

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :.HYDERABAD BENCH
AT HYDERABAD

O.A.No.590/90.

Date of Judgment: 4.1.1991.

South Central Railway represented
by its Divisional Railway Manager,
Guntakal Division, Ananthapur District.

.....Applicant

Vs.

1. M.Balasubbaiah
2. M.Narayana
3. G.Sadasivam
4. K.Sampoornammal
5. K.S.Ramamoorthy
6. C.V.Sudarshanam
7. T.H.Ramanathan
8. A.V.Sampath
9. K.Narayanaswamy
10. S.Sadasiva Rao
11. T.S.Kuppuswamy
12. T.R.Dandapani
13. J.Sunder Raj
14. Abdul Hai
15. R.Balaguruswamy
16. J.Venkata muni Chetty
17. V.Ramakrishnaiah
18. T.V.Rama Rao
19. B.Chakradhara Rao
20. B.Ameerkhan
21. T.Govindarajulu Naidu
22. Mrs.Mary Rich Mond,
23. G.Muniswamy
24. A.Kondappa
25. J.N.Purushotham Reddy
26. G.Krishnamoorthy
27. P.Venkata Rangam
28. M.Sarangapani
29. A.Sreenivasulu
30. P.T.Sampath Iyengar
31. R.Venkata Ramaiah
32. S.Koteswara Rao
33. K.Venkatraman
34. A.B.Krishna Moorthy
35. P.Narayana Rao
36. G.Sreenivasa Moorthy

37. Chairman,
Industrial Tribunal-cum-
Labour Court, Ananthapur,
Andhra Pradesh

.....Respondents

- 2 -

Counsel for the Applicant : Shri N.R.Devaraj, SC for Rlys

Counsel for the Respondents : Shri G.V.Subba Rao

CORAM:

THE HON'BLE SHRI B.N.JAYASIMHA : VICE-CHAIRMAN

THE HON'BLE SHRI D.SURYA RAO : MEMBER (JUDICIAL)

(Judgment of the bench delivered by Hon'ble
Shri D.Surya Rao, Member (J)).

This is an application filed by the South Central Railway, represented by its Divisional Railway Manager, Guntakal Division, Guntakal, Anantapur district assailing the order dated 11-4-1990 of the Chairman, Industrial Tribunal-cum-Labour Court, Anantapur, (Respondent No.37 herein) passed in CMP No.1 of 1988. By the said order the Labour Court directed the applicant herein to fix the pay of the Respondents 1 to 36 herein in their present cadre of Assistant Station Master/Station Master (ASM/SM for short) so as not be less than the pay they would have drawn if they had continued in the cadre of Commercial Clerks from which they were promoted and that their pay should not be less than the pay of their Juniors who continued as Commercial Clerks. The Labour Court further directed the applicant herein to pay the respondents the arrears with interest at 5% per annum from 11-7-79 within three months from the date of the order.

2. The Respondents 1 to 36 herein were previously parties to earlier litigation before the High Court of

Andhra Pradesh and this Tribunal. They were working either Station Masters or Assistant Station Masters of Guntakal Division of South Central Railway. They had filed Writ Petition No.2719/82 before the High Court of Andhra Pradesh claiming that their salaries should be fixed in accordance with the directions issued by the High Court of Andhra Pradesh in an earlier Writ Petition No.2958/70 dated 28-8-1970. The Respondents 1 to 36 herein and the petitioners in W.P.2958/70 had originally joined service in the erstwhile M and S.M.Railway as Commercial Clerks. They were later promoted as Assistant Station Masters/Station Masters. On 1-4-1956 certain beneficial scales were given to railway employees under what was known as 'New Deal'. As a result of implementation of the 'New Deal', juniors to some of the Assistant Station Masters/Station Masters who remained as Commercial Clerks began to draw more pay than their seniors who had been promoted as ASMs/SMs. The senior ASMs/SMs moved the High Court of Andhra Pradesh in W.P.No.1153/63 for a direction that their scale of pay should be fixed on par with that of their juniors who had remained as Commercial Clerks. The Writ Petition was allowed on 6-2-1968. The Respondents herein and certain others who were not parties in the said writ petition, filed Writ Petition No.2958/1970 and batch. These Writ Petitions were disposed of with a direction similar to that in WP 1153/63. The Railway Administration carried the Judgment in WP 2958/70 and batch, before the Division

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Bench of the High Court in Writ Appeal No.497/71 which was dismissed. A Special Leave Petition filed by the Railway Administration before the Supreme Court against the order in W.A.No.497/71 was also dismissed on 27-11-72. The Railway Board thereupon, by a letter dt.28-5-70 directed implementation of the orders of the High Court. Subsequently, the Railway Board issued another revised circular dt.20-2-75 whereby the benefit of giving the higher pay available to Commercial Clerks was not extended to all Assistant Station Masters. By the revised circular dt.20-2-75, proforma promotions was directed to be given to ASMs/SMs only on 1:1 basis i.e. if two ASMs/SMs were senior to a Commercial Clerk, then the benefit of notional promotion and fixation of pay was to be given only to the senior of the two ASMs/SMs and not to both. Some ASMs/SMs filed W.P.1923/75 questioning the circular dt.20-2-75. The Writ Petition was allowed by the High Court and the same was also confirmed in Writ Appeal. The Railway Administration preferred a Special Leave Petition No.4029/77 before the Supreme Court. The Leave was not granted. However, a connected writ appeal namely, W.A.No.108/75 from the Madras High Court come up before the Supreme Court wherein the correctness of the decision of the Andhra Pradesh High Court in W.P.1923/75 was considered vide AIR 1980 SC 959 (Union of India Vs. E.S.Soundara Rajan). The Supreme Court differed with the reasoning of the High Court of Andhra Pradesh and held that the ASMs/SMs had no right to fixation of pay on par with the Commercial Clerks, since these two categories of employees xxxxxxxxxxxxxxxxxxxxxxxx consti-

- 5 -

tuted different categories. Though the Supreme Court dismissed the case of the ASMs/SMs for a right to fixation of pay on par with their juniors, the Court did not interfere or set aside the decision of the High Court since these employees had already obtained the benefit by virtue of the decision of the High Court. The Supreme Court had held as follows :

"Having heard counsel on both sides on this aspect, we direct that while the law has been declared by us and it in effect reverses the position taken by the Andhra Pradesh High Court, the emoluments that the respondents in the appeals as well as the Special Leave Petitions will draw will not be affected, subject of course to our observations regarding the second point urged by the learned Additional Solicitor General."

This benefit, however, was limited only to the applicants who were before the Supreme Court and not to persons like the Respondents 1 to 36 herein who were not parties to the case before the Supreme Court. Thereupon, the Respondents herein had filed W.P.2719/82 before the A.P.High Court which was transferred to this Tribunal and was numbered as T.A.No.173/86, claiming that the Supreme Court judgment in giving the benefit to those who were not parties to the appeals before the Supreme Court is arbitrary and that the persons like the Respondents 1 to 36 herein were entitled to all benefits already derived. We had dealt with these contentions at paragraphs 5 to 7 of our order dt.12-7-87 in T.A.173/86 as follows :-

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5. The applicants before this Tribunal now in the present petition-application contend that by virtue of the decision in their favour in WP No.2958/70 and the Rly.Bd's Circular dt.28.5.70 the order of the Supreme Court restricting the right only to the applicants before the Supreme Court is arbitrary and that it can be ignored. It is stated that the applicants were not before the Supreme Court due to certain fortuitous circumstances. It is contended on their behalf that the applicants by virtue of the decision in W.F.No.2958/70 had derived a right to have their pay fixed on par with what their juniors have drawn in the category Commercial Clerks, that this right was confirmed in a Writ Appeal and also by the Supreme Court by the dismissal of a Special Leave Petition. They stated that they could not question the subsequent clarification by the Railway Board dt.20.2.1975 as they had no knowledge of the said clarification. It is contended that since judgment in WP No.2958/70 became final, they were entitled to get the benefit of the said judgment.

6. On behalf of the respondents a counter is filed admitting that the applicants had filed WP No.2958/70 and obtained a direction from the High Court that the applicants would be entitled to fixation of the pay that they would have drawn had they continued as Commercial Clerks. The contention of the Railways however is that even if the applicants had continued as Commercial Clerks they had continued as Commercial Clerks all the promoted ASMs/SJs would not get promotion. The reasoning is that if there is only one promotion post and two ASMs are both senior to a Commercial Clerk who got promotion then only one of two ASMs would have got the promotion. It was in this context that the Railway Board issued a revised circular dt.20.2.75. This circular was issued to give effect to this actual relief sought for and granted by the High Court. The Supreme Court upheld the validity of the circular dt.20.2.75. The applicants did not question the circular and so they were not parties before the Supreme Court before which the correctness of the circular dt.20.2.75 was canvassed. Though the Supreme Court upheld the principle contained in the circular dt.20.2.75, it did not interfere with the benefits already obtained by the parties i.e., ASMs/SJs actually before it numbering about 547.

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7. Though the applicants in the present case were not parties to the appeal before the Supreme Court they claim that they are entitled to the emoluments on three main grounds (1) The Judgment in W.F.2958/70 entitled them to fixation of pay on par with their juniors who had continued as Commercial Clerks. (2) The judgment of the Supreme Court denying the benefit of higher scales of pay is an obiter and not binding on them as they were not parties to the case before the Supreme Court. (3) The Divisional Personnel did in fact in proceedings dt.5.1.74, 25.1.74, 28.1.74, 7.2.74 and 10.2.74 determine the salaries of the applicants in compliance with the earlier orders of the High Court but withheld payment, that in W.F.4550/74 the High Court ordered that such withholding was illegal without issue of a notice to the applicants and that since no notice was given to the applicants non payment of salaries as revised is illegal. In regard to contentions (1) and (2) we are unable to agree with the contention of the Learned Counsel for the applicant. All that the High Court had ordered in W.F.No.2958/70 and batch is that ASMs/SMS if they had continued as Commercial Clerks would be given the benefit of the better scales of pay available to their juniors. The Judgment does not direct proforma fixation of all ASMs/SMS on par with all or any of their juniors in the category of Commercial Clerks. The circular letter dt.20.2.75 has interpreted the Judgment of the High Court in W.F.No.2958/70 and earlier judgments to mean that ASMs/SMS have to be put back into the position of Commercial Clerks and thereafter their rights worked out via., whether they would have got higher pay under the 'New Deal'. The effect of the circular letter dt. 20.2.75 is that fixation of pay of ASMs/SMS would be on the basis that proforma promotion should be given to not more than one person against a single actual promotion. This interpretation of the effect of the judgment in W.F.No.2958/70 has been confirmed both by the decision of the Supreme Court and the High Court by rejection of the Contempt cases filed by the applicants. Therefore, as rightly contended by the respondents in their counter, the applicants would not have got an increase in pay pursuant to the 'New Deal' if they had continued as Commercial Clerks and in fact such is not their claim. Hence irrespective of the fact whether the Judgment of the Supreme Court is an obiter or not the applicants merely by virtue of the Judgment in W.F.2958/70 etc., would not be entitled to an increase in salaries on the ground that their Juniors who are continuing as Commercial Clerks were given a higher salary. It follows that when the applicants are unable to establish any legal right on the basis of the judgment in W.F.2958/70, no relief can be granted to them.

3. The Respondents 1 to 36 herein having failed in T.A.173/86 thereupon filed C.M.P.1 of 1988 before the Labour Court, Guntur under section 33(c)(2) of the Industrial Disputes Act, 1947. They claimed that by virtue of the order of the High Court of Andhra Pradesh in Writ Petition 2958/70 and batch they were, "entitled to fixation of the pay that they would have drawn had they continued in the post of Commercial Clerk to be effected from 1-4-1956". It has contended that the order of the Single Judge in W.P.2958/70 was confirmed in W.A.497/71 dated 31-12-71, that the Special Leave Petitions therefrom viz., S.L.P. No.2489-2499-A/72 were dismissed by the Supreme Court on 27-11-72, that the Railway Board had therefore not implemented the directions of the High Court but issued contrary orders on 20-2-75 in order to deny the successful employees their claims, that some of the employees identical to Respondents 1 to 36 herein (applicants in CMP 1/1988) had moved the High Court of Andhra Pradesh in W.P.1923/75) questioning the Railway Board letter dt.20-2-75, that the said letter dt.20-2-75 was quashed and that this order had become final since the consequent W.A.108/75 and S.L.P. 4029/77 preferred to the Supreme Court had been dismissed. The respondents 1 to 36 herein claimed before the Labour Court that because of the dismissal of SLP Nos.2489-2499-A/72 by the Supreme Court (from the Judgement of the High Court in W.P.2958/70 and batch) they were entitled to the benefits

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conferred by the earlier Railway Boards letter No.ME(D&E) 11/70 CPC P.A.3/28-5-1970. They claimed that the letter dt.28-5-1970 was enforceable despite the subsequent Railway Board letter dt.20-2-1975 and that they were entitled to difference in pay with interest at 12% per annum till the date of ~~payment~~.

4. The respondents to C.M.P.1/88, the Railways (the applicants herein) filed a counter before the Labour Court contending that the claims of Respondents 1 to 36 was concluded by the decision of the Tribunal dt.12-3-1987 in T.A.173/86 and that therefore the application ~~was~~ liable to be dismissed.

5. The Labour Court, Anantapur held that by virtue of the Judgement of the High Court of Andhra Pradesh in Writ Petition 2958/70 and batch and the dismissal of SLPs preferred therefrom to the Supreme Court and the clarification given by the Railway Board dt.28-5-70 the applicants before it (Respondents 1 to 36) were entitled to the benefits of pay fixation in terms of the said order dt.28-5-1970. It was held that the Judgement of the ~~Supreme~~ Supreme Court in AIR 1980 SC 959 that the benefit should be given to the employees who are already on record before the ~~High~~ High Court and the Supreme Court and to none else would also apply to the cases of the applicants in CMP No.1/1988. In the result the CMP was allowed with a direction that the claimants be paid arrears

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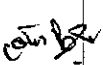
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in terms of the Railway Boards earlier circulars dt.28-5-70 and 19-9-80 (Exhibit W-1 & W-2) with interest at 5% per annum.

6. We have heard the learned standing counsel for the applicant Railways Sri N.R.Devareaj and Sri G.V.Subba Rao, learned Counsel for Respondents 1 to 36. The short question is whether by the judgement of the Supreme Court in AIR 1980 SC 959 (Union of India & others vs. E.S.Soundara Rajan etc.) the applicants are precluded from claiming the benefits of the Railway Board circular dt.28-5-70. To answer this question it would be necessary to consider what were the pleadings and arguments of the applicants 1 to 36 in TA 173/86 on transfer of WP 2719/82 to this Tribunal from the High Court of Andhra Pradesh. Applicants 1 to 36 had stated therein that aggrieved by the orders of the Railway Board dt.20-2-75, which denied the employees the benefit of the order dt.28-5-70 issued as a consequence to the judgement of the High Court of Andhra Pradesh in WP 2958/70 and batch, certain employees of Vijaya-wada Division had approached the High Court by way of WP 1923/75, that the High Court had quashed the order dt.20-2-75, that the consequent WP 108/76 and SLP 4029/77 preferred against these orders were dismissed and that the judgement in WP 1923/75 became final. As already stated earlier the order of the Railway Board t.20-2-75 was separately considered on merits by the Suprme Court in AIR 1980 SC 959 (Union of India & others Vs. E.S.Soundara Rajan etc.) and the said order dt.20-2-75 was upheld. In doing so the



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Supreme Court held that the law as declared by it in effect revises the position taken by the Andhra Pradesh High Court (in WP 1923/75). While doing so the Supreme Court clarified that the respondents before it (employees) who had got the benefit of restructuring will not be affected. It also clarified that the benefits of restructuring which the employees got as a result of the clarification of the Andhra Pradesh High Court assuming it was wrong (viz in WP 1923/75 & WA 108/76 therefrom) should not be recovered. Thus the decision of the Supreme Court in AIR 1980 SC 959 only saved the rights of respondent employees before it and those who were parties to WP 1923/75. Admittedly the applicants were not parties before the Supreme Court nor were they parties to WP 1923/75. The factual position viz., that the Judgement of the Supreme Court in AIR 1980 SC 959 does not save the emoluments of employees like Respondents 1 to 36 was also admitted in T.A.173/86. It was the specific plea of these respondents that due to certain fortuitous circumstances they could not join as parties to WP 1923/75 or question the later orders of the Railway Board dt.20-2-75. It was in this context pleaded that the decision of the Supreme Court limiting the benefits of restructuring to the employees before it was an obiter and not binding on them. These contentions were for the reasons given by us in TA 173/86 rejected. We had specifically held that the judgement of the High Court rendered earlier in WP 2958/70 does not entitle them to increase in salaries. Respondents 1 to 36 accepted the said decision

- 12 -

in TA 173/86 and did not prefer any appeal to the Supreme Court therefrom. If the decision in WP 2958/70 gave them an executable order or right then there was no need at all for them to have pleaded that the Supreme Court decision in AIR 1980 SC 959 was an obiter and there was further no need to have again approached the High Court by way of WP 2719/82 (TA 173/86) and sought quashing of the Railway Board subsequent instruction dt.20-2-1975. After having invited a decision as to the applicability the Supreme Court decision in AIR 1980 SC 959 and failed they have now once again sought to re-agitate the identical pleas before the Labour Court in C.M.P.1/1988 were directly in issue in Transfer Application 173/86 before this Tribunal and rejected after due consideration of the pleadings. The claim of Respondents 1 to 36 before the Labour Court are clearly barred by the principle of res-judicata.

7. Apart from C.M.P.1/1988 being barred by the principle of Res-judicata the Labour Court has clearly erred in holding that this Tribunal had misdirected itself. In doing so the Labour Court ignored the ^{admission in the R} pleadings in Transfer Application No.173/86, viz., that the applicants could not because of the certain circumstances question the orders of the Railway Board dt.20-2-75. It also ignored the earlier pleading that the judgement of the Supreme Court rendered in AIR 1980 SC 959 is an obiter in so ^{far} as the Respondents 1 to 36 were concerned. The Labour Court neither considered these pleadings nor the decision of the Tribunal rendered thereon in

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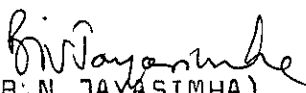
To


1. The Divisional Railway Manager,
S.C.Railway,
Guntakal Division, Ananthapur Dist.
2. The Chairman, Industrial Tribunal-cum-
Labour Court,
Ananthapur,
Andhra Pradesh.
3. One copy to Mr.N.R.Devraj, SC for Rlys, CAT.Hyd.Bench.
4. One copy to Mr. G.v.Subba Rao,, Advocate
1-1-230/33 Jyoti Bhavan, Hyderabad.(Chikkadapally).

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T.A.No.173/86. It had proceeded merely on the basis that the judgement of the High Court in WP 2958/70 confers rights of pay fixation on respondents 1 to 36, ignoring the reasons given by this Tribunal as to why the said decision does not confer any such rights. We have already extracted those reasons in para (7) supra. The decision of the Labour Court, Anantapur in CMP 1/1988 is thus clearly illegal and liable to be set aside. That this Tribunal in exercise of the powers analogous to that of the High Court under Article 226 and 227 of the constitution, can set aside the decision of Labour Court rendered in regard to service matters governing Central Government employees, is well established vide decision of the Larger Bench of the Tribunal (5 Members Bench) rendered in OA 576/86 (A.Padmavalli Vs. CPWD) & batch cases (date of Decision 30-10-1990).

8. For the reasons given by us in the preceding paragraphs we allow this original application and set aside the orders passed by the Labour Court, Anantapur, dt.11-4-1990 in CMP 1 of 1988. The parties are directed to bear their own costs.


(B.N. JAYASIMHA)
Vice-Chairman


(D. SURYA RAO)
Member (J)

Dated: 4th January, 1991.

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Deputy Registrar (Judl)

21/1/91

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CHECKED BY 802

APPROVED BY

TYPED BY 2/1/91

COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR. B. N. JAYASIMHA : V.C.

AND

THE HON'BLE MR. D. SURYA RAO : M(J)

AND

~~THE HON'BLE MR. J. NARASIMHA MURTY : M(J)~~

~~AND~~

~~THE HON'BLE MR. R. BALASUBRAMANIAN : M(A)~~

Dated: 4/1 -1991.

~~ORDER~~ / JUDGMENT:

~~M.A./R.A./C.A. NO.~~

~~in~~

~~T.A. No.~~ ~~W.P. No.~~

O.A. No.

590/90

Admitted and Interim directions
issued.

Allowed ✓

Disposed of with direction

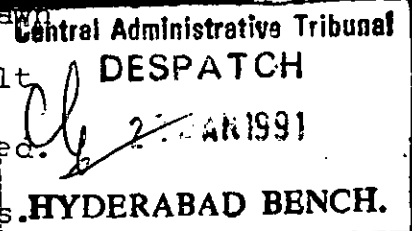
Dismissed

Dismissed as withdrawn

Dismissed for default

M.A. Ordered/Rejected.

No order as to costs.



2/1/91