

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH, CALCUTTA

C.A. No.194 of 1997

Dated Calcutta the 14<sup>th</sup> June 2002

1. Ardhendu Lal Lahiri
2. Vivekanand Yadav
3. Dilip Kumar Das
4. S.K.Banerjee
5. R.K.Achariya
6. Santi Prosad Banerjee
7. Dilip Kumar Pal
8. B.G.Saha
9. N.G.Das
10. Manindra Nath Pramanik
11. Saibal Bhattacharjee
12. Pankaj Kumar Sihi
13. Pradip Kumar Chaudhuri
14. Shibendra Nath De
15. Asish Kumar Niyogi
16. M.M.Nath
17. Kamalendu Bhattacharjee
18. Sardar Kuldeep Singh
19. Bholanath Jha
20. Arun Kumar Ghosh
21. Debicharan Bhattacharjee
22. Mahesh Prosad Sinha

Applicants

-versus-

1. Union of India through General Manager, Eastern Railway, Fairlie Place, Calcutta-1.
2. General Manager, E.Rly, F.P., Calcutta-1
3. F.A. & CAO, E.Rly, F.P., Calcutta-1.
4. Chief Accounts Officer/Admn. E.Rly, FP, Calcutta-1.
5. Secretary, Ministry of Rlys, Rly. Board, New Delhi-1.

Respondents

Counsel for the applicants .. Mr. B.C. Sinha

Counsel for the respondents .. Mr. P.K. Arora

P R E S E N T: The Hon'ble Mr. L.R.K. Prasad, Member (A)

The Hon'ble Mrs. Meera Chibber, Member (J)

O R D E R

L.R.K. Prasad, Member (A):

1. The applicants (22 in number) have filed this O.A. with the prayer that they should be granted the same relief as has been given in case of retired employees till 31.8.1996 vide Railway Board's letter dated 24.9.1995 (Annexure-A7).

2. Heard the learned counsel for the parties and perused the materials on record.

3. The applicants are some Accounts staff working at various places in Eastern Railway. It appears that in terms of Railway Board's letter dated 18.6.1987 (Annexure-A1), higher functional pay scale of Rs.2000-3200(RP) was granted to Accounts staff with effect from 1.4.1987. Against the said order, the Indian Railway SAS Staff Association filed O.A.13 of 1988 before the Principal Bench of this Tribunal claiming grant of higher functional pay scale with effect from 1.1.1986 instead of 1.4.1987. The said O.A. was disposed of on 26.4.1991 allowing the claim of the Association. Accordingly, instructions were issued vide Railway Board's letter dated 9.9.1993 (Annexure-A3) whereby it was directed to implement the judgment provisionally on the lines of Board's letter dated 28.4.1993, subject to final outcome of I.A.No. 93 in Review Petition Reference 931/92 in SLP No.13492/91 which was pending before the Hon'ble Supreme Court. Vide order dated 15.7.1994 (Annexure-A6), the Hon'ble Supreme Court was pleased to pass the following order:

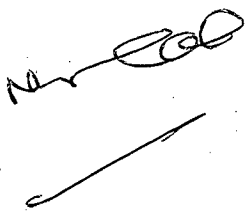
"The result, therefore, is that the respondent employees in the present proceedings would be entitled to the revised pay-scales only with effect from 1st April, 1987 since the revised pay scales will be fixed for the first time with effect from that date. They are not entitled to any difference on the basis of the notional fixation of pay w.e.f. 1.1.1986. The arrears, if any, paid to the respondent-employees on account of the notional fixation of their pay w.e.f. 1st January 1986 may be recovered from their future salaries.

It is, however, made clear that the said arrears shall not be recovered from those who have already retired from service.

The Interlocutory Application is allowed accordingly with no order as to costs."

4. Thereafter, the Ministry of Railways (Railway Board) issued a letter dated 24.9.1996 (Annexure-A7) giving following directions:-

- (a) To immediately stop the payments as effected in terms of Board's letter of even number dated 28.4.1993, addressed to N.Rly. and dated 9.9.1993 addressed to All Indian Railways.
- (b) To start effecting recoveries immediately for the excess payments/arrears made provisionally from the serving employees.
- (c) No recoveries should be made for the excess provisional payments so made in terms of Board's letter dated 28.4.1993 and 9.9.1993 in so far as the employees who have retired till 31.8.1996 are concerned.



On the basis of aforesaid letter, certain instructions were issued by ~~Eastern~~ Railway vide their letter dated 30.9.1996 (Annexure-A8). It further appears that the applicants submitted representation with the prayer that no recovery should be made for excess provisional payments keeping in view the matter of parity with the retired employees (retiring till 31.8.96), who have been exempted from said recoveries. The said representation was addressed to Executive Director, PC II, Railway Board, and the matter is still pending with the Railway Board. Copies of representations are at Annexures-A9 and A10. Therefore, in view of what has been stated in the O.A., the applicants have prayed for grant of

same benefit to them in the matter of recovery of excess payment which has been allowed to the employees, who have retired till 31.8.1996.

5. While opposing the above application, the respondents have clarified the position through their W.S. They have stated that Railway Board had decided to grant higher ~~functional~~ pay scale of Rs.2000-3200(RP) to Accounts staff with effect from 1.4.1987. However, the date of implementation of the said order was ~~changed to~~ 1.1.1986 on provisional basis in pursuance to the judgment passed by CAT, New Delhi, on 26.4.1991 in O.A.13/88, but the same was subject to the final outcome in Review Petition No.951/92 in SLP(Civil) No.13492/91. The Interlocutory Application was decided by the Hon'ble Supreme Court vide their judgment dated 15.7.1994 (Annexure-A6) which has been quoted above. In pursuance to the direction of the Hon'ble Supreme Court, the Railway Board issued certain instructions on 24.9.1996(Annexure-A7). With reference to Railway Board's communication dated 24.9.1996(Annexure-A7), some of the effected staff preferred an appeal before the Railway Board praying that excess payment made to them up to 31.8.1996 may be written off in order to maintain conformity between <sup>retired</sup> serving staff and the ~~required~~ staff (retiring till 31.8.1996) in whose case excess payments were not to be recovered. It appears that the matter is pending with the Railway Board. In our opinion, the Railway Board should examine the matter and pass appropriate order on the pending representation in accordance with law and in the light of order of Hon'ble Supreme Court referred to above.

6. It is noted that certain orders were passed by this Tribunal in M.A.76/97 and M.A.77/97 on 21.3.1997.

In the light of reasons indicated therein, both the aforesaid MAs were disposed of with the order that settlement dues of petitioner no.5 may be released subject to his furnishing an Indemnity Bond of Rs.3771/-. The interim order dated 20.2.1997 was vacated and O.A.194/97 was ordered to be listed for admission with liberty to respondents to file reply.

7. It is argued on behalf of the applicants that fixation of cut off date by Railway Board is arbitrary and the benefit having once been given to the employees cannot be taken away from a few while others continued to enjoy the said benefit. While passing order in the above MAs, this Tribunal had given certain observations in the context of the order of the Hon'ble Supreme Court, which are recorded in para 4 of the order dated 21.3.1997. It had clearly observed that the order of the Hon'ble Supreme Court must be regarded as the law of the land. The Railway Board might have shifted the cut off date, but it is not within the scope of the present proceeding to decide whether it should be done or not. But there cannot be any doubt about the position that if interim order, as passed, is allowed to survive, it would clearly offend the order passed by the Hon'ble Supreme Court and, therefore, the Tribunal has no option but to vacate it.

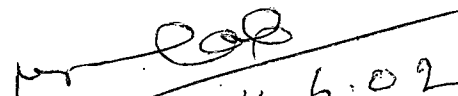
*msd*  
8. We have considered this case in the light of submissions made on behalf of the parties and materials on record. It is admitted position that higher functional pay scale of Rs.2000-3200(RP) was granted to Accounts staff with effect from 1.4.1987, but in pursuance to an order of the Principal Bench of this Tribunal, the date was shifted to 1.1.1986 on provisional basis as is clear from Railway Board's letter dated 9.9.1993(Annexure-A3). The said letter makes it clear that benefits were extended in terms of the order of the

Principal Bench of the Tribunal, New Delhi, on provisional basis, subject to final outcome of Review Petition No.951/92 in SLP(Civil) No.13492/91. As the orders of the Hon'ble Supreme Court were passed in the Review Petition No.951/92 (Annexure-A6), the Railway Board issued certain set of instructions which are contained in their letter dated 24.9.1996 (Annexure-A7) and the respondents are proceeding in the matter, accordingly, in the light of the orders of the Hon'ble Supreme Court passed in Review Petition No.951/92. However, during the course of argument, neither side was able to throw any light on the final outcome of SLP (Civil) No.13492/91. It is, however, noted that the respondents have clearly stated that no recovery should be made for the excess provisional payment so made in terms of Board's letter dated 28.4.1993 and 9.9.1993 in so far as employees, who have retired till 31.8.1996, are concerned.

9. In view of the facts and circumstances of the case and the fact that certain specific orders have been passed by Hon'ble Supreme Court (Annexure-A6) resulting in issue of subsequent instructions by the Ministry of Railways (Railway Board) vide letter dated 24.9.1996 (Annexure-A7), (which is self-explanatory), we feel that there is no scope for this Tribunal to interfere in the matter. As such, this O.A. is dismissed, accordingly, with no order as to the costs.



(Meera Chibber)  
Member (J)

  
14.6.02  
(L.R.K. Prasad)  
Member (A)