

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. O.A.270 of 1996

Present : Hon'ble Mr.D.Purkayastha, Judicial Member.

ASOKE SENGUPTA & ORS.

... Applicants
Vs.

1. Union of India through the General Manager,
Eastern Railway, 17, Netaji Subhas Road,
Calcutta-700 001.
2. Chief Personnel Officer,
Eastern Railway,
17, Netaji Subhas Road,
Calcutta-700 001.
3. Chairman, Railway Board,
Ministry of Railways,
Railway Board,
Rail Bhawan,
New Delhi-110 001.

... Respondents

For the applicants : Mr.Asit Banerjee, counsel.

For the respondents : Mr.P.K.Arora, counsel.

Heard on : 19.3.1997, 17.4.1997 Judgment on : 15.5.1997
& 24.4.1997.

JUDGMENT

The dispute arose in this application for non-granting of another four advance increments in addition to 2 (two) advance increments already given to the applicants, as per Railway Board's letter No.E(NG)I/87/ IC2/1 dated 29.5.1989, letter no.E.(TRG/89 (28)/29 dated 12.10.1990 and the Railway Board's letter no.E(TRG)/89(28/29) dated 4.5.1990 to the 29 applicants who had just acquired higher technical qualification as BE or equivalent to B.E. like Grade-I.E.T.E., A.M.I.E. and holding technical non-gazetted posts under Group-C in different places under respondent no.2.

2. The case of the applicants in short is that they are holding the non-gazetted posts under Group-C in different places under

respondent no.2 and they acquired higher technical qualifications as B.E. or equivalent to B.E. like Grade-I.E.T.E., A.M.I.E., after joining in the service ~~not~~ before 29.5.1989. Accordingly, the applicants were granted two advance increments as per incentive scheme meant for Group-C Railway employees as per Railway Board's letters dated 14.5.1966 and 13.2.1972. According to the applicants, as per the Railway Board's letter dated 14.2.1990 and letter dated 12.10.1990, they are entitled to get ~~another~~ 4 additional increments because ~~by virtue of letter~~ the letter dated 14.5.1966 of the Railway Board had been amended by increasing the increments from 2 (two) to 6 (six). The applicants made representations to the authorities for granting them balance 4 (four) increments, but the respondents refused to grant the increments, as prayed for. According to the applicants, they are entitled to get additional 4 increments in view of the judgment passed by the Hon'ble C.A.T., Madras Bench, in O.A.1013 of 1990.

3. The case has been resisted by the respondents by filing a reply stating inter alia that the application is misconceived. It is also stated in the reply that the applicant nos.1 to 4 have passed the above examination in the year 1987 and they were granted two advance increments as per Board's letter dated 14.5.1966 (annexure 'R' to the reply). So their claim for grant of further four increments is not tenable in view of the clarification given in their letter dated 4.9.1990 (annexure 'R' to the reply). They also state that the applicants claim for further four advance increments as per Board's letter dated 29.5.1989 is not tenable as they had passed the above examination much earlier than 29.5.1989. So it is stated in the reply that applicants have already been granted two advance increments for passing B.E.(Mech) and B.E.Elec.)/ IETE, AMIE Section-B and they are not eligible to get further four advance increments. So the application is liable to be dismissed.

4. Ld.counsel, Mr.Asit Banerjee, appearing on behalf of the applicants, submits that the applicants are entitled to get balance four advance increments in addition to two advance

increments which had been granted to the applicants before the amendment of the memorandum dated 14.5.1966 (annexure 'R' to the reply), vide the letter dated 29.5.1989. Mr.Banerjee further submits that the said benefit was further extended to Group-B. Thereafter, in pursuance of the recommendation of the Fourth pay Commission, the Ministry extended the said circular dated 14.5.1966 and letter dated 10.3.1972 for further period until further order, except para (d) of Board's letter dated 14.6.1966. Referring to this circular (annexure 'D' to the application), ld.counsel, Mr.Asit Banerjee, submits that the applicants are entitled to get four advance increments in addition to the two advance increments which has already been granted to them, in view of the judgment passed by the C.A.T., Madras Bench, in O.A.1013 of 1992 on 28.1.1992.

5. ld.counsel, Mr.P.K.Arora, appearing on behalf of the respondents, strenuously argued before me that the applicants are not entitled to get benefit prior to 29.5.1989 since they have acquired the aforesaid ~~clarification~~ ^{qualification} before amendment of the aforesaid circular bearing even no.dated (14.5.1966) by the circular serial no.140 of 1988 (annexure 'D' to the application). He submits that the matter was referred to the authority for certain clarification regarding effect of the circular serial no.110 of 1989 and Railway authorities have clarified the position stating that according to Rule 2045-G I, the said circular No.110 of 1989 (annexure 'D' to the application), should take effect from the date of issue of the Board's letter dated 29.5.1989 (annexure 'F' to the application). He further submits that as per circular serial no.134A of 1990 dated 25th September, 1990 (annexure 'R/1'), the benefit of such four advance increments cannot be extended to the applicants since it was clarified that the instructions come into force from the date of the issue of the letter dated 29.5.1989 (annexure 'R/14'). He further submits that the benefit of the

judgment of the C.A.T., Madras Bench, as referred to by the 1d. counsel, Mr. Asit Banerjee, could not render any help to the applicants since the C.A.T., Madras Bench, did not consider the retrospectivity of the circular dated 29.5.1989. Thereby the applicants are not entitled to get any benefits of four advance increments in view of the clarification given by the authority vide letter dated 25th September, 1990 (annexure 'R/1') and clarification given vide letter dated 25th September, 1989 (annexure 'R/15'). Thereby the application is liable to be dismissed with costs. The 1d. counsel, Mr. P.K. Arora, further submits that the benefit of four advance increments, as per circular dated 29.5.1989 was granted to Group 'B' employees not to Group 'C' and Group-B employees will get the same benefit of four advance increments on promotion. Now it is to be considered who and from when they are entitled to get the benefit of the circular dated 29.5.1989 (annexure 'R/14' to the reply which is marked as annexure 'F' to the application). Mr. Arora submits that from the judgment it does not appear that the 1d. Members of the C.A.T., Madras Bench, had considered the letter dated 25th September, 1989 (annexure 'R/15' to the reply) and another letter dated 25th September, 1990 (annexure 'R/1' to the reply). Thereby that judgment cannot have any binding force.

6. I have considered the submissions of both the parties, perused the documents, as well as the circulars placed before me alongwith the application as well as the reply submitted by the respondents. Before entering into the merits of this case it is found that it remains undisputed from the side of the respondents that those 29 applicants are non-gazetted technical staff under Group 'C' posts and all of them were granted two advance increments as per scheme contained in the letter no.E(ANG) 64/RCI/25 dated 14.5.1966 read with letter No.E.(ANG) II/72/ IC I IC II/ I dated 10.3.1972. From Serial No.158/1990 (annexure 'A' to the rejoinder), it is found that the Board's letter dated 14.5.1966 and letter dated 10.3.1972 being no.NG/ II/72/102/ I laid down a scheme for granting advance increments to Group-C

employees who acquired higher or additional qualification after entering into the service. Thereafter, pursuant to the recommendations of the Fourth Pay Commission, that scheme has been introduced and extended to Group-B Railway employees. It is further clear that before 29.5.1989, the scheme of incentive was available to the Group 'C' staff acquiring higher qualification and they were given two advance increments for passing Part-II and cash incentive of Rs.200/- was granted for passing Part-I. So admittedly, on the basis of the recommendation of the Fourth Pay Commission, by the circular or letter dated 29.5.1989 (annexure 'R/14' to the reply), the scheme continued in the letter dated 14.5.1966 was amended by adding that (i) For passing Part-I or A or Intermediate or Pre-Final Examination, the employees would be entitled to 2 (two) advance increments and (ii) For passing Part-II or 'B' or Final Examination, ~~for~~ ^{only} advance increments. So question comes what is the effect of that substitution brought in by way of amendment of the circular dated 14.5.1966 by the letter dated 29.5.1989 (annexure 'D' to the application), though the Railway Board clarified the position holding that the benefit of the circular dated 29th May, 1989, cannot be extended to the applicants since they acquired the higher technical qualification before 29.5.1989.

7. Applicants raised their claims for getting four balance advance increments basing on the letter dated 29th May, 1989 (annexure 'R/14' to the reply), which is marked as annexure 'D'. On a careful reading of the said annexure 'R/14', it is found that pursuant to the recommendations of the Fourth Pay Commission, Ministry of Railways reviewed the existing incentive scheme and decided that existing scheme as contained in the letter dated 14.5.1966 read with letter dated 10.3.1972, should continue to be in force until further orders except para (d) of the Board's letter dated 14.5.1966. The said letter contained the expressions of the word "should continue to be in force" which indicated that the letter dated 14.5.1966 shall be in force until further

order except para (d) of the Board's letter dated 14.5.1966. Regarding entitlement of the benefits by substitution indicates that the previous circular dated 14.5.1966 in general would have no effect. The entitlement of the benefits of four advance increments, as claimed by the applicants, were brought into effect by way of amendments, substituting the conditions for granting incentive dated 14.5.1966. That amendment, by way of substitution, had been made by the Railway authorities on the basis of the recommendations of the Fourth Pay Commission.

^{In Revised Pay Rules 1986}
Admittedly, the ~~Fourth Pay Commission~~ has come into force w.e.f. 1st January, 1986. It is further stipulated that whatever amendment made in the circular dated 14.5.1966 should remain in force until further orders. It is clear from the letter dated 29th May, 1989 (annexure 'R/14'), which is annexure 'D' to the application, that subsequent amendment by way of substitution brought into itself by referring to the previous entitlements of benefits under the scheme of incentive granted to the applicant. ~~If it is found that the substituted provision has become an integral part of the memorandum dated 14.5.1966.~~ It is also true that the circular or status which effects the substantive right is issued to be prospective unless made retrospective either expressly or by necessary intendment, notification or letter dated 29.5.1989 (annexure 'D' to the application), ^{if} does not affect the substantive rights of the applicants, rather it confers the right of getting benefits of four advance increments on the basis of the amendments made therein. So in view of the aforesaid circumstances, I am of the view that subsequent amendment of the provisions of the enjoyment of the benefit of granting advance increments, on acquiring higher technical qualifications, as amended by the letter dated 29th May, 1989 (annexure 'D' to the application), had become an integral and independent part of the circular dated 14.5.1966.

8. In the judgment of C.A.T., Madras Bench, a question arose that some of the employees were granted benefits of four advance increments on the basis of the circular dated 29th May, 1989, and those were withdrawn. Subsequently by the authority on the same plea that the said circular would not be applied to the employees who acquired qualification prior to that circular dated 29.5.1989. But the Madras Bench considered the legal effect of the circular dated 29th May, 1989 (annexure 'D' to the application) and allowed the application holding that "on a very careful consideration, we are of the view that this order dated 29.5.1989 had the effect of continuing the old order dated 14.5.1966. Therefore, it had effect right from 1.7.1988. If that was not the intention, the order dated 29.5.1989 would not have used the word "continue" after referring to the last extension upto 30.6.1988. If the intention was that the order dated 29.5.1989 was to have effect only from 29.5.1989, this would have been indicated clearly and the word "continue" would not have been used. In other words, if the intention of the Railway Board in 1969, was as pointed out by the respondents in their reply, the order dated 29.5.1989 would have actually introduced a fresh scheme and there would have been the question of the earlier scheme continuing. We have thus no hesitation in upholding the contention of the applicants that the order dated 29.5.1989 continued the 1966 scheme and had necessarily to be given effect to from 1.7.1988, if the words in the letter dated 29.5.1989 have to be plainly and reasonably interpreted."

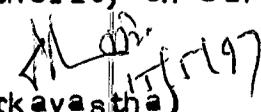
10. I do not find any reason to differ with the judgment of the C.A.T., Madras Bench, in view of the discussions made above. Further it is found from the annexure annexed to the application that incentive scheme was initially introduced for Group-C non-gazetted technical staff and that has been further extended to Group-B officers pursuant to the recommendation of the Fourth Pay Commission. Annexure 'A' to the application contends that those who had earlier drawn two advance increments after passing BE/B.E Tech. or AMIE or equivalent, may be given balance four

increments even though if they may now be working as Group-B Officers in the scale and stage on which they were drawing their pay or scale as on 1.5.1990. The stipulations made in annexure 'A' further affirm that the persons who are granted two advance increments after final B.E. or AMIE Examination, may be given balance four advance increments even if they were working as Group-B Officers. I have already held that the scheme of 1966 had been brought into effect or to be in force until further orders by way of substitution. Whatever amendment has come by way of substitution of the previous memorandum dated 14.5.1966, would have come with full force.

11. So in view of the aforesaid circumstances, I have no hesitation to hold that those who acquired higher qualification during service after notification dated 14.5.1966 and before the circular dated 29.5.1988 (annexure 'D' to the application), even though the circular dated 29.5.1988 was prospective in operation, would be entitled to get balance four increments for acquiring higher qualification in terms of the letter dated 29.5.1989, because they acquired the qualification before the circular dated 29.5.1989 and after notification dated 14.5.1986. It has been specifically stated in the notification dated 29.5.1989 that notification dated 14.5.1986, even after amendment by way of substitution of the clause in question mentioned above, should continue.

12. In view of the aforesaid circumstances, I find that applicants are entitled to get balance four increments, as claimed in the application and accordingly I direct the respondents to grant the applicants balance four increments in compliance of the circular dated 29.5.1989 and that should be paid within four months from the date of communication of this order.

13. Accordingly, the application is allowed with a direction upon the respondents as stated above, without awarding any costs. The applicants shall not be entitled to get any arrears prior to the date of representations submitted to the authority on different dates in the year 1995.


(D. Purkayastha)
Judicial Member