

Before the Central Administrative Tribunal
Mumbai Bench

O.A.Nos: 956/95 & 798/96

pronounced this the 17th day of April 1997

CORAM:

HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

1. Shri Rashid Qureshi & 23 Ors. .. Applicants in O.A.956/95
2. Shri R.K.Shrivastav & 16 Ors. .. Applicants in O.A.798/96

By Advocate Shri Sureshkumar

-versus-

1. Union of India through General Manager Western Railway, Churchgate, Mumbai - 400 020.
2. General Manager, Western Railway, Churchgate, Mumbai - 400 020.
3. The Divisional Railway Manager, Bombay Central Division, Western Railway, Bombay Central, Bombay- 400 008.

By counsel Shri V.S.Masurkar .. Respondents

:- O R D E R :-

(Per M.R.Kolhatkar, Member(A))

As in these two OAs a common order is challenged viz. order dt. 16-6-1995 of the Western Railway DRM Mumbai on the subject "Increment of N.G.Staff-Mech.Loco(Rg)Dept. Counting of training period for increment on regular appointment" as a result of which the earlier pay fixation of the applicants has been revised downward and ordering recovery, the same are being disposed of by a common judgment.

2. In O.A. 956/95 there are 24 applicants.

In O.A. 798/96 there are 17 applicants. For illustration

purposes, reference is made to facts in O.A.956/95.

The contention of the applicants is that they were appointed on different dates as Trainee Drivers.

Thereafter they were appointed regularly as Drivers and they were given the pay scale of Rs.290-350 and that the respondents issued orders in October '93 at annexure A-6 in O.A. 956/95 giving them the benefit of increment during the training period.

Respondents by the impugned orders sought to withdraw the benefit which they are not competent to do; not only because no showcause notice was issued but also because as a matter of principle the employees are entitled to benefit of Railway Board orders which follow the orders of Ministry of Personnel on the subject of counting of training before regular appointment period for the purpose of drawal of increment.

In this connection reference may be made to Annexure A-7 which is reproduced below:

"No.E(NG)1/90/IGI/1 dt. 2-6-1992

Please refer to Board's letter of even number dated 4-2-91 and subsequent clarifications thereto dated 8.8.91, addressed to South Central Railway and circulated to all the Railways under Board's letter dated 15-11-91 on the above subject wherein it was clarified that Govt. of India's orders regarding counting of training period for the purpose of increments are effective from 1.10.1990 and the training period before 1.10.1990 will, therefore, not count for the purpose of increments. This matter has since been considered in the National Council/JCM and it has been decided with the approval of the President that the benefit of treatment of such training as duty for the purpose of increments may be allowed in the case of those railway servants also who had undergone such training on or after 1-1-1986. However, in such cases, the benefit of counting period

for pay will be admissible on notional basis from 1-1-1986 and on actual basis from 1-10-1990. "

3. Respondents have opposed the O.A. There are certain preliminary objections regarding the common application filed by 24 and 17 applicants challenging an order which covers employees in different categories totalling $44 + 45 = 89$. It is contended that the applicants were engaged as Trade Apprentices on different dates and they were appointed as Assistant Drivers on different dates and they were also subjected to different training periods. Hence a common application does not lie. It is also contended that the applicants had approached Regional Labour Commissioner(Central) which fact they suppressed. It is held that I am not inclined to dispose of the OAs on the basis of these preliminary objections and the common application stood admitted for disposal on merits.

4. On merits the respondents contend that the applicants were absorbed on different dates in the pay scale of Rs.290-350 which has been revised to Rs.950-1500. However, erroneously pay was fixed at Rs.1200/- w.e.f. 1-1-1986. This mistake has been rectified by the respondents and revised fixation has been done in the pay scale of Rs.950-1500. Since the applicants were recruited in the pay scale of Rs.950-1500 only, and therefore the revised fixation done by the respondents is correct. It is always open to the respondents to rectify the mistake so as to avoid loss to the public exchequer.

5. Regarding the contention of the applicants that applicants are entitled to increments from the date they were engaged as Trade Apprentices respondents contend that this is not so. They were

Trade Apprentices initially entitled to stipend plus dearness allowance. The Railway Board instructions on which applicants relied do not apply because those instructions related to regularly employed Govt. servants who undergo training after appointment. On the other hand as trade apprentice the applicants appointment counts from the date they were regularly appointed and the question of grant of increments during the period of trade apprenticeship training does not arise.

6. In this connection reliance is placed on Supreme Court judgment in the case of The Employees' State Insurance Corporation and another vs. The Tata Engineering & Locomotive Co.Ltd, AIR 1976 SC 66 in which at para 7 it is stated that:

"It is, therefore, inherent in the word 'apprentice' that there is no element of employment as such in a trade or industry but only an adequate well-guarded provision for training to enable the trainee after completion of his course to be suitably absorbed in earning employment as a regular worker."

Next, reliance is placed on The State of Gujarat vs. Maheshkumar Dhirajlal Thakkar, AIR 1980 SC 1167 which is also to the same effect. The C.A.T. Judgment of Sunil Kumar Singh and Others v. Railway Board and Others, (1991) 15 ATC 342, has also followed the ratio of Supreme Court judgments and it has been held that apprentices are not automatically entitled to employment in the Railways.

7. The respondents have filed certain appointment orders which show that applicants are appointed as

Apprentice Trainee on Rs.290/- p.m. as stipend plus dearness allowance admissible as per the rules. The counsel for the applicants on the other hand states that the same order refers to pay scale of Rs.290-350 and they should be deemed to have been appointed *ab-initio* as regular employees whose training counts for increment.

8. In the light of above discussion and keeping in view of the ratio of the Supreme Court judgment I am of the view that the claim of the applicants that they were regularly appointed from the date they were engaged as trade apprentices is not substantiated. The mere reference to pay scale does not avail. The applicants therefore are not entitled to the benefit of Railway Board instruction dt. 2-6-1992. The orders relied upon by the respondents dt. October, 1993 were based on an error and on receipt of clarification revised orders dt. 16-6-1995 were issued. It is well settled that Govt. employee is required to draw emoluments as per rules, and if there are any errors in earlier pay fixation it is always open to the Govt. department concerned to rectify the error so as to avoid unjust enrichment and loss to exchequer. The action of the respondents in issuing orders of revised pay fixation therefore cannot be faulted. However, in the facts and circumstance of the case the recovery of over payment may be staggered in convenient instalments as per rules. In my view the applicants are not entitled to any other reliefs.

9. OAs are therefore dismissed with no order as to costs.

Member(A)