

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
(CAMP OFFICE AT INDORE)

Original Application No. 439/2001

~~Jabalpur~~ this the 6th day of May, 2004

Hon'ble Shri M.P.Singh, Vice-Chairman
Hon'ble Shri Madan Mohan, Member (J)

Prakash Bhatnagar s/o Late Sh. Dharamdeo
Bhatnagar, aged 65 years, Depot Store Keeper,
Grade-II, Western Railway, Kota (Retd.),
R/o 1/4, Ankur Complex,
Shivaji Nagar, Bhopal.

...Applicant

(By Advocate: Shri D.M.Kulkarni)

-versus-

1. Union of India through
General Manager (Estt.)
Western Railway, Churchgate,
Mumbai.
2. Controller of Stores,
Western Railway, Churchgate,
Mumbai.
3. Dy. Controller of Stores,
Inside Wagon Repair Shop,
Western Railway, Kota.

...Respondents

(By Advocate: Shri Y.I.Mehta, Sr. Adv. with Sh. H.Y.Mehta)

O R D E R

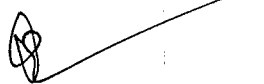
By Madan Mohan, Member (J):

By filing this original application, the applicant has
sought the following main reliefs:-

"8.1 It be held that the applicant is entitled to
stepping up of pay in the cadre of Ward Keeper vis-a-vis
Shri Ladharam Diwani as on 1.3.1977 the date when Diwani
was promoted and the respondents be directed to pay arrears
of pay and fixation of salary on proforma basis and pay
arrears of pensionary benefits.

8.2 The respondents be directed to pay interest at the
current market rate on the arrears of pension till the
date payment is made to him."

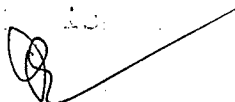
2. Brief facts of the case are that the applicant got appoin-
ted as Store Clerk in Stores Department on 11.1.1957. At that
time there was only one cadre namely "Stores Staff" under
District Controller of Stores at Mahalaxmi. Stores staff was
bifurcated on 3.11.1959 into Ministerial and Non-ministerial



categories and the applicant opted for ministerial cadre. The applicant worked on the post of ministerial clerk. On 19.4.1961, one Shri Ladha Ram Diwani was appointed in Stores Department and was absorbed in Non-ministerial cadre against existing vacancy as a non-ministerial clerk. Bifurcation of Stores Staff was challenged in Bombay High Court and the bifurcation was quashed in the year 1962-63 on the ground that the Controller of Stores had no power to bifurcate the Stores Staff cadre. The Railways continued to bifurcate the Stores Staff even after the order of the High Court after preferring S.L.P. In the year 1965, Shri Ladha Ram Diwani was promoted from the post of non-ministerial clerk as Ward Keeper, treating bifurcation in existence. The High Court instructed the respondents to honour the decision and maintain the seniority as on 21.11.1959. But the respondents kept the Stores Staff on ad hoc basis.

2.1 The applicant was promoted as Ward Keeper on 1.3.1977 on the seniority based on 2.11.1959 purely on temporary and on ad hoc basis just 12 years after the promotion of Shri Diwani who was more than four years junior to the applicant. Thus there occurred pay anomaly in between the pay of Shri Diwani and the applicant. Shri Diwani being junior was drawing more pay than the applicant on the post of Ward Keeper. This happened because of administrative error. Had the Bombay High Court decision implemented timely, the applicant would also have been promoted in the year 1965. The applicant was entitled to stepping up of pay on the post of Ward Keeper and fixation of pay thereafter on the promotion post held by the applicant.

2.2 The applicant submitted his representation / appeal to District Controller of Stores, Kota which was rejected on 27.5.1977 on the ground that the applicant's promotion was made on ad hoc basis and the question of proforma fixation,




does not arise. A clarification was made by the respondent no. 1 vide D.O. letter dated 7.8.1978 that the bifurcation scheme of Stores department of 3.11.1959 was struck down by the Bombay High Court and as a result no ministerial/non-ministerial cadre existed and the promotions given to the employees in the stores department on or after 3.11.1959 as per bifurcation scheme could not be taken into consideration for assigning seniority to these staff till the final decision in the case.

2.3 There was fresh bifurcation of Stores Department vide H.O. Circular no. 60 dated 15.12.1992. The applicant and Shri Diwani both were promoted and regularised as Ward Keeper on 20.4.1984. Though the date of superannuation of the applicant was 31.12.1994, he took voluntary retirement on 30.1.1988 i.e. six years earlier. The applicant submitted several representations for stepping up of his pay while in the cadre of Ward Keeper and proforma fixation of pay thereafter vis-a-vis Shri Diwani but the same has been rejected on the ground that pay anomaly was not created and no stepping up of pay could be granted to the applicant. Hence, the applicant has filed the present application for seeking the aforesaid reliefs.

3. Heard the learned counsel for both the parties and perused the material on record.

4. It is argued on behalf of the applicant that according to letter dated 7.1.1979 (A/3) since the bifurcation scheme of Stores Deptt. on 3.11.1959 has been struck down by the High Court of Bombay there is no ministerial/non-ministerial cadre in Stores Deptt. in existence at present and, therefore, the promotions made to the employees in the Stores Deptt. on and after 3.11.1959 as per bifurcation scheme of Stores Deptt. cannot be taken into consideration for assigning the seniority to these staff, till such time the court case of bifurcation of Stores Depot cadre which is still subjudice in the High Court of Bombay is finally decided. Hence, the promotion of Shri Diwani is in violation of Rules.



5. In reply, the learned counsel for the respondents argued that Shri L.R.Diwani was allotted non-ministerial cadre and he got promotion to the post of S.D.C. on 5.12.1966 then Ward Keeper on 14.4.1967 while the applicant was allotted ministerial cadre and he was promoted as Senior Clerk on 20.11.1965 i.e. earlier to Shri Diwani and then promoted as Ward Keeper on 1.3.1977. It is argued that after getting new directions from H.Q. office, the common seniority was started in the year 1976-77 and as per the said seniority the applicant was promoted as Ward Keeper as on 1.3.1977 and further promoted as ASK on 9.5.77 earlier than Shri Diwani who was promoted as ASK on 2.6.1979. It is further argued that the benefit of stepping up of pay can only be given on fulfilment following conditions:-

"(a) Both staff should be in one cadre/one unit/one Distt./ one seniority. Both should belong to the same post in which they have been promoted.

(b) Should be identical in the same cadre i.e. pre-revised and revised scale of pay of the lower and higher post in which they are entitled to draw pay should be identical.

(c) The seniors at the time of promotion have been drawing equal or more pay of than the junior.

(d) The economy should be directly as a result of the application of provision Rule 22 (previous rule 2018 FR 22 (c))."

5.1 Learned counsel for the respondents has further argued that the applicant has not fulfilled the above conditions hence he is not entitled for any benefit of stepping of pay.

6. After hearing the learned counsel for the parties and perusal of record, we are of the opinion that since the order of Bombay High Court vide which bifurcation was struck down is subjudice, the Tribunal cannot pass any order till the matter is finally decided by the courts of competent jurisdiction.

7. In view of the above discussion, the present O.A. is disposed of with directions to the respondents to consider the case of the applicant in accordance with rules and law after ^{the alleged} the final decision is taken in regard to/bifurcation Scheme against the order of the Bombay High Court. No costs.

(Madan Mohan)
Member (J)

(M.P. Singh)
Vice Chairman