

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 108/91

Transfer Application No:

DATE OF DECISION 23-3-94

Shri V.R.Lal Petitioner

Shri G.S.Walia Advocate for the Petitioners

Versus

Union of India and Ors. Respondent

Shri N.Narayanan Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri M.R.Kohatkar, Member(A)

The Hon'ble Shri

1. Whether Reporters of local papers may be allowed to see the Judgement ? X
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? X
4. Whether it needs to be circulated to other Benches of the Tribunal ? X

M R Kohatkar
(M.R.Kohatkar)
Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

OA No. 108/91

Shri V. B. Dal,
Bombay

.... Applicant

Vs.

Union of India
Through Secretary,
Railway Board, New Delhi
and Others.

.... Respondents

CORAM : Hon'ble Shri M. R. Kolhatkar, Member (A)

Appearance :

Shri G. S. Walia, counsel
for the applicant.

Shri N. Narayanan, counsel
for the Respondents.

ORAL JUDGMENT

Dated : 23.3.1994

Per : Hon'ble Shri M. R. Kolhatkar, Member (A)

1. The applicant retired from the Railways on 30.11.1989 as a Senior Mechanical Engineer Group 'A' service. He is claiming benefit of the special pay in terms of Railway Board's letter No. E(P&A)/II/88 (RS-12) dated 16.9.1988 under title "Anomaly in the fixation of pay of Loco Supervisory Staff appointed prior to 1 Jan. 1986 with reference to juniors appointed after 1 Jan. 1986 and drawing more pay than the seniors." It appears as Exhibit 'A' Page 10 of the application and the same appears as Annexure R-1 to the written statement. Operative portion is reproduced below:

- i) " The pay of a senior loco supervisor appointed prior to 1.1.1986, as fixed in the revised scales of pay of Rs. 2000-3200, may be stepped up to the level of a junior drawing more pay in this grade,

appointed on or after 1.1.1986, with effect from the date junior is drawing more pay than the senior, this will, however, be subject to the condition that the notional pay of the junior in the revised (4th P.C.) scale of Rs. 2000-3200, hypothetically fixed on the assumption that the junior was also appointed to the pre-revised loco supervisory grade prior to 1.1.1986, is less than that of the senior.

- ii) The pay of a senior loco supervisor promoted to still higher pre-revised grades prior to 1.1.1986, and fitted in the replacement scale of Rs. 2375-3500, may be stepped up, with reference to the pay of the junior in scale Rs. 2000-3200 which has been stepped up under 2(1) above, with effect from the date of such stepping up of the junior."

2. Applicant says that by the relevant time i.e. to say on 1.1.1986, he was working ^{at} Bombay, in the pay scale of 2375-3500 (Pre-revised 840-1040). He was drawing Rs. 3050 in the above scale. However, another railway employee working in the same zone namely Shri R. N. Chaturvedi of Kota got the benefit of stepping of pay w.e.f. 8.10.86 vide statement at [Page 65] which is annexure to the letter dated 15.3.1989 (Page 63). It is issued as an Office order by the Divisional Railway Manager, Kota. The pay of the Shri R.N. Chaturvedi was Rs. 2900/- on 1.1.1986 but

considering that Shri K. L. Chaurasia, a junior working in Ratalam division was getting higher pay of Rs. 3300/- as on 8.10.1986, ^{the} pay of Shri Chaturvedi was stepped up to Rs. 3300 from 8.10.1986. So far as the applicant is concerned the benefit of stepping up was not given to him, in spite of the Railway Board's letter dated 16.9.1988. The applicant had represented on 12.12.1988 with reference to the case of Shri R. S. Gohil who got the benefit of stepping of pay with reference to Shri N.P. Oak who was drawing higher pay. This was prior to his retirement. After his retirement he sent another representation dated 21.1.1990 wherein the applicant referred to the case of Chaturvedi which had been decided earlier on 15.3.1989. There was no reply thereto. The application has been filed on 30.3.1991.

3. The applicant has challenged non-action of the respondents in not considering his representation and has asked for the relief of fixation of pay at Rs. 3300/- w.e.f. 1.10.1986, back wages, arrears of allowances and other pensionary benefits on pay fixation.

4. The respondents have opposed the application firstly on the ground of limitation, Secondly they have taken the stand as below vide para 4.3 of written statement.

" It is submitted that the applicant and

his vis-a-vis juniors were Loco Running Staff and subsequently promoted as Loco Supervisor. But since the seniority of the cadre junior field Inspector/Loco Foreman of scale Rs. 550-750(RS)/1600-2660(RP) consequent upon modification in terms of recommendations of 4th pay commission in scale Rs. 700-900/2000-3200(RP), was decentralised to the division, such stepping up of pay of staff for one division with reference to another division on the basis of integrity seniority list cannot be allowed".

5. Thus the basic contention of the respondents is that Applicant and Shri Chaturvedi belong to different seniority lists, that the cadre to which the applicant belongs is controlled by the respective divisions, that ^{Shri} R. N. Chaturvedi belongs to a different division (Kota and not Bombay) and that the same is the case in regard to Shri R. S. Gohil and therefore the applicant cannot challenge non-stepping up on the ground of discrimination. Subsequently the respondents have also pointed out in the counter affidavit to the rejoinder that order of the Kota division dated 15.3.1989 giving benefit of stepping up of pay to Shri R. N. Chaturvedi has subsequently been cancelled by the officer order dated 20.12.90 vide annexure R-II there to in which the same

ground has been given for Cancellation viz., stepping up of pay is permissible in respect of staff L ^{working} in one unit whereas order of stepping up issued by the Kota division was given with reference to employee of another unit.

6. With reference to the contention of the respondents, the applicant has stated that the issue regarding validity of the stepping up of pay granted to Shri Chaturvedi was challenged before the Principal Bench in the case of Kishorilal Vs. Union of India OA No. 125/91 and the Tribunal in its order dated 6.1.1993 has given a clear finding that prior to 24.4.1989 the seniority and selection for the Running Supervisors in the grade of Rs. 700-900/Rs. 2000-3200 was controlled by the headquarters and therefore the railways' action of stepping up of pay of petitioners in terms of letter dated 15.3.1989, who figured in the combined seniority list ^{was justified.} circulated on 13.2.1985. This seniority list appears at Page 39 of this application. Shri Kishorilal petitioner before Principal Bench appears at Sr. No. 76, Shri Chaturvedi at Sr. No. 83 and the Applicant in the present Petition at Sr. No. 18. The name of Shri Chaurasia does not figure in the seniority

list as it pertains to the year 1985. It is not disputed that he was promoted on 8.10.1986 and he was junior to Shri Chaturvedi.

7. Counsel for the respondents did not appear at the final hearing but the departmental officer who appeared brought to our notice communication dated 13.12.1993 from Government advocate in the Ministry of Law and Justice addressed to the Divisional Personnel Officer Kota which indicates that the department has gone up in SLP against the case of Kishorilal in the Supreme Court and the Supreme Court ordered ^{status-quo} ~~L~~ of the judgement.

8. The learned counsel for the Applicant has pointed out that the status-quo granted by the Supreme Court is not on merits and it is only on interim relief. Moreover present ^{of SLP} position is not known. Additionally, he relies on judgment in OA 2106/91 in "O.P. Chabra and Ors. Vs. Union of India" decided by this Bench on 24.12.1992 which in para 5 cross refers to the case of "Union of India Vs. K. L. Mahendiratta & Anr." decided by CAT, Principal Bench on 22.11.1992 in OA 469/92, SLP against which was dismissed by the Hon'ble Supreme Court on 19.11.1993 on the ground of delay as well as merits.

9. Coming to the issue of limitation we are not inclined to entertain the same at this late stage also keeping in view the fact that the applicant had been making representations both prior to retirement (dated 12.12.1988) and after retirement (dated 22.1.1990) and failing to get a reply from the railway administration he filed this application on 13.3.1991, thus showing reasonable diligence .

10. The decision in this case turns on whether the cadre to which the applicant belonged on the relevant date was a divisional cadre or it was headquarters controlled or Zonal cadre. In annexure - 2 to the rejoinder filed by the applicant there is a copy of the Western Railway's letter dated 22.4.1989. It shows that the cadre of Loco Foremen in the revised pay scale of Rs. 2000-3500 would be controlled by the headquarters. Circular dated 24.4.1989 is issued in the context of merger of grades and change in classifications and has prospective effect. The question, therefore, is whether the cadre prior to 24.4.1989 was headquarters cadre or whether it was divisional cadre. The seniority list filed by the applicant at Annexure-I to the rejoinder indicates that the cadre was headquarters controlled cadre.

11. Although the stand earlier taken by the

respondents was that consequent on decentralisation the cadres were made divisional cadres, no material has been produced to show that in fact there was a divisional seniority list and that it was operated. The finding of the Principal Bench in the case of Kishorilal is also that prior to 24.4.1989 the cadre of 700-900/2000-3200 was headquars controlled cadre. Since the cadre of 2375-3500 to which present Applicant belongs is a higher cadre (840-1040 Pre-revised) it could not be a divisional cadre.

12. So far as the interim relief by way of status-quo granted by the Supreme Court in the case of Kishorilal is concerned, We do not know what the present position of the case is and moreover, as pointed out by Applicant, in Mahendiratta's case in which the same issues are involved, Principal Bench held that Railway Board's clarification dated 14.9.1990 of its earlier circular dated 16.9.1988 was not correct and the SLP against this judgment has been rejected on merit. In the result we find merit in the case which we dispose of by passing the following order:

O R D E R

Application is allowed. The respondents are directed to step up the pay of the applicant to Rs. 3,300 with effect from 8.10.1986 with all normal

benefits of back wages and arrears of pay and allowances and other pensionary benefits ~~on~~ such as fixation of pay. We are not inclined to grant any interest thereon. This order should be implemented within 3 months of communication there of. No order as to costs.

M. R. Kolhatkar

(M. R. Kolhatkar)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Review Petition No.153/94 in
Original Application No: 108/91

Transfer Application No:

DATE OF DECISION: 28.4.1995

Union of India & Ors.

Petitioner

Shri M.S.Ramamurthy.

Advocate for the Petitioners

Versus

Shri V.B.Lal

Respondent

Shri G.S.Walia.

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri M.R.Kolhatkar, Member(A).

The Hon'ble Shri

1. To be referred to the Reporter or not ? ☒
2. Whether it needs to be circulated to other Benches of the Tribunal ? ☒

MR Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A).

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, BOMBAY.

Review Petition No.153/1994
in
Original Application No.108/1991.

Union of India & Ors. ... Applicants)
(Original Respondents)

V/s.

V.B.LAL. ... Respondent
(Original Applicant).

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

Appearances:-

Review Petitioners by
Shri M.S.Ramamurthy.
Review Respondent by
Shri G.S.Walia.

Tribunal's Order :-

[Per Shri M.R.Kolhatkar, Member (A)] Dt. 29.4.1995.

In this Review Petition, the Review
Petitioners/Original Respondents have sought review
of our Judgment dt. 23.3.1994. That was a case
in which ^{the} issue for examination was whether the
applicant who retired as Senior Mechanical Engineer
under the Rlys.
of Group 'A' service/was entitled to stepping up of
his pay in comparison with his junior Shri R.N.
Chaturvedi who drew a higher pay. This Tribunal
following the ratio of Kishorilal V/s. Union of India
decided by Principal Bench in O.A. No.125/91 held
that the relevant cadre was a divisional cadre and
that ~~the~~ other conditions for stepping up of pay
and
were fulfilled/ therefore, the applicant was
entitled to the stepping up of his pay in comparison
with his junior. The Review Petitioner contends that a
wrong factual assumption has been made by the Tribunal.
In ^{as} that on 1.1.1986, the original applicant was assumed ^{to be}

working in the pay scale of Rs.2375-3500, whereas, the correct position was that as on 1.1.1986 the original applicant was working as Assistant Mechanical Engineer in the scale of Rs.2000-3500 in Gazetted Group 'B' post and not in Non-gazetted Group 'C' post. It is contended that on 1.1.1986 or on 8.10.1986 the original applicant and Shri R.N.Chaturvedi did not belong to the same cadre, because Shri R.N.Chaturvedi was in the Non-Gazetted Cadre in the 'C' class. The original applicant was promoted to Gazetted cadre of Group 'B' on ad hoc basis w.e.f. 13.4.1984 and regularised in the same post w.e.f. 16.4.1985 much before the relevant date. In this connection the Review Petitioner has pointed out that in the O.A., the Respondents had presented^a comparative statement from which what is stated by the Review Petitioner is borne out.

2. The Review Petition has been opposed by the original applicant who has contended that the panel in which he was promoted on 13.4.1984 was provisional and the regular post held by the applicant was in the Non-gazetted cadre, and therefore, the conditions specified in the relevant circular have been fulfilled. The original applicant also relied on the decision of Calcutta Bench of the Tribunal on the same point against which SLP was reportedly dismissed on merits.

3. We have considered the matter. There is no doubt that the case was decided ~~xxx~~ ex-parte in

...3.

the absence of counsel for the Respondents. It is also true that along with their statement dt. 17.2.1994 the original respondents had filed a comparative statement showing the particulars relevant to Shri V.B.Lal (original applicant) ^{and} Shri R.N.Chaturvedi (with whom he compared his case) and did indicate that as on 1.1.1986 Shri V.B.Lal was working in ^{Rs. 2000-3500} Class II ^{was working} Class III whereas, Shri R.N.Chaturvedi ^{in the} scale of Rs.2375-3500. There is, therefore, an error apparent on the face of the record, inasmuch as, an important document on the file which was available at the time of deciding the OA was lost sight of partly because of the ex parte hearing. It is also true that the case of Kishorilal on which reliance was placed had stated while deciding on the nature of the cadre that if the cadre Rs.700-900 was a Divisional cadre then there was all the more reason why the cadre Rs.840-1040 ^{treated} has to be a Divisional cadre. The distinction in the rank viz. one scale was a scale belonging to the Gazetted line (Class II Group 'B') and the other though ^a higher scale was a scale on the Non-gazetted line was lost sight of. In any case, the question to be decided is as to whether the three conditions which were specified in the Railway Board letter dt. 16.9.1988 were fulfilled. The relevant condition is that both the junior and senior employee should belong to the same cadre and the post in which they are promoted are in the same cadre. This basic condition is not fulfilled in comparison of the cases of Shri V.B.Lal and Shri R.N.Chaturvedi. We are, therefore, of the view that this is a fit case for review of our order and

accordingly we review the same. We therefore dispose of this review petition by passing the following order:

ORDER

The judgment dated 23-3-94 is reviewed. The direction to step up the pay of the applicant to Rs.3,300/- w.e.f. 8-10-1986 with all normal benefits of back wages and arrears of pay and allowances and other pensionary benefits ~~are~~^{is} quashed and set aside. The O.A.108/91 is dismissed with no order as to costs.

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M.R. Kolhatkar
(M.R. KOLHATKAR)
Member(A)