

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. 28.4.1995.

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 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 that on 1.1.1986, the original applicant was assumed as 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 ~~not~~ ex parte in

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 and Shri V.B.Lal (original applicant)/Shri R.N.Chaturvedi (with whom he compared his case) and did indicate that Rs.2000-3500 as on 1.1.1986 Shri V.B.Lal was working in 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 treated all the more reason why the cadre Rs.840-1040 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 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:

O R D E R

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.

M.R.K. Kolhatkar

(M.R. KOLHATKAR)
Member(A)

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