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CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 604 OF 1988.

~~**T.A. NO.**~~

DATE OF DECISION 26-8-1994.

Shri G.A. Malik & Ors. Petitioners

Mr. G.A. Pandit, Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent s

Mr. R.M. Vin, Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. N.B. Patel, Vice Chairman.

The Hon'ble Mr. V.Radhakrishnan, Admn. Member.

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

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1. Shri G.A.Malik
JDI-BL
2. Shri I.A.Barki,
CTIC-BL
3. Shri G.R.M.Shaikh,
JDI-BL
4. Shri D.S.Saxena
CTIC-BL
5. Shri Shawakshaw F.
TIC-BL
6. Shri Dildarkhan P.
SC(L)-BL

All Supervisory category
employee of Western Railway,
Bulsar.

Applicants

Advocate Shri G.A.Pandit

versus

1. Union of India,
Notice to be served through:
The General Manager,
Western Railway, Churchgate,
Bombay.
2. Divisional Railway Manager (E),
Western Railway,
Bombay Central, Bombay.
3. Sr. Divisional Electrical Engineer (TRD),
Western Railway,
Bulsar.

Respondents

Advocate Shri R.M. Vin,

J U D G M E N T

O.A.604 of 1988

Date: 26-8-1994.

Per Hon'ble Shri M.Radhakrishnan, Member (A)

The applicants has challenged the order

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No.E/L/763/4(RG)/Vol.ix, dated 12-9-1988 of the Respondent No.2 withdrawing the benefit of stepping up of pay to the applicants holding it to be not admissible, as the employees junior to the applicants were getting higher pay were working only on ad hoc basis. The applicants were working as Supervisors in the Loco(Running) Mechanical, Electrical AC Traction Department. In terms of Railway Board's letter No.PC/IV/86/RSRP/1 dated 19-9-86, the pay of the applicants was stepped up to a figure equal to the pay as fixed for junior employees in the higher posts who were promoted after 1.1.1986 in the revised scale. One Mr.S.L.Pate was promoted to officiate in the Supervisory post of junior Driving Instructor with effect from 5-5-1986 and his pay was fixed in the revised scale of Rs.2000-3200(RP) which resulted in his drawing higher pay than the applicants. In terms of Railway Board letter dated 19-9-1986, where a senior Railway Servant promoted to higher post before 1-1-1986 drew less pay in the revised scale than his junior promoted to higher post on or after 1-1-1986, the pay of the senior railway servant was to be stepped up to the amount of pay fixed for his junior in the higher post. On this basis the pay of the applicants was stepped up to bring

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it on par with that drawn by Mr.S.L.Pate. It is the contention of the respondents that Mr. Pate, the junior, was promoted on ad hoc basis, which fact was lost sight of and hence a mistake occurred in fixing the pay of the applicants at the higher stage. They have quoted General Manager, Western Railway letter dated 28.10.76, Ann. R/1 and letter dated 30.9.76, Ann. R/II, according to which stepping up of pay of a senior when the junior is promoted on ad hoc basis is not admissible. Because of this the respondents issued an order withdrawing the benefit of stepping up of pay of the applicants vide order dated 12.9.88, Ann. A/2. This order is now under challenge by the applicants. They have alleged that the impugned order is illegal, improper, ultravires the provisions of Rule 2018 BR-II on the basis of which the Railway Board had directed to step up the pay of the senior employees to that of junior employee getting higher pay. They have stated that as per Railway Board letter dated 16-11-84, Annexure A/1 there is no condition that if the junior employee is promoted on ad hoc basis the benefit of stepping up shall not be given to the seniors. They have stated that ad hoc promotions of junior employees continued for 10 years and more and hence they cannot deny stepping up of pay of senior employees. The applicant submits that the impugned order quotes the

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authority of General Manager, Western Railway letter dated 28-6-88 while the benefits were given by order Annexure A dated 14.1.88 which has the authority of Railway Board letter dated 19.9.86. The applicants, therefore, argued that the General Manager's letter cannot over-rule orders issued by Railway Board. Accordingly they challenge the validity of the impugned order Annexure A-2 and pray for the following reliefs:

"7(A) YOUR HONOUR be pleased to declare that the impugned order Annexure A-2 dated 12.9.88 is illegal, improper and unconstitutional and ultra vires the railway Board require Ann.A-1 and set aside and quashed.

(B) YOUR HONOUR be pleased to direct the respondent - Railway Administration to give the benefit of rule 2018 BR-II and the Railway Board circular Annexure A-1 from 1.1.1986 which the applicants have received and are receiving till this date."

Interim relief staying the recovery of the alleged over-payments was granted in favour of the applicants.

2. The respondents have contested the claim of the applicants. They state that the stepping up of pay of the applicants was a mistake as the junior Mr. S.L. Pate was promoted on ad hoc basis and as per letters produced by them viz; Annexure R/1 & R/2, the applicants are not entitled for stepping up of pay. Accordingly the mistake had to be rectified and the orders stepping

up of pay of applicants had to be withdrawn and also recovery of the over-payment had to be effected.

3. Mr.G.A.Pandit, learned advocate for the applicants, argued vehemently that stepping up of the pay of the applicants was done in accordance with the Railway Board letter No.PC/IV/86/RSRP/1 dated 19.9.1986 which has not mentioned anything about stepping up being not admissible when the junior is promoted on ad hoc basis. The respondents' contention that the General Manager(E) CCGs letter No.E(PC)765/0 dated 30.9.1986 introducing this condition cannot deprive the applicants of their rightful dues in view of the fact that the General Manager, Western Railway, cannot over-rule the orders of the Railway Board. He argued that the Railway Board's letter is issued with the authority of President of India and has the statutory authority and the General Manager's instructions in the form of executive instructions cannot over-ride statutory orders. He further pointed out that Mr.S.L.Pate is still being continued on ad hoc basis after so many years without any reversion and one Mr.B.V.R. Rajan, another junior officer is also officiating in an ex cadre post. After discussion at the Bar, on instructions from respondents, Mr. Vin, learned advocate for the respondents pointed

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out that it is a fact that Shri S.L.Pate is still working on ad hoc basis and the process to regularise his promotion is on. So far as Mr.Rajan is concerned, he is working in ex cadre post. The respondents have themselves admitted that the condition of non-admissibility of stepping up of seniors pay when junior is promoted on ad hoc basis is not contained the Railway Board letter dated 19.9.86. This condition, according to them, was incorporated in GM(E) CCGs letter No.E(PC)765/0 dated 30.9.86 by the General Manager's letter. As rightly pointed out by Mr. Pandit, learned advocate for the applicants, the General Manager's letter cannot supercede Railway Board's letter and no such condition was prescribed in the Railway Board letter. It is also seen from Railway Ministry's letter dated 5.10.76 that the benefit of stepping up of pay can also be given on account of ad hoc promotions provided ad hoc promotions are followed by regular promotion without break. It has been pointed out by respondents that the junior officer Mr.S.L.Pate has continued without reversion in the higher post and process of his regularisation is on. So the case can be said to be covered in terms of the provisions of the above letter.

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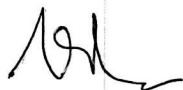
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4. Taking into account the facts and circumstances of the case we feel that the stepping up of the pay of the applicants was done correctly. Accordingly, we allow the application as per the following order:

ORDER

Impugned order dated 12.9.88, Annexure A/2, is quashed and set aside. The stepping up of pay as carried out by order dated 4.1.1988, Annexure A, shall remain valid in respect of the applicants. No order as to costs.



(V. Radhakrishnan)
Member (A)



(N.B. Patel)
Vice Chairman

vtc.