

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH: CALCUTTA

Original Application No. 1185/96

Date of decision: 21-12-2004

Hon'ble Mr. Mukesh Kumar Gupta, Judicial Member.

Hon'ble Mr. M.K.Misra, Administrative Member.

Prabhat Kumar Mitra
and 22 others.

vs.
Union of India and ors.

Mr. S.K. Dutta: Counsel for the applicants.

Mr. B-P. Ray, Counsel for the respondents.

ORDER

Mr. Mukesh Kumar Gupta, Judicial Member.

The validity of memorandum dated 08.05.96, clarifying that the three additional increments granted to Stock Verifiers in the grade of Rs. 1400-2600 for passing Appendix IV-A examination will not be treated as part of the basic pay and is therefore not to be reckoned for calculating dearness allowance etc, is questioned in the present application with all its consequential benefits.

2. The applicants case is that they are presently working as Stock Verifier in the different offices/ Sections departments of ISA, Kharagpur, South Eastern Railway in

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the pay scale of Rs. 1400-2600. On passing the Appendix IV.A examination they were granted three advance increments and they have been enjoying the said benefit. The said advance increments have all along been treated as part of their pay and as such dearness allowance/HRA are being computed after aggregating the said advance increments with the basic pay. The same has been withdrawn by the impugned memorandum dated 08.05.96. It is contended that the said memorandum is wholly illegal and without jurisdiction and the unilateral action of the respondents would make the applicants to suffer a sum of Rs. 250/- per month for the time being. However, in the cases of other categories like Clerk Gr.I etc. the benefit of additional increments is being treated as part of their basic pay the said benefit is withdrawn from the applicants without any jurisdiction. It is further contended that the impugned decision of the respondents amounts to discrimination between two sets of employees in the same Railway and no opportunity of being heard was afforded to the applicants before passing the said impugned order.

3. The respondents in their reply contested the applicants claim and stated that the case of payment of incentives to stock verifiers cropped up with the award of Board of Arbitration under the Joint Consultative Machinery.

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Their demand for revision of pay scale from Rs.210-380 to Rs.210-475 was referred to Board of Arbitration, who gave their award on 11.11.73. On passing Appendix IV examination they will be given two additional increments in addition to the normal increment on confirmation. The said award came into force from 01.02.73. The said award was accepted by the Railway Board by its letter dated 05.11.74 and the pay scale of Rs.210-380 was revised to Rs.210-475 with effect from 01.01.73. Subsequently, the Railway Board, vide its letter dated 09.03.78, issued orders that the benefit of two additional increments was made admissible to Stock Verifiers in the revised scale of pay of Rs.425-700 on passing the Appendix IV Examination. The pay scale of Stock Verifiers was revised from Rs.425-700 to Rs.425-750 and the posts of sub-head, which was feeder grade remained in the pay scale of Rs.425-700 and the post of Sub-head was now redesignated as Accounts Assistant.

Later, with effect from 01.01.86, both the posts were placed in the same scale of pay of Rs.1400-2600. However, in the 3rd Pay Commission, when the Sub-Head was promoted as Stock Verifier, they were given the benefit of fixation of pay under FR 22C and in addition two increments were also granted on passing Appendix IV Examination. The Railway Board, vide its letter dated 03.03.89, decided to increase the incentive from two to three increments and the incentive increments were termed as 'advance increments'. Thereafter the matter was

reviewed by the Board in the context of of an item raised in the PNM meeting with All India Railwaymen Federation and it was decided by the Railway Board vide its letter dated 25.07.95 to treat the 'advance increments' as 'additional increments'. With this clarification the Railway Federation satisfied and closed the item. The sanctity of the instructions issued has been upheld by this Bench in T.A. No. 1840/86, Somnath Mukhopadhyay and others vs. UOI and others, on 30.09.91. After the issuance of the above clarifications, references were made by some of the zonal railways seeking clarifications whether the dearness allowance was admissible on the additional increments granted to stock verifiers on passing the Appendix IV examination and whether the same would be reckoned for pensionary purposes. All these were examined in detail and the Board issued a clarificatory order on 08.05.96, stating that the three additional increments granted to the Stock Verifier in the scale of pay of Rs.1400-2600 for passing Appendix IV A examination, will not be treated as part of their basic pay and will not be reckoned for calculating D.A. The definition of pay has been given in Indian Railway Establishment Code Vol. II 1987 edition in para 1303. For accounts staff there are other departmental examination like Appendix II A and App. III A besides Appendix IV A exam, and the incentive granted on passing the examination is not treated as part of their basic pay but as a separate element and does not count for D.A and other purposes. Additional/advance increments



granted in the form of incentive for acquiring higher qualifications such as passing Hindi Examination etc. are not being reckoned for grant of D.A. and other benefits. Similarly, the incentives for promoting small family norms issued under circular dated 09.03.87 also specifies that special increment granted shall be in the form of personal pay and not to be absorbed in further increments and the same will not qualify for calculation of allowances. It is contended that the clarification dated 08.05.96 has been upheld by the Mumbai Bench vide its judgement dated 30.05.97 in O.A. No. 714/96, 740/96 and 854/96 (S.V. Malgi and ors. vs. UOI and ors.) Similarly, the Hyderabad Bench vide its judgement dated 16.04.97 in O.A. No. 961/96 (M.K. Ramaswamy vs. UOI and ors.) also upheld the same.

4. We heard the learned counsel for the parties and perused the pleadings carefully. Both sides have reiterated their submissions as noticed herein above. The respondents have also produced a judgement of this Bench in O.A. No. 852/99 dated 11.08.2004(Rakshakar Roy and ors vs. UOI and ors.) wherein identical question of facts have been decided. After noticing the contentions raised by the parties, the coordinating Bench dismissed the said application . The relevant portion reads as follows:

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18. We also take note of the fact that before issuing the order dated 25.07.95, a meeting was held with the recognised Unions where it was decided to treat the advance increments as additional increments which would not be absorbed in future increments. Therefore, it is quite proper that without issuing any show cause

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notice to individual employees, the authorities have changed the nomenclature of the allowance. The applicants cannot take the plea that they were completely unaware of this development as now show cause notice was issued to them. This contention of the ld. Sr. counsel is also of no avail.

19. The respondents have submitted that incentive increments is not a new thing and it is not also unique to the applicants only. Such incentive increments are granted to employees of various other grades also under various circumstances. In all these cases similar treatment was made to such advance increments and, therefore, the applicants cannot take advantage of certain lacuna in the order itself to claim unintended benefit.

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21. The applicants have also raised a plea that the additional increments should be treated as special pay so that they can get fixation benefit as in their pay slips this amount has been indicated as special pay. They have relied on the decision of the Tribunal in Laxmi Kanta Kundu & ors which was upheld by the Apex Court and accordingly the Hon'ble Calcutta High Court also passed similar orders. However, that was a case for grant of special pay to the UDCs for working in certain pin pointed post. Here the question is for grant of incentive on passing Appendix IV A examination which is not applicable to all employees. We find that in M.A. 570/03 filed by the respondents in connection with the instant O.A. it has been brought on record certain orders dated 31.05.01, 07.12.96 granting fixed special allowance of Rs. 240/- p.m. from 01.06.96 which will count for fixation purpose on promotion contending that this will set at rest the grievance of the applicants .

22. In the light of our foregoing discussion and in view of the decision rendered by the Hon'ble Madras High Court, we find no merit in this case. Accordingly it is dismissed. Consequently M.A. No. 570/03 and M.A. 268/01 are also disposed of. The interim order stands vacated. Recovery, if any, may be made in suitable and easy instalments so that the applicants are not unduly inconvenienced. No costs. "



5. On a perusal of the above order and judgement we are satisfied that the issue raised in the present O.A. is squarely covered by the aforementioned judgement and issues raised in this O.A are not ^{note} remain res-integra. Following the said judgement, we find no illegality in the respondents action and accordingly, the O.A is dismissed. No costs.



(M.K. Misra)
Administrative Member



(Mukesh Kumar Gupta)
Judicial Member.

jsv.