

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this Thursday the 16th day of June, 2003

Coram: Hon'ble Mr.V.K.Majotra - Member (A)
Hon'ble Mr.Shankar Raju - Member (J)

O.A.999 of 1999

1. N.K.Mishra,
working as Motorman,
Western Railway, Mumbai Division,
Mumbai.
R/o Western Railway Quarters,
No.49/7, Railway Colony,
Kandivili (West) 400 067.
2. K.S.Vishwanathan,
Motorman,
Western Railway,
Mumbai Division, Mumbai.
R/o B-206, Sujata Apartments,
Kopar Road, Dombivili,
District Thane.
3. Anjanee Kumar,
working as Motorman,
Western Railway, Mumbai Division,
Mumbai.
R/o Suvarna Bhavan, 2nd Floor,
Near Shirodkar Hospital,
Manpada Road,
Dombivili (East),
District Thane.
4. Mukesh Prasad,
Motorman,
Western Railway,
Mumbai Division,
Mumbai.
R/o 45/3, Railway Colony,
Kandivili,
Mumbai.
(By Advocate Shri G.S.Walia) - Applicants

Versus

1. Union of India, through General Manager, Western Railway, Headquarters Office, Churchgate, Mumbai. Pin Code - 400 020.
2. Divisional Railway Manager, Mumbai Division, Western Railway, DRM's Office, Mumbai Central, Mumbai - 400 008.
(By Advocate Miss D.Fernandez on behalf of Shri Suresh Kumar) - For the Respondents

O R D E R

By Hon'ble Mr. Shankar Raju, Member (J) -

M.A. for joining together is allowed. Assailed herein Respondents' order dated 9.8.1999 and 26.11.1998 refixing the pay of the Applicants working as Motorman in revised scale after 1.1.1996 and also rejecting the representation an ordering recovery on account of earlier wrong fixation of pay. Quashment of the aforesaid order has been sought and with further directions to fix the pay on formula applicable as on 1.1.1996 arrived at by Fifth Central Pay Commission (in short Fifth CPC) with all consequential benefits.

2. Applicants who are selected Apprentices Motormen were appointed on stipend of Rs.1600/- plus other allowances including DA and CA in the month of March, 1995 and after completion of training were absorbed on different dates, March, April and May, 1996.

3. As per the Fifth Pay Commission the fact of which had come into operation w.e.f. 1.1.1996, the pay scales have been revised. Accordingly the respondents by an order dated 7.4.1997 fixed the pay of the Applicants on absorption as Motormen and an increment of Rs.50/- was added and basic pay was fixed at Rs.1650/- in the pay scale of Rs.1600-2660/-.

4. By an order dated 8.6.1998 Applicants were confirmed as Motormen in the pay scale of Rs.5500-9000/- w.e.f. 1.1.1996 as per the revised Pay Rules.

5. By the impugned orders the pay of the Applicants was reduced and they were not given benefits of fixation of pay as per Fifth CPC w.e.f. 1.1.1996.

6. A representation made by the Applicants to fix their pay as 5790/- with next stage of increment as Rs.5850/- the pay which should have been fixed as aforesaid on 1.3.1996 was fixed at Rs.5675/-. The Respondents have proposed recoveries on account of wrong fixation as to the arrears which has been stayed by this Court on 10.12.1999.

7. The learned counsel for the Applicants Shri G.S.Walia contends that the Applicants have been discriminated arbitrarily in violation of Article 14 and 16 of the Constitution of India and so far as similar treatment has not been meted out to them vis-a-vis regular serving Railway employees. It is in this conspectus, it is stated that once the increment is accorded to them and the period of Apprenticeship is to be treated as qualifying service for pension, the same should have been granted towards other benefits and once they have been accorded pay, fix pay scale on absorption, the formula evolved by Fifth CPC would have been applied for revision of their pay scales.

8. It is further stated that without affording an opportunity and putting the Applicants to notice, their pay has been refixed and revised to their detriment causing civil consequences. The learned counsel for the Applicants state that

the decision in Rashid Qureshi & 23 others Vs. Union of India, OA 956 of 1995 decided on 17.4.1997 would have no application in the present case as therein the issue was of increment to the Apprentice. Shri Walia relying on the decision of a Division Bench in OA 515/98 Raghunath Shankar Borse Vs. Union of India decided on 21.12.2001 contends that in identical situation the period has been observed to be treated i.e. training period of Apprentice towards qualifying service. Further it is contended that Apprentices who were imparted training along with Applicants, their pay was fixed on the initiation of the pay scale but revised by a memorandum dated 15.10.1999. Applicants who were in all four and equal in all respects have been denied similar treatment.

9. Lastly it is contended that the pay fixation done by the Respondents earlier is without any mis-representation, fraud and played by the Applicant and was not at all attributable to them as such no recoveries can be affected as per the decision in the case of Sahib Ram Vs. State of Haryana and others, 1995 SCC (L&S) 248.

10. On the other hand the Respondents' counsel contested the OA and vehemently opposed their contentions drawing our attention to the decision of the Division Bench in OA 531 of 2000 Ramesh Kumar Vs. Union of India and another decided on 28.6.2002 wherein it has been held that an Apprentice is deemed to be regular employee from the date of absorption and would be

accorded all the benefits from that date and also that an Apprentice does not hold a substantive post. Further it is stated that even if some of the employees have been accorded benefit dehors the rules will not debar the right of the Applicants to claim parity and similar treatment. By referring to the Railway Board's letter dated 26.11.1997 it has been contended that Apprentices are not Railway servants as such Railway Servants (Revised Pay) Rules are not applicable to them and as the same was inadvertently given assuming them to be Railway servants, the mistake has been rectified by Government which requires no show cause notices to the Applicants. While referring to the decision in Qureshi's case (supra), it is contended that the case in all four covers the present issue and the Applicants, except increment cannot be given the benefit of service rendered by them as Apprentices as the Applicants have been absorbed on or after 10.3.1996 and were entitled to stipend of Rs.1600/- plus DA which was not a definite scale of pay and not being regular service there was no question of their pay being fixation of pay as on 1.1.1996 but on absorption they have been correctly fixed in the pay scale of Rs.5500 - 9000/-.

11. We have carefully considered the rival contentions of the parties and perused the material on record. Para 1902 of the Indian Railway Establishment Manual Volume II defines an 'Apprentice' to be a person deputed for training with a view to employment in Government service drawing stipend at monthly rates from Government during such training but is not employed in or

against substantive vacancy in a cadre of a Department. Para 103 (iv) of Indian Railway Establishment Manual Vol.I also defines 'Apprentices' as being not employed in or against a substantive vacancy.

12. From the perusal of the appointment letter issued by the Respondents to the Applicants, it appears that the Applicants have been offered appointment as Apprentices in the scale of Rs.1600-2660/- at stipend of Rs.1600/- per month plus other admissible allowances, the payment to a permanent post is an event subsequent on the basis of seniority and subject to completion of prescribed period of probation. As per the Revised Pay Rules, 1997 which is applicable to Railways as well, existing scale has been defined under Rule 3 (2) as present scale applicable to the post held by the Government servant, whether in substantive or officiating capacity.

13. Rule 5 of the Revised Pay Rules (ibid), provides that Government servant shall draw pay in the revised scale applicable to the post to which he is appointed. If one has regard to the aforesaid in Apprentices cannot be said to be a holder of a substantive post in a cadre and cannot be equated with a serving Railway servant. The ^kCondition precedent for grant of revised pay scale is drawing of a scale attached to a post to which he is appointed. The Apex Court in the case of The Employees' State Insurance Corporation and another Vs. The Tata Engineering & Co. Locomotive Co.Ltd. and another, AIR 1976 SC 66 held that in

Apprenticeship there is no element of employment but it is a training to enable the trainee after completion of his course to suitably observe. As held by the Division Bench in Ramesh Kumar (supra), having regard to Para 302 of the Indian Railway Establishment Manual where the seniority among the direct recruits is to be reckoned from the date of regular appointment against the regular post, apart from DA and Compensatory Allowance and also increment; an Apprentice cannot be treated as holder of a substantive post in the cadre.

14. As admittedly on 1.1.1996 revised pay rules were applicable to a scale attached to a substantive post. Applicants who are absorbed on or about March, 1996 cannot be given the revised pay scale as they cannot be treated to have been enjoying a definite scale of pay as the pay scale is always attached to a post before absorption, the status of Apprentice is not a serving Railway employee but only on a traininee. It is on absorption that an Apprentice is absorbed against the substantive post.

15. The decision cited by the learned counsel of the High Court of Judicature at Bombay in Ramchandra Baliram Mulgaonkar and others Vs. The State of Maharastra, 1986 (3) SLR 592 would have no application and is distinguishable as there the claim is regarding a probationer who was appointed against a substantive post.

16. We have also perused the decision in Qureshi's case where even on the issue of increment what has been held is that claim of the Applicants therein were regularly appointed from the date they were engaged as Trade Apprentices is not substantive. The mere references to pay scale is of no avail.

17. In so far as revision of the orders passed by the Respondents superseding their earlier orders where the Applicants' pay has been fixed as on 1.1.1996 is concerned, being an order passed dehors the rules by way of an inadvertent mistake, Government has every right to correct the same and this does not require an opportunity to show cause.

18. At a belated stage the learned counsel for the Applicant filed an affidavit contending that vide order dated 10.3.1995 a departmental candidate Shri S.C.Agarwal and Mr.Sitoke have been included along with the Applicants Shri K.S.Vishwanathan having shown to be provisionally appointed as temporary Motorman on a stipend of Rs.1600/- and their pay has been fixed as per formula given by Fifth CPC vide letter dated 15.10.1999. In this view of the matter, discrimination has been alleged.

19. In reply to the aforesaid Respondents have produced letter dated 26.2.2000 wherein fixation of pay of Motorman arrived at on 15.10.1999 has been modified and their pay has been fixed from the date of their regular absorption after 29.3.1996 and thereafter.

20. Having regard to the rival pleadings, as the inadvertent mistake has been rectified in respect of similarly circumstanced, as contended by the Applicant, we do not find any hostile discrimination meted out to the Applicant and as such Articles 14 and 16 of the Constitution of India would have no application in the present case.

21. However, as the earlier pay fixation arrived at by the Respondents in case of Applicants is concerned; is not an outcome of any fraud or mis-representation played by them, moreover it is not at all attributable to them having regard to the decision of the Apex Court in the case of Sahib Ram's case (supra) in identical situation, the amount paid is ordered not to be recovered from them, we respectfully follow the same.

22. In the result, for the foregoing reasons, finding no infirmity in the orders passed by the Respondents, OA is disposed of with a direction to the Respondents not to recover the amount already paid to the Applicants. No costs.

S. Raju
(Shankar Raju)

Member (J)

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V.K. Majotra
(V.K. Majotra)

Member (A)