

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE: 6.7.93

O.A. 526/92
O.A. 926/92

1. K. Sreedharan Nair
2. P.M. Thomas
3. K.R. Prakash and
4. C.M. Balan

Applicants
in O.A. 526/92

vs.

1. Union of India through the
General Manager,
Southern Railway, Madras-3
2. The Chief Personnel Officer,
Southern Railway, Madras-3
3. The Divisional Personnel Officer
Southern Railway, Madurai-10
4. The Divisional Personnel Officer,
Southern Railway, Trivandrum-14

Respondents
in O.A. 526/92

S. Thanabalan

Applicant in
O.A. 926/92

vs.

1. Union of India through the
General Manager, Southern
Railway, Madras-3
2. The Chief Personnel Officer
Southern Railway, Madras-3
3. The Divisional Personnel Officer
Southern Railway,
Trivandrum-14
4. The Railway Board through its
Secretary(E) Railway Board,
Rail Bhavan, New Delhi

Respondents in
O.A. 926/92

Mr. P. Sivan Pillai

Advocate for
all applicants

Smt. Sumathi Dandapani

Advocate for
all respondents

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THE HON'BLE MR. N. DHARMADAN JUDICIAL MEMBER

1. To be referred to the Reporter or not? Yes
2. To be circulated to all Branches of the ~~to~~ Tribunal?

JUDGMENT

MR. N. DHARMADAN JUDICIAL MEMBER

These two cases are heard together and disposed of
by the common judgment with the consent of the parties in view

of the fact that identical question of law arises for consideration.

2. There is no dispute with regard to the facts. I am referring to the facts in O.A. 926/92 for disposal of these two cases. The applicant is working as Chief Train Examiner. He ~~has~~ passed B.E.(Mechanical) Examination on 27.5.89 and according to applicant he is entitled to six increments on the basis of policy decision of the Rly Board contained in Annexure A-1. But he has been granted only two increments and denied additional four increments, which is illegal. Hence, he has filed this application under section 19 of the Administrative Tribunals' Act with the following prayers:

- "a) to call for the records leading to the issue of Annexure A-4 and Annexure A-5 and quash the same.
- b) to direct the respondents to grant the applicant four more additional increments as provided in Annexure A-1 and A-2 with effect from 29.5.89 with all attendant benefits.
- c) to issue such other orders or directions as deemed fit and necessary by this Hon'ble Tribunal in the facts and circumstances of the case."

3. The decision in this case depends upon the interpretation of ~~xxx Ext.~~ R-1 as modified by Annexure A-1 and A-2. The relevant portion of ~~xxx Ext.~~ R-1 issued by the Railway Board and published in Gazette is extracted below:

"(d) On passing the relevant examinations the following awards shall be given to the Railway employees/apprentices

i) for passing part I or A of Intermediate or pre-final examination: Rs. 200 cash award

ii) For passing Part-II or B or Final Examination Two advance increments

(e) Incentives are to be granted only once and not twice."

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4. The Railway Board issued subsequent clarification of the policy decision in Annexure R-1 as per Annexure A-1. Para 12 of the said letter is relevant; it reads as follows:

"Pursuant to the recommendations of the IV Pay Commission, the Ministry of Railways have reviewed the existing incentive scheme as aforesaid and have decided that the existing scheme as contained in their letter No. E(NG) 64/RCI/25 dated 14.5.66 read with their letter No. E(NG) II/72/IC2/1 dated 10th March, 1972 should continue to be in force until further orders except that para (d) of the Board's letter dated 14th May, 1966 would be substituted by the following:

Passing the relevant examinations, the following awards shall be given to the railway employees/apprentices:

- i) for passing part (i) or A or Intermediate or Pre-final examination - two increments
- ii) for passing Part (ii) or B or final examination - four advance increments."

5. Annexure A-2 is a further clarification. The relevant portion is extracted below:

"As the Railway are aware in terms of Board's letter of even number dated 29th May, 1989 the following incentives are admissible for acquiring higher Scientific/Technical and Accounts qualifications to Group-C staff:

- (i) for passing Part (i) or A or Intermediate or pre-final examination - two advance increments
- (ii) for passing Part (ii) or B or Final Examination - for additional advance increments.

2. It has now been decided by the Ministry of Railways that the Technical non-gazetted staff who acquire B.E/B.Tech Degree directly may be granted six advance increments as there are no two stages in B.E./B. Tech. Examinations."

A reading of Ext. R-1 read with clarification letters Annexure A-1 and A-2 indicates that the provision contained in Ext. R-1 has not been superseded. The indication is that the existing incentive scheme as decided and introduced w.e.f. 14.5.66 should be continued in regard to payment of incentives to employees but the portion dealing with grant of specific increments are substituted. The fact is that in the place of grant of cash award of Rs. 200/- and two advance increments as provided

under the original scheme was replaced by addition of grant of two advance increments to one category and four advance increments to other category depending upon the pass in the examination. So the total increment that can be granted under the incentive scheme to Railway employees is six. ^{the effect that} There ~~xx~~ is no restriction to/ those who enjoyed two ^{be} increments would/deprived of additional four increments as provided in the clarification Annexure A-1 and A-2.

6. Applicants have produced two important documents which give considerable aid to the / of Ext. R-1 read with clarificatory circulars Annexure A-1 and A-2. They are Annexure A-6 and A-7. Annexure A-6 is the list of railway employees who had been granted additional four increments while they were enjoying the two increments covered under the original scheme, even though they have passed the examination before the crucial date of 29.5.89. Item 1 to 6 are persons who have been granted six increments even though they have passed AMIE/B.E. Examination before 29.5.89. Similarly, items 9 to 15 are persons who are granted two increments on the basis of ext. R-1 since their passing ~~xx~~ B.E. Examination or AMIE examination in the year 1986-87, 87-88. They were given additional increments also after the clarification letter issued on 29.5.89.

7. Annexure A-7 is Board's clarificatory letter referring to the earlier notification dated 4.5.90 by which the benefit of incentive increments as provided in Ext. R-1 was extended to Group-B employees as well. When a doubt arose as to whether they should be given additional four increments also after clarification dated 29.5.89, the said letter was issued clarifying the position as follows:

"1. The benefit of incentives shall also be admissible to such Group-B officers who have qualified the recognised exam. prior to the issue of the above referred instructions dated 4.5.90 from the date of issue of the said letter and in the time scale of pay in which they are drawing pay as on the date of the said letter.

2. Officers who are earlier working in Group-C and had drawn two advance increments/cash awards of Rs.200/- after passing final/intermediate of ICWA at that time, may be given balance four/two increments even though they may now be working as Group-B officers in the scale and stage at which they were drawing their pay scale on 4.5.90."

8. Clause 2 extracted above makes it clear beyond any doubt that the intention made in the clarification is to give the balance of four increments to such of Railway employees in Group-B who were also eligible for two increments on the basis of the original order of the incentive scheme. Such being the decision, there is no justification in denying the claim of the applicants that they are also entitled to four additional increments in spite of the fact that they are enjoying additional two increments on the basis of Ext. R-1.

9. Learned counsel for applicant placed reliance on the decision of the Supreme Court in Union of India v. Supp. Deoki Nandan Aggarwal, 1992(1) SCC 323. It was a case dealing with grant of pensionary benefits to Judges following the case of D.S. Nakara v. Union of India, 1983(1) SCC 305. The Supreme Court held as follows:

"The classification may be founded on differential basis according to objects sought to be achieved but what is implicit in it is that there ought to be a nexus i.e. causal connection between the basis of classification and object of the statute under consideration. It is equally well settled by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

9. According to him, the principle laid down by the Supreme Court in para 11 squarely applies to the facts of this case. The Railways could have very well issued a fresh order scrapping ext. R-1⁴ making it clear that those Railway employees who have got incentives as per original order will not be eligible for further incentives as given in Annexure A-1 and A-2. On the other hand what the Railway has done in this case is to maintain incentive scheme provided in Ext. R-1 and clarified⁴ wide Annexure A-1 and A-2

making it clear that any railway employee who is eligible for the incentive may get the total benefit of six increments and that is the result of policy decision contained in Ext. R-1 ^{and with} ~~xxx~~ Annexure A-1 and A-2.

10. Learned counsel for respondents submitted that in view of the financial commitment involved in the grant of additional incentive, a restricted interpretation should be applied to these cases and in that connection she has also relied on Pathai Vs. State of Kerala, 1984 KLT 1009 and Union of India Vs. Tej Ram Parashramji and others, 1991(3) SCC 11. It is further submitted that the additional financial commitment may arise by implementing Annexure A-1 and A-2 clarification letters. ⁴ ~~xx~~ It is ^{xx} to be presumed that the subsequent circulars Annexure A-1 and A-2 have been issued by the Railway Board after examination of ^{ramification of} ~~the~~ ⁴ additional financial implications and that is the reason why they have granted the benefit to the other similarly situated persons as per Annexure A-6 and issued Annexure A-7 clarification. Hence, I do not find any justification in denying the benefit to the applicants on the ground that it may create additional financial liability. ⁴ ~~xx~~ The decisions relied by the learned counsel for respondents are not squarely applicable to ⁴ ~~the~~ cases.

11. It may also be seen that on the basis of the contention of the learned counsel for respondents if I reject the claim of the applicants, the same will cause injustice to the applicant in view of the fact that he passed the eligibility examination on 27.5.89 while the clarificatory letter was issued on 29.5.89. If the applicant was unsuccessful in the examination and ⁴ ~~xx~~ ⁴ a pass only subsequently after issue of clarificatory letter, then he will be eligible for six increments. But simply because of his merit and ^{he} was able to pass the examination two days before the date of clarificatory

letter, he would be denied the benefit of increments available to him on the basis of normal interpretation and combined reading of Ext. R-1 along with Annexures A-1 and A-2 in case the contentions of the learned counsel for respondents are accepted. The result of acceptance of the contentions would be that the persons like applicant who passed in the examination before 29.5.89 would only get two increments, while the failed candidates/sit in the next examination after 29.5.89 would earn all six increments on satisfaction of the requirements. This is an anomalous situation and cannot be accepted.

12. Learned counsel for respondents also submitted that they are taking steps to cancel the additional increments granted to persons included in Annexure A-6 letter ~~for the~~ ^{who} ~~some had been~~ granted only on a mistaken basis. No such order cancelling the benefits given to persons mentioned in Annexure A-6 has been placed before me. Simply because they have issued some notice to the persons in Annexure A-6 list may not be accepted as a ground for denying the benefit to the applicant. The case of mistaken grant of increments to persons in Annexure A-6 was raised by the respondents only because of the filing of this application by the applicant. But ^{for the filing of the application by} ~~they would not have taken any steps~~ for cancellation of increments against persons in Ann.A-6. Hence, I can't see any banafides in the proposed action for cancellation of increments. If such actions are taken I am sure they would seek relief by taking appropriate legal or other procedures challenging the same.

13. Having regard to the facts and circumstances of the case, I allow the application and quash Annexure A-5 and direct respondents to grant the applicant four additional increments in terms of the observation made above. It shall be done within a period of six months

from the date of receipt of a copy of this judgment.

14. O.A. 526/92 is also allowed with same observation,
and directions 6

15. There shall be no order as to costs.

N. Dharmadan
6.7.93

(N. DHARMADAN)
JUDICIAL MEMBER
6.7.93

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List of Annexures

1. Annexure A-4 : Impugned order dated 9.7.91 from Divisional Office, Trivandrum
2. Annexure A-5: Impugned order of the Railway Board dated 4.9.90 regarding incentives for acquiring higher scientific/accounts/technical qualifications.
3. Annexure A-1: Copy of Board's letter dated 29.5.89 granting incentive for acquiring higher scientific/accounts/technical qualification.
4. Annexure A-2: Copy of Board's letter dated 14.2.90 granting incentive for acquiring higher scientific/accounts/technical qualification.
5. Annexure A-3: order of DPO dated 26.4.91 fixing the pay of the applicant
6. Annexure A-6: CPO's memorandum dated December, 1989 clarifying Railway Boards letter Annexure A-1
7. Annexure A-7: DPO's letter dated 8.4.91 regarding grant of incentives to Group-B officers
8. Ext. R-1: Copy of letter dated 20.6.66 from General Manager, HQs Madras-3 addressed to FA&CAO, Madras etc. regarding grant of incentives to Class-III employees
9. Ext. R-2 Copy of corrigendum dated 10.3.72