

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION No. 247 OF 2007

Dated the.....20. th June, 2008

C O R A M:

HON'BLE Dr. K. B. S. RAJAN, JUDICIAL MEMBER
HON'BLE Dr. K. S. SUGATHAN, ADMINISTRATIVE MEMBER

1. Ambili Suraj
W/o Suraj V Panicker,
Railway Quarter No.95/D,
Ganesh Giri, Shoranur.
2. Devaki Baiju,
W/o Baiju C.V.,
Railway Quarter No.301/F,
Shoranur.

(By Advocate : Mr. Ravi K Pariyarth)

.. Applicants

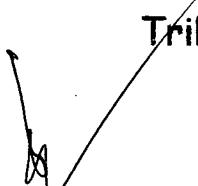
-Versus-

1. Union of India,
Represented by the General Manager,
Southern Railway, Park Town,
Chennai, PIN 600 003.
2. The Chief Personal Officer,
Southern Railway, Chennai.

Respondents

(By Advocate : Mr. Thomas Mathew, Nellimootttil & Varghese John)

The application having been heard on 10th June, 2008, the
Tribunal delivered the following on 20.06.08.



ORDER

(Hon'ble Dr.KBS Rajan, JM)

The question: When two advance increments hitherto granted under Rule 166 of IREM, for possessing additional qualification at the time of initial appointment were treated as pay for all purposes, can the same be modified by an administrative order by the respondents to the disadvantage of the beneficiaries of such advance increments.

[2] Brief facts of the case as admitted by both the parties are that the applicants are working as Staff Nurse (from 06-03-1999) and Nursing Sister (31-12-1994) respectively at Railway Hospital Shoranur coming under the Palghat Division of the Southern Railways. Both were granted two advance increments in accordance with the provisions contained in sub- para (iii) of Para 160 of the I.R.E.M. (Vol) 1, 1989 Edition, which reads as under:-

"Incentive: Staff Nurses who possess at the time of recruitment or acquire subsequently a degree in Nursing will be granted two advance increments."

The aforesaid advance increments were taken as pay for all purposes. However, the respondents in consultation with the Ministry of Health and Family Welfare as well as DOPT decided to treat as non absorbable increments vide Railway Board circular dated 28-02-2005 which reads as under:-

[Signature]

"ADMISSIBILITY OF TWO ADDITIONAL INCREMENTS (NON-ABSORBABLE) TO THE NURSING STAFF POSSESSING B.Sc. DEGREE AFTER FIXCATION OF PAY IN NEWLY REVISED PAY SCALES W.E.F.

01.01.96

PB Circular No.36/2005

RBE No.37/2005

[Copy of Board's letter No.PC-V/2003/1/7/6/1 dated 28.02.2005 from Director, Pay Commission, Railway Board, New Delhi, addressed to the General Managers, All India Railways and Production Units]

Admissibility of two additional increments (non-absorbable) to the nursing Staff possessing B.Sc. Degree after fixation of pay in newly revised pay scales w.e.f.01.01.96

The Nursing staff holding B.Sc. degree as additional qualification, appointed before 1/1/96 were extended the benefit of two advance increments in terms of IREM (Vol.I) 1989 Edition, para 166, sub-para (iii). The above scheme has been reviewed by the Ministry of Health and Family Welfare in consultation with the Department of Personnel and Training and it has been decided to continue the scheme. The matter regarding treatment of these increments had been under Examination in Board's office in consultation with Ministry of Health and Family Welfare.

2. It has now been decided that on electing to come over to revised scales under V CPC, the pay of the Nursing staff who were enjoying the benefit of up to two advance increments in the IV CPC pay scale as on 1st January 1996 may be fixed in the revised pay scale with reference to the pay in the pre-revised scale excluding the quantum of two advance increments enjoyed by them. After the pay is fixed in the revised scale V CPC) two additional increments at the revised rate (non-absorbable) may be granted in the revised scale.

The additional increments (non-absorbable) are not to be treated as pay for the purpose of allowances. However, past cases decided otherwise need not be reopened for the purpose of recovery, although pay in all cases have to be fixed and regulated as indicated above.

[This issues with the concurrence of Finance Directorate of Railway Board]"

In pursuance of the above circular the Divisional Office, Palghat have issued Annexure A-5 order dated Nil September,

2005, whereby the pay as of the applicants had been reduced as under:-

Applicant No. 1 Pay as on 06-03-1999: From Rs 5,300/- to Rs 5,000 + Rs 300

Applicant No. 2 Pay as on 01-01-1996: From Rs 5,150/- to Rs 5,000 + Rs 300

[3] Applicants have claimed that representations were made against the reduction in the pay scale but the same had not been responded to. Hence this O.A. on the following grounds:-

1. Taking away the benefit provided under the provisions of IREM is against law. The statutory provisions cannot be varied to the disadvantage of the applicants by a Railway Board circular.
2. Juniors working in Chennai continue to get their pay without any such depletion, and thus the applicants were discriminated.
3. Respondents had not responded to the representations.
4. Uniformity has not been followed inasmuch as in other Railways, the Railway Board Circular dated 28-02-2005 had not been put in vogue.
5. The benefit of treating advance increments as pay has been there since the time of their recruitment and hence, taking away the same is illegal (This is in the additional ground as per amendment application).

[4] Respondents have contested the O.A. According to them, there is no illegality and the decision was after consulting the Ministry of Health and Family Welfare and DOPT. As regards alleged discrimination, it has been stated that since the examples cited by the applicants are persons employed in Chennai where the



number of such Staff Nurses are more, it would take some time to revise their pay and thus, no discrimination is shown. As regards representations, it has been stated that the said Annexures were not received by the second respondent.

[5] Counsel for the applicants submitted that there is no justification in reducing the pay of the applicants and all the grounds as contained above have been reiterated. The counsel referred to the following decisions in support of his case:-

1. *U.P. Raghavendra Acharya & Others vs. State of Karnataka & Ors.* (2006) 9 SCC 630.
2. *KPEO Association vs. State of Kerala*, 2000(3) KLT 701.

[6] Counsel for the respondents has reiterated the contents of the counter.

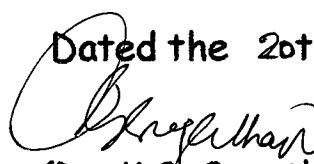
[7] Arguments were heard and documents perused. The rules provide for two advance increments right from the date of recruitment. This kind of advance increments has been rightly named as "incentives". The respondents have, by the recent order did not in fact withdraw the advance increments but excluded the same from the character of 'pay' consequent to which they have been added as personal pay, not qualifying for various allowances. The question is 'Can this be held legally valid?' The counsel for the applicant is right when he had relied upon the two judgments cited above. Especially, in the decision of KPEO Association, it has been held that any rules formulated effective from a retrospective date cannot take away the vested right. Here, the benefit available under a statute is sought to be taken away retrospectively by an administrative order, which is thoroughly impermissible. An aspect

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which has been there right from the beginning, which is in conformity with the provisions of statutory rules, cannot be taken away by an administrative order. In this regard, in its decision in *Shailendra Dania v. S.P. Dubey, (2007) 5 SCC 535* the Apex Court has held, " *If we find that two views are possible after interpreting the Rule, then the Rule would be interpreted keeping with the practice followed in the Department for a long time and thus the practice practically acquired status of rule in the Department.*"

[8] In view of the above, the O.A. is allowed. It is declared that Annexure A-5 order, whereby the additional increments initially granted to the applicant at the time of recruitment and hitherto treated as pay for other purposes, are now being treated as non-absorbable personal pay is quashed and set aside. The respondents shall not separate the two increments from the basic pay and status quo as existed prior to the issue of Annexure A-5 is ordered to be maintained. If there had been any difference in pay and allowances due to implementation of Annexure A-5 should be paid to the applicants, within a period of two months from the date of communication of this order.

[9] Under the circumstances, there shall be no orders as to cost.

Dated the 20th June, 2008

 (Dr. K.S. Sugathan)
 Administrative Member


 (Dr. K.B.S. Rajan)
 Judicial Member