

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION: 19.3.92

Original Application
No.42/91

P.Gangadhara Kurup and
28 others

.. Applicant(s)

Mr. P.Sivan Pillai

.. Counsel for applicants

Versus

Union of India represented
by General Manager, Southern
Railway, Madras and others

.. Respondent(s)

Mr.M.C.Cherian

.. Counsel for respondent(s)

CORAM

HON'BLE MR. S.P.MUKERJI - VICE CHAIRMAN

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. To be circulated to all Benches of the Tribunal?

J U D G M E N T

(Hon'ble Mr.S.P.Mukerji, Vice Chairman)

In this application dated 1.1.91 the 29 applicants who have been working as Goods Driver under the Southern Railway have challenged the impugned order dated 26.9.90 rejecting the representation of the first applicant for stepping up of his pay and have prayed that the respondents be directed to fix the pay of the applicants at par with that of Shri Mohd.Ghouse at Sl.No.1 in part 2 of Annexure-A.1 with all attendant benefits.

2. The brief facts of the case are as follows. The applicants have given their own service particulars and pay in part 1 of the list at Annexure-A.1 and those of their juniors in part 2 of the same annexure. The

applicants' order of promotion as Goods Driver dated 14.2.86 is at Annexure A.2. Annexure A.3 gives the Seniority List of Goods Drivers of Palghat Division. Their grievance is that their representations for stepping up of their pay to that of their juniors, a typical copy of which is at Annexure A.4, was rejected by the impugned order at Annexure A.5. Their claim is that under President's decision No.9/3 below Rule 1316 of the Railways corresponding to FR 22-C, the pay of a senior official promoted to the higher grade earlier would be stepped up if any person junior to him in the lower grade who is subsequently promoted to the higher grade in identical post draws higher pay. The stepping up is done with effect from the date of promotion of the junior employee provided both junior and senior employees belong to the same cadre and the posts to which they are promoted are identical and are in the same cadre and the anomaly of the junior drawing higher pay is as a result of the application of Rule 1316 (corresponding to FR 22-C). They have also referred to President's decision No.11 below Rule 1316 which allows such stepping up of pay even where the junior gets on promotion a higher pay because he had in the meantime been promoted to an intermediate post while the senior was directly promoted to the higher grade. The applicants have argued that in accordance with the Seniority List at Annexure A.3 all the applicants are senior to those in part 2 of Annexure A.1 and the posts to which they were promoted are identical and are in the same cadre. The scales of pay in the lower and higher posts were also identical. They have conceded that the applicants were promoted from the Post of Diesel Assistant

to that of Shunter prior to 1.1.86 whereas their juniors were promoted as Shunters after 1.1.86. Their contention is that the pay of Sl.Nos. 2 to 4 in part 2 of Annexure-A.1 were stepped up on par with Sl.No.1 Shri Mohd. Ghous who was their junior but the same benefit is being denied to the applicants even though Sl.Nos. 2 to 4 in part 2 of Annexure-A.1 were junior to the applicants. ^{also} They have however, conceded that they did not draw the special pay of Rs.15/- as Diesel Assistant.

3. In the counter affidavit the respondents have stated that the applicants were previously working as Diesel Assistant in the scale of Rs.290-350. Some of them had been promoted as Shunters in the scale of Rs. 290-400 prior to 1.7.85 and others were so promoted after 1.7.85. The special pay of Rs.15/- were allowed to the Diesel Assistants with effect from 1.7.85 only and the seniormost 30 per cent Diesel Assistants who were working as Diesel Assistant on 1.7.85 were given the special pay of Rs.15/-. The benefit of special pay was discontinued on revision of pay scales with effect from 1.1.86. The applicants Nos. 1 to 10, 17 to 21, 23 and 25 to 29 who had been promoted as Shunters before 1.7.85 were not eligible for the grant of special pay as Diesel Assistant of Rs.15/- while the applicants nos. 11 to 16, 22 and ^{who} 24 ₆ were given promotion as Shunter after 1.7.85 were in receipt of special pay of Rs.15/- till their promotion as Shunter before 1.1.86. The special pay of Rs.15/- however was not taken into account for fixing of their pay as Shunters as there was no such orders at the time of such promotion. But on revision of the pay scales with

effect from 1.1.86 vide the order at Annexure.R.2 the special pay attached to the post of Diesel Assistant for the Diesel Assistants was to be taken into account. It therefore transpires that the applicants who had all been promoted as Shunters before 1.1.86 were either not in receipt of special pay of Rs.15/- as Diesel Assistant before their promotion or even if they were in receipt of special pay of Rs. 15/- as Diesel Assistants before their promotion as Shunters it was not taken into account for fixing of their pay as Shunters. Whereas those Diesel Assistants who had not been promoted as Shunters before 1.1.86 but were in receipt of special pay of Rs.15/- got their special pay included as pay for fixing their pay as Diesel Assistants in the revised scale with effect from 1.1.86. When these Diesel Assistants who were promoted as Shunters after 1.1.86 got higher pay than the applicants as in their case the special pay had been taken into account in fixing the pay as Diesel Assistants in the revised scale. The respondents have stated that the representation made by the applicants at Annexure.A.4 has been replied to by the impugned communication at Annexure.A.5 which also indicates that the matter had been referred to the Headquarters, from where a reply was awaited. The respondents however, have conceded that the persons mentioned at Sl.Nos 2 to 4 in part 2 of Annexure.A.1 were given the benefit of stepping up of pay to that of their junior Shri Mohd. Ghouse but have stated that this was by mistake and necessary orders have been sought from the Headquarters. If the advise is to continue the benefit already given to Sl.Nos. 2 to 4 above, the claim of the applicants will also be considered.

4. I have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. It is clear that the juniors are getting higher pay on their subsequent promotion as Shunters because unlike the applicants because of their being junior they were never promoted as Shunters ^{to the applicants} before 1.1.86, and were given a special pay of Rs.15/- per month with effect from 1.7.85 as Diesel Assistant. This special pay was taken into account for fixing their pay as Diesel Assistant in the revised pay scale with effect from 1.1.86. When they were subsequently promoted as Shunters the benefit which they had got on enhanced ^{as Diesel Assistant} revised pay because of the special pay, gave them higher pay as Shunters under FR 22-C. The applicants on the other hand ^{who} by virtue of their seniority had been promoted as Shunters before 1.7.85 without getting a special pay of Rs.15/- as Diesel Assistants and other applicants who having got the special pay of Rs.15/- as D. Ass't could not get it included in their pay for fixing their pay on promotion as Shunters before 1.1.86, because of Railway Board's order at Exbt.R.2, ^{on} ^{thus} their lateral switching over to the revised pay of Shunters ^{thus} did not get the benefit of adding special pay in fixing their pay in the revised pay scale of Shunters. ^{thus} to my mind the benefit which the juniors got on getting special pay of Rs.15/- included as part of their pay for first getting the revised pay scale of Diesel Assistant and ^{thus} getting the revised pay of Shunters under FR 22-C, was completely denied to the applicants under fortuitous ^{for no fault of theirs} circumstances. The conditions for stepping up of pay available under FR 22-C or Railway Rule 1316 are ^{needs} as follows:

"(a) Both the junior and senior employees should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;

(b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical; and

(c) the anomaly should be directly as a result of the application of Rule 1316 (FR 22-C). For example, if even in the lower post the junior employee draws from time to time a higher rate of pay than the senior by virtue of fixation of pay under the normal rules, say due to grant of advance increments or due to accelerated promotion, etc. the provisions contained in this letter will not be invoked to step up the pay of the senior employee."

The condition for stepping up the pay to remove anomaly in the revised pay scale as quoted by the applicant in note 7 below Rule 7 of the Railway Servants Pay Rules, 1986 are as follows:

"(a) Both the junior and the senior Railway servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadres.

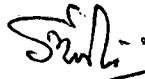
(b) the pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical; and

(c) The anomaly should be directly as a result of the application of the provisions of Rule 2018 B (FR 22-C) of Indian Railway Establishment Code Volume II or any other Rule or order regulating pay fixation on such promotion in the revised scale. If even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provisions of this Note need not be invoked to step up the pay of the senior officer."

Since the applicants and their juniors were in the same cadre and position with identical pay scales of Diesel Assistant and Shunter both before 1.1.86 and also after 1.1.86 and since the juniors got the higher pay not because in any accelerated promotion or advance increments but by the fortuitous advantage of getting their special pay of Rs 15/- as Diesel Assistant included for getting their pay in the revised pay scale fixed after 1.1.86, I feel that the applicants are fully entitled to the benefit of stepping up of their pay to that of their juniors. The respondents themselves have allowed this

benefit to Sl.Nos. 2,3 and 4 in part 2 of the List at Annexure-A.1 and stepped up their pay to that of Shri Mohd. Ghouse. Since these three officials are admittedly junior to all the applicants, the applicants are also entitled to similar stepping up of pay as of Shri Mohd. Ghouse. The respondents have stated that Sl.Nos.2,3 & 4 above were given the benefit of stepping up of pay by mistake. But they have not taken any action to correct the mistake or given any notice to these persons for withdrawing the benefit. Accordingly it does not lie in their mouth to say that the applicants should not be given the same benefit. As a matter of fact I find that the applicants are entitled to the benefit in their own rights.

5. In the facts and circumstances I allow this application and direct that the applicants' pay should be fixed at par with that of Shri Mohd. Ghouse with effect from the date Shri Mohd. Ghouse was promoted as Shunter. Arrears of pay and allowances should be paid to the applicants within a period of three months from the date of communication of this judgment. There will be no order as to costs.


19.3.92
(S.P.MUKERJI)
VICE CHAIRMAN
19.3.1992

(7-07-92) Mr. TCG Swamy.

Mr. TA Rajan for Mr. C. Cherian.

Shri. M.C. Cherian takes notice on behalf of the Contemner. He wishes to file a statement. He may do so within two weeks with a copy to the learned Counsel for the petitioner. List for further directions on 4.8.92.

SJL

SPM
17/7/92

SPM & ND

(21) Mr P Sivan Pillai
Mr MC Cherian

Learned counsel for the respondents seeks one month's time to fully implement the judgment of this Tribunal in OA 42/91.

Artur List the CCP for further directions on 1.9.92.

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ND

SJL
SPM

4.8.92

1.9.92 Mr.TCG Swamy
Mr.MC Cherian through proxy

In spite of the assurance given by the learned counsel for the respondents on 4.8.92 nothing seems to have been done towards implementation of the judgment in O.A. 42/91. Accordingly we direct the Contemner Shri P. Dharmalingam, Divisional Personnel Officer, Southern Railway, Palghat either to appear in person on 22.9.92 to explain why action under the Contempt of Courts Act be not initiated against him or to report compliance through the learned counsel in case the compliance is effected by that date. List for further directions on 22.9.92.

N. Dharmadan
(N.Dharmadan)
J.M.

SJL
(SP Mukerji)
V.C.

1.9.92

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✓ RM
See to Mr.
Dharmalingam
Served P.

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See to Dharmadan
Served P.

SPM & ND

Mr. P.S. Pillai
Mr. T.A. Rajan

Opp. docket ruled
by Reg. on 18/9/92
S. 1

Heard learned counsel for both parties. Learned counsel on both sides agreed that the judgment of this Tribunal has been fully complied with. Accordingly we close the CCP and notice on contempt is discharged.

~~DR. N. Dharmadan~~
(N. Dharmadan)
Judicial Member

~~S. P. Mukerji~~
(S. P. Mukerji)
Vice Chairman

22.9.92

F.O

PZ

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M.R.P

order at 20th
Aug