

In the Central Administrative Tribunal

Principal Bench: New Delhi

OA No.125/91

Date of decision: 08.01.1993.

Shri Kishori Lal & Others

...Petitioners

Versus

Union of India through the
General Manager, Western Railway,
Bombay & Others

...Respondents

Coram:-

The Hon'ble Mr. I.K. Rasgotra, Member (A)

For the petitioner

Shri O.N. Moolri, Counsel.

For the respondents

Shri Shyam Moorjani, Counsel.

1. Whether reporters of local papers may be allowed to
see the Judgement? *Ho*

2. To be referred to the Reporter or not? *yes*

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

(13)

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Date of decision: 06.01.1993.

Shri Kishori Lal & Others

...Petitioners

Versus

Union of India through the
General Manager, Western Railway,
Bombay & Others

...Respondents

Coram:-

The Hon'ble Mr. I.K. Rasgotra, Member (A)

For the petitioner

Shri O.N. Moolri, Counsel.

For the respondents

Shri Shyam Moorjani, Counsel.

Judgement(Oral)

Shri Kishori Lal and 12 others are working as Loco Running Supervisors in Kota Division of the Northern Railway. Petitioner No.1 Shri Kishori Lal was working in the pay scale of Rs.840-1040 which was revised to Rs.2375-3500 w.e.f. 1.1.1986 after the recommendations of the Fourth Central Pay Commission were implemented. The other 12 petitioners are in the pay scale of Rs.700-900/2000-3200. The case of the petitioners is that consequent to the introduction of the revised scales of pay w.e.f. 1.1.1986 the Loco Running Supervisors in the pre-revised scale who were promoted in the scale of Rs.2000-3200 after 1.1.1986 were drawing higher pay than the Supervisors who were promoted in Rs.700-900 prior to 1.1.1986 and fixed ⁱⁿ the revised grade of Rs.2000-3200 on or after 1.1.1986. Thus the senior Running Supervisors were receiving lower pay than their juniors who were promoted after 1.1.1986 but in other divisions of the Western Railway. This anomaly was recognised by the Railway Board and pay of the seniors who were promoted prior to 1.1.1986 was directed to be stepped up to the stage at which their juniors promoted after

1.1.1986 were fixed subject to the conditions stipulated in the Railway Board's letter No.E(P&A)II/88-RS-12 dated 16.9.1988. The relevant part of the said order is extracted below:-

"2. The Ministry of Railways have decided that these anomalies should be resolved as follows:-

(i) The pay of a senior loco supervisor appointed prior to 1.1.1986, as fixed in the revised scales of pay of Rs.2000-3200, may be stepped up to the level of a junior drawing more pay in this grade, appointed on or after 1.1.1986 w.e.f. the date junior is drawing more pay than the senior; this will, however, be subject to the condition that the notional pay of the junior in the revised (4th P.C.) scale of Rs.2000-3200, hypothetically fixed on the assumption that the junior was also appointed to the pre-revised loco supervisory grade prior to 1.1.1986, is less than that of the senior.

ii) The pay of a senior loco supervisor promoted to still higher pre-revised grades prior to 1.1.1986 and fitted in the replacement scale of Rs.2375-3500, may be stepped up with reference to the pay of the junior in scale Rs.2000-3200, which has been stepped up under 2(i) above with effect from the date of such stepping up of the junior.

3. The benefit of stepping up in the revised loco supervisory grades of Rs.2000-3200 and Rs.2375-3500 will be subject to the following conditions:-

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- (a) The stepping up of pay will be allowed to running staff only appointed as loco running supervisors in whose case 30% of basic pay is taken as pay element in the running allowance. The stepping up of pay will not be admissible to the non-running staff of mechanical department appointed as loco running supervisors as in their case the question of pay element in the running allowance does not arise;
- (b) If even in the lower post revised or pre-revised, the junior was drawing more pay than the senior by virtue of advance increments granted to him or otherwise, stepping up will not be permissible;
- (c) stepping up will be allowed only once; the pay so fixed after stepping up will remain unchanged;
- (d) the stepping up will be subject to the existing stipulation that the maximum of the scale of Rs.2000-3200 or Rs.2375-3500, as the case may be, is not exceeded in any case;
- (e) the next increment will be allowed, if due, on completion of the requisite qualifying service with effect from the date of refixation of pay.
4. Board desired that the stepping up of pay under these instructions may be allowed and arrears as may be due, paid to the affected staff.
5. This has the approval of the President and issues with the concurrence of the Finance Directorate of the Ministry of Railways."
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2. In this background we are called upon to examine whether the stepping up of pay was valid and justified. The stepping up of pay would be valid and legally sustainable if the posts in Rs.700-900/2000-3200 and above were controlled by the Headquarters. Conversely such stepping up of pay would be invalid if the posts were controlled by the Division. Thus the question at issue is a simple one, i.e, whether posts in Rs.700-900/2000-3200 were controlled by the Headquarters or by the Division.

3. The D.R.M. Kota, in pursuance of the above instructions of the Railway Board allowed the stepping up of pay of petitioners with reference to the pay of some junior working in RTM Division and advised the Headquarters the details of the action taken by him vide letter dated 16.11.1990. Paragraphs 2 and 3 of this letter which are relevant, to decide the question before us are extracted below:-

"II. Based on the DRM(E)RTM's above o/o the Rg. supervisors of this division represented their cases for stepping up pay with reference to the pay of their junior Shri S.S. Srivastava PCR RTM Dn. whose pay had been stepped up to Rs.3200/- from 22.6.86 in scale of Rs.2000-3200(RP) and Shri K.L. Chaurasia SFI of RTM Divn. whose pay had been stepped up to Rs.3300/- from 8.10.89. The representation of staff of this division was also based on the combined seniority list of Rg. supervisors notified vide CME (E) COG's letter No.EM/1030/8/28 of 13.2.85.

III. Since prior to issue of revised AVC for Loco supervisors GM(E) COG's letter No.EM/834/8/2 (AVC) dated 24.4.89, the posts in scale of Rs.700-900(R)/Rs.2000-3200 (RP) and above were H.O. controlled posts, the claim of Rg. supervisors working on this division was examined on the basis of whole Rly. seniority notified by CME(E) COG as brought out in para II above."

It is clear from the above that prior to the issue of the Headquarters letter dated 24.4.89 the posts in the scale of Rs.700-900/2000-3200 and above were headquarter controlled posts and, therefore, the claim of running supervisors working on Kota Division for stepping up was examined on the basis of all Railway seniority as notified by CME(E) CCG's letter referred to above. That the seniority of Running Supervisors in Rs.700-900/ Rs.2000-3200 and above was controlled by the Headquarters is also apparent from the respondents letter dated 1.3.1985 which deals with the subject of "seniority of non-gazetted staff - mechanical department JFI/LIS scale Rs.700-900(R)" issued with reference to CME (E) CCG's letter dated 13.2.1985. The preamble to the letter reads:-

"A combined seniority list of PCRs/LIs/ALFs(Running) who have applied for the post of JFI/LI scale Rs.700-900 notified vide CME(E) CCG's letter No.EM/1030/8/28 of 13.2.85 is sent herewith for information of the staff concerned..."

This letter is addressed by DRM, Kota to senior subordinates in Kota Division giving the combined seniority of Running Supervisors in Rs.550-750 who had applied for the higher posts in scale of Rs.700-900. The seniority list given includes not only Running Supervisors of Kota but all other Divisions of the Western Railway. The only reasonable inference that can be drawn from the above is that the selection for the Running Supervisors for the period of Rs.700-900 was to be held by the headquarter of the Western Railways, as it is the head-quarter that circulated the combined seniority for the purpose of selection to the higher grade. Both the above

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documents support the view that prior to 24.4.1989 the seniority and selection for the Running Supervisors in the grade of Rs.700-900 and above was controlled by the headquarter and that the respondent No.2 (DRM, Kota) was acting only in accordance with the instructions of the Railway Board and the the Western Railway in giving the benefit of stepping up of pay to the petitioners who figured in the combined seniority list circulated on 13.2.1985. Thereafter, as brought out by the respondents in their counter-affidavit and stressed by the learned counsel representing the respondents Shri Shyam Moorjani in the course of hearing a change in the channel of promotion was brought about vide order dated 24.4.1989 and the posts (selection) in the grade of Rs.2000-3200 came to be controlled by the division. The change over from the headquarter to divisional control was applicable prospectively, as there is no stipulation in the said order that revised channel is effective retrospectively. The respondents have also failed to produce any other material to indicate that the posts in Rs.700-900/Rs.2000-3200 were controlled by the Division prior to 24.4.1989. There is also no material before me to indicate that the Railway Board who authorised stepping up of pay vide order dated 16.9.1988 rescinded/modified/amended their instructions retroactively. In absence of any material in this behalf the stand of the respondents that the posts in question were controlled by the division lacks conviction. Consequently the withdrawal of the benefit of stepping up of pay vide order dated 30.12.1990 by D.R.M. Kota from the petitioners is violative of the Railway Board's instructions. The said action is legally, therefore, not sustainable.

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4. The learned counsel for the respondents objected to the petitioners approaching the Tribunal before first exhausting the departmental remedy available by making a representation to the respondents to seek redress of their grievance. This petition, however, was filed on 7.1.1991 and when this petition was admitted on 4.2.1991 the respondents do not appear to have raised or pressed this point before the Tribunal. Be that as it may, I am of the opinion that this ^{is} too late a stage to refer the petitioners to go through the process of making a representation to seek redress of their grievances as the same will not be in the interest of justice at this point of time.

5. In the facts and circumstances of the case I do not find any merit in the stand of the respondents. Accordingly, the impugned order dated 20.12.1990 is set aside and quashed. The petitioners shall be paid the salary in accordance with the pay as stepped up in accordance with the order of the Railway Board. These orders shall be implemented as early as possible but preferably within three months from the date of communication. No costs.

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(I.K. RASGOTRA)
MEMBER (A)