. The Hon'ble Supreme Court held it to be unjustifiable to deny the benefit to the attendants of Northern Railway. We agree that there ought not to be any discrimination among similarly placed employees of different Railways but the applicants did not produce any documentary material to show that surplus Telegraphic Signallers in Western Railway were placed in the higher pay scales which they were drawing earlier or their higher pay in the earlier grade was protected. This plea of discrimination is therefore, not tenable.

15. We have heard the learned counsel for the applicants as well as the respondents and have perused the relevant documents. it is clear that the applicants were found surplus on account of winding up of Telegraphic Department and the applicants were redeployed as Ticket Collectors on their own option for the post of Ticket Collector. The basic scale of the Ticket Collector is Rs.950-1500 the applicants have already been drawing more than Rs.1500/- which is the maximum of the scale. Therefore, their pay was fixed

at Rs.1500/- All that the applicants paid for the post of Ticket Collector and the Railway Administration had followed the instructions in force i.e. as per the letter dated 23.9.1992. Had the applicants not been absorbed as Ticket Collectors they had to go home. Also the applicants did not opt for other posts, though option was available for those posts also. They failed to challenge their appointment order of 28.11.1996 nor had they represented against the same. The letter referred by the applicants from the Railway Board dated 20.8.1999 refers to cases of transfer, it is regarding pay protection on request transfer. In the present case it is not the case of transfer, but of redeployment in a post opted for by the applicants on their being declared surplus. In the facts and circumstances of the case, we do not find any merit in the OA, it deserves to be dismissed and accordingly we dismiss the OA without any order as to costs.

Shanta 9-

(SMT. SHANTA SHAstry)
MEMBER (A)

Lakshmi

(SMT. LAKSHMI SWAMINATHAN)
VICE CHAIRMAN (J)

Gajan