

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.581/99

Thursday this the 2nd day of August 2001.

CORAM

HON'BLE MR. A.M.SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

A.L.Thomas
Retired Loco Running Supervisor
Southern Railway
Shornur.
Residing at Alappat House
Chettupuzha P.O.
Trichur District. Applicant.

[By advocate Mr.T.C.Govindaswamy]

Versus

1. Union of India represented by
The Secretary to the Government of India
Ministry of Railways
Rail Bhavan
New Delhi.
2. The General Manager
Southern Railway
Headquarters Office
Park Town P.O.,
Madras.
3. The Senior Divisional Personnel Officer
Southern Railway
Palghat Division
Palghat.
4. The Divisional Railway Manager
Southern Railway
Palghat Division
Palghat. Respondents.

[By advocate Mrs Sumathi Dandapani]

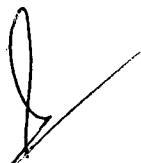
The application having been heard on 2nd of August, 2001, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M.SIVADAS, JUDICIAL MEMBER

Applicant seeks the following reliefs:

(a) declare that the denial of the benefit of para 5.5 of A-1 to the Crew Controllers/Power Controllers who die while in service/retire/superannuate, is arbitrary, discriminatory and unconstitutional.



- (b) Declare that para 6.1 of A-1 to the extent it denies the benefit of para 5.5 of A-1 to the Crew Controllers/Power Controllers alone is arbitrary, discriminatory, unreasonable and unconstitutional.
- (c) Call for the records leading to the issue of A-1 and quash para 6.1 of the same to the extent it holds that para 5.5 of A-1 shall not be applicable to the Power Controllers/Crew Controllers.
- (d) Direct the respondents to re-calculate the applicant's pension and other retiral benefits by treating the applicant's basic pay, as basic pay plus 30% of basic pay as add-on element, as provided under para 5.5. of A-1 and to grant the same forthwith.
- (e) Call for the records leading to the issue of A-7 and quash the same.
- (f) Award costs of and incidental to this application.
- (g) Pass such other orders or direction as deemed just, fit and necessary in the facts and circumstances of the case.

2. Applicant is a retired Loco Running Supervisor. He superannuated from service on 30.4.98. A-1 was intended to overcome the drop in emoluments of the running staff on being promoted as Loco Running Supervisors. As per A-2, the cadres of Loco Inspector, Power Controller and Crew Controller shall stand merged on and with effect from 1.1.93 and shall form one common cadre with one common seniority group. Loco Inspectors, irrespective of their grade, shall be credited with actual foot plate duties as indicated in Rule 1514 of the Railway Establishment Code. They shall also be granted allowance in lieu of kilometreage for other than foot plate duties performed by them. In lieu of the aforesaid allowance, the Crew Controllers/Power Controllers would be eligible for a special pay of Rs. 300/- per month. Para 5.5 of A-1 says that for the purpose of pensionary benefits, the basic pay shall also include, with effect from 1.1.93, an add-on element of 30% of basic pay. The benefit of add-on element to basic pay shall not be admissible for any purpose other than computation of



pensionary benefits. In terms of para 6.1 of A-1, the benefits envisaged in para 5 admissible to Loco Inspectors shall not be available to Power Controllers and Crew Controllers. A-1 was modified as per A-2. As per A-2 the cadre of Power/Crew Controllers with distinct scale of pay would stand abolished. As per A-2, almost all the Crew Controllers/Power Controllers who were selected and appointed in terms of A-1 Scheme were re-designated as Loco Inspector though allowed to continue to discharge their duties as Power Controller/Crew Controller. The applicant while working as Mail Driver was empanelled to the common cadre of loco running supervisors in terms of A-1 Scheme. He was posted as per A-3. Though he had barely two years of service left as on the date of A-3, he was posted only as Crew Controller, Shornur, though many of his juniors in the same panel were posted as Loco Inspectors. In view of the drop-in emoluments in his monthly pension and other retiral benefits, he submitted a representation to the 4th respondent which was followed by another representation. A-7 is the order rejecting the representation of the applicant. A-7 is violative of the provisions of Articles 14, 16 and 41 of the Constitution.

3. Respondents resist the OA contending that the applicant superannuated on 30.4.98 while he was working as Crew Controller at Shornur. In A-1 there is a provision which says that during the last two years of service one would compulsorily be posted as Loco Inspector and in case this is not arranged, the employee will have the right to report to the Divisional Railway Manager/Head of Department for posting. The



applicant did not make any representation and further, he submitted that he may be allowed to continue as Crew Controller and exempt him from being posted as Loco Inspector. As far as para 5.5. of A-1 is concerned, if a Loco Inspector retires before completing a period of 10 months under the Scheme, he shall be permitted the benefit of add-on element to the basic pay on a pro-rata basis depending on the actual period of service under the scheme. A-2 says that existing regularly selected Power/Crew Controllers under A-1 Scheme will continue to be in the existing pay scales and will progressively be posted as Loco Inspector in accordance with the scheme contained in A-1.

4. Learned counsel appearing for the applicant submitted that on facts applicant is estopped from raising any plea and the applicant is confining his plea only on the question of law.

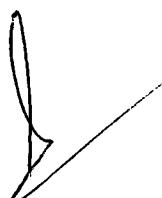
5. The learned counsel appearing for the applicant vehemently argued that Power Controller, Crew Controller and Loco Inspector belong to a common class and there cannot be a further classification among Power Controller, Crew Controller and Loco Inspector. According to him there is discrimination as far as Power Controller and Loco Inspector are concerned and that is violative of the provisions contained in Articles 14 and 16 of the Constitution of India.



6. Learned counsel appearing for the respondents argued that there is no discrimination and there is no violation of the provisions of Articles 14 & 16 of the Constitution of India and there is no case of like being not treated alike. According to the respondents, Power Controller and Loco Inspector do not stand on the same footing due to difference in the nature of duties and, therefore, as the applicant was not Loco Inspector but only Crew Controller he cannot say that he should also be treated alike Loco Inspector.

7. The applicant was promoted and posted as Crew Controller as per A-3 dated 28.11.95. He is at S1.No.3 therein. From A-3 it is seen that at the time of issuance of A-3 he was working as Mail Driver. Certain other persons who were Passenger Drivers and Goods Drivers at the time of issuance of A-3 were posted as Loco Inspectors. There is no objection raised as to the posting made as per A-3.

8. Learned counsel appearing for the applicant submitted that para 5.5 of A-1 has been denied to Power Controller/Crew Controller as per para 6.1 and the same is bad in law. Para 5.5 of A-1 says that for the purpose of pensionary benefits, the basic pay shall also include, with effect from 1.1.93, an add-on element of 30% of basic pay in the case of Loco Inspectors, that if a Loco Inspector retires before completing a period of 10 months under this Scheme, he shall be permitted the benefit of add-on element to basic pay on a pro-rata basis depending on the actual period of service under the Scheme and that the benefit of add-on element to basic pay shall not be

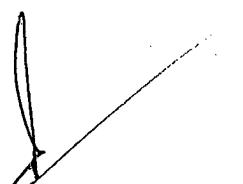


admissible for any purpose other than computation of pensionary benefits.

9. Para 6.1 of A-1 says that Power Controller/Crew Controller in both the grades shall be entitled to a special pay to the extent of Rs. 300/- per month with effect from 1.1.93 for the duration they work as such and the benefits envisaged in para 5 admissible to Loco Inspectors shall not be available to Power Controllers/Crew Controllers.

10. The benefit under para 5.5 of A-1 is admissible to those who have worked as Loco Inspectors. According to the applicant, it should be equally extended to Power Controller and Crew Controller. In that context it is to be seen whether there is any rationale principle adopted by the administration in confining the benefit of para 5.5 of A-1 to those who are posted and working as Loco Inspectors exclusively.

11. Rule 1514 of The India Railway Establishment Code Vol.II says that "running allowance shall be admissible to the Loco Inspectors drawn from the Loco Running Staff for the performance of duties directly connected with the training and monitoring of Loco Running Staff on foot plate of the locomotive cab of the moving trains." So it is clear that Loco Inspectors have to perform the duties directly connected with the training and monitoring of Loco Running Staff on foot plate of the locomotive cab of the moving trains. There is no such duty to be performed by Power Controller and Crew Controller. So there is difference in the nature of the duties of the Loco Inspector and Power Controller/Crew Controller.

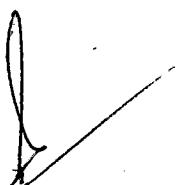


12. In A-3 as per which the applicant was promoted and posted as Crew Controller, it is specifically stated that the employees who have been posted as Loco Inspectors will perform the duties directly connected with the training and monitoring of Loco Running Staff as laid down in A-1 and they will be eligible for running and other allowances as admissible under Rule 1514 and 1515 of The Indian Railway Establishment Code Vol.II and will not be eligible to draw TA/DA. It is further stated therein that promotees shown at S1.No.3, 6 and 10 are eligible for special pay of Rs. 300/- per month from the date of their posting as Crew Controller/Traction Loco Controller. Applicant is at S1.No.3 in A-3.

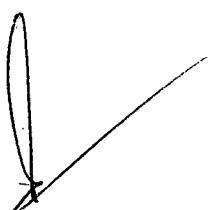
13. As per para 6.1 of A-1 Power Controller and Crew Controller are entitled to special pay to the extent of Rs. 300/- per month.

14. A-2 came into force on 9.1.98. By the time the applicant was promoted and posted as Crew Controller. As per A-2 the existing regularly selected Power Controllers and Crew Controllers under A-1 will continue to be in the existing pay scales and will progressively be posted as Loco Inspectors in accordance with A-1.

15. It is also relevant to know the purpose for which A-1 was issued. The purpose is clearly seen from A-1 wherein it is stated that "the problem of filling up the posts of Loco Running Supervisors on account of drop in emoluments of running staff on coming over as Loco Running Supervisors has been



engaging attention of Railway Board for quite some time". So it is in this background A-1 was issued. From a reading of A-1 it is clearly seen that the interest of those Running Staff who come as Loco Running Supervisors is protected according to the nature of duties they perform. Crew Controllers and Power Controllers perform duties different from that of Loco Inspectors. It is on this basis different benefits are granted to Power Controllers/Crew Controllers and to Loco Inspectors. It is true that Loco Inspectors get comparatively better monetary benefits than Power Controllers and Crew Controllers as per A-1 but A-1 provides sufficient safeguard in this aspect. Para 3.5 of A-1 says that "no person shall, however, be posted as Power Controller/Crew Controller during the last two years of his service, and during this period, he would be compulsorily posted as Loco Inspector even by posting Loco Inspectors as Power Controllers/Crew Controllers and in case this is not arranged, the employee will have the right to report to the DRM/Head of Department for posting in Loco Inspector's category when just one and half years of service is left and it would be obligatory on the competent authority to do so". Thus, in the light of the provisions contained in para 3.5 of A-1 all those who are Power Controllers and Crew Controllers are given the right to get themselves posted as Loco Inspectors during the last two years of their service. For any reason the Administration has failed to do so, the Power Controllers and Crew Controllers have been given the right to get posted as Loco Inspectors being insisted on. In that situation there cannot be any grievance for one appointed as Power Controller/Crew Controller to say that what benefit is

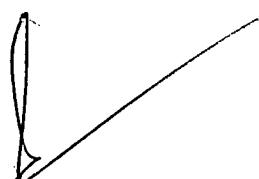


available to the Loco Inspector is in toto denied to him. It is specifically provided that he is entitled to and he can even insist on. In this case, there is a glaring aspect that the applicant requested the Railway Administration to exempt him from being posted as Loco Inspector. So what is guaranteed to the applicant as per A-1, he has relinquished and requested that he should be allowed to continue as Crew Controller. In such a situation how there can be a discrimination and violation of Articles of 14 & 16 of the Constitution?

16. The learned counsel appearing for the applicant drew our attention to the ruling in Pathumma and others Vs. State of Kerala and others and K.M.Kunhahammad etc. Vs. State of Kerala and others AIR 1978 SC 771 wherein it has been held that

"it is now well settled that what Article 14 forbids is hostile discrimination and not reasonable classification. Equality before law does not mean that the same set of law should apply to all persons under every circumstance ignoring differences and disparities between men and things. A reasonable classification is inherent in the very concept of equality, because all persons living on this earth are not alike and have different problems."

"It is now well settled that while Article 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differential must have a rational relation to the object sought to be achieved by the statute in question."

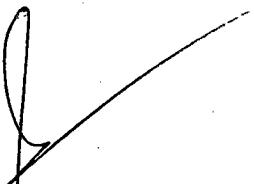


17. In the light of the said ruling, the reasonable classification is not at all held to be bad in law. What it says is that in order to pass the test of permissible classification two conditions should be satisfied and those are that the classification must be founded on an intelligible differentia and that that differentia should have a rational relation to the object sought to be achieved by the statute. Here A-1 is in question. Though learned counsel appearing for the applicant argued that Crew Controllers/Power Controllers and Loco Inspectors form one common class there cannot be a classification among them. There is no taboo for a classification but the only question is whether that classification is reasonable. As per A-1 the classification is made on reasonable premises considering the nature of duties to be performed by the Loco Inspectors and Crew Controllers/Power Controllers. It cannot be said that it lacks rational relation to the object sought to be achieved.

18. Learned counsel appearing for the applicant further drew our attention to the ruling in D.S.Nakara and others Vs. Union of India 1983 SCC (L&S) 145 wherein it has been held that:

"It is well settled that what Article 14 strikes at is arbitrariness because any action that is arbitrary must necessarily involve negation of equality and legislative and executive action may accordingly be sustained if it satisfies the twin tests of reasonable classification and the rational principle correlated to the object sought to be achieved".

19. We have already held that both the conditions are satisfied in this case.

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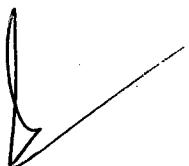
20. Learned counsel appearing for the respondents drew our attention to the ruling in Tamil Nadu Administrative Service Officers Association & Another etc. Vs. Union of India & Others 2000(2) SLR 659 wherein it has been held that when rules have been framed with inbuilt safeguards to keep at bay any eventuality, the challenge against the Rules should fail.

In this case in A-1, the built-in clause is provided.

21. In Premchand Somchand Shah and another Vs. Union of India and another and Dalapatlal and Co. and another Vs. Union of India and another 1991 2 SCC 48 it has been held that the right to equality under Article 14 is well settled and the said right ensures equality among equals and its aim is to protect persons similarly placed against discriminatory treatment. It means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed and that conversely discrimination may result if persons dissimilarly situated are treated equally.

22. As per A-1 those who are similar are treated alike. If the applicant's stand is accepted it will be a case of treating unequal equally which is also violation of the provisions of Article 14.

23. The principle of equality embodied under Article 14 of the Constitution does not take away the power to classify persons for legitimate purposes. It is competent to exercise discretion and make classification. Every classification is in



some degree likely to produce some inequality and mere production of inequality is not enough to offend Article 14 of the Constitution. Article 14 does not insist that legislative classification should be scientifically perfect or logically complete.

24. Accordingly OA is dismissed.

Dated 2nd August, 2001.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

aa.

Annexures referred to in this order:

- A-1 True copy of Railway Board order R.B.E.No.198/92 dated 25.11.92 less its annexures.
- A-7 True copy of letter No.J/P 509/V/J/M/88 dated 7.9.98 issued by the 3rd respondent.
- A-2 True copy of letter No.J/P 535/V/LRS dated 5.8.98 issued by the 3rd respondent along with Railway Board letter No.RBE 9/98 dated 9.1.98.
- A-3 True copy of office order No.J/MM 17/95 dated 28.11.95 issued by the 3rd respondent.