

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH: JAIPUR

ORIGINAL APPLICATION NO.: 20/2003
and
MISC. APPLICATION NO.: 49/2003

Date of order: 06.04.2004

Subhash Chandra Sharma S/o Shri Durga Prasad Sharma, aged about 38 years, at present working on the post Assistant Trains Controller (ATNL), Office of Chief Trains Controller (CTNL), North-West Railway, Jaipur Division, Jaipur, R/o 197/62, Road No. 2, Madhav Nagar, Opposite Durgapura Railway Station, Jaipur.
...Applicant.

V E R S U S

1. The Railway Board through Chairman, Rail Bhawan, New Delhi.
2. The Union of India, through the General Manager, North-West Railway, Headquarter Office, Jaipur.
3. The Divisional Railway Manager, Jaipur Division, North-West Railway, Jaipur.

...Respondents.

Mr. P.V. Calla, counsel for the applicant.
Mr. V.S. Gurjar, counsel for the respondents.

CORAM:

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER.
HON'BLE MR. M.K. MISRA, ADMINISTRATIVE MEMBER.

ORDER (oral)

Shri Subhash Chandra Sharma has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 and has sought following reliefs:-

- (i) declared that the applicant being appointee of Post-1987 and as such he is entitled to get the benefit of Railway Board's circular dated 15.5.1987.
- (ii) direct the respondents to fix the pay of the applicant in the pay scale Rs. 1600-2660 from the date of appointment with all consequential benefits.
- (iii) Any other relief to which the applicant is found entitled, in the facts and circumstances of the present case, may also be granted in favour of the applicants."



2. With the consent of the learned counsel for the parties, the case was heard for final disposal at the stage of admission. We have carefully perused the pleadings and the records of this case.

3. Skipping up the superfluities the admitted facts relevant for resolving the controversy involved in this case, as culled out from the pleadings of the parties, are that the applicant applied for the post of Traffic Apprentice in pursuant to an advertisement issued by the Railway Recruitment Board, Ahmedabad in Newspaper on 15.12.1986 vide Employment News No. 2/86-87. He was allotted Roll No. 1188 and was allowed to undertake the written test held on 28.06.1987 at Ahmedabad. He also appeared in the interview held on 30.10.1987. Thereafter a final select list (panel) was notified on 02.11.1987. The applicant was allotted Rajkot Division for appointment to the post of Traffic Apprentice. At the relevant time when notification came to be issued the pay scale for the post of Traffic Apprentice was 1400-2300 but there was change in the recruitment rules vide Railway Board circular dated 15.05.1987 and w.e.f. the date of the circular no appointment was to be made in the said grade and the Traffic Apprentice were to be appointed in the grade of Rs. 1600-2660.

4. The further case of the applicant is that he successfully completed the requisite training of two years and was posted against the working post of Assistant Station Master vide letter dated 21.03.1990. He was allowed transfer from Rajkot Division to Jaipur Division. Certain cases were filed by the pre - 1987 Traffic Apprentice before the Central Administrative Tribunals which was allowed in their favour and

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finally the matter was taken up before the Supreme Court in Union of India & Anr. vs. M. Bhaskar and Ors. On the other hand, the applicant was allowed the benefit of the pay scale of Rs. 1600-2660 and also enjoyed his promotion to the post of Station Superintendent in the pay scale of Rs. 2000-3200. The Supreme Court allowed the appeal of the Union of India in M. Bhaskar's case (supra) holding therein that the Pre-1987 Traffic Apprentice would not get the benefit of circular dated 15.05.1987 and they will be given the pay scale of Rs. 1400-2300 only and in case of post 87 Apprentice they would be given the benefits of higher scale. The applicant was considered to be a Pre-87 Apprentice and the benefit granted to him were ordered to be withdrawn, in the year 1997, pursuant to aforesaid decision.

5. Certain similarly situated persons i.e. Post 87 Apprentice, but wrongly treated as Pre-1987 apprentices approached the co-ordinate Bench of the Tribunal at Ahmedabad and they have been allowed the due benefits of the circular dated 15.5.1987. The applicant also submitted his representation to the authorities after the said decisions and requested for grant of similar benefits on the basis of the judgement rendered in the said cases but could not find favour of the respondents and the benefit has not been granted to him.

6. The Misc. Application No. 49/2003 has been filed for condonation of delay. The basic grounds taken in the M.A. as good and sufficient reasons is that since the co-ordinate Bench of the Tribunal has allowed the same benefits to similarly situated persons the applicant should also be granted the said benefits. It has been averred that immediately after the decision in such cases in the year 2000, the applicant moved a representation to the respondents and therefore, the delay in

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filing the O.A. deserves to be condoned.

7. The respondents have vigorously resisted the application for condonation of delay and have stressed that as per Section 21 of the Administrative Tribunals Act there is no proper explanation for the delay at all and the O.A. is hopelessly time barred.

8. Both the learned counsel have reiterated their pleadings. The learned counsel for the respondents has vociferously opposed the maintainability of the O.A. on the ground of delay. He has submitted that claiming the benefit on the basis of a decision of Court of Law would not give rise to any cause of action. Once a person has slept all over his rights, he cannot take advantage from a decision in a case contested by some other similarly situated persons. He has also cited numerous judgements in support of his contentions. He has next contended that until and unless the delay is condoned, the O.A. cannot be heard and decided on merits. He laid great emphasis on Section 21 of the Administrative Tribunals Act, and submitted that until the applicant crosses the hurdle of limitation, this Tribunal would not adjudicate upon the merits of the case. In this view of the matter, the O.A. as such cannot be entertained. As regards the merits, he has submitted that since the O.A. itself is not maintainable and the case cannot be decided on merits, the applicant cannot get any relief as such.

9. We have considered the rival contentions and before adverting to the facts of the case, we would like to dispose of the preliminary objection of limitation in this case. It is no doubt true that the main reason for condonation of delay that

there has been a decision in case of similarly situated persons and the relief is claim on the basis of those decisions. While we find that there are decisions on both sides' favourable and against on the point whether once can claim of the relief on the basis of the judgement in case of a similarly situated person. There are two types of judgement, judgement in rem and judgement in persona. However, we need not delve and debate on this and we would like to leave this question open for discussion and adjudication in some appropriate case. This we propose for the reason that in the instant case a pure question of fixation of pay is involved and the matter of fixation of pay is admittedly a continuing wrong giving rise to a recurring cause of action and this proposition of law is now well settled by the Supreme Court in case of M. R. Gupta vs. UOI & Ors. reported in AIR 1996 SC page 669 and therefore the issue does not remain res integra. The only restriction in such cases adduced by the Supreme Court is regarding the relief and that we would take care of while granting the relief. In this view of the matter, the law of limitation does not come in our way to take up and examine the instant case on merits and therefore the preliminary objection stands repelled. Misc. Application No. 49/2003 stands accepted, accordingly.

10. Now adverting to the merits, we find that there is absolutely no quarrel as regards the factual aspect of the matter, is concerned. From the records, we find that as per the very notification dated 15.05.1987 clause 2(ii) (xiii) are relevant and are extracted as under:-

"(ii) In future, the recruitment of these Apprentices should be made to grade Rs. 550-750/1600-2660 (RP). Traffic Apprentices absorbed in the cadre of Section Controller in scale Rs. 470-750/1400-2600 (RP) be fixed at starting pay of Rs. 1600/- on absorption the recruitment of Traffic

Apprentices may be suitable staggered in view of sub-para (viii) below.

(xiii) No recruitment in scale Rs. 455-700/1400-2300 (RP) will henceforth be made except to the extent panels have already been received by Railway Administration from the Railway Recruitment Boards in the case of open market quota and panels have already published in the case of departmental quota."

Testing the instant case on the tough stone of the aforesaid notification, we find that the applicant was subjected to written test held on 28.06.1987, viva voce test on 30.10.1987 and the select panel was notified by the Railway Board on 2.11.1987, therefore the select panel was received from Railway Board after the cut off date i.e. 15.5.87; the date of circular. If that be so, there can be no iota of doubt that the applicant belongs to a subsequent panel to the said date and which could aptly be described as post-87 Apprentice as has been described by the Apex Court in Bhaskar's case. We also have waded through the various orders passed by the co-ordinate Bench of the Tribunal in case of Shrikrishna Arya vs. UOI & Ors ;O.A. No. 537 of 1999 with M.A. No. 72 of 2000 decided on 20.10.2000 (Annex. A/11) as upheld by High Court of Gujarat at Ahmedabad in Specil Civil Application No. 2623 of 2001 decided on 16.04.2001 (Annex. A/12) and in O.A. No. 201/1997 decided on 17.01.2002 (Annex. A/14) etc. The issue in question in this case is squarely covered on all fours by the said decision including the decision of Supreme Court in M. Bhaskar's case (Supra). We have, therefore, absolutely no hesitation in following the same and deciding this O.A. on the similar terms.

11. In view of what has been said and discussed above, we find that the inescapable conclusion is that the Original Application has ample force and the same deserves to be allowed in part and stands allowed accordingly. The respondents are directed to extend the benefit of the Railway Board circular

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dated 15.05.1987 to the applicant and place him in the pay scale of Rs. 1600-2660 from the date of his initial appointment with all consequential benefits except that the actual monetary effects shall be admissible only from the date of filing of this case. The parties are directed to bear their own costs.



(M.K. MISHERA)

Administrative Member



(J.K. KAUSHIK)

Judicial Member

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