

(103)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT  
HYDERABAD

TRANSFERRED/ORIGINAL APPLICATION NO. 620 of 1989

DATE OF ORDER: 8<sup>th</sup> June, 1990

BETWEEN:

Mr. S.Madhava Rao and 58 others

APPLICANT(S)

and

Union Ministry of Railways and 3 others

RESPONDENT(S)

FOR APPLICANT(S): Mr. R.V.Kameshwaran, Advocate

FOR RESPONDENT(S): Mr. N.R.Devaraj, SC for Railways

CORAM: Hon'ble Shri J.Narasimha Murthy, Member (Judl.)  
Hon'ble Shri R.Balasubramanian, Member (Admn.)

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it <sup>es</sup> needs to be circulated to other Bench of the Tribunal?
5. Remarks of Vice-Chairman on columns 1,2,4 (to be submitted to Hon'ble Vice-Chairman where he is not on the Bench)

JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE SHRI R.BALASUBRAMANIAN, MEMBER (ADMN.)

This Original Application has been filed under Section 19 of the Administrative Tribunals Act by Shri S.Madhava Rao and 58 others against the Ministry of Railways and 3 others.

2. The applicants are Goods Guards in the Vijayawada Division of the South Central Railway. According to the scheme of restructuring introduced by the Railways, these applicants were to have been promoted from Grade 'C' to Grade 'B' with effect from 1.1.1984 and that such promotions should have been ordered before 31.8.1985. It is the case of the applicants that they were promoted but long after 31.8.1985. In the application they have quoted four orders dated 27.3.1986, 10.7.1986, 31.7.1986 and 25.9.1986 covering all the applications. In the meantime, the Government accepted the recommendations of the 4th Pay Commission by which the two Grades 'B' and Grade 'C' were merged into a single grade. This decision though taken in October 1986 only, was effective retrospectively from 1.1.1986. As a result, the applicants' ~~pay~~ <sup>which</sup> pay was fixed in accordance with the earlier instructions was revised to their disadvantage. ~~and the pay was revised~~ In fact, the applicants had been drawing higher emoluments in accordance with the older pattern and they are aggrieved by the decision of the respondents to fix them on lower pay with the consequent recovery. In the application they had given a statement indicating where their pay was fixed soon after promotion and where it stands after revision. They are further aggrieved that this lower pay has resulted in further pecuniary loss like overtime allowance,

dearness and other allowances which depend on the basic pay.

3. The main grievance of the applicants is that if the promotions under the restructuring scheme had been effected by the respondents within the target date of 31.8.1985, this situation would not have arisen because in <sup>that</sup> case the decision on the Pay Commission's recommendations would only be in force from 1.1.1986 and ~~these~~ applicants would not have ~~affected~~ been <sup>them</sup> effected adversely.

4. The applicants have quoted another letter of the Railway Board dated 5.2.1987 which states that the promotions/postings made between 1.1.1986 and the crucial date (25.9.1986) will ~~be~~ stand protected indicating thereby that their pay fixed in accordance with the rules in force before the merger would not be affected. The applicants, therefore, contend that~~their~~ delayed promotion on account of the lapses of the department and the subsequent protection given to them by the Railway Board's order of 5.2.1987, there should be no lowering in the pay fixed already. It is also their point that the revision order by the respondents amounts to penalty imposed on them without recourse to disciplinary action and should, therefore, be treated as illegal.

5. They have prayed that their pay be restored to the earlier level and that all arrears be paid to them.

6. The respondents have opposed the prayer of the applicants. They have pointed~~that~~ promotion of all the applicants was not under the restructuring scheme but was ~~a~~ <sup>vacancies caused by</sup> normal one due to ~~A~~ retirement etc. It is also their point that the protection given under Railway Board's letter dated

5.2.1987 was in a different context and was subsequently amended by the President of India <sup>as</sup> communicated in Railway Board's letter No.PC.IV/88/FOP/2 dated 27.1.1989 (Serial Circular No.32 of 1989) restricting protection of promotions made between 1.1.1986 and 25.9.1986 only for purposes of seniority and not for purposes of fixation of pay.

7. The respondents have stated that the revision of pay fixation in the light of merger of cadres consequent to acceptance of 4th Pay Commission's recommendations has been uniformly adopted in other cases also such as Assistant Station Masters and Station Masters. It is their contention that they cannot adopt different yard sticks for different cadres and hence their opposition to the prayer of the applicants.

8. The respondents have also contended that what has been ordered is mere recovery of excess payments and is not disciplinary proceedings ~~and~~ as a matter of punishment.

9. We have heard both the learned counsels for the applicants and the respondents. The main contention of the applicants ~~was~~ is that if the respondents had effected the restructuring promotions according to the schedule, this situation could have been avoided. The respondents on the other hand contend that the promotion of these applicants was not at all under the restructuring scheme but ~~under~~ <sup>in</sup> the normal ~~scheme~~ <sup>course</sup>. In the rejoinder to the counter furnished by the applicants as well as in the course of hearing, the learned counsel for the applicants took pains to prove that the promotion of the applicants was under the restructuring scheme. We have gone through the records of the Railways and

find that as early as in January 1986 they have calculated the various posts available/to be created under the restructuring scheme and in the office notes we find that 64 posts were available for filling-up under the restructuring scheme. Accordingly, they had issued the order dated 27.3.1986 in which 64 persons were promoted under the restructuring scheme and 61 under the normal scheme. All the applicants come under the latter part. It is now clear that the applicants cannot feel aggrieved on the score that the delay on the part of the respondents in implementing the restructuring scheme has led to their present predicament.

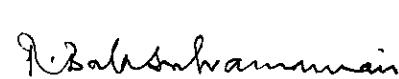
10. We shall now take-up other aspect viz., protection given to those who were promoted from 1.1.1986 to 25.9.1986 regardless of the scheme under which their promotions were effected - restructuring or otherwise. The Railway Board's letter dated 27.1.1989 is a later letter and the President in exercise of the powers conferred by the proviso to Article 309 of the Constitution had issued this rule on the subject of fixation of pay. In para-3 of this letter, it is clearly stated that the instructions contained in the Board's letter dated 5.2.1987 providing protection for promotees between 1.1.1986 and 25.9.1986 is only for purposes of seniority. The pay of such employees has to be fixed in terms of Railway Services (Revised Pay) Rules, 1986 only. It is in accordance with this that the pay of the applicants was refixed. The applicants have challenged the legality of such modification to rules with retrospective effect. In the course of hearing, they had cited four decisions viz., (1) AIR 1969 Punjab & Haryana Page-258 (2) AIR 1972 (SC) 628 (3) SCC L&S Vol.I 1987 Page-310 and (4) AIR 1989 (SC) 1688. Quoting these,

the applicants contended that having been promoted before a decision on Pay Commission's recommendations was taken, they have acquired a vested right which cannot be snatched away by a subsequent rule. We find that the citations at Sl.Nos. 1 and 2 ~~are~~ relate to different cases. Regarding citations at Sl.Nos. 3 and 4, we find that these decisions are by way of protecting interse seniority among contending cadres and do not have a bearing on fixation of pay. The rules for fixation of pay are seperate and the cases cited by the applicants do not come to their help.

10. We are, therefore, of the opinion that the respondents are well within their rights to refix the pay in accordance with the decisions taken legally.

11. In the result, the application fails with no order as to costs.

  
(J. NARASIMHA MURTHY)  
Member (Judl.)

  
(R. BALASUBRAMANIAN)  
Member (Admn.)

Dated: 8<sup>th</sup> June, 1990.

  
For Deputy Registrar (J)

To:

1. The Chairman, (Union Ministry of Railways) Railway Board, New Delhi.
2. The General Manager, S.C.Railway, Sec'bad.
3. The Chief personnel officer, S.C.Railway, Sec'bad.
4. The Divisional railway Manager, Vijayawada division of south central railway, Vijayawada.
5. One copy to Mr.R.V.Kameshwaran, Advocate, B-21, Rly. Quarter, Sithaphalmandi, Sec'bad.
6. One copy to Mr.N.R.Devaraj, SC for Rlys., CAT, Hyderabad.
7. One copy to Hon'ble Mr.R.Balasubramanian: Member: (A), CAT, Hyd.

... .

k.j.

vsn