CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA Nos.907/94, 943/95, 945/95,
1269/94, 1575/95, 2106/94
& 1587/95.

(37)

New Delhi this the 8 th day of October, 1997.

Hon'ble Smt. Lakshmi Swaminathan, Member(J)

Hon'ble Shri R.K. Ahooja, Member(A)

1. OA-907/94

1. Ram Dass Dixit S/o Shri Ram Charan
Senior Driving Inspector (Safety)
Baroda House, Northern Railway
New Delhi.

2. Shri Kanwaljit Singh S/o Shri Gurbax Singh
T.L.C./(Power Controller)
Baroda House, Northern Railway
New Delhi. ... Applicants

(By Advocate: Shri G.D. Bhandari)

Vs.

1. Union of India
through the General Manager
Northern Railway, Baroda House
New Delhi.

2. The Chief Personnel Officer
Northern Railway, Baroda House,
New Delhi. ... Respondents

(By Advocates S/Shri Raj Birbal, Sr. Counsel with
R.L. Dhawan and P.S. Mahendru)

2. OA-943/95

1. Inder Singh
S/o Shri Nek Singh
Retired A.M.E.,
N.Rly. Ambala Cantt. ... Applicant

(By Advocate: Shri G.D. Bhandari)

Versus

1. Union of India through,
the General Manager, N.Rly.,
Baroda House, New Delhi.

2. The Chief Personnel Officer,
N.Rly., Baroda House,
New Delhi.

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(38)

3. Sr.Divl.Personnel Officer,
N.Rly., DRM's Office,
AMBALLA CANTT. ... Respondents

(By Advocates S/Shri Raj Birbal, Sr. Counsel with Shri R.L. Dhawan and P.S. Mahendru)

3. OA-945/95

1. Ved Prakash Nanda
S/o Late Shri Amar Nath Nanda
Senior Mechanical Engineer(Fuel)
N.Rly., Baroda House,
New Delhi. ... Applicant

(By Advocate: Shri G.D.Bhandari)

Versus

1. Union of India through
The General Manager,
N. Rly., Baroda House,
New Delhi.

2. The Chief Personnel Officer,
N. Rly., Baroda House,
New Delhi.

3. Sr.Divisional Personnel Officer,
N.Rly., DRM's Office,
AMBALA CANTT. ... Respondents

(By Advocates S/Shri Raj Birbal, Sr. Counsel with Shri R.L. Dhawan and P.S. Mahendru)

4. OA-1269/94

1. Tarlok Singh & Ors
S/o Late Shri Mangal Singh,
Retd. AME,
Northern Railway, Baroda House,
New Delhi. ... Applicant

(By Advocate: Sh. G.D.Bhandari)

Versus

1. Union of India through
The General Manager,
Northern Railways, Baroda House,
New Delhi.

2. The Chief Personnel Officer,
Northern Railway, Headquarters Office,
Baroda House,
New Delhi. ... Respondents

(By Advocates S/Shri Raj Birbal, Sr. Counsel with Shri R.L. Dhawan and P.S. Mahendru)

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(39)

5. OA-1575/95

1. Mohd. Siddiq
S/o Late Sadiq Hussain,
Retd. Sr.Driving Inspector,
N. Rly., Kanpur. ... Applicant

(By Advocate: Shri G.D.Bhandari)

Versus

1. Union of India through
The General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Chief Personnel Officer,
Northern Railway,
Baroda House,
New Delhi.

3. The Divisional Railway Manager,
Northern Railway,
Allahabad. ... Respondents

(By Advocates S/Shri Raj Birbal, Sr. Counsel, with R.L. Dhawan and P.S. Mahendru)

6. OA-2106/94

1. Shri Banwari Lal Sharma
S/o Shri Badri Parsad Sharma
Sr. Fuel Inspector, N.R.Rewari.

2. Shri Bhisham Kumar S/o Shri Jagan Nath
Loco Foreman, Hanumangarh.

3. Shri Murari Lal Chaturvedi S/o Sh.Shiv Charan
Asstt. Mechanical Engineer, N.R. Bikaner.

4. Shri Kastoor Chand S/o Sh. Mohan Lal
Asstt. Mechnical Engineer, N.R. Bikaner.

5. Shri Brahma Swaroop Saxend
S/o Shri Shiv Charan Lal Saxena
Sr. Loco Inspector, N.R. Bikaner.

6. Shri Uma Shanker S/o Shri Piare Lal Sharma
Sr. Loco Inspector, N.R. Bikaner.

7. Shri Hari Singh S/o Shri Kanhiya Ram
Sr. Loco Inspector, N.R. Rewari. ...Applicants

(By Advocate Shri G.D. Bhandari and in addition Shri B.L. Sharma, Applicant No. 1 in person)

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(40)

VERSUS

1. Union of India through
The General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Divisional Railway Manager,
Northern Railway,
Bikaner.

3. The Chief Personnel Officer,
Northern Railway,
Baroda House,
New Delhi. ... Respondents

(By Advocates S/Shri Raj Birbal, Sr. Counsel with R.L. Dhawan and P.S. Mahendru)

7. OA-1587/95

1. R.P. Sharma,
S/o Shri Chand Bahadur,
SLI/Fuel, Baroda House,
New Delhi. ... Applicant

(By Advocate: Shri G.D.Bhandari)

Versus

1. Union of India through
the General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.

3. The Chief Personnel Officer,
Northern Railway, Baroda House,
New Delhi. ... Respondents.

(By Advocates S/Shri Raj Birbal, Sr. Counselwith R.L. Dhawan and P.S. Mahendru)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The learned counsel for the parties in these seven Original Applications submit that the main

issues involved in these cases are similar and so they have been heard together. Shri G.D. Bhandari, learned counsel for the applicants, has, however, submitted that ~~the~~ two cases (Ram Dass Dixit and Anr. Vs. Union of India and Anr. (OA 907/94) and R.P. Sharma Vs. Union of India & Ors. (OA 1587/95)) are somewhat different from the other cases, as they involve only ad hoc promotions, whereas the other cases involve regular promotions. However, in the facts and circumstances of the case, these seven Original Applications are being disposed of by this common order.

2. For the sake of convenience, the facts in O.A. 907/94 have been referred to, on the basis of which Shri G.D. Bhandari, learned counsel, has submitted his arguments.

3. The main grievance of the applicants is that the respondents have refused to step up their pay to one Shri Raksha Ram, who is junior to them which is in violation of Rule 1316 of the Indian Railway Establishment Code (Vol.II) which provisions are para-materia to FR 22-C. They have stated that the representation of the applicants has been rejected by the respondents by their letter dated 20.10.1993.

4. The brief facts of the case are that the applicants were appointed in March, 1967 as Fireman Grade 'A' in Delhi Division, Northern Railway. Thereafter, they were promoted as Driver 'C' after passing the departmental

training courses. At the time of filing the application, Applicant No. 1 was holding the post of Senior Driving Inspector in the grade of Rs.2000-3200, while Applicant No. 2 was holding the post of Power Controller in the same grade and both these posts are in the sub-cadre of running staff Supervisor. They have submitted that on implementation of the 4th Pay Commission Report, an anamolous situation had occurred in the fixation of pay of Loco Supervisory Staff appointed prior to 1.1.1986 with reference to juniors appointed after that date. According to them, Shri Raksha Ram who was promoted after 1.1.1986 has been fixed at a higher rate of pay than those promoted prior to 1.1.1986 in the pre-revised scale. Shri Bhandari, learned counsel, has, therefore, submitted that the pay of the applicants should be stepped up to that of his junior.

5. The respondents have denied that the applicants have a claim for stepping up of their pay as according to them they are not covered under the Rules. In the impugned rejection letter dated 20.10.1993, the respondents have stated that Applicant No.1's case for grant of stepping of pay is not covered under the extant orders. They have stated that Shri Ram Dass Dixit was promoted from Driver 'C' to ATFR and then TLC grade Rs.700-900, whereas Shri Raksha Ram was promoted from Driver'C' to Driver 'B', Driver'A' and then Power Controller grader Rs.700-900/2000-3200. They had, therefore, held the claim of the applicants for stepping up of pay as not tenable. They have also relied on

a recent judgement of the Supreme Court in **Union of India & Ors. Vs. O.P. Saxena, etc.** (JT 1997(6) SC 586). Shri Bhandari, learned counsel for the applicants, has submitted that even though admittedly the facts in the present case and that of the judgement of the Supreme Court in **O.P. Saxena's case (supra)** are identical, other similarly situated persons who had earlier approached the Tribunal had been granted similar relief and, therefore, the Tribunal should not deny these applicants the same reliefs, but follow the earlier orders of the Supreme Court where SLPs had been dismissed. In this judgement, the Supreme Court has dealt with a number of civil appeals from the order dated 18.5.1995 of the Tribunal, Jabalpur Bench in O.A. No. 462 of 1994 relating to the stepping up of the pay of the respondents who were promoted as Loco Running Supervisors prior to 1.1.1986 vis-a-vis the pay of one Shri P.N. Kareer, who was promoted to that post after 1.1.1986 but was drawing higher pay than the respondents. The facts in this case are identical to the facts in the present O.As. Under the rules, the locomotive drivers are eligible

(44)

for promotion, amongst other posts, to those of Loco Supervisors. In **O.P. Saxena's case (supra)**, Shri Kareer and the respondents, at one time, were holding the running post of Driver Grade-C. Shri Kareer had been promoted as Driver Grade-C on 29.8.1961 and was placed in the grade of Rs.150-240 and the respondents had been promoted and appointed as Drivers Grade-C from a date subsequent to 29.8.1961. In other words, Shri Kareer was senior to the respondents as Driver Grade-C. The respondents then opted to be promoted to the 'stationery post' of Loco Supervisor directly from the post of Driver Grade-C which they were holding and their promotion was made prior to 1.1.1986 and they were placed in the grade of Rs.550-750. Shri Kareer chose to remain in the running staff and he was promoted as Driver Grade-B on 1.1.1981 in the scale of Rs.425-640 and his pay was fixed at Rs.580/-. Thereafter, on 28.11.1984, he was promoted as Driver Grade-A in the scale of Rs.550-700 w.e.f. 1.1.1986 when the revised pay scales came into existence as a result of the 4th Pay Commission Report. At that time, the respondents were working on the stationery post of Loco Supervisors, while Shri Kareer was working on the running post of Driver Grade-A. The Supreme Court has held that the pay of running staff on promotion to Loco

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Supervisor's post is fixed under Rule 1316 of the Indian Railway Establishment Code which rule is also applicable to the present case. On introduction of the revised pay scales w.e.f. 1.1.1986, the 30% addition in the pay element of the running allowance of running staff was increased which resulted in higher fixation of pay of running staff appointed as Loco Supervisors after 1.1.1986 than those appointed as Loco Supervisors before 1.1.1986. Therefore, when Shri Kareer was appointed as a Loco Supervisor later, his pay as Loco Supervisor was fixed after taking into account the aforesaid 30% addition which resulted in his getting higher pay than the respondents. The Supreme Court had noticed that the pay of the respondent, O.P. Saxena, was stepped up but when the Department discovered that the benefit had been wrongly given to him his pay was refixed and recoveries were made of the excess amount paid to him. Shri Saxena challenged the aforesaid decision by filing O.A. No. 462 of 1994 before the CAT, Jabalpur Bench, and the other O.As were filed by other respondents seeking the benefit of stepping up of pay. The facts in the present Original Applications are identical to the facts which have been decided by the Hon'ble Supreme Court in **O.P. Saxena's case (supra).** The Supreme Court has held that the Tribunal first decided the case of Shri O.P. Saxena and came to the conclusion that stepping up of the pay was admissible to him and thereafter the other O.As were also allowed and the appellants, Union of India were directed to step up their pay keeping in view the pay of Shri Kareer. The Supreme Court has also held that the directions

(46)

to step up the pay of the respondents was not correct. They have referred to the Ministry of Railway's letter dated 16.8.1988 and 14.9.1990 and Rule 1316 of the Indian Railway Establishment Code, Vol.II which contains the conditions for stepping up of pay. The two main conditions for stepping up of pay are;-

(a) Both the senior and junior officers should belong to the same cadre and the post in which they have been promoted on a regular basis should be identical in the same cadre;

(b) The scales of pay of the lower and higher posts in which they are entitled to draw should be idetntical.

The Supreme Court has held that as Shri Kareer remained in the cadre of running staff and the respondents by choice opted for being promoted to the supervisory cadre and posted as Loco Supervisors, they belonged to two different cadres having their own seniority lists. The pay of Shri Kareer was fixed according to the scales which were approved for the running staff, including the running allowance. Shri Kareer was drawing more salary as Driver Grade-A just before his appointment as a Loco Supervisor, than the respondents. Therefore, with the revision of pay scales w.e.f. 1.1.1986, since the source of the recruitment to the post of Loco Supervisor in the case of Shri Kareer vis-a-vis the respondents was different, it was held that the principle of stepping up of pay would not arise. The Supreme Court has further held that the pay of Shri Kareer had to be fixed with reference to what he was last drawing as Driver Grade-A, a post which was never held by any of the

A7

respondents. The judgement of the Tribunal was, therefore, set aside as it was held that there was no justification in applying the principle of stepping up of pay and directing the refixation of the pay of the respondents. Another similar appeal filed by the Union of India against the order of the Tribunal, Lucknow Bench, which had ordered stepping up of pay was also considered and allowed. We find that the judgement of the Supreme Court in **O.P. Saxena's case (supra)** is fully binding on us and the claim of the applicants in these Original Applications for stepping up of pay to that of their junior has to be rejected.

6. While Shri Bhandari, learned counsel, admits that the facts in the present case are similar to the facts in **O.P. Saxena's case (supra)**, he had advanced an argument that in various other earlier cases the Supreme Court had dismissed the Special Leave Petitions filed by the Union of India against the orders of the Tribunal allowing stepping up of pay in identical situations. He relies on the order of the Supreme court dated 19.11.1993 in **Union of India Vs. K.L. Mehendiratta & Anr.** (SLP No. 22344, copy placed on record) wherein the SLP had been dismissed on the ground of delay as well as on merits. This SLP had been filed by the Union of India against the order of the Tribunal (Principal Bench) dated 22.12.1992 in O.A. 469/92 in which the Tribunal had allowed the application stating that the applicants were entitled to the benefits of stepping up of pay which had been earlier allowed by

the respondents - Union of India and held that no recovery shall be made, as they could not be deprived of the benefits without giving an opportunity of hearing to the applicants. However, the Tribunal had observed that the Railway Administration can take any decision against the applicants in accordance with law. Shri Bhandari, learned counsel, has submitted that there were also six other similar Special Leave Petitions which have been dismissed by the Supreme Court, resulting in the applicants in those cases getting the benefit of stepping up of pay in identical situations as the present applicants. He has urged that the earlier judgements of the Supreme Court in similar cases had not been brought to the attention of the Court in **O.P. Saxena's case (supra)** which ought to have been done by the respondents. He had also argued that in two cases before us (O.As 907/94 and 1587/95), the promotions involved were not on regular basis but were only ad hoc promotions and, therefore, these should also be treated as a separate category.

7. We have carefully considered the facts, the relevant case law and the submissions made by the learned counsel for the parties as well as one applicant, Shri B.L. Sharma who was heard as a matter of indulgence.

8. In the light of the detailed judgement of the Supreme Court in **O.P. Saxena's case** (supra) on identical fact situation, where the persons who were similarly situated as the applicants were promoted as Loco Supervisors from Drivers Grade-C whereas the person whom they claim as junior was placed in the cadre of Loco Supervisor after being promoted from the post of Driver Grade-C to Driver Grade-B and then Driver

(A9)

Grade-A before promotion as Loco Supervisor, the principle of stepping up of pay cannot apply to these cases. Admittedly, the applicants and the person with whom they claim stepping up of pay are not in the same cadre and their promotion was from Driver Grade-C to Loco Supervisor whereas their junior, Shri Raksha Ram, was promoted from Driver Grade-C to Driver Grade-B and then to Driver Grade-A and thereafter as Power Controller. Therefore, the two conditions for stepping up of pay under the Rules as given in Para 5 above are not fulfilled and the action of the respondents to refuse their claim to step up of pay at par with Shri Raksha Ram cannot be faulted.

9. In **State of Maharashtra & Anr. Vs. P.B. Ingle** (1996(3) Supreme 245), the Supreme Court has held that once the Supreme Court has confirmed the order passed by the Tribunal by dismissing an SLP even by a non-speaking order, the Tribunal cannot have any power to review that order as that order has become final. Shri Bhandari, learned counsel, has relied on this judgement and his contention was that as the Supreme Court had dismissed the SLPs filed by the Union of India in **K.L. Mehendiratta's case (supra)** and other cases and they have become final, they should be followed and the present cases ought to be allowed by the Tribunal. The judgement in **Ingle's case (supra)** was primarily on the question of review of an order passed by the Tribunal after the SLP had been dismissed by the Supreme Court and will not assist the applicants in the facts of the present case. This is so especially when there

(50)

is a detailed judgement of the Supreme Court which admittedly is on all fours, both on facts and law, with the present cases. We are also not impressed with the arguments advanced by Shri Bhandari to try and distinguish the cases in O.As 907/94 and 1587/95 that they involve only ad hoc and not regular promotions as this does not affect the question under consideration here. We do not also find any merit in the other arguments advanced on behalf of the applicants.

10. In the facts and circumstances of the case and having regard to the recent decision of the Supreme Court in **O.P. Saxena's case (supra)** which is fully applicable to the cases before us, we find no merit in these applications. The same are accordingly dismissed. No order as to costs.

11. Let a copy of this order be placed in the file of O.As 943/95, 945/95, 1269/94, 1575/95, 2106/94 and 1587/95.

(R.K. Ahooja)
Member(A)

(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'

Attested
8/10/97

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