

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 162 of 2002

Allahabad this the 13th day of January, 2005

Hon'ble Mr. V.K. Majotra, Vice Chairman
Hon'ble Mr. A.K. Bhatnagar, Member (J)

1. R.S. Singh S/o Sri Ganga Singh, R/o G.20 Shastri Nagare Bareilly (U.P.) (Retired on 30.11.1996) from the Post of Senior Section Engineer and Loco Shed/Diesel Lobby, N.E. Raily, Bareilly City Tel : 549543.
2. B.D. Rastogi, Son of Sri Bankey Lal Rastogi, Resident of 317/322, Memoran Behind Belan Police Chowki Bareilly City (Retired on 28.2.2001) from the Post Senior Section Engineer Loco Shed/Diesel Lobby N.E. Rly. Bareilly City, Tel : 557433.

Applicants

By Advocate Shri R.C. Pathak

Versus

1. Union of India through the Secretary, Ministry of Railways, Rail Bhawan, Govt. of India, New Delhi.
2. The Chairman, Railway Board, Rail Bhawan, New Delhi.
3. The General Manager, N.E. Railway, Gorakhpur (U.P.)
4. The Divisional Railway Manager, (D.R.M) N.E. Railway, Izat Nagar, Bareilly (U.P.)
5. Senior Divisional Personal Officer(Personnel) and (Mechanical) D.R.M. Office N.E. Railway, Izatnagar Bareilly (U.P.).

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6. The Incharge Loco/Diesel Shed, N.E. Railway
Bareilly Izatnagar, and Pilibhit (U.P.)

Respondents

By Advocate Shri K.P. Singh

O R D E R (Oral)

By Hon'ble Mr.A.K. Bhatnagar, Member (J)

By this O.A. the applicants have prayed for
the following reliefs:-

"(i) issue suitable order or direction by CERTIORARI quashing illegal and unlawful order issued and against law of natural justice and arbitrary by the respondent no.3 on Jan 2001 and 17.8.2000 shown as Annexure A-1 and A-2 to this petition and applicants be given opportunity to fill option form for thier for pay fixation w.e.f. 1.1.86(R.P.S.) Rules 1986 as the same could not be filled up due to great lapse on the part of respondent No.4 and 5 and non circulation of letter for option upto 31.12.1987 and extended option 30.9.1988 and the applicant be pay be fixed up w.e.f. 1.1.86 and 1.1.1996 and arrears be to the applicants alongwith with 18% penal interest.

(ii) issue suitable order or direction by way Mandamus commanding the respondents to take option of the applicants like Shri Ashok Singh, Assistant Station Master as ordered on 5.4.2000 shown as Annexure A-3 as the same has been taken after the due date of 31.12.87 and 30.9.88 and his pay has been fixed w.e.f. 1.1.86(R.P.S.) Rule 1986 and 1.1.96 and further order to the respondents not make discrimination in the case of the applicants and also not to violate the Article 14 and 16 of Indian Constitution. Accordingly fixed up pay of the applicants...pg.3/

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w.e.f. 1.1.86(R.P.S.) 1986 and 1.1.1996 and accordingly Pension be revised arrears be paid to the applicants with 18% penal interest. A photo copy of the order dated 5.4.2000 is enclosed as Annexure A-3 to this petition.

2. The brief facts of the case, as per the applicants, are that applicants no.1 and 2 were working since 01.01.1984 on the post of Foreman 'B' at Bareilly City and as Section Inspector at Izatnagar. Their pay were fixed on 01.01.1984 Rs.700/- P.M. in the pay scale of Rs.700-900. The grievance of the applicants is that their pay were required to be fixed in the pay scale of Rs.2000-3200/- since 01.01.1986 due to recommendation of IVth Pay Commission in new pay scale. The option was said to be asked through Circular letter for pay fixation up to 31.12.1987 in all the Offices of the respondents, except in the Office of the applicants i.e. Loco/Diesel Sheds, Bareilly City, Izatnagar and Pilibhit. It is stated that the same option/could not be filled up by the applicants up to 31.12.1987 as the Circular letter issued by the respondents, was not circulated in the office of the applicants. Hence, their pay could not be fixed and they were deprived with the benefit of pay fixation of (R.P.S.) Rule, 1986. The applicant no.1 represented the matter on 22.02.1995 to the respondent no.4. Respondent no.2 also issued letter on 23.06.88 and extended their options for pay fixation up to 30.09.88 as per (R.P.S.) Rule, 1986. The same was also not circulated in the office of the applicants by the respondents. Therefore, they could not submit their options in time. The Railway Board's letter dated 23.06.1986 and a

representation dated 22.02.1995 are enclosed as annexure A-4 and A-5 to the present O.A. The claim of the applicants were not considered as the applicants are said to have sent their options after the due date. The applicants have filed annexure A-1 dated ___/1/2001 and annexure A-2 dated 17.08.2000 to this effect. When nothing has been decided by the department on the representations of the applicants, they preferred this O.A. for getting the reliefs.

3. Learned counsel for the applicants submitted that the applicants are entitled to give options for pay fixation w.e.f. 01.01.1986 and 01.01.1996 as per (R.P.S.) Rule, 1986 and subsequently even after due date i.e. 31.12.1987 and 30.09.1988. The applicants could not give options for pay fixation as the same was not circulated in their Office on due date i.e. 31.12.1987 and 30.09.88, and even afterwards, while other employees were allowed to fill up the form for pay fixation w.e.f. 01.01.1986 and 01.01.1996, and their pensions were accordingly corrected. Learned counsel further submitted that one Shri Ashok Singh, A.S.M. was allowed to fill up the option form even after lapse of due dates, but the respondents were denied this benefit of pay fixation to the applicants, although applicants represented in 1995, 1996 and 1998 ^{in vide} annexure A-25, annexure A-26 and annexure A-28 respectively. Therefore, applicants are legally entitled to give option for pay fixation w.e.f. 01.01.1986 and 01.01.1996 and even after due date. Learned counsel for the applicants further invited our attention on annexure A-6 to annexure A-23 in support of their claim that no option form was circulated in applicants' office, so they were not in the knowledge of the same. They..pg.5/-

applicants have filed annexure X.A-6 to A-23, the internal correspondence of the respondents, showing that the above option letter was never circulated in the Office of the applicants.

4. Learned counsel for the respondents have raised preliminary objection that O.A. has been filed after long gap of 16 years from the time, cause of action arose so it is barred by period of limitation. We are not going to agree with this argument of learned counsel for the respondents as it is the pay fixation matter. Therefore, argument of learned counsel is not tenable.

5. Inviting our attention to paragraph no.10 of the counter affidavit, learned counsel for the respondents submitted that Circular No.Ka/213/0 dated 12.08.1988 was circulated to all the Branch Officers and depots etc. but the applicants failed to submit their option well in time and, therefore, they were deprived of the pay fixation w.e.f. 01.01.1986. A photocopy of Railway Board Circular dated 12.08.1988 is enclosed with C.A. as annexure C.A.-1. Learned counsel further submitted that the case of Mr.A.K. Singh, A.S.M. is quite different to the case of the applicants as Shri Singh had been in foreign country on deputation, as such, it was not possible for him to submit his option in time whereas the applicants ^{yet} through-out remained at their Headquarters and failed to submit their options in time. Therefore, claim of the applicants does not deserve any ^{favourable} interference as they have not submitted their option form within the specified period.

6. We have heard the learned counsel for the

parties and perused the record.

7. The short question involved in this case is whether the said circular was circulated in the Office of the applicants or not. We have gone through annexure A-6 to annexure A-23. From perusal of annexure A-6 to annexure A-9, it is clear that the applicants have represented that they could not give their options as it was not circulated in the Office where the applicants were working. In annexure A-10 (page 32 of the O.A.), it is stated that

"इसकी कापी किसी भी शौड में नहीं भोजी गई है।"

In annexure A-12, it is mentioned that

"प्रसारण में सभी पर्यवेक्षकों को प्रति द्वी गई है किन्तु उनके पदनाम का उल्लेख नहीं है। अतः ऐसी परिस्थिति में यह सुनिश्चित करना सम्भाव नहीं है कि इस परिपत्र की प्रति कहाँ भेजी गई और कहाँ नहीं भेजी गई।

प्राप्तवित कर्मचारियों से प्राप्त आवेदन पत्र के सन्दर्भ में मोरोग्रो के अनुमोदन से इनको वेतन संशोधन का लाभ दिया जा सकता है।

In annexure A-13, it is mentioned that "विकल्प देने की प्रक्रिया अपनायी जाए। कृपया अपना मत देने का कष्ट करें।"

We have also gone through annexure A-14. The first paragraph reads as under:

"स्टेशन रजिस्टर चेकर करने के पश्चात् दिनांक 12.8.88 से 12.09.88 तक स्टेशन डाक में कट/213/0 दिनांक 12.08.88 का पर्यवेक्षक को किसी भी विभाग को डिस्पैच नहीं किया गया है।"

We have also gone through Annexure A-17 to annexure A-23, which fortifies the contention of the applicants that the above mentioned circular was never circulated... pg. 7

in the Office where the applicants were working so they could not submitted their option for their due claim. These facts mentioned specifically in para-4(v) of the O.A., have also ~~been~~ categorically denied by the respondents in their counter-affidavit.

8. It is only stated in paragraph no.13 of the counter affidavit that Circular letter no.Ka/213/0 dated 12.08.1988 was sent to all concerned in the division but respondents failed to establish that it was received in the Office where the applicants were working. Had the Circular letter been circulated in the Office of the applicants within time, then the applicants would be having no case but the respondents have nowhere mentioned in the counter affidavit that the same was sent in the Office, where the applicants were working.

9. In view of submissions made by the counsel for the parties and our aforesaid discussions, we are of the view that applicants are entitled for the relief, claimed by them through this O.A. Accordingly the O.A. is allowed. The respondents are directed to fix the pay of the applicants correctly w.e.f. 01.01.1986 and thereafter w.e.f.01.01.1996. Consequently, the applicants will also be entitled for arrears accruing on account of pay fixation. The respondents shall complete this exercise within a period of 3 months from the date of communication of this order. No order as to cost.

Member (J)

M. Majah -
Vice Chairman

/M. M./