

Kewal Krishan Bagga

Vs

The Chairman, Railway Board and Others

Civil Appeal No. 1065 (N) of 1971

(Y.V. Chandrachud, P.K. Goswami, P.N. Shinghal JJ)

03.08.1976

JUDGMENT

CHANDRACHUD, J. -

1. The appellant, Kewal Krishan Bagga, joined the Central Workshop at Amritsar as a godown keeper in the year 1953 against a permanent post in the scale of Rs. 50-125. The said workshop was run by the Irrigation Department of State of Punjab. There were 38 godown keepers in the Amritsar workshop and they all had a separate seniority list, distinct from that of clerks whose scale of pay was Rs. 60-175.

2. The Amritsar workshop was taken over by the Government of India with effect from June 1, 1956 whereupon, the services of the existing employees of the workshop were transferred to the Northern Railway on terms and conditions agreed to by the Railway Board. The seniormost 8 out of the 38 godown keepers who were working under the Government of Punjab were given letters of appointment by the Northern Railway as wardkeepers in the grade of Rs. 80-160. The remaining 30 godown keepers, amongst whom was the appellant were offered appointments as clerks in the grade of Rs. 55-130 effective from June 1, 1956. Thus, as a result of the transfer of employment from one employer to another, the appellant came to be placed in the scale of Rs. 55-130 instead of Rs. 50-125 and he became under this new employer, the Government of India, a clerk instead of a godown keeper that he was under the Government of Punjab.

3. Since 30 godown keepers and all those working in the clerical cadre in the Amritsar workshop under the Government of Punjab were taken over as clerks by the Government of India, a question arose in course of time as regards the fixation of their inter se seniority. That question, as in all similar cases of equation and equivalence, presented a ticklish problem for solution because persons who were working as clerks in the Amritsar workshop under the Government of Punjab were working in a higher grade than godown keepers and after the Government of India took over the workshop, the 30 godown keepers and all clerks were integrated into a common cadre of clerks in the scale of Rs. 55-130. On December 20, 1957 the Government of India decided that the inter se seniority of godown keepers and clerks who, after the transfer of employment, were assimilated in a common cadre of clerks should be fixed on the basis of their respective length of service. In pursuance of this directive the appellant was placed at serial No. 178 in the common seniority list. Later, the Government revised its decision and resolved that persons who were working as clerks under the Government of Punjab should all be treated as senior to godown keepers since the former were placed in a higher scale of pay. As a result of this decision, the appellant moved down to serial No. 225 in the list of seniority.

4. In January 1968 the appellant filed a writ petition in the Delhi High Court to challenge the decision of the Government of India creating a common seniority list for godown keepers and clerks, and treating all clerks as senior to godown keepers. The petition having been rejected by the High Court the appellant has filed this appeal by special leave.

5. On April 27/28, 1956 the General Manager of the Northern Railway wrote to the Secretary, the Government of Punjab, asking that persons working in the Amritsar godown should be informed that consequent on the transfer of the workshop to the Government of India from June 1, 1956, the non-gazetted staff of the workshop will be offered appointments by transfer to the Northern Railway in accordance with the terms and conditions which were set forth in the annexure to the letter. These terms and conditions, in so far as relevant, are as follows : (1) the existing pay and grade of the staff transferred to the Government of India was to be protected; (2) For each existing post/category in the Amritsar workshop, the Northern Railway administration would indicate an appropriate scale of pay applicable to the corresponding post/category in the railway workshops; and (3) the staff of the Amritsar workshop would be given an option individually to be governed either by the new scale of pay or by the scale which was applicable to them while they were serving under the Government of Punjab. Those opting for the new scales of pay would have their pay fixed at the stage above their existing pay as on May 31, 1956.

6. The first contention of learned Counsel appearing for the appellant is that the appointment of the appellant as a clerk in the Northern Railway is contrary to the terms and conditions set out above. We find it impossible to accept this contention. On May 31, 1956, the appellant was working under the Punjab Government as a godown keeper in the grade of Rs. 50-125. On June 1, 1956 his services were taken over by the Government of India and he was placed in the grade of 55-130. Thus, his existing pay and grade were duly protected. As regards the second condition, the Northern Railway had to fix the equation between the post of a godown keeper held by the appellant and one of the posts in their own establishment. Under the terms and conditions on which the non-gazetted staff of the Amritsar workshop was taken over by the Government of India, the power to fix the equation was vested in the Northern Railway administration. That power was exercised by them by appointing the appellant as a clerk on the basis that the post of a godown keeper would have correspondence with that of a clerk in the new establishment.

7. There is no substance in the appellant's grievance that the decision to equate godown keepers with clerks was unfair and that godown keepers should have been equated with wardkeepers. Whereas the scale of pay of godown keepers in the Government of Punjab was Rs. 50-125, that of wardkeepers in the Northern Railway administration was Rs. 80-160. The scale of pay of wardkeepers was revised in November, 1957 to Rs. 150-225 with respective effect from April 1, 1956. Thus, paywise there was greater correspondence between godown keepers and clerks than between godown keepers and wardkeepers. Godown keepers in the Government of Punjab were working in the grade of Rs. 50-125 and correspondingly, clerks in the Northern Railway were in the grade of Rs. 55-130. The grade of clerks in the Northern Railway administration was revised on August 1, 1956 to Rs. 60-130 which means that godown keepers like the appellant were placed in the grade of Rs. 60-130. We see no unfairness in the equation fixed by the Northern Railway, apart from the fact that in the absence of discrimination court of law do not embark upon the exercise on fixing equation between posts in the old and the new establishments.

8. The appellant did urge that he was discriminated against, the contention being that 8 out of 38 godown keepers were appointed as wardkeepers and the remaining 30 including the appellant were wrongly denied an equal treatment with them. The very assumption of this argument is fallacious

because the seniormost 6 godown keepers, apart from the 2 whose service record was unsatisfactory, were appointed as wardkeepers by way of promotion and not by the test of equivalence. The counter-affidavit filed on behalf of the Government says, which we have no reason to doubt, that 8 godown keepers who were seniormost and who were found suitable were promoted to the post of wardkeepers on the basis of seniority-cum-suitability. It is necessary in this behalf to bear in mind that whereas the appellant was recruited in 1953 his senior who were taken by the Northern Railway as wardkeepers had joined the service of the Punjab Government at least 6 years before him. They had each a much longer experience than the appellant. It cannot therefore be said that any discriminatory treatment was accorded by the Government of India to the appellant in relation to the 8 godown keepers who were absorbed as wardkeepers. The absorption was by way of promotion and not by equation. The decision in *E. P. Royappa v. State of Tamil Nadu* ((1974) 2 SCR 348, 389 : (1974) 4 SCC 3 : 1974 SCC (L & S) 165), on which the appellant's Counsel relies for the proposition that for fixing equivalence the pay drawn by an employee is not a conclusive consideration, has therefore no application.

9. It was finally urged that clerks in the old establishment were wrongly accorded seniority over godown keepers in the cadre of clerks in the Northern Railway in which both clerks and godown keepers were assimilated. The argument overlooks the basic consideration that clerks in the Amritsar godown while working under the Punjab Government were placed in a higher scale of pay than godown keepers. The decision to treat clerks as senior to godown keepers was therefore not arbitrary or irrational. In fact, some injustice done earlier to clerks by fixing their inter se seniority with godown keepers in the establishment on the basis of their length of service in the respective cadres was later rectified by providing that clerks will be considered as senior to godown keepers.

10. Since we have considered the matter on merits, we do not propose to deal with the objection of the Government that the appellant was guilty of laches and should have been declined relief on that ground.

11. Accordingly, the appeal is dismissed but there will be no order as to costs.

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