

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
OA 1172 OF 1996

Present : Hon'ble Mr. S. Biswas, Administrative Member
Hon'ble Mr. M.L.Chauhan, Judicial Member

1. Samuel Tigga,
S/o Late Marcus Tigga,
Retd. Stock Verifier,
O/o FA & CAO, S.E.Rly.
R/o Loke Nath Nagar,
Kusum Kunj, P.O. Chakradharpur,
Dist. Singhbhum.
2. Monohar Karketta,
S/o Late K.S.Kerketta,
Retd. Stock Verifier,
O/o FA & CAO, S.E.Rly.
R/o Patel nagar, Hatia,
Dist. Ranchi-3

VS

1. Union of India through the
General Manager, S.E.Rly.
Calcutta-43
2. The Financial Adviser & Chief
Accounts Officer, S.E.Rly.
Calcutta-43
3. The Sr. Accounts Officer (Admn/Bills)
S.E.Rly. Calcutta -43
.... respondents

For the applicants : Mr. P.B.Mishra, Counsel

For the respondents : Mr. S.Sen, Counsel

Heard on : 15.5.02 : Order on : 17.5.02

O R D E R

M.L.Chauhan, J.M.:

In this OA, the applicant No. 1 has challenged the service certificate dt. 5.10.94 and another memo dt. 24.11.95 issued from the office of the FA & CAO, S.E.Rly. Garden Reach, Calcutta, whereby the pay of the applicant No. 1 was reduced to Rs. 2250/- from Rs. 2420/- after his retirement leading to recovery of Rs. 23.095.40p on account of alleged overpayment vide Annexures-A1 & A2. Similarly, applicant No. 2 has challenged the service certificate dt. 2.7.92 and another Memo dt. 10.12.93 issued from the office of FA & CAO, S.E.Rly. Garden Reach, Calcutta whereby his pay has been reduced to Rs. 2050/- from Rs. 2150/- after retirement leading to recovery of Rs. 100/-

11,368.80p on account of alleged overpayment vide Annexures-A5 & A6.

2. The applicants while working as Clerk, Gr.I were given special pay of Rs. 35/- per month, which was admissible for working against certain pint-pointed posts involving complex and specially arduous nature of duties. On promotion to the next higher grade of Rs. 425-700/-, this special pay of Rs. 35/- p.m. was taken into account for the purpose of fixation of pay in the higher scale and accordingly the pay of the applicants was fixed under F.R.22C, which corresponds to Rule 2018-B of Railway Establishment Code, Vol. II. The applicants contend that they had been enjoying continuously the said benefit of fixation of pay till their retirement. However, by orders dt. 5.10.94 and 14.11.94 (annexures-A1 & A2) as also dt. 2.7.93 and 10.12.93 (annexures-A5 & A6) respectively, the said fixation of pay was revised and accordingly their pay was reduced to a lower stage of Rs. 2250/- so far as applicant No. 1 was concerned and Rs. 2050/so far as applicant No. 2 was concerned after their retirement. Consequently, the respondents have also ordered recovery of the excess amounts viz. Rs. 23,095.40p and Rs. 11,368.80p respectively already paid to the applicants, from their DCRG. The applicants have further contended that they made representations to the respondent authorities, copies of which have been placed on record as Annexures-A4 & A7, thereby contending that vide judgement of the Calcutta Bench of the Tribunal dt. 16.2.96 in OA 400 of 1995 (Anil Kr. Banerjee & Ors -vs- UOI & Ors) and other similar cases, direction was given to the Railway Administration to refund the entire amount of such type recovered from the employees within two months from the date of the order. They have also prayed that the amounts deducted from their DCRG should be refunded to them accordingly at an early date. Since the respondents did not respond favourably, they have filed the present OA with the prayers that the benefit of the judgements of the Tribunal as referred to above, should be extended to them and that their pay be refixed on promotion to the scale of Rs. 425-700/- by taking into account the special pay of Rs. 35/- p.m. w.e.f. 1.4.80

and grant them pensionary benefits accordingly with interest.

3. The respondents have contested the case by filing a reply affidavit. In a nutshell, their case is that the pay of the applicants was erroneously fixed on promotion to the grade of Rs. 425-700/- by taking into account Rs. 35/- which they were enjoying as special pay in the lower post, which was rectified subsequently and this necessitated recovery of excess amount paid to them from their retirement gratuity.

4. We have heard the ld. counsel for the parties.

5. The only point which requires our consideration is whether the applicants are entitled to the benefit of the judgements of the Tribunal referred to above.

6. We have perused the judgements annexed to the application viz. OA 400 of 1995 dt. 16.2.96, O.A. 1264 of 1994 dt. 26.3.96 and group cases i.e. OA 1121 of 1993 etc. etc. decided on 26.2.96 as also other decisions on this point and we are of the view the case of the applicants is fully covered by the judgements of the Tribunal rendered in the aforesaid cases which are on the self-same issue. It may be noticed that the Tribunal directed the respondents to take into account the special pay for the purpose of fixation of pay on promotion to higher post under F.R.22C and to give the applicants in those cases all consequential benefits. The matter was also carried to the Hon'ble Supreme Court in SLP against the decision of the Tribunal in OA 1025 of 1988 (B.K.Joardar & Ors -vs- UOI & Ors) dt. 30.1.92, which was dismissed by the Apex Court vide order dt. 7.10.92. These facts are also admitted by the respondents authorities in para 2(h) of their reply. Rather in para 3 of the reply, the respondents have conceded the claim of the applicants to the effect that the case of the applicants is covered by the judgement as referred to above. But their stand is that the aforesaid decisions cannot be made applicable to the applicants as those decisions should be treated to be in personem only and hence no general effect of the said decisions could be given unless there were specific direction

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from the Court/Tribunal in respect of the applicants.

At this stage it will be useful to reproduce para 3(a) of the reply affidavit as under :-

a) The deponent herein states and submits that the decisions referred to and relied upon by the applicants (stated supra) cannot be said to be decisions in rem. However effect had to be given by the Railway Administration in certain cases, keeping in view the sanctity and solemnity and gravity of the decisions of the Hon'ble Courts and Tribunals. Since the said decisions, referred to therein in para 4.4., 4.6 of the OA cannot be construed as rights in rem, no effect as such could be given to the applicants herein towards extending the benefits of special pay of Rs. 35/- in the appointment grade as was given to the Clerk Grade-I for their performing complex and arduous nature of work in that grade. The aforesaid decisions were treated to strictly a right in personem. Therefore, no general effect of the said decisions could be given unless there were specific directions from the Hon'ble Courts/Tribunals which had passed the said orders. It is, therefore, an utterly misconceived case to demand benefits of the judgements/orders referred to (supra) in which the instant applicants were not a party even."

7. Thus, the only stand taken by the respondent authorities in denying the benefit to the applicants is that there is no specific direction given by the Tribunal, in the absence of which no benefit can be granted to the applicants. We are of the opinion, that on the basis of the ratio of the judgements rendered by the Tribunal in OA 500 of 1995, OA 1025 of 1988, OA 1264/94, OA 1121 of 93 with other analogous cases as also the recent decision dt. 8.2.2002 in OA 1269 of 1996, the applicants are entitled to fixation of their pay on promotion to the higher scale of Rs. 425-700/- by taking into account the special pay of Rs. 35/- p.m. which they were enjoying in the lower post of UDC/Clerk, Gr.I. In that view of the matter, we hold that the recovery made from their DCRG by the respondents by the impugned orders are liable to set aside.

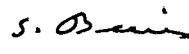
8. Consequently, the OA is allowed. The recovery orders vide annexures-A1 & A2 in respect of applicant No. 1 and annexures-A5 & A7 in respect of applicant No. 2 are hereby set aside. The respondents are directed to refund the amounts of Rs. 23.095.40p. and Rs. 11.360.80p. respectively to the applicants within two months from the date of communication of this order. The respondents are further

directed to refix the pay of the applicants on their promotion to the scale of Rs. 425-700/- by taking into account the special pay of Rs. 35/- p.m., which they were enjoying in the lower post of UDC/Clerk, Gr.I and pay them all consequential monetary benefits including pensionary benefits accordingly within four months from the date of communication of this order. No costs.



(M.L.CHAUHAN)

MEMBER(J)



(S.BISWAS)

MEMBER(A)