

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 375/90
T.A. NO.

DATE OF DECISION 19-8-94

Shri O.P. Sharma and Others

Petitioner

Shri K.K. Shah

Advocate for the Petitioner (s)

Versus

Union of India and Others

Respondent

Shri N.S. SHEVDE

Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. K. Ramamoorthy Member (A)

The Hon'ble Mr. Dr. R.K. Saxena Member (J)

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 ?

/ NO

1. Shri Omprakash P.Sharma,
2. " M.M.Shelat,
3. " J.R.Kalra,
4. " S.A.Khan
5. " Narain Singh
6. " Ganesh Dutt B.
7. " J.K.Malik
8. " A.S.Saxena
9. " M.I.Khan
10. " S.M.Grover
11. " S.G.Bagga,
12. " Jaswant Singh B.

...Applicants.

(Advocate : Mr.K.K.Shah)

Versus

1. Union of India,
notice to be served through
Chairman,
Railway Board, Rail Bhavan,
New Delhi.
2. General Manager,
Western Railway,
Churchgate,
Bombay.
3. Divisional Railway Manager,
Divisional Office,
Western Railway,
Pratapnagar,
Baroda.

...Respondents.

(Advocate : Mr.N.S.Shevde)

JUDGMENT

O.A.NO. 375 OF 1990.

Date : 19.8.1994.

Per : Hon'ble Mr.K.Ramamoorthy : Member (A)

The present application relates to the retention of the benefits of stepping up of pay given to the applicants consequent to the implementation of the Fourth Pay Commission Report. The petitioners are loco-supervisors appointed prior to 1.1.1986. After the Fourth Pay Commission recommendation was implemented on 1.1.1986, it was clarified by the Railway Board that if certain loco-supervisors were getting pay less than their juniors, they were entitled to stepping up

(9)

: 3 :

of their pay. According to the applicants, because of the clarifications issued by the Railway Board, the petitioners were given the benefits of the revised pay by virtue of the Memorandum dated 24/17 May, 1988 (Annexure A-2). However, by virtue of the impugned order of 28.5.1990, the Divisional Railway Manager had sought to deprive them of the benefit and hence the present applications against the implementation of this order.

In their written statement the respondents have contended that while it is true that by virtue of the order dated 16.9.1988, certain pay anomalies were sought to be rectified, such stepping up was to be given only in respect of persons who were falling within the parameters mentioned therein. It is the contention of the respondents that in the case of the present applicants such stepping up was not required as they were working in different cadres. It is the contention of the respondents that the pay of the present applicants had been stepped up due to a mistake since all the general conditions for the stepping up were not fulfilled and the impugned order is only the correction of a mistake done earlier. The respondents have further stated that stepping up had been given on the basis of the cases of juniors Shri D.K.Mali and Shri J.B.Chadda, but the pay fixations of these officers were done on adhoc basis and could not become the basis of a stepping up.

R The main ground raised by the applicants is that the respondents had failed to give them a reasonable opportunity of hearing before the recovery had been ordered. In any case, they were also entitled to the step-up even otherwise.

: 4 :

We have gone through the papers and also heard the arguments of the counsels on both the sides.

On going through the rules in this regard, it is seen that there is a specific provision as under : -

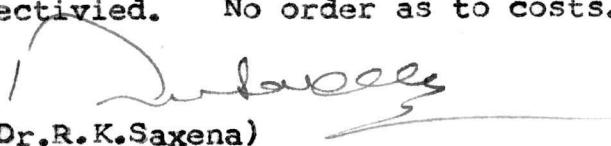
"In cases where a senior railway servant promoted to higher post before 1.1.1986 draws less pay in the revised pay scale than the junior promoted to the higher post on or before 1st January, 1986, the pay of the senior railway servant should be stepped up to an amount equal to the pay as fixed for his junior in the higher post."

The argument that stepping up of the pay on the basis of the persons such as Mr. Mali and Mr. Chadda who were given purely adhoc promotions is not acceptable as in all cases, the promotions were only on adhoc nature. The respondents have not in their averment specifically brought out the circumstances and reasoning under which the first order of 1988 was issued whereby the applicants had been given the benefit of stepping up. It is true that in the orders of the General Manager, dated 12th September, 1988, a reference has been made to the purely adhoc nature of the promotion of the officers on the basis of whose pay, the present stepping up has been done. But the respondents have not clearly spelt out the specific conditions which are not fulfilled by the present applicants. The averment made in the statement of the respondents that none of the conditions

: 5 :

required for stepping up of pay are satisfied is not supported from the record produced before this Tribunal. The reference to the applicants working in ~~xx~~ different cadres namely, scales of Rs.2000-3200 and Rs.2000-2350 (R.P.) is not understood as the circular of 1988 specifically refers to giving benefit of stepping up in these two very scales for the revised loco-supervisor grades. It is all the more necessary that the explanation should be specific and clear specially when payments have been once made and recovery is sought to be made after a lapse of some time.

The arguments made in the applications that the recovery should not be made without a specific notice to the applicants and without giving them reasonable opportunity of hearing before stepping down the pay is thus a valid argument. This principle of giving an opportunity before recovery is an accepted principle by the Tribunal in more than one case earlier. For this reason, the petition is allowed. The recovery order of the respondents as made in their letter of 2nd May, 1990, is set aside. The respondents, however, are at liberty to pass any such order after specifically giving the applicants an opportunity for stating the specific reasons why the recovery is sought to be given and after indicating as to how the stepping up was at all done in the first place and specifying the specific error made by the respondents in granting such stepping up earlier, which is sought to be rectified. No order as to costs.


(Dr. R. K. Saxena)
Member (J)


(K. Ramamoorthy)
Member (A)