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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL


2.1.2007


OA 181/2005

Mr.H.S.Choudhary, counsel for applicant.
Ms.Dilshad Khan, proxy counsel for
Mr.S.S.Hasan, counsel for respondents.

Learned counsel for the applicant prays for
adjournment.

Let the matter be listed on 9.1.2007.


(J.P.SHUKLA)
MEMBER (A)


(M.L.CHAUHAN)
MEMBER (J)

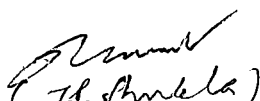
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9.1.2007

Mr. H.S. Choudhary, Counsel for Applicant.
Mr. S.S. Hasan, Counsel for respondents.

Heard the learned counsel for the
parties.

For the reasons dictated separately,
the OA is allowed.


(J.P. Shukla)
M(A)


(M.L. Chauhan)
M(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR

Jaipur, the January 09th, 2007

CORAM:

HON'BLE MR. M.L. CHAUHAN, MEMBER (JUDICIAL)

HON'BLE MR. J.P. SHUKLA, MEMBER (ADMINISTRATIVE)

1. ORIGINAL APPLICATION NO. 181/2005

Murli son of Shri Kimat Rai Punjabi, aged about 72 year, retired Stock Verifier (Accounts Assistant) Deputy Chief Accounts Office (TA), Western Railway, resident of House No. 449/25, Chand Bavadi, Ajmer.

2. ORIGINAL APPLICATION No. 270/2005

Dev Sharma son of Late Shri Banwari Lal Sharma aged about 75 years, Retired Accounts Assistant, Deputy Chief Accounts Office (TA), Western Railway, Ajmer. Resident of Nand Niketan, Nagra, Ajmer.

3. ORIGINAL APPLICATION NO. 271/2005

Mohan Singh son of Late Shri Chhotu Singh Gehlot, aged about 67 years, Retired Accounts Assistant, Deputy Chief Accounts Office (TA) Western Railway, Ajmer. Resident of Plot No. 96, Vijay Bhawan, Sidharth Nagar, Dhola Bhata Road, Ajmer.

By Advocate: Mr. H.S. Choudhary

...Applicants

Versus

- 1 Union of India through General Manager, Western Railway, Churchgate, Mumbai.
- 2 The Financial Advisor and Chief Accounts officer, Western Railway, Churchgate, Mumbai.
- 3 The Deputy Chief Accounts Officer (TA), Traffic Accounts Office, Western Railway, Ajmer.

By Advocate: Mr. S.S. Hassan

.....Respondents.

ORDER (ORAL)

By this common order, we propose of dispose of these three OAs as common question of facts & law is involved.

2. Briefly stated, facts of the case are that initially the applicants were appointed as Clerk Grade II. Subsequently, they were promoted as Clerk Grade I in the Traffic Accounts Office, Ajmer. It may be relevant to state here that the clerical cadre of the Traffic Accounts Office Ajmer was having two separate cadre i.e. 'Good cadre' and 'Coaching cadre.' It may also be relevant to mention here that the persons who were selected by the RSC later on were allotted 'Coaching cadre' in the Deputy Chief Accounts Office (Traffic Accounts), Ajmer. Those persons who were junior to the applicants were promoted in Grade I earlier to the applicants as due to availability of vacancies in

the 'Coaching cadre.' Subsequently both 'Coaching' and 'Good' cadres were merged w.e.f. 01.10.1976 and the juniors were given higher seniority having been promoted earlier in the Coaching cadre. Aggrieved by this action of the respondents, the applicants therein have filed Writ Petition No. 449/78 before the Hon'ble High Court of Rajasthan, Jaipur Bench, and the same was transferred to Jodhpur Bench of this Tribunal and registered as TA No. 373/1986. Jodhpur Bench of the Tribunal decided the TA vide order dated 08.05.1989 with a direction to the respondents to recast the seniority list on the basis of merit list of the RSC. Accordingly, the respondents recasted the seniority list vide order dated 03.11.1989. The grievance of the applicants is that inspite of occupying higher position in the recast seniority list, they have been deprived of the fruit of the decision dated 08.05.1989 of the Jodhpur Bench of the Tribunal. Since the respondents did not grant the benefit of notional pay fixation in the cadre of Clerk Grade I to the senior employees from the date when their juniors were so promoted, some of the applicants filed OA No. 566/1994 alongwith MA No. 608/1994. The said OA was disposed of vide order dated 09.08.2000. In the earlier OA, the respondents have taken the similar stand which has been taken in this OA namely that the benefit of the judgement rendered in TA No. 373/1986 could be given only to the applicant therein and the applicant in the earlier OA is not entitled to the benefit of notional fixation of pay to those who have been given higher position in the seniority list as compared to the juniors who got accelerated promotion in their separate unit before merger. This Tribunal in Para 6 of the order dated 09.08.2000 has observed that after the seniority has

been assigned above to the junior persons, it would be unconceivable to think that after getting higher position in the seniority list vis-à-vis their juniors, the applicants could gain absolutely nothing in terms of monetary benefits. Accordingly, the direction was given that such persons who have been given seniority in terms of the judgement of the Tribunal shall also be entitled to notional fixation of pay and actual payment of salary & allowances on the basis of such notionally fixed higher pay for the period when they actually performed the duties of Clerk Grade I. It was further observed that the applicants who have already superannuated on retirement will also be entitled for revision of their retrial benefits including the pension on the basis of revised pay as notionally fixed and accordingly in Para No. 10, this Tribunal gave the direction in the aforesaid terms and disposed of the OA.

3. The matter was carried before the Hon'ble High Court by filing Writ Petition and the Hon'ble High Court has also upheld the direction given by the Tribunal. Thereafter this Tribunal disposed of the similar matters by rendering subsequent judgements. One of the judgements which has been placed on record it dated 02.03.2005 in OA No. 18/2004, **Shrichand vs. Union of India & Others.** It is on the basis aforesaid judgements and the judgement which has been upheld by the Hon'ble High Court that the applicant(s) of these OAs are claiming the similar benefits.

4. The respondents have filed reply. The fact that the matter is fully covered by the judgement rendered by the different Benches including the judgement rendered by this Tribunal in OA No. 18/2004, **Shrichand vs. Union of India**



(Annexure A/5) and also that the Hon'ble High Court in one of the case has upheld the judgement rendered by the Tribunal, is not disputed. The contention which the respondents have raised in the reply was the same as was raised by them in OA No. 18/2004 which has been elaborately discussed. Thus the reasoning given by this Tribunal in the case of Shrichand (supra) is fully applicable in the facts & circumstances of this case. At this stage, it will be useful quote Para Nos. 6 to 8 of the judgement, which reads as under:-

"6. We are of the view that the applicant is also entitled to the same relief as has been granted to the applicants in OA 566/94 and OA 41/95 vide order dated 9.8.2000, which order has been affirmed by the Hon'ble High Court and has attained finality. The learned counsel for the respondents has not disputed that the case of respondents has not disputed that the case of the present applicant is squarely covered by the judgement rendered by this Tribunal and has affirmed by the Hon. High court in the case of Shanti Lal Sethi. However, the objections have been taken by the respondents regarding limitation as well as that the judgement rendered by this Tribunal vide order dated 9.8.2000 was the order in personam, which are not tenable.

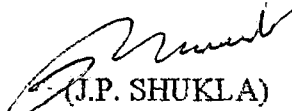
7. The Apex Court in the case of Shri Narayan Yeshwant Gore v. Union of India & Ors., 1995 (3) SLJ 188, held that one of the juniors of the appellant was promoted as ad hoc on 22nd May, 1986 after the decision was given by this Court calculating his seniority from 1969 and he was given promotion in 1986 as Deputy Director with effect from 17.3.1983. Since the appellant was senior to his junior who was promoted as Deputy Director from 1983, the appellant too shall be deemed to have been promoted as Deputy Director from 17.3.1983 and it was held that similarly situated should be given the similar treatment.

8. In view of what has been stated above, we are of the view that the applicant is also entitled to similar benefits as was granted to the applicants in OA 566/94 and 41/95 vide order dated 9.8.2000."

5. Accordingly, the aforesaid OAs are partly allowed and the respondents are directed to grant notional pay fixation to the applicants in the cadre of Clerk Grade I w.e.f. the date when their juniors were so promoted earlier. For the

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period the applicants have actually performed the duties of Clerk Grade I, their pay would be revised on the basis of such notional fixation of pay and they will be entitled to draw pay & allowances accordingly and in no case their basic pay will be less than the basic pay being drawn by their juniors, and in case the applicants have been superannuated on retirement without having actually performed the duties of Clerk Grade I, their retrial benefits including the pension will be revised on the basis of such notional fixation of pay. The above direction will be carried out within a period of four months from the date of receipt of a copy of this order. No order as to costs.


(J.P. SHUKLA)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ