

Central Administrative Tribunal
Principal Bench: New Delhi.

OA 2348/92

New Delhi this the 21st day of March 1997.

Hon'ble Mr N. Sahu, Member (A)

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1. Shri R.K.Bodh
S/o Shri Shugan Chand
I.O.W. Instructor
Civil Engineering Training Academy
R/o 974/C Loco Railway Colony
Kanpur -4.
2. Shri P.C.Agarwal
S/o Shri Shyam Lal
P.W. Instructor
Civil Engineering Training Academy
Northern Railway
Kanpur
R/o 975/B Jamunia Bagh Railway Colony
Kanpur-4. ...Applicants.

(By advocate: None)

Versus

Union of India through

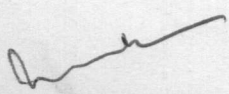
1. Secretary
Ministry of Railways
Rail Bhawan, New Delhi.
2. General Manager
Northern Railway
Baroda House
New Delhi.
3. Principal
Civil Engineering Training Academy
Northern Railway, Kanpur. ...Respondents.

(By advocate: Shri B.K.Aggarwal)

ORDER

Hon'ble Mr N. Sahu, Member (A)

The prayer in this OA is to strike down the cut-off date of 1.1.91 fixed for payment of teaching allowance as irrational and arbitrary and to direct the respondents to pay teaching allowance at 30% of basic pay w.e.f. 1.1.86 when the recommendations of the Fourth Pay

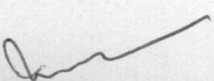


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Commission were made applicable to the Instructors of the All India Training Institutes meant for Group-A officers of Indian Railways. The distinction between these training institutes and the Zonal Training Institutes to which applicant belongs is that the Instructors in all these Institutes excepting a few are Gazetted Officers, whereas in Group-C Training Institutes, instructors are mainly Non-Gazetted Officers. Higher qualification, good academic record and tested training, ability and experience are needed for training Group-A Officers. For Zonal Group-C employees, the training institute runs under separate and distinct rules and regulations in regard to the selection of Instructors. Grades and terms and conditions applicable to the Instructors in All India Training Institutes under the control of the Railway Board are different. In view of financial constraints, the incentive scheme was initially made applicable to these institutes from

1.1.86. A decision subsequently had been taken to extend the incentive scheme to other training institutes also.

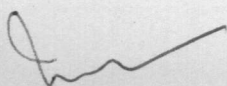
2. The claim of the respondents is that the trainers of CETA, Kanpur cannot be treated at par with the trainers employed in Group-A Training Institutes and, therefore, they cannot be granted teaching allowance w.e.f. 1.1.86. Learned counsel for the respondents Shri B.K. Aggarwal relied on a judgement of the Hyderabad Bench in OA 764/91 wherein the Hyderabad Bench held that the trainers in Group-C have no right to claim parity with the trainers in Group-A. Incentives given on different



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dates do not offend either articles 14 or 16 of the Constitution of India. This decision has been given on the ground that the two classes of trainers are distinct both in regard to classification of training and the composition and status of trainers. Learned counsel for the respondents Shri Aggarwal urged that besides merits, on other grounds also, this application cannot be considered as the applicant worked at Kanpur and the jurisdiction lies with the Allahabad Bench and no petition u/s 25 of the Act has been moved. It is stated that the scheme for granting teaching allowance was introduced vide memo dated 7.2.86 followed by another OM dated 31.3.87. The applicants never came forward to make a demand for prompt implementation and hence this application filed on 8.9.92 demanding teaching allowance w.e.f. 1.1.86 is hit by limitation. It is finally submitted that the applicants had not moved any representation and thus they have not exhausted alternative remedies. The respondents denied having received any representation dated 7.12.91.

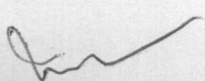
3. The applicants claim that the instructors working either in centralised or zonal training schools belong to the same classification and perform similar duties of imparting training to trainees either foundational, promotional or refresher courses. There is no justification to extend the incentive to others at a later date. The subsequent extension to other institutes was only a case of delay and no principle is involved. The applicants have been performing the duties of instructors since 1978 and could not be deprived of the



monetary benefits which accrued to them w.e.f. 1.1.86 on the basis of the recommendations of the Fourth Pay Commission. The cut-off date of 1.1.91 was stated to be artificial and arbitrary. The other prayer made is that CETA, Kanpur is a branch of Zonal School at Chandausi and at best the benefit of teaching allowance should have been extended to them from 1.4.89, the date on which Chandausi instructors were benefitted and till 1980 the I.R.T.S. selected by the UPSC were trained at Chandausi. Para 4 of the rejoinder is extracted hereunder:

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"Averments made in this para are admitted to the extent it relates to OM dated 7.2.86 (Ann.R-1) which was further supplemented by another OM dated 31.3.87, according to which the cut out date for payment of teaching allowance was fixed as 1.1.87 for trainers deputed for training in institutions meant for training other officials. On account of mandates given in this OM, the respondents have paid teaching allowance to Gazetted or non Gazetted faculty members of centralised training Institutes, w.e.f. 1.1.86 but they have ignored such mandate in respect of non-Gazetted faculty members deputed to zonal training schools and other technical schools and fixed various dates, namely 1.4.89 for zonal training school and 1.1.91 for technical schools. Fixing such dates has no nexus with the objective to be achieved namely attracting best talented trainers, and are arbitrary and discriminatory. According to respondents, there are two classes of trainers, one for centralised training institutes and the other for zonal/technical training schools, but by fixing different dates for



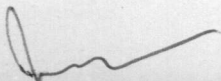
payment of teaching allowance, the non-gazetted trainers have been divided into mini classification which is not permissible as per the law laid down by the Apex Court. Moreover, CETA Kanour is a branch of ZTS/Chandausi and was shifted to Kanpur only due to space problem and on this account also fixing of different dates for payment of incentives is unreasonable and arbitrary."

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4. The last plea is that all non-gazetted faculty members form one class and, therefore, there is no justification for fixing different dates.

5. I have carefully considered the submissions. First, with regard to the plea of limitation. I do not think it is hit by limitation. What all the applicant has claimed is a retrospective application of the order dated 5.2.91 issued by Dir. Estt (RRB)., Railway Board, New Delhi dated 5.2.91 w.e.f. 1.1.86. And this application has been filed after filing a representation dated 7.12.91 with General Manager, Annexure A-9 to the petition. It is now well-settled by the decision of the Supreme Court in Madras Port Trust Vs. Himanshu International that a technical plea of limitation cannot be taken by Government and public authority to defeat the genuine monetary claims of citizens.

6. On merits, however, the applicants have a weak case. Besides the Hyderabad Tribunal's decision on which I respectfully rely, the matter is clearly concluded by two early decisions of the Supreme Court. In Kishori Vs. UOI 1962 SC 1139 and in Menon Vs. State of Rajasthan



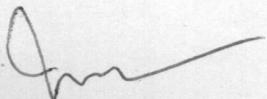
1968 Sc. p.81, it was held that Article 14 would not debar the State from dividing the employees doing the same kind of work into superior and inferior classes with different pay scales. There is no bar under Article 14 from fixing different scales of pay for persons employed in the same post on the ground of their being recruited from different sources. In this case there are very clearly defined grounds justifying differentiation. The quality of work between the two types of instructors is different. The equation of two posts requires evaluation of duties and responsibilities. On such evaluation, the instructors of A Group training institutions and zonal training institutions clearly form two different classes. The trainers of the former have higher academic qualifications and experience and they cater to trainees who are distinctly different from zonal trainees.

7. Each Zonal Railway has its own zonal training schools, having separate rules and regulations regarding selection of instructors, grades and terms and conditions applicable to those instructors. Conditions applicable to the instructors in the All India Training Institutes under the control of the Railway Board are not applicable to the instructors in the Zonal Training Schools, referring to Annexure R-1 dated 7.2.86 of the G.O.I., Ministry of Personnel. The scheme under these guidelines was not made applicable to all training institutes, but only to training institutes meant for Group-A officers. Only a decision has been taken subsequently to extend this scheme to other training institutes. Thus, the Hyderabad Bench decision that by giving training

incentives on two different dates to two categories of trainers is not violative of Articles 14 & 16 of the Constitution is eminently acceptable. In Shyam Babu Sharma & Ors Vs. UOI 1994 (2) SLJ 57, the Supreme Court has held as follows:

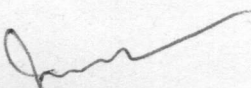
"The nature of work may be more or less same, but scale of pay may vary based on academic qualification or experience which justifies classification. The principle of 'equal pay for equal work' should not be applied in a mechanical or casual manner. Classification made by a body of experts after full study and analysis of the work should not be disturbed except for strong reasons which indicate the classification made to ~~the~~ unreasonable. Inequality of the men in different groups, excludes applicability of the principle of 'equal pay for equal work' to them. The principle of 'equal pay for equal work' has been examined in State of Madhya Pradesh v. Pramod Bhartiya (1993) 1 SCC 539 by this Court. Before any direction is issued by the Court, the claimants have to establish that there was no reasonable basis to treat them separately in matters of payment of wages or salary. Then only it can be held that there has been a discrimination, within the meaning of Article 14 of the Constitution".

8. It was also observed by the Lordships of the Supreme Court in State of West Bengal & Ors Vs. Hari Narayan Bhowal and others 1994 27 ATC 524 to this effect.



"In public services, nature of work in two services or in the same service, the nature of the work of the two groups may be more or less same. But merely on that ground they are not entitled to the same scale of pay. It is well known that scales of pay are fixed by expert bodies like the Pay Commissions, which consist of persons having specialised knowledge of the subject. Such Commissions while fixing the scales of pay or revising the same have to go in depth, not only into the nature of work by members of the same service and members of different services but also various other factors before the scales of pay are fixed."

With regard to the cut-off date, the Supreme Court dealt with the alleged artificiality of this date in pension matters and held that it is permissible for the State Government to adopt different modes of computation of pension, in respect of government servants retiring on different dates and it cannot be challenged on the ground of discrimination so long as the cut-off date thus provided has a reasonable nexus with the change in the mode of computation. Respondents have rightly claimed that incentives were given to A-Class training institutes training senior officers. It can extend the scheme to junior officials later who form a distinct and different class. It can do so on account of financial liability also. It can also say the finances do not permit the incentives being given to all the trainers, at the same time. Therefore, it distinguished the trainers teaching A Grade officers and postponed the payment of incentives to other



grade officers. There is no discrimination whatsoever.

I, therefore hold that there is no substance in this OA

and it is accordingly dismissed.

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Narasimhaiah
(N. Sahu)

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Member (A)

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