

CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH.

ORIGINAL APPLICATION NO.977/1999.

Dated : 4-8-2006

P.K.Rai & 23 Ors. ...Applicants

Shri G.K.Masand ...Advocate for
Applicant.


v.

Union of India & Ors.. ...Respondents.

Shri Shri S.C.Dhawan ...Advocate for
Respondents

Coram : Hon'ble Shri A.K.Agarwal, Vice-Chairman,
Hon'ble Shri Muzaffar Husain, Member (J)

- (i) To be referred to the Reporter or not?
- (ii) Whether it needs to be circulated to other
Benches of the Tribunal?
- (iii) Library?


(A.K.AGARWAL)
VICE-CHAIRMAN

B.

CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH.

ORIGINAL APPLICATION NO.977/1999.

Friday, THIS, THE 4th DAY OF AUGUST, 2006.

Hon'ble Shri A.K.Agarwal, Vice-Chairman,
Hon'ble Shri Muzaffar Husain, Member (J).

1. P.K.Rai,
2. V.R.Chavan,
3. V.J.Patil,
4. H.C.Bhalla,
5. J.S.Rudraswamy,
6. V.K.Sharma,
7. Indrajit Ghosh,
8. A.S.Pandey,
9. Kailash Yadav,
10. M.K.Sengar,
11. A.K.Gautam,
12. Purushottam Ahiab,
13. Ujwalkumar Ghosh,
14. S.K.Agnihotri,
15. C.R.Patel,
16. Jasi Joseph,
17. Askhilesh Bodara,
18. Rampal Singh,
19. K.K.Pandya,
20. S.P.Pathe,
21. S.K.Sharma,
22. Vinod Kumar Thakaral,
23. R.N.S. Yadav,
24. D.K.Sinha,

(All applicants are
working under Chief
Workshop Manager,
Matunga,
Mumbai - 400 019.

...Applicant.

(By Advocate Shri G.K.Masand)

v.

1. The Union of India,
through General Manager,
Central Railway,
Mumbai.
2. Chief Workshop Manager,
Central Railway,
Matunga,
Mumbai - 400 019.
3. FA & CAO,
Central Railway,
Mumbai.

(By Advocate Shri S.C.Dhawan)

: O R D E R :

{A.K.Agarwal, Vice-Chairman}

This O.A. has been remitted back to the Tribunal by the High Court of Judicature at Bombay vide its order dt. 7.4.2006 given while disposing of Writ Petition No.7124/2003. This O.A. was filed by 24 applicants seeking direction to respondents to fix their pay in the revised pay scales based on the recommendations of the Vth Pay Commission after giving them the benefit of two increments as per the orders of the Railway Board.

2. The facts of the case, in brief, are as follows. All the applicants were directly recruited for the post of Apprentice Mechanic by the Railway Recruitment Board (RRB). Their training commenced from 1993-94 and was completed after 1.1.1996. All the applicants were appointed as Apprentice Mechanic on the dates varying from 29.9.1993 to 24.12.1993. The completion of two years training by different applicants was on dates from 28.9.1995 to 23.12.1995. Thus, all the applicants completed their training period before 1.1.1996 and the applicants were given posting by the Railways on the dates ranging from 30.1.1996 to 5.7.1996. It is the contention of the applicants that since they were appointed on a regular basis as Chargeman 'B' only after 1.1.1996, the advantage

of two increments at the time of fixation of pay in accordance with the guidelines of the Railway Board has to be given in the new revised pay scale only. In fact, the pay of the applicants was fixed in the corresponding replacement scale i.e. Rs.5000-8000 at the stage of Rs.5,300/- by giving advantage of two increments. The applicants' were working at Matunga Workshop and according to them the pay fixation in other unit also was done in the same manner. The Works Manager, Matunga after fixing the pay of applicants at Rs.5,300/- on provisional basis sought clarification from the Headquarters. However, in the clarification it was indicated that the pay of the applicant should be fixed at Rs.5000/- as on 1.1.1996. Aggrieved by such action, the applicants have approached this Tribunal.

3. Learned counsel for the applicant Shri G.K. Masand stated that as per Rule 140 of IREM 50% of the vacancies in the category of Chargeman 'B' are filled by induction from open market through RRB. There is no dispute that all the applicants had successfully cleared the exam of RRB and thereafter joined as Apprentice Mechanic. The learned counsel drawing our attention towards the provisions Chapter XIX of IREM relating to apprentices stated that one becomes eligible for appointment to a working post only after successfully completing the

training. During the period of training they are not entitled for the regular pay scale of the post, but are given only stipend plus allowances as may be prescribed from time to time. The learned counsel stated that the railways do not give any guarantee of employment to the persons recruited as apprentice which is very clear from the provisions mentioned in Rule 1914. Further, an apprentice can be absorbed against a working post only after successful completion of his apprenticeship/training period. The learned counsel stated that whenever there is delay in issuing office orders owing to administrative reasons, then the apprentice is to be paid only stipend for the intervening period. The learned counsel contended that all these provisions amply demonstrate that a person directly recruited as apprentice will be entitled for regular pay scale only when he joins the post after the completion of all essential formalities. Even when there is a delay on account of administrative reasons he is only paid stipend for the intervening period and not given the pay scale.

4. The learned counsel for the applicant submitted that normally the period of training is not counted for the purpose of increment. However, as per instructions issued by Railway Board vide circular dt. 4.2.1991, after consideration of the

matter in the National Council (JCM) it was decided to treat the training period as duty for the purpose of drawing increments. The learned counsel stated that keeping in view the length of training period which is two years, the applicants were rightly given two increments in the initial pay scale of Rs.5,000- 8000 applicable from 1.1.1996. The learned counsel stated that all the applicants were posted in the regular post only after 1.1.1996 as is evident from the chart given by the respondents in the reply to Misc. Petition. 23 applicants were appointed between 19.1.1996 and 13.2.1996 and only one applicant viz. Shri Purushottam Ahiab was appointed on 5.7.1996.

5. The learned counsel contended that when the applicants had joined the regular post only after 1.1.1996, the date from which pay scales recommended by V Pay Commission were granted, there is no question of giving them advance increments in the old pay scale of IV Pay Commission. Because before 1.1.1996 they were not in the regular service of the Railways. The learned counsel contended that Railways do not give any guarantee of employment even after successful completion of Apprentice Training. Even in the case of applicants, with regard to whom a decision for a regular employment is taken, but there is a delay on administrative reasons, only stipend is paid for

the extended period and they are not eligible for regular pay scale. Under such circumstances, the action of respondents in granting the applicants pay fixation on notional basis in the pay scales of IV Pay Commission and giving two increments in that scale is contrary to rules. The initial fixation of pay of applicant at the rate of Rs.5300/- p.m. w.e.f. 1.1.1996 was in order. Subsequent action of respondents in revising the pay to the level of Rs.5000/- deserves to be set aside.

6. The learned counsel for respondents Shri S.C. Dhawan stated that no weightage of the training period was given for the purpose of drawing increments before the Railway Board issued a circular on 4.2.1991 in pursuance of DOP&T O.M. dt. 22.10.1990. The learned counsel drawing our attention towards the provisions of Apprenticeship under IREM Vol.II stated that an Apprentice means person who is deputed for training with a view to employment in government service and who draws the stipend during the training period, but he is not employed in or against a substantive vacancy of a cadre. However, as per Railway Board letter dt. 4.2.1991 training period undergone by such person is to be treated as duty for the purpose of increment. Because of such provision the period of tranining, which was two years, was counted as duty and two increments were granted for their training

period. According to these instructions, the training period is notionally treated as duty. The learned counsel stated that the Railway Board Circular dt. 4.2.1991 was essentially issued to put departmental candidates at par with direct recruits for the purpose of increments.

7. The learned counsel for the respondents continuing his submissions stated that the O.A. was earlier dismissed by the Tribunal by holding that pay fixation of the applicant at the level of Rs.5,000/- was in order. It was observed by the Tribunal in its order dt.4.8.2003 that the object of this policy was to remove the perpetual disadvantage with non-gazetted departments and the technical staff were put to vis-a-vis a non-technical staff recruited along with them. Although, initially the pay of the applicant was fixed at Rs.5,300/- by the local Accounts Department, but when it was brought to the notice of FA & CAO, directions were issued to rectify the mistake and fix the initial pay at Rs.5,000/- p.m.

8. The learned counsel for respondents stated that on counting of training period for the purpose of increment the Integral Coach Factory, Chennai had sought following clarification from the Railway Board vide letter dt. 19.11.1999 whether :


"(a) the stand taken by Personnel Branch in allowing 'the increments for the period of training spent before 1.1.1996' in the revised

scales and the consequential stepping up of pay of seniors on par with the junior who was appointed later and absorbed after 1.1.1996 is correct (OR)

(b) the Finance opinion of it being a "non-existent anomaly" and its interpretation of pay fixation on 1.1.1996 or the date of absorption of the junior awarding the increment in the pre-revised scales notionally and then bringing them to V PC scales is correct".

The Railway Board vide its letter dt. 16.12.1999 replied that the opinion given by the Associate Finance is in order. The learned counsel contended that in view of such clarification the action taken by the respondents is in order and the O.A. deserves to be dismissed.

9. We have heard both the learned counsel and have gone through the material placed on record. It is not disputed that as per provisions contained in FR and IREM the period spent on apprenticeship training is not counted for the purpose of increment. As per provisions contained in F.R. 26 only duty in a post on a time scale counts for increments in that time scale. Even the circular of the Railway Board dt.4.2.1991 specifically mentions that :

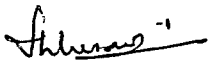
 "As such, the training period during which a Government servant is not remunerated in the scale of pay attached to the post cannot be treated as duty".

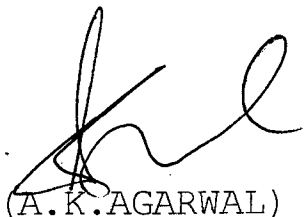
10. Thus, as far as rule position is concerned it is quite clear that the period of apprenticeship training during which one is entitled only for

stipend, cannot be treated as duty. As per provisions of FR9 (6)(A)(i) the services as a probationer or apprentice can be treated as duty provided that service as such is followed by confirmation. In the present case, the applicants were not given any guarantee of regular appointment and as such there was no question of treating the period of training in the category "service as an apprentice". Nevertheless, it is a fact that the Railway Board gave a relaxation vide its circular dt. 4.2.1991. An authority giving relaxation from the provisions of rules can certainly make it subject to certain conditions. On the subject relating to giving of notional increments, the Railway Board has clarified that such increments are to be given in pre-revised scales. One cannot argue that the relaxation of Rules should be given in a manner which is more advantageous to beneficiaries. The Railway Board could have given relaxation of giving two notional increments even in the revised scale of pay, but they have done it otherwise. Such decisions are always taken keeping in view the basic objective. The Railway Board letter dt. 4.2.1991 was issued essentially to remove disparity between technical and non-technical staff since the latter is required to undergo training from to time and not counting such period as duty was prejudicial to their interest.

We therefore do not see any legal infirmity when respondents have selected one out of two options available to them.

11. Keeping in view the analysis of facts of the case in foregoing paragraphs, we hold that the action of the respondents in giving notional increments for the period of apprenticeship in the pre-revised scale does not suffer from any legal infirmity. The O.A. is therefore dismissed. No order as to costs.


(MUZAFFAR HUSAIN)
MEMBER (J)


(A.K. AGARWAL)
VICE-CHAIRMAN

B.