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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.  
( AT JAIPUR ).

Date of decision: May 8, 1989.

T.A. No.2230/86

SHRIMATI EKTA GUPTA & OTHERS ... Plaintiffs/Petitioners.  
Shri M.S. Bhargava ... Counsel for Petitioners.


VERSUS

UNION OF INDIA AND OTHERS ... Defendants/Respondents.  
Shri G.P. Soral ... Counsel for Respondent No.1.  
Shri M.S. Singhvi ... Counsel for Respondents  
Nos.2 to 4.

CORAM:

THE HON'BLE SHRI B.S.SEKHON, VICE CHAIRMAN.  
THE HON'BLE SHRI G.C.SINGHVI, ADMIN. MEMBER.

G.C. SINGHVI



It may be stated at the outset that a Civil Suit was filed by the Plaintiffs/Petitioners in the Court of learned Munsif, Kota (North) on 15.12.1984 (Civil Suit No.976/1984). Simultaneously an application for issue of a temporary injunction was also filed by the plaintiffs/petitioners in the same Court (C.M. 498/84). On 15.4.1985 the application for issue of temporary injunction was rejected by the learned Munsif. The plaintiffs/petitioners went in appeal against the learned Munsif's order of 15.4.1985. This appeal was rejected by the learned Civil Judge, Kota on 5.8.1985. The Civil Suit, by virtue of operation of section 29(1) of the Administrative Tribunals Act, 1935, was then transferred to the Tribunal and rechristened as Transferred Application No.2230/1986.

S.S.89  
EC  
8/9/89

2. Plaintiff/Petitioner No.4 Shri Krishna Sharma, in the meantime expired. So his name was deleted as per orders dated 3.8.1988.

2 - 2 -

3. The factual background, as depicted in the plaint, leading to the institution of the instant suit since rechristened as Transferred Application is that all the plaintiffs were Accounts Clerks, First grade working in Western Railway, Kota under the defendants. Plaintiffs 2,3 and 4 were selected I grade Accounts Clerks. The plaintiffs 2,4,5,6 & 7 were posted in the Railway Electrification Project Kota as I grade Accounts Clerk on deputation. Plaintiff No.1 (Ms. Ekta Gupta) and No.3 (Shri Ghanshyam Lal Jhala) had been transferred back to their parent department on 22.8.1984. The plaintiff No.1 was posted in Divisional Accounts Office, Kota and No.3 in Railway Workshop, Kota. According to Railway Gazette Notification No.85, Gazette No.3 dated 1.11.1981 all the plaintiffs on deputation from their parent department to Railway Electrification Project were to be fixed in the higher pay grade with effect from the date they joined on deputation. The defendants have accordingly been fixing the pay of such employees going on deputation except the Accounts hands. Even in Accounts Department Shri R.K. Sharma, Cashier's pay scale Rs.330-560 had been fixed in the pay scale of Rs.425-640, Shri Ram Het in the pay scale of Rs.196-232 had been fixed in the pay scale of Rs.225-308. Their pays were raised and increments granted accordingly. All the plaintiffs have not been given the next higher pay grade with effect from the day they joined the Railway Electrification Project on deputation. Thus, they have been discriminated against and sustaining monetary losses not only in fixation and increments but would suffer in terms of retiral benefits also. The plaintiff No.3 Shri Ghanshyam Lal Jhala should have been fixed in the pay scale of Rs.425-750 in the Railway Electrification Project because on reversion to his parent department on 22.8.1984 he has been promoted and fixed in the pay scale of Rs.425-700 in due course. Notices under Section 80 of the



8-589 B  
EC  
8/9/89

78/3-

C.F.C. were issued on 1.8.1984 and 17.8.1984 but there was no response. The cause of action arose on 10.8.1982, 1.7.1982 and 2.7.1982, the dates of joining the REP by the plaintiffs on deputation. The Court Fee of Rs.25.00 had been paid for declaration \*\* and of Rs.30.00 for permanent injunction. The reliefs sought comprised a declaration that the plaintiffs were entitled to get next higher grade with effect from the dates they joined on deputation as follows:

Name of Plaintiff with date of appointment	Date of joining REP on deputation and duration of deputation	Present Pay scale Rs.	Next higher pay grade Rs.
1. Smt. Ekta Gupta 7.10.1977	10.8.1982 to 22.3.1984	330-560	425-700
2. Shri Dwarka Prasad Sharma 25.2.1956	10.8.1982 continuing	425-700	425-750
3. Shri Ghanshyam Lal Jhala 17.1.1956	10.8.1982 to 22.3.1984	425-700	425-750
4. Shri Krishna Sharma 29.3.1956	10.8.1982 continuing	425-700	425-750
5. Shri Gopal Narain Gupta 16.5.1974	2.7.1982 continuing	330-560	425-700
6. Shri Mangilal Mitholia	10.8.1982 continuing	330-560	425-700
7. Shri Vishwas Jindani 1.7.1982	1.7.1982 continuing	330-560	425-700



8-589/3

CC  
5/8/89

granting of all consequential benefits in terms of fixation increments, allowances, perks etc. and issuance of a permanent injunction against the defendants not to deprive the plaintiffs of fixation in the next higher grade of pay and consequential benefits as aforesaid.

4. The defendants have contested the Suit in their written statement controverting the pleas and the grounds

get selection grade on joining the Railway Electrification Project is not tenable.

- 4 -

set out by the plaintiffs. They admit that the plaintiffs Nos.1 and 3 were working in the Divisional Accounts Office and Accounts Office, Railway Workshop, Kota respectively and the plaintiffs 2,4,5,6 & 7 were in the REP but they deny their being on deputation to REP. Accounts Department of REP, is a part of the entire Accounts Department of Railways and all accounts hands manning these posts belong to seniority group of Kota Accounts Department which includes Senior Divisional Accounts Officer, Senior Accounts Officer, (Workshop Stores) and Senior Accounts Officer (Survey & Construction). The plaintiffs also belong to the seniority group of Kota Accounts Department. Thus, it is not a case of deputation to REP but a simple case of transfer to REP. The plaintiff Nos.1 and 3 have been transferred from REP to office of Senior Divisional Accounts Officer with effect from 22.8.1984 but they were not on deputation to the REP. The plaintiff No.3 was in the grade of 330-560 when he was in the REP but he got the pay scale of Rs.425-700 after transfer from REP to Accounts Office Workshop Kota. Railway notification No.85 which was published in Gazette No.3 of 1.11.1981 clearly lays down that staff posted in REP units will be treated as promoted to next higher grades and REP will grant higher grades to them when the rules permitted it. Moreover, in the Accounts Department the scale of Rs.425-700 is selection grade. Under the Railway Board orders of 4.10.1982 promotion to selection grade can be made only when selection post is available and no selection post was available in REP Department or Construction Project. Actually, selection grade posts cannot be created there. The plaintiffs 1,5,6 & 7 did not fulfil the conditions for promotion to grade Rs.425-700. All staff posted under Senior DAO, SAO (C), SAO (W) and Deputy FA & CAO (RE) including the plaintiffs



8-5-89  
Cc.  
8/5/89

8  
P-6 -

1

sometime the plaintiff/petitioner No.5 Shri M.L.Mitholia was also transferred to the parent department. In this representation also the plaintiffs/petitioners reiterated the stand taken by them earlier. The respondents Nos.3 and 4 filed a rejoinder to this representation. They have stated that the Ministry of Railways have issued Circular dated 12.4.1977 (Annexure R-2/1) and 4.10.1982 (Annexure R-2/2) in which it was provided that the higher posts in the selection grade will not be offered till the incumbents are selected in their parent department for such higher posts. Interpretation taken by the petitioners in regard to the notification No.85 is also not correct. In this notification itself it has been mentioned that the the promotion may be offered on the transfer to the Railway Electrification and thus, the Respondents were not obliged to give promotion to the petitioners on their transfer to the REP. Notification has to be read in its entirety and with reference to other communications. The plaintiffs/petitioners, according to the respondents, were not entitled to get the next higher grade pay after joining the REP. In so far as reference to other employees who have been given higher grade made by the plaintiffs/petitioners is concerned, it was reiterated that higher grades were given on the posts which were not selection posts. It was not correct to contend that in all the departments the employees were offered next higher grade immediately after their posting. They have stated that the selection grades have not been offered in any case unless the incumbents are selected in their parent departments therefor. They have reiterated that grant of higher grade when the higher grade is selection grade is governed by Circulars Annexure R-2/2 and R-2/3. The petitioners did not fulfil the conditions laid down in those circulars and therefore they had not been given promotions to selection grade in their



8-5-89  
Cc.  
8/5/89

2  
A-7 -

respondents  
parent department and therefore/also did not give them such promotion/grade. They have emphasised that the respondents have not given selection grades as a matter of course on joining the REP to anyone. The selection grades had been given only if the incumbents were selected by the regular process in their parent units. In that view of the matter the petitioners were not entitled to get Selection Grade out of turn and they could only be given such grades in regular/normal/due course after getting through the selection process. Summing up, the respondents have stated that the petitioners are not entitled to any of the reliefs claimed in the Suit. The Suit/Transferred Application be therefore, dismissed with costs. The plaintiff/petitioners filed an affidavit in support of documents and the respondents submitted a reply to the affidavit. The respondents have pointed out that the documents submitted by the plaintiffs/petitioners alongwith the affidavit are not relevant to the controversy in issue. For example Railway Board letter dated 25.8.1981 deals with man power mobilisation for REP and it has nothing to do with promotion of accounts staff. Likewise, letter dated 12.11.1987 written by FA & CAO deals with the restructuring of non gazetted cadres of Accounts Department. These instructions are based on Railway Board letter dated 13.5.1987 but it has no relevance in regard to the controversy in issue. Coming to promotion orders of Accounts Officers they have stated that the orders were issued by the General Manager Railway Electrification Project, Allahabad on the basis of seniority/suitability but the petitioners were not Accounts Officers. Summing up they have stated that the petitioners' could claim promotion to the selection grade in the REP only if they had become due for and got such promotion in their parent cadre while serving in the REP.



8-5/89

Cc-  
8/5/89

6. Thus, the relevant orders which are applicable to the facts and circumstances of the instant Suit/Transferred Application are the Railway Board Instructions issued vide their letter No.PC III/78/SG/8 dated 4.10.1982. Subject is "Introduction of Selection Grade in Group 'C' & 'D' cadres." The text of the order is reproduced hereinbelow:

"A question has been raised as to whether non-functional selection grades for Group 'C' & 'D' cadres envisaged in this Ministry's letter No.PC II/74/MS/16 dated 12.4.1977 can be created in the independent construction projects such as Railway Electrification, MTP(Rlys), COFMOW and also the Railway Service Commissions. The introduction of selection grade in a cadre and appointment there to are subject to certain conditions which are not satisfied in the case of cadres operated in the Construction Projects and Service Commissions. It is, therefore, not feasible to introduce selection grades in these units. However, the employees working on the Construction Projects and Railway Service Commission may be considered for appointment to the selection grade sanctioned in their cadre in the parent office, if any, under the next below rule on one to one basis, from the date the junior employees in the cadre becomes eligible for selection grade.

"It is further clarified that it is not permissible to create a regular working post in a category in the scale of pay applicable to non-functional selection grades unless the scale is already available in the cadre as a regular functional scale."

Another circular which is applicable to the controversy in issue is the Railway Board directive No.PC II/74/MS/16 dated 12.4.1977. It is on the subject "Selection Grades in Groups



8-5-89 B

Ce  
8/5/89

'C' & 'D' cadres implementation of the recommendations of the Third Pay Commission." Paras V and VI thereof which throw ample light on the subject are reproduced hereinbelow:

"V. For becoming eligible to be considered for appointment to the selection grade, an employee should have rendered such length of service which would have brought him to the stage represented by  $\frac{3}{4}$ th of the span of the revised scale of the ordinary grade inclusive of the service rendered in the pre-revised scale of that grade subject to minimum of 14 years of service. This will not, however, have the effect of deliberalising the criteria which might be applicable in respect of selection grades already in vogue".

"VI. The time scales for the selection grades should start near about the  $\frac{3}{4}$ th span of the ordinary grade and should end short of the maximum of the scale of pay of the next promotional post."

And the plaintiffs/petitioners have not been able to establish that either of these instructions are not applicable to their case or that these instructions have been superseded and some other instructions are applicable to their case.

7. In view of what has been said and discussed above it is very clear that the claim of the plaintiffs/petitioners to get selection grade on joining the Railway Electrification Project is not tenable because they can get a selection grade in the R.E.P. only if they have got it in their parent department. And since it is not the case of the plaintiffs/petitioners that before their joining the R.E.P. or while serving the R.E.P. they had got their selection grade in their parent departments, wind stands taken out of the sails



8-5-89 B

8/5/89

8  
10 -



of their case. Accordingly there is little merit in the Transferred Application and the same is hereby rejected with no order as to costs.

*G.C. Singhi*  
( G.C. SINGHI )  
ADMN. MEMBER

8-5-89

*B.S. Sekhon*  
( B.S. SEKHON )  
VICE CHAIRMAN

8-5-89

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Cover of Petitioner's Sub Petition  
sent vide no. 2323  
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