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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.2489/1989 DATE OF DECISION: 11.6.1991.

NATIONAL FEDERATION OF TELECOM EMPLOYEES & OTHERS ...APPLICANTS

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

OA NO.493/89

ALL INDIA TELECOM DEPUTY ACCOUNTS OFFICERS' & JAO ASSOCIATION THROUGH THEIR GENERAL SECRETARY SHRI V.P. MEHTA. ...APPLICANTS

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

OA NO.494/89

JUNIOR ENGINEERS TELECOMMUNICATION ASSOCIATION ...APPLICANTS

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

OA NO.495/89

TELECOMMUNICATION ENGINEERING SERVICES ASSOCIATION ...APPLICANTS

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

CORAM:

THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN
THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANTS SHRI RAKESH LUTHRA &
SHRI R.K. KAMAL, COUNSEL

FOR THE RESPONDENTS SHRI P.P. KHURANA, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE MR. I.K. RASGOTRA, MEMBER (A))

The common issue of law and fact raised in this bunch of four OAs is whether the eligibility limit for payment of productivity linked bonus (PLB for short) for the applicants who are employees in the Department of Posts and in the

Department of Telecom should be raised from Rs.2500/- per month to Rs.3500/- per month on the ground that the Ministry of Railways in identical circumstances has done so for the period covered by the agreement signed in 1987. We, therefore, propose to deal with these OAs through this common judgement.

2. The brief particulars of the fours OAs, filed under Section 19 of the Administrative Tribunals Act, 1985 are given below:-

i) OA No.2489/89 has been filed by the National Federation of Telecom Employees, Federation of National Telecom Employees Organisation, National Federation of Postal Employees, Federation of National Postal Employees Organisations through their respective Secretaries General and Shri R.K. Kohli, Senior Supervisor, Delhi Telephones.

ii) OA No.493/89 has been filed by All India Telecom Deputy Accounts Officers' and JAO Association through Shri V.P. Mehta, General Secretary of the Association.

iii) OA No.494/89 has been filed by Junior Engineers Telecommunication Association through Shri M.K. Bagchi, General Secretary of the Association.

iv) OA No.495/89 has been filed by Telecommunication Engineering Services Association through Shri S. Basu, General Secretary of the Association.

The applicants' Federations and Associations are recognised bodies and are aggrieved by the refusal of the respondents to enhance the eligibility limit for PLB/Ex-gratia payment from Rs.2500/- to Rs.3500/- as evidenced from Memo No.31-3/88 PAT dated 6.10.1988 (Annexure VIII).

3. The case of the applicants is that they being industrial workers are governed by the Industrial Disputes Act, 1947, but they were not extended the benefits available to industrial employees under the Payment of Bonus Act, 1965.

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In 1979, the Ministry of Railways signed an agreement with its two recognised Labour Federations, introducing the scheme of Productivity Linked Bonus for the Railway employees who were in service on or after 1.4.1979. The scheme laid down detailed norms for calculating the PLB taking the performance of 1977-78 as the bench mark. The employees drawing emoluments, as detailed in the scheme, not exceeding Rs.1600/- per month were eligible for the PLB. Where emoluments exceeded Rs.750/- per month but did not exceed Rs.1600/- per month, the PLB payable was to be calculated as if the emoluments were Rs.750/- per month. The financial limits of eligibility for making payment of PLB were the same, as were provided in the Payment of Bonus Act, 1965. The upper ceiling of Rs.1600/- was subsequently raised to Rs.2500/-. The financial limit of emoluments for eligibility was also raised by amending the Payment of Bonus Act, 1965. In 1987, however, the Railway Board vide Memo No. E(P&A)II/87/PLB-4 dated 21st September, 1987 further raised the financial ceiling for eligibility for payment of PLB to Rs.3500/- in accordance with the provisions made in the revised agreement signed with the two recognised Labour Federations as extracted below:-

"(vi) PLB would be payable to the railway employees whose wages do not exceed Rs.2500.00 p.m. Where the wages of employees exceed Rs.1600.00 p.m. but do not exceed Rs.2500.00 p.m., PLB payable to such employees shall be calculated as if wages are Rs.1600.00 p.m.

(vii) As a very special case, an ex-gratia amount equal to the amount of PLB admissible to employees whose wages are Rs.1600/- p.m. will be payable as a special dispensation to Railway employees whose wages exceed Rs.2500/- p.m. but do not exceed Rs.3500/-."

Following the introduction of PLB scheme on the Railways, the Department of Posts and Telecommunications also signed an agreement with their respective Labour Federations/Unions and introduced a scheme of PLB on the

pattern obtaining on the Railways in March, 1980. The PLB scheme was reviewed and revised in the Department of Posts and Telecommunications in 1987 and in the meeting held on 22/23rd September, 1987 the following minute was recorded:-

"4. Secretary (T) pointed out that the orders of the Ministry of Finance would be necessary before the limit could be extended to the staff in respect of wages upto Rs.3500/- p.m. He mentioned that this has been taken up with the Ministry of Finance with whom it would be persued." (Annexure VII)

The respondents, however, did not enhance the limit for the Posts and Telecommunications employees, as is apparent from the impugned memo dated 6th October, 1988. The applicants submit that despite the nomenclature of the "ex-gratia" payment used in the Ministry of Railways for PLB for the employees drawing emoluments between Rs.2500/- and Rs.3500/-, for all practical purposes the eligibility ceiling has been increased from Rs.2500/- to Rs.3500/- and that this was to compensate for the rise in the wages caused due to high rate of inflation and the cost of living. The refusal to increase the limit for the applicants, therefore, is discriminatory and violative of the constitutional provisions. The pursuit of the matter by the applicants in the National Council of the Joint Consultative Machinery (JCM) resulted in the recording of disagreement on 6.7.1989 and final rejection of the claim of the applicants. The applicants contend that during the last 10 years since the introduction of the PLB scheme, inflation and rising prices have resulted in artificial increase of wages and have effectively led to the reduction in the number of employees eligible for PLB within the ceiling of Rs.2500/-.

4. The stand of the respondents is that the PLB scheme is worked out by the respective departments in consultation with the staff side in the JCM and are in force in the respective departments in accordance with the agreement signed by the

department and the staff side, taking into consideration all relevant factors and characterstic of the functions and activity of each department. Consequently the quantum of bonus varies from one department to another and the scheme of one department is not comparable with another department. Any attempt on such comparison is totally misconceived. They deny that there is any discrimination against the applicants and consequent violation of the provisions made under Articles 14 and 16 of the Constitution of India is involved.

5. The applicants filed an additional affidavit stating that the Director (JCA), Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training vide letter dated 18.3.1991 has advised the Secretary of the staff side, National Council (JCM) that:-

"the demand of the Staff Side for raising the ceiling of Rs.2500/- per month for eligibility to bonus has been examined and it has not been found possible to agree to the demand. Further, it is also not possible to accede to the demand for raising of the eligibility ceiling from Rs.2500 per month in the case of PLB and ad hoc bonus to the employees in Central Government Departments. As regards, the arbitrability of the issue, the matter has been examined and Govt. is of the view that this item is not compulsorily arbitrable under Clause 16 of the JCM Scheme. In case, the Staff Side subscribe to this view on the arbitrability of the issue, a disagreement would be deemed to have been recorded. We shall be grateful for your views on this."

With the above advice from the respondents all hopes of seeking redress of their grievance through administrative channel have come to nought.

6. Shri Rakesh Luthra, the learned counsel appearing for the applicants in OA-2489/89 submitted that both the applicants and the Railways servants are industrial employees

and are covered by schemes of PLB, with identical parameters, although the formula for calculating the PLB had to depend on the characterstic and the nature of the work performed by the employees in each department. Altering the parameter of eligibility for payment of PLB in the Railways and denying the same benefits to the applicants is discriminatory and violates the Articles 14 and 16 of the Constitution of India, as the schemes of PLB are built on identical foundation. There is also no intelligible differentia for classifying the Railway employees separately from the applicants, nor is there any nexus between such classification and the object sought to be achieved.

Shri R.K. Kamal, the learned counsel for the applicants in OAs No.493/89, 494/89 & 495/89 submitted that Railways and Posts and Telecommunication Departments are the largest commercial undertakings of the Government. There has always been a parity between the two departments in the matter of the PLB scheme. In fact, the two PLB schemes are identically worded. The learned counsel sought to fortify is argument by citing the following judicial pronouncements:-

i) 1982 SCC (L&S) 119 Randhir Singh v. UOI & Ors.

ii) 1983 SCC (L&S) 145 D.S. Nakara & Ors. v. UOI

iii) 1987 SCC (L&S) 100 M/s.Mackinnon Mackenzie & Co. Ltd. v. Audrey D'costa & Anr.

We do not consider the above citations very material for dealing with the issues before us.

7. Shri P.P. Khurana, the learned counsel for the respondents submitted that the scheme of PLB has nothing to do with the Payment of Bonus Act, 1965. In fact, all Government employees are excluded from the purview of the Payment of Bonus Act, 1965. He reiterated the stand of the respondents as narrated earlier and affirmed that the scheme of PLB of Railways is neither comparable nor applicable to

the Posts and Telecom Departments and, therefore, the question of disturbing the parity between the Railways and P & T does not arise. The issue of discrimination would arise only if one set of employees in one department drawing emoluments upto Rs.3500/were paid PLB while others were restricted upto Rs.2500/ per month. Since no such classification has been made within the department, the provisions of Articles 14 & 16 of the Constitution of India are not attracted.

8. We have heard the learned counsel for the applicants and respondents and considered the record carefully. Admittedly, the employees of the Government of India are excluded from the purview of the Payment of Bonus Act, 1965. The Railwaymen who are the industrial employees were nevertheless representing for a long time that they should be covered under the Payment of Bonus Act, 1965 and paid bonus accordingly. It was considered that the Railway play an important role as an infrastructural activity in the performance of the economy as a whole and that a scheme of PLB acceptable to railwaymen would further stimulate the performance of the Railways in particular and economy in general to greater endeavour and achievement. The Government accordingly introduced the concept of PLB in lieu of bonus under the Payment of Bonus Act, 1965 in agreement with the All India Railwaymen's Federation and National Federation of Indian Railwaymen. This scheme was introduced w.e.f. 1.4.1979. The scheme has three important ingredients:

a) It covers all Railway employees whose monthly emoluments do not exceed Rs. 1600/- per month. Where the emoluments exceed Rs. 750/- per month but do not exceed Rs. 1600/- per month the PLB payable shall be calculated as if emoluments were Rs. 750/- per month.

b) Both the labour federations accepted the concept of Productivity Linked Bonus and agreed to give up their demand under the Payment of Bonus Act,1965 or payment

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of ex-gratia amount as prevalent in sectors "excluded" from the purview of the Payment of Bonus Act.

c) For developing Productivity Linked Bonus formula 1977-78 was taken as the base year entitling PLB equivalent to 25 days emoluments.

In brief the mainstay of the scheme was acceptance of concept of PLB by the labour federations and the development of the formula for calculating the PLB in accordance with the norms developed within a defined framework. Following the Railways, the Department of P & T also introduced PLB for their employees who too were not covered by the Payment of Bonus Act, 1965, inspite of being industrial workers, on the pattern of Railway PLB scheme. An agreement was reached between the staff side and the official side within the framework of the scheme of JCM. While the formulae for calculation of PLB in Department of Post and Department of Telecom varied from the Railways, as rightly they should, the broad framework of the two schemes was identical i.e. only those staff were covered by the PLB whose monthly emoluments were not exceeding Rs.1600/- per month. The wages included besides the basic pay, the dearness allowance, additional dearness allowance and special pay, as was the case in the Railways. Where the wages exceeded Rs.750/- per month but did not exceed Rs.1600/- per month the PLB for such employees was to be calculated as if the total wages were Rs.750/- per month. The PLB is to be paid on the basis of 25 days emoluments for productivity index of 100, taking best year as the base year viz. 1976-77 in this case. Similar agreements were also worked out for some of the other organisations which were involved in commercial/production activity and where the productivity could be measured. The upper ceiling for eligibility of PLB was later raised to Rs.2500/- per month. The higher eligibility limit further got sanctified, as the Payment of Bonus Act, 1965 was also amended to raise the

limit from Rs.1600/- to Rs.2500/-. The Railways who were the pioneers in introducing the scheme of PLB in 1979 raised the limit of Rs.2500/- to Rs.3500/- in 1987 vide their letter NO.E(P&A)II/87/PLB-4 dated 21st September, 1987, in accordance with the revised agreement, as arrived at between the Ministry of Railways and the Labour Federations. The relevant part of the agreement is reproduced below:-

"(vii) As a very special case, an ex-gratia amount equal to the amount of PLB admissible to employees whose wages are Rs.1600/- p.m. will be payable as a special dispensation to Railway employees whose wages exceed Rs.2500/- but do not exceed Rs.3500/- p.m."

A similar demand was raised by the applicants in their meeting with the respondents held on 23.9.1987. The relevant part of the minutes is extracted below:-

"2. The staff side representatives while generally agreeing to the new formula for the Productivity Linked Bonus, raised the following points:

3. The eligibility limit of Productivity Linked Bonus has been retained at Rs.2500/- as in the previous year. They pointed out that the Railways have already allowed ex-gratia payment at the same rate as the Productivity Linked Bonus to their employees with wages upto Rs.3500/- p.m. They wanted that this should be extended to the staff of the Department of Telecommunications also.

4. Secretary (T) pointed out that the orders of the Ministry of Finance would be necessary before the limit could be extended to the staff in respect of wages upto Rs.3500/- p.m. He mentioned that this has been taken up with the Ministry of Finance with whom it would be persued.

5. The staff side representatives wanted a specific ceiling for the productivity linked bonus, as they were apprehensive that a low ceiling may be fixed which would make them ineligible to justified bonus. Secretary (T) explained that there is no need for any apprehension that the staff would be denied of the bonus justified by higher productivity. He felt that it was advantageous to the staff not to indicate any specific ceiling but work for higher productivity to which they would be entitled according to the new formula."

It is against this backdrop that the applicants signed the revised agreement in the Department of Telecom. It now appears that the respondents have not agreed to raise the limit of eligibility from Rs.2500/- to Rs.3500/-.The brief over-view of the scheme indicates that while the norms for calculating PLB in the Railways vary from those in the two departments, the broad frame work of the scheme remained identical till 1987 commencing from the year 1979-80. The merger of the dearness allowance at 568 points All India Consumer Price Index and introduction of the revised scales of pay and further sanction of the dearness allowance on a half yearly basis in accordance with the recommendations of the Fourth Central Pay Commission w.e.f. 1.1.1986 appear to be the main reasons which compelled the Ministry of Railways to enhance the limit of eligibility from Rs.2500 to Rs.3500 for payment of PLB. Had this not been done, a large number of staff engaged in operating the Railways would have been excluded from the scheme of PLB, thereby frustrating the very objective of the scheme. Identical situation in this regard obtains in the departments where the applicants are employed. In that view of the matter the refusal to enhance the ceiling from Rs.2500 to Rs.3500 for eligibility for PLB in the case

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of the applicants would be against the basic structure of the scheme and would be tantamount to discriminaton, attracting Articles 14 and 16 of the Constitution of India, as similarly placed employees forming a class for a specific purpose cannot be further sub-classified.

In these circumstances, we are of the view that the applicants herein shall also be entitled to the payment of PLB/ex-gratia as long as their emoluments do not exceed Rs.3500/-. We order accordingly. The PLB in their case shall be paid as ex-gratia and shall be equal to an amount, as if their emoluments amount to Rs.1600 per month. The PLB, as due in accordance with the above orders for the year 1989-90 shall be paid in cash to the applicants. We will, however, leave the respondents to decide the mode of payment of arrear PLB for the years prior to 1989-90. We further direct that these orders shall be carried out within 16 weeks from the date of communication.

With the above orders all the four OAs viz. 2489/89, 493/89, 494/89 & 495/89 are disposed of, leaving the parties to bear their own costs.

(I.K. RASGOTRA)
MEMBER(A) 11/6/91

(AMITAV BANERJI)
CHAIRMAN

/SKK/

Pronounced by me in the open Court on 11.6.1991.

(I.K. RASGOTRA)
MEMBER(A)
11.6.91.

प्रमाणित सत्यप्रतिलिपि
दिनांक.....
CERTIFIED TRUE COPY
Dated..... 6/7/92

अनुभाग अधिकारी (न्या०-I)
Section Officer (J-I)
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रधान न्यायपीठ, नई दिल्ली
Principal Bench, New Delhi