
(2010) 04 PAT CK 0112
In the Patna High Court

Shiv Kumar Prasad

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-04-2010

Acts Referred:

Citation : (2010) 04 PAT CK 0112

Final Decision : Allowed

Judgement

Kishore Kumar Mandal, J.—This writ petition is directed against the order dated 9.8.2005, passed by the Central Administrative Tribunal, Patna Bench, Patna, in OA No. 718 of 1999 (Shiv Kumar Prasad and Ors. v. Union of India and Ors.), whereby the learned Tribunal has refused to interfere with the order dated 17.11.99 (Annexure 11), passed by the authorities reducing the scale of pay of the petitioner.

2. According to the writ petition, there are two levels of recruitment relevant in the present context. One of them is Traffic Inspector which is a generic name of that category of employees who, after their recruitment and completion of training, serve the Indian Railways as Assistant Station Master, Assistant Yard Master, Traffic Inspector and Section Controller. This category is not relevant in the present context, and we may not pursue it further. The other category is relevant in the present context, namely, Commercial Apprentice which once again is the generic expression who, after recruitment and prescribed training, are given different assignments like Assistant Claims Inspector/Supervisor, Assistant Commercial Inspector, Assistant Rates Inspector (Goods & Coaching), etc. Until 15.5.1987, the entire recruitment to the category of Commercial Apprentice was by promotion from the next lower grade. The Indian Railways issued a memorandum on 15.5.87 whereby it brought about some changes in the recruitment of Traffic/Commercial Apprentices - one of the changes being that on and from 15.5.1987 the recruitment of these apprentices would be made in the pay scale of Rs. 1600-2660 (this scale earlier was Rs. 1400-2300) and, instead of all the posts being filled up by promotions, ratio of promotees was

made 75%, and of the remaining 25%, 10% were required to come through Railway Recruitment Boards and 15% on the basis of Limited Departmental Competitive Examination. The pre-1987 apprentices laid their claim for the higher scale of pay on the basis of 1987 memorandum; and it is this claim which has come to be allowed by the majority of the CATs. In other words, the new mode and manner of recruitment and the quota allotted to the three groups enforced with effect from 15.5.1987.

3. A brief statement of facts giving rise to the present writ petition may be indicated. The petitioner was appointed as Coaching Clerk by order dated 5.11.82 (Annexure 2). He was subsequently considered and promoted as Commercial Supervisor in pay scale of Rs. 1400-2300, and thereafter to the post of Commercial Superintendent Grade-II in the pay scale of Rs. 1600-2660 by order dated 7.4.92 (Annexure 3). It appears from the record that for consideration of promotion to the next higher scale of Rs. 1600-2660 written test and interview was conducted. The department identified four posts, three of them belonged to the general category whereas one post was reserved for the category of Scheduled Tribe. In terms of the Railway Circular, a selection process appears to have been undergone in which the petitioner appeared and was declared successful as would be evident from the order dated 22.3.96 (Annexure 4). Annexure 6 is another document on record which indicates that after having been subjected to written test followed by interview the petitioner was declared successful and was empanelled. By order dated 21.8.1996 (Annexure 7) the petitioner along with others were posted/appointed to the next higher post of Commercial Inspector Grade -I in the unrevised pay scale of Rs. 2000-3200. The petitioner continued to officiate on the said post since 1996. On 1.4.99 the final gradation list of the employees like the petitioner serving in the commercial wing of the East Central Railway was published. Name of the petitioner figured at sl. No. 2. In the light of the judgment rendered by the Supreme Court in the case of Union of India (UOI) and Another Vs. M. Bhaskar and Others, , a notice dated 5.10.99 was served on the petitioner whereby he was called upon to explain as to how he was granted the pay scale of Rs. 1600-2660 and as to why his promotion to the next higher scale, i.e. Rs. 2000- 3200 making him senior to his seniors, be not cancelled and reverted to lower scale of pay. Cause was shown by the petitioner by his representation contained in Annexure -10. On a consideration of his representation, the impugned order dated 17.11.99 (Annexure 11) has been passed, whereby the petitioner has been reverted to the next lower scale of Rs. 6500-10500. It further clarified that his reversion would not result in recovery of amount already paid. Aggrieved by the order, the petitioner moved before the Tribunal in OA No. 718 of 1999 which has been rejected. Hence the writ petition.

4. We have perused the materials on record and considered the submissions of learned Counsel for the parties. Learned Counsel for the petitioner submits that the grounds set out in the notice was completely misconstrued and misplaced. The petitioner was not given the scale of Rs. 1600-2660 by misinterpreting the

circular, and thus was by upgradation of the scale of pay. It is contended that the petitioner was considered in view of the provisions contained in the said circular against 15% quota earmarked for the Commercial Apprentice in the pay scale of Rs. 1600-2660 as provided in the circular dated 15.5.1987. It further appears that he is a post-1987 appointee to the post carrying scale of pay of Rs. 1600-2660 in the light of provisions made in the 1987 circular/policy decision. Learned Counsel for the petitioner is correct in submitting that the judgment rendered by the Supreme Court in the case of Union of India v. M Bhaskar (supra) has been completely misconstrued by the respondent authorities as it was not a case of upgradation of the scale of pay by misinterpreting the provisions contained in the circular of the Railway dated 15.5.1987. He next contended that the respondents have not made any attempt to demonstrate as to how and in what manner the petitioner superseded the others in the category of the employees carrying such unrevised pay scale.

5. Learned Counsel for the Railways has supported the impugned action.

6. It is seen on a bare perusal of the judgment of the Supreme Court in the case of Union of India v. M Bhaskar (supra) that the Supreme Court was considering the case of those employees who had made claim that by reason of creation of new posts of Commercial Apprentice in pay scale of Rs. 1600-2660, they were entitled to be automatically upgraded to the said pay scale as they were also discharging the same nature of job and had undergone training for three years. Such claim appears to have been allowed by several Tribunals. In the background of these facts it was found by the Supreme Court that the circular of the Railway dated 15.5.1987 does not ipso facto entitle Commercial Apprentice who were working in the Railways prior to 1987 to the next higher pay scale of Rs. 1600-2660. We find that reliance placed on the aforesaid judgment by the Railway authorities in the given situation is completely misplaced. As noticed above, the petitioner herein, was made to undergo selection process against the number of posts reserved for promotion by way of limited competitive examination. On being declared successful he was given the pay scale of Rs. 1600-2660 allotted for the post of Commercial Apprentice by the aforesaid circular. The case of the petitioner thus cannot be equated with that of the pre-1987 employees who were serving in Commercial Wing and were getting the scale of Rs. 1400-2300. From a perusal of the order placed at Annexure 3 read in the light of pleadings made in para 5 of the writ petition, it is more than apparent that the petitioner was in the pay scale of Rs. 1400-2300 as was admissible prior to 15.5.1987, and thereafter he was considered against the post(s) of Commercial Apprentice in the pay scale of Rs. 1600-2660, reserved/earmarked for promotion by way of limited competitive examination. We are thus convinced that the petitioner was selected for the post in question carrying scale of pay of Rs. 1600- 2660 in terms of the provisions contained in the circular of the Railway dated 15.5.1987. We thus find adequate justification for interfering with the impugned order dated 17.11.99 (Annexure 11) passed by the respondent authorities. Accordingly, we allow this writ petition and quash the order dated

9.8.2005 (Annexure 1), passed in OA No. 718 of 1999, as well as the order dated 17.11.99 (Annexure 11), in so far as they relate to the petitioner. In the facts and circumstances of the case, the petitioner shall be entitled to costs quantified at Rs. 5000/- (five thousand) which shall be paid to him with the salary.

S.K. Katriar, J.

I agree.