CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.69/1998
with
O.A. No.24/1998
O.A. No.106/1998

New Delhi, this the 19th day of February, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

O.A. No.69/1998

1. Shri R.S. Jolly,
S/o Late Shri Sohan Singh Jolly,
Retd. T.F.R.,
Central Railway,
New Delhi.

Resident of :
51, Hem Kunt, Opposite Nehru Palace,
New Delhi.

2. Shri S.P. Pathak,
Ex.J.D.I.,
Central Railway,
Agra Cantt.

Resident of :

C5D, Basant Lane,
Railway Quarters,
New Delhi -110055.

3. Shri B.R. Kapoor,
S/o Shri Des Raj Kapoor,
Retd. Chief Progress Supervisor,
Central Railway,
New Delhi.

Resident of :

C4D, Basant Lane,
Pahar Ganj,
Near Karnail Singh Stadium,
New Delhi.

....Applicants

(By Advocate : Shri B.S. Mainee)

V E R S U S

Union of India
Through :

1. The General Manager,
Central Railway,
Mumbai CST.

2. The Divisional Railway Manager,
Central Railway,
Jhansi (U.P.)

.... Respondents

(By Advocate : Shri H.K. Gangwani)

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O.A. No.24/1998

Shri Tilak Raj Sharma
S/o Shri Gurucharan DAs
Senior Loco Inspector (Retd.)
Central Railway,
Loco Shed,
New Delhi. ....Applicant
(By Advocate : Shri B.S. Mainee)

V E R S U S

Union of India : Through

1. The General Manager
Central Railway, C.S.T.,
Mumbai.

2. The Divisional Railway Manager
Central Railway,
Jhansi. .... Respondents
(By Advocate : P.S. Mahendru)

O.A. No.106/1998

1. Shri K.K. Kapoor
S/o Shri Ram Nath Kapoor,
Sr.Loco Inspector (Retd.)
Central Rly., Agra,
R/o 19974 Katra Kurshihd Rai
Kinari Bazat, Delhi.

2. Shri K.N. Sharma
S/o Late Shri Banwari Lal Sharma
J.D.I. (Retd.)
Central Rly., Agra Cantt.,
C/o Yogendra Sharma
Rly. Qr.No.C3L Rly Colony,
New Delhi.

3. Shri K.M. Prashar
S/o Shri Babu Ram Prashar
Retd. Chief Traction Foreman
Central Railway,
R/o 130A MIG Flat,
Rajouri Garden, New Delhi.

4. Shri J.C. Sharma
S/o Shri M.L. Sharma
Sr.Loco Inspector
Central Rly.
19 LIG Flat, Vikas Puri,
New Delhi.

5. Francis Xavier Baptist
S/o Shri Lucas Baptist
Retd. Sr. Loco Inspector
Central Railway, Jhansi.
R/o 37A/53, Old Maderoo Nagar,
Agra Cantt.

....Applicants
(By Advocate : Shri B.S. Mainee)

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V E R S U S

Union of India : Through

1. The General Manager
Central Railway, C.S.T.,
Mumbai.

2. The Divisional Railway Manager
Central Railway,
Jhansi.

.... Respondents

(By Advocate : P.S. Mahendru)

ORDER (ORAL)

By Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J) :

The aforesaid three Original Applications (OA No.69/1998, OA No.24/1998 and OA No.106/1998) have been taken up together for hearing as learned counsel for all the parties have submitted that the relevant facts and issues raised in all the three applications are the same, namely, the applicants have challenged the validity of Office Order No.21/97 dated 21.7.1997. Accordingly, the aforesaid three applications are being disposed of by a common order.

2. Admittedly, the applicants in the aforesaid three applications, who are nine in number, had earlier filed original applications before the Tribunal (Principal Bench), namely, OA No.1123/1994 and OA No.934/1993 which were disposed of by a common order dated 2.12.1996. In that order, the impugned order (Annexure A-1) revising their pay without giving notice was quashed, leaving it free to the respondents to proceed in accordance with law, wherein it was also

indicated that predecisional hearing should have been given to the applicants. Admittedly, these nine applicants have now filed the present three applications against Office Order No.21/97 dated 21.7.1997, by which the respondents have stated that the applicants, Ex.Loco Supervisors, were not entitled to the benefit of stepping up of pay at par with the supervisor of another Division, i.e., Shri B.D. Singh in Bhopal Division. In the annexure to the impugned order the fixation of pay stepped down by the respondents is also indicated against each of the applicants that is w.e.f. 20.6.1989.

3. One of the grounds taken by Shri B.S. Mainee, learned counsel for the applicants, is that no predecisional hearing was given by the respondents before passing the order dated 21.7.1997. This has been stoutly contested by the learned counsel for the respondents, who has drawn our attention to the reply filed by them in the aforesaid three applications. In one application (OA 24/1998), Shri P.S. Mahendru, learned counsel has submitted that in the last line, there is a typographical error about the date on which the applicant was personally heard but has stated that in pursuance of the notice of hearing issued by the respondents dated 23.6.1997, the applicant was personally heard. In the other two OAs, the respondents have submitted that they have issued the letter to the applicants which is dated 23.6.1997 and not 26.6.1997, and except two applicants, i.e.,

applicant No.3 in each of other two OAs, namely, OA No.69/1998 and OA No.106/1998 other applicants were personally heard on 8.7.1997. The applicants have, however, denied this averment in the rejoinder filed by them in all the OAs stating that they were not heard. Shri B.S. Mainee, learned counsel has also very vehemently submitted that the hearing which was ordered to be given by the Tribunal's order dated 2.12.1996 has to be read by way of giving an opportunity to the applicants to give their written submissions which has not been done and merely giving an opportunity of personal hearing would not be sufficient in the present case.

4. Apart from the above submissions, Shri B.S. Mainee, learned counsel has also submitted that after passing the Annexure A-1 order which has been made in the present three OAs, in the reply to the additional affidavit filed by the respondents on 7.1.2002 they have brought in other factors which have now been introduced to refix the pay of the applicants with the pay of Shri B.D. Singh in a lower level as in the year 1986, again pleading that the respondents have made a mistake. We see force in the submissions made by Shri B.S. Mainee, learned counsel for the applicants that after several years and that too, admittedly, after Shri B.D. Singh, has retired from service on superannuation in 1997, the respondents are continuing to discover further mistakes to refix not only the pay of Shri B.D. Singh but also the pay of the present applicants. This is also proposed to be

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done on an entirely new ground which obviously the respondents have not brought to the notice of the applicants before they passed the order dated 21.7.1997, in pursuance of the Tribunal's order dated 2.12.1996. Therefore, even if a prima facie conclusion is arrived at that the respondents have complied with the directions of the Tribunal's order dated 2.12.1996 in OA No.1123/1994 and OA No.934/1993, the further proposal to refix the pay of Shri B.D. Singh, which will have a direct effect on the pay of the applicants, cannot again be done by the respondents behind either the back of Shri B.D. Singh or the applicants. It is relevant to note that Shri H.K. Gangwani, learned senior counsel has submitted that the respondents would indeed issue a show cause notice to Shri B.D. Singh, who is a retired person, before any refixation of his pay.

5. The peculiar facts and circumstances of the case are that the present applicants are stated to have already retired from service in the years 1994 and 1996 before the aforesaid order of the Tribunal was passed on 2.12.1996. It is also ~~was~~ a fact that Shri B.D. Singh has also retired from service on superannuation in 1997 but the issue of refixation of their pay is still to be settled by the respondents. In the peculiar facts and circumstances of the case, it would also be appropriate for the respondents to consider and take a final decision in the matter as to what should be their stand at this stage when they keep discovering more and more errors committed

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several years back by their own employees which adversely affects the pay and consequential pensionary benefits of other retired employees.

6. Therefore, in the above facts and circumstances and having regard to our earlier order dated 2.12.1996, we are of the view that the respondents cannot at this stage refix the pay of the applicants by re-fixing the pay of Shri B.D. Singh, who are all retired employees, without issuing a show cause notice and giving them a reasonable opportunity of being heard, which admittedly has not been done. On the new ground mentioned by the respondents in the additional affidavit dated 7.1.2002, the impugned Office Order No.21/97 dated 21.7.1997 will undergo further changes as indicated in the reply due to the alleged discovery of errors committed by their offices in Bhopal/Jhansi Division where Shri B.D. Singh was employed at the relevant time. The principles of natural justice have to be complied with.

7. In the result, in the interest of justice the impugned order No.21/97 dated 21.7.1997 in all the three applications is quashed and set aside, leaving it open to the respondents to take appropriate decision in accordance with law, subject to the observations made above. No order as to costs.

8. Let a copy of this order be placed in OAs No.24/1998 and 106/1998.

(Govindan S. Tampi)
Member (A)

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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