

**Brief History & PRELIMINARY Comments on the Judgement of CAT Chandigarh In the OA
No 060/00211/2014IRTSA Vs Union of India**

Reg: Classification of Posts in Group B on the Indian Railways

For information of the Members & to invite their specific comments on the issues involved

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1. BRIEF HISTORY OF THE CASE:

IRTSA had filed a case in CAT Chandigarh in March, 2014 that the Posts of SSE, CMS, CDMS and Sr. Er(IT) on the Indian Railways -in the grade pay of Rs.4600 – be classified as Group-B (Gazetted) as per “The Gazette of India (Extraordinary) S.O.946(E) issued by Ministry of Personnel. The CAT Chandigarh has Dismissed the OA vide its judgement dated 12th March, 2016. This has caused wide spread resentment amongst the Technical Supervisors on the Railways.

The judgement has many infirmities – both legal & factual. IRTSA proposes to file an appeal in the High Court early. All related aspects were affectively placed by IRTSA in the pleadings bybefore the Tribunal. But the Tribunal has apparently ignored the same about which we shall write in our detailed comments and the Appeal or the Writ Petition before the High Court.

Following are Brief History & my Preliminary Comments on the Judgement of the CAT for ready reference of the Members, who are requested to give their comments & suggestions so that the same be kept in view while preparing the Detailed Brief for the Advocate(s) and the Appeal for the High Court.

2. ARGUMENTS BY IRTSA BEFORE THE CAT &ITS PLEADINGS IN THE OA & REPLICATION / REJOINDER

- i) Based on the accepted recommendations of 3rd and 4th CPC, the DoPT issued the orders for Classification in Group ‘B’ the Posts which were the scales recommended for the category of the Applicants in the case - which IRTSA is representing.
- ii) CAT Principal Bench New Delhi agreed with petitioners filed by IRTSA and directed Railway Board to consider grant of Group ‘B’ (OA 836 of 1989 decided on 21-2-1992).
- iii) Railways through its letter dated 27.04.1992 to GS IRTSA, turned down CAT direction listing the reasons for not granting Group ‘B’.
- iv) In para 44.4 of Fifth Pay Commission recommendation, DoP&T declared that in classification posts, though there are certain exceptions to the rule, like the case of Assistants of Central Secretariat, the effort was to be made to ensure that posts carrying similar functions were given similar classification.
- v) DoPT’s order after 5th CPC classified the scales belonging to Technical Supervisors in Group ‘B’
- vi) After 6th CPC, DoPT classified Grade Pay of the Applicant Categories in Group B – including Rs.5400, Rs.4800, Rs.4600 & Rs.4200 in Group ‘B’.
- vii) All the ministries & some of the state Governments classified the posts in line with DoPT order.
- viii) Railway Accident Inquiry Committees (RAICs) had recommended for upgrading of Senior Supervisors to Group-B Gazetted so as to have the status and powers to ensure Safety and discipline on the Railways.
- ix) The ratio of Group A& B Gazetted officers viz-a-viz Group C are the lowest on the Railways as compared to all other Departments under the Central Government. In Central Govt. Departments the overall ratio of Gazetted to Non-Gazetted employees is 1:20. In Railways, - the ratio is 1:114
- x) According to Census of Central Government employees published by Ministry of Labour, between the year 2001 and 2008 number of Group-B employees (in all Departments except the Railways) have increased to the tune of 35.65% from 1,59,517 to 2,47,822 despite of reduction of total number of employees to the tune of 24.5% from 38,76,395 to 31,11,610.
- xi) Over the years Railways have introduced a lot of new technologies, upgraded its working system, and improved its productivity & safety through various methods, which warrants clear administrative reforms with higher number of managerial posts.
- xii) Various members of Railway Board (including MS, MM, FC, etc) have repeatedly proposed and recorded their opinion in favour of reclassification of posts of senior supervisors into Group ‘B’. (as

per noting(s) thereof - copies of which procured by IRTSA under RTI and placed before the Tribunal as annexure to the petition/rejoinder). Some of the Noting are reproduced below:

- a) *"The issue of classification was re-examined by the Board in its meeting held on 26th and 29th July, 1999 and then again on 30.09.1999 wherein it was decided that a committee consisting of AM(Staff), OSD (A/Cs) and OSD(Management Service) would examine the implication including financial of reclassification of posts in the highest Group 'C' scale of Rs.7450-11500 to Group 'B' gazetted".*
- b) *".... Officers on Indian Railways constitutes only 0.5% of its total workforce whereas the average in respect of Group 'B' officers for All India Central Government Employees comes to 5.6% i.e.10.6 times higher as compared to Railway Group 'B' officers.*
- c) *..... Member Staff recorded that the issue of upgradation of highest grade of Group 'C' to Group 'B' is a long standing agenda item and the demand is justified.*
- d) *"Reclassification from Group 'C' to Group 'B' has been very marginal and is needed for enlarging the Management Cadre".*
- e) *... "The issue is also under deliberation since 1999 and hence does not attract ban of Ministry of Finance for dealing with any such proposal during pendency of VI CPC"....*
- f) *EDPC recorded that "A meeting was convened on 19.07.2007 in MS's chamber, which was attended by Adviser (Staff), Adviser (finance) and the undersigned along with JDPC to discuss the modalities for processing / implementation of the upgradation scheme for Group 'C' employees, to Group 'B'. All were briefed about the background of the case and the salient issues involved.*

All concerned noted the intent of the top management to implement the scheme and assurance given to the Federations for a favourable decision"...

- g) *... "Board's approval to the proposal had been obtained prior to 6th CPC and the unfortunate delay in the processing of the proposal somewhat changed scenario..."*
- h) *..... EDPC recorded that..."the expenditure on supervision outsourcing through PMC (project Management Consultancy) will be to the tune of almost Rs.287 crores on a straight line method. With these Junior Management officers in place, the expenditure will substantially reduce and will more than absorb the expected impact of Rs.51 crores indicated above. There is even a dispute about the financial impact worked out above as remarked by FC on the account of impact taken on passes which seems exaggerated"...*
- i) *..... Advisor (Staff) recorded that "It is therefore, once again proposed that keeping in view the large scale upgradation of Group 'A' posts and cadre restructuring of Group 'C' and Group 'D' posts, it is necessary that some fillip to upgradation of Junior management cadre i.e. upgradation of Group 'C' posts to Group 'B' posts be also done to absorb the ensuing changes in Railway working.....*

- xiii) Financial Commissioner Railways had given his formal concurrence to upgrade some of Group 'C' posts to Group 'B'
- xiv) Railway Ministry answered YES to RTI query of "Is there a proposal under consideration of the Railway Board for upgradation of some percentage of posts from Group 'C' to Group 'B' on Railways".
- xv) DoPT and Railways classified the posts on the basis of pay only, not on the basis of functional responsibilities of the posts as claimed by Railways.

3. ARGUMENT OF RAILWAY BOARD ACCEPTED BY CAT IN ITS JUDGMENT DATED 12-3-2016

- i) No fresh grievance since from 1st CPC members of IRTSA were in Group 'C'
- ii) Railways is multi-disciplinary operational system governed by separate rules. Railways have separate pay rules & DAR. Railways present separate budget in parliament. Railways not governed by CCS & CCS classification, control & appeal rules.
- iii) DoPT order on classification not applies to Railways. Railway sent letter dated 14.07.2009 intimating DoPT that Railways were in the process of reclassification of posts and done the classification on its own.
- iv) Govt of India (Allocation of Business) Rules 1961 excludes Railways from DoPT rules on classification of posts.

- v) Railway servants were specifically excluded from CCS rules 2008 as per explanatory memorandum.
- vi) In Railways some posts carrying even higher GP in Rs.4800, Rs.5400 & Rs.6600 are classified in Group 'C'
- vii) In other ministries Group 'B' Gazetted & non-gazetted are available. In Railways only Group 'B' Gazetted is available, hence stringent norms/procedures are being followed.
- viii) If granted Group 'B' it will lead to drastic upheavals in hierarchical structure. Disciplinary powers cannot be entrusted to staff in Grade pay Rs.4200 and Rs.4600. Staff in various departments of Railways in GP Rs.4200 and Rs.4600 running into lacs.
- ix) Due to unique nature Railways stands in different footing than other Ministries of Central or State Governments.
- x) Applicants reference that Railway Boards internal notings justified re-classification of the posts is misconceived and untenable, since the notings were made by junior level section officers.
- xi) There was no clarity in the proposed cost savings.
- xii) Order dated 27.04.1992 contains detail reasons for rejecting the claim of applicants.
- xiii) The issue have attained finality in Madras bench and Principle bench (1996) and cannot be reopened.
- xiv) Applicants are guilty of hiding speaking order (27.04.1992) issued by Railways. Applicants have tried to misled the Tribunal by omitting the explanation at the foot of DoPT order dated 09.04.2009.
- xv) Hon'ble Supreme Court in it Judgement dated 21.01.1998 against the petitioner Indian Railway SAS Staff Association stated that "We therefore cannot subscribe to the view that the scale of pay alone can be the criteria for classification of posts"
- xvi) Applicants had also an opportunity to present their grievance before 7th CPC.

4. ORDERS BY CAT

For the reasons aforesaid no justification found and dismissed. No cost.

5. OUR PRELIMINARY COMMENTS ON THE JUDGMENT

The judgement has many infirmities – both legal & factual. IRTSA proposes to file an appeal in the High Court early. We are preparing detailed comments on the Judgement of the CAT. And the same shall be placed on IRTSA Website & Face Book soon.

However, in order to dispel the the misgivings about a couple of disparaging remarks appearing in the judgement, the following facts are mentioned here below for the information of the Members:

Hon'ble CAT has unjustly remarked that petitioner is guilty of hiding some of the facts about the case particularly the Railways order dated 27.4.1992 and omitting the explanation at the foot of DoPT order dated 09.04.2009 Annexure-1 of OA.

While we are preparing the pointwise comments on the judgment, but it may be mentioned that IRTSA had not hidden anything in the matter - as clear from the following facts:

- a) IRTSA had clearly referred to the Railway Boards letter dated 27.4.1992 to GS IRTSA, in the list of events of OA itself.
- b) IRTSA had produced copies of all related orders of DoPT including order dated 09.04.2009 in their original form. Annexure-1 was a retyped copy of DoPT order dated 09.04.2009 only for ready reference. Even though it did not contain the foot note but in any case a certified copy of the original order of DOPT was also separately placed in Annexure 13 of OA.
- c) As such there was no attempt or intention of the Applicants to hide any facts or Docs.

INVITING SUGGESTIONS

Members are requested to give their opinion and suggestions about the case with supporting evidence or materials so that we can take the final decision whether to file an appeal in the High Court or to continue to slog& crib – as many of us prefer to do.

Remember: United we rise, divided we fall, LONG LIVE IRTSA

KVR