

Harkant Hiralal Vohra (dead) by Lrs.

Vs

Union of India and Another

Civil Appeal No. 12164 of 1995

(K. Venkataswami, A. P. Mishra JJ)

08.09.1998.

JUDGMENT

K. VENKATASWAMI, J.

1. The legal representatives of the deceased-appellant are prosecuting this appeal. In this judgment, wherever the word "appellant" is used, it will mean the deceased-appellant.

2. The appellant was aggrieved by the Order dated 1-3-1982 which denied the benefit of the Railway Board's Letter No. (ES)-61-CC-176 dated 9-8-1961 under which he was to be granted four advance increments from 1-5-1961. The appellant joined the then BB & CI Railway Company as a Clerk in the grade of Rs. 55-130. After the taking over of the said Railway Company by the Central Government on 1-1-1942, the appellant was confirmed as a Clerk by the General Manager, Western Railway, on 12-3-1943. After crossing the efficiency bar test in 1955, he was promoted and confirmed as a Senior Clerk in the grade of Rs. 80-220. Subsequently, he was confirmed as Clerk Grade I w.e.f. 1-4-1956 in the pay scale of Rs. 130-300. Some time in August 1958, he was transferred from the Mechanical Department to the Accounts Department in the interest of Railway Administration.

3. The Railway Board's letter dated 9-8-1961, on the basis of which the appellant claimed four advance increments from 1-5-1961, reads as follows (relevant portion only is extracted) :

"(1) In the case of Clerks Grade II promotion as Clerks Grade I on or after 1-5-1961 by virtue of either passing App. II-A examination or having been permanently exempted from passing App. II-A examination their pay should be fixed at the stage that would be arrived at by grant of four advance increments for grade of Clerks Grade I after normal fixation, subject to a minimum of Rs. 150. A statement showing the fixation of pay of Clerks Grade II on promotion as Clerks Grade I with reference to their pay as Clerks Grade II at the time of promotion is attached herewith for guidance.

(2) In the case of Clerks Grade I promoted before 1-5-1961, the pay of all such staff whether working in a permanent or officiating capacity, should be refixed on 1-5-1961 as (1) above, with reference to the pay to which they should be entitled as Clerk Grade II, but for their promotion as Clerks Grade I and they should be allowed either the pay so refixed on 1-5-1961 or their existing pay, whichever is more beneficial to them."

4. According to the appellant, he was entitled to get the benefit of the said four increments in the light of clauses (1) and (2) extracted above, as he was promoted before 1-5-1961, namely, on 1-4-1956. In spite of representations, the relief was denied by an Order dated 1-3-1982. Hence, he moved the Gujarat High Court which transferred the matter to the Central Administrative Tribunal and the Tribunal in the order under appeal has dismissed the claim of the appellant for four advance increments w.e.f. 1-5-1961. Aggrieved by that, the present appeal has been preferred by special leave.

5. Learned counsel appearing for the appellant invited our attention to a number of documents to show that the appellant was entitled to the benefit of the Railway Board's letter dated 9-8-1961. One such document was para 644 of the Indian Railway Establishment Manual. It is the further case of the learned counsel for the appellant that the Tribunal, by mentioning only clause (a) of para 644, rejected the claim of the appellant without referring to clause (b) of the same para, which is relevant for his claim. He also invited our attention to the seniority list of the category of "CGIS", which, according to the learned counsel for the appellant, exempted the appellant from appearing in the Appendix II-A examination. He also referred to the two other documents dated 22-7-1959 and 23-11-1960 to further support his contention that the appellant was exempted from appearing in the Appendix II-A examination. In the light of the documents brought to the notice of this Court, learned counsel for the appellant submitted that the order of the Tribunal has to be set aside and the relief prayed for has to be granted.

6. Learned counsel appearing for the respondent-Railway submitted that the document relied on by the learned counsel for the appellant will not help the appellant to get the increments, but will help him only to get promotion.

7. Before discussing the matter further, we would like to point out that having regard to the fact that the appellant retired and died pending appeal, we had directed the learned counsel appearing for the respondents to find out from the Railway whether they can settle the matter out of court. Learned counsel for the respondents, after taking several adjournments, informed us that the respondents were not willing to settle the matter out of court.

8. The learned counsel for the appellant was right when he contended that the Tribunal went wrong in deciding the issue against the appellant by noticing only clause (a) of para 644 of the Manual without referring to clause (b) of the same para.

9. The relevant documents read as follows :

(1) The relevant portion of paras 644(a) and (b) of the Manual is given below :

"644. Clerks Grade II on promotion to the post of Clerks Grade I in the Accounts Department :

(a) Clerks Grade II promoted as Clerks Grade I on or after 1-5-1961 by virtue of either passing Appendix II-A examination or having been permanently exempted from passing that examination, will have the pay fixed at a stage that would be arrived at by grant of four advance increments, in the grade of Clerks Grade I after normal fixation, subject to a minimum of Rs. 150 as indicated below.

(b) ... In the case of Clerks Grade I promoted before 1-5-1961, the pay of all such staff, whether working in a permanent or officiating capacity, should be refixed on 1-

5-1961 as (a) above, with reference to the pay to which they would be entitled as Clerks Grade II, but for their promotion as Clerks Grade I and they should be allowed either the pay so refixed on 1-5-1961 or their existing pay, whichever is more beneficial to them."

(2) Seniority list of category of CGIS is given below :

Ref. - FA & CAO (Adm.) CCG's No. ADM IV/A2083/E-1030/10/0/Vol. III dated 24-11-1969.

#-----	Pg.	Actual Name	Dept.					
Community Education Dept.	Date of	No. No.	Exam appointment passed-----					
-----	1	2	3	4	5	6	7	8-----
-----	1	-	S/Sh.	AAO H	Matric	Exempted	12-3-1943	H.H.
(W&S) Vohra DHD-----	-----	Date of confirmation	Desg.	Date of officiation-----	9	10	11-----	-----
-----	1-4-1956	SH	3-1-1968-----	-----	-----	-----	-----	-----
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(3) Copy of Item No. 359 of the minutes of the meeting with the GM held on 21st and 22nd July, 1959, is given below :

"359. Graded staff transferred from Mech. Deptt. to Accounts Deptt. :

GPO explained that according to the accounts memorandum of 18-9-1958 issued with the approval of GMS, the staff who were willing to go on transfer to the Accounts Deptt. were taken over permanently by the Accounts Deptt. treating their transfer as in the interest of service thereby causing no loss in the seniority. He also stated that the staff of the Mech. Deptt. will get seniority in that grade in the Accounts Deptt. without having to pass any examination."

(4) The document dated 23-11-1960 was one relating to sub-graduation list of staff as on 1-9-1960. This document gives the seniority list of Clerks Grade I and there is one column saying that the appellant was exempted from appearing in the Appendix II-A examination.

10. A careful perusal of para 644(b) of the Manual and the other documents extracted above, namely, seniority list of the category of CGIS exempting the appellant from the departmental examination, etc., will support the case of the appellant. It is not in dispute that had the appellant been exempted from appearing in the Appendix II-A examination, he was entitled to get 4 advance increments as provided in the Railway Board's letter dated 9-8-1961. The Railway Board's letter's paras 1 and 2 are in identical terms with paras 644(a) & (b) of the Indian Railway Establishment Manual. After perusing the documents produced before us, we are unable to agree with the learned counsel for the respondents that the documents referred to and relied upon by the learned counsel for the appellant relate only to promotion and not to grant of increments. A conjoint reading of the above referred to documents will show that the appellant was exempted from appearing in the Appendix II-A examination not only for the purpose of seniority but also for the purpose of getting four advance increments under the Railway Board's letter dated 9-8-1961.

11. In the result, the appeal succeeds and the respondents are directed to recalculate the salary of the deceased-appellant after giving four increments from 1-5-1961 and also the pensionary benefits. The additional amount now to be paid, as a result of recalculation by the respondents, to the legal representatives of the deceased-appellant, will bear interest at the rate of 12% p.a.

12. The appeal is accordingly allowed with costs which we quantify at Rs. 5000.