

03/08/92

AP 1003/92

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

1. ORIGINAL APPLICATION NO. 857/92.
2. ORIGINAL APPLICATION NO. 1021/92.
3. ORIGINAL APPLICATION NO. 1025/92.
4. ORIGINAL APPLICATION NO. 1103/92.

, this the 7th day of July 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A).

1. Original Application No.857/92.

S.K.Jain,
63, Sambhaji Nagar,
Opp. Nahatali Mill,
Varangaon Road,
Bhusaval,
Jalgaon - 425 201.

...Applicant.

2. Original Application No.1021/92.

S.J.Mohammed,
Bata Building,
1st Floor,
Main Market Road,
Bhusaval - 425 201.

...Applicant.

3. Original Application No.1025/92.

D.B.Jahagirdar,
27-B "Madhugandh"
Professor Colony,
Jamner Road,
Bhusaval - 425 201.

...Applicant.

4. Original Application No.1103/92.

1. N.K.Singh,
2. L.T.Bendale,
3. E.B.Godse,
4. J.S.Choudhary,
5. C.M.Mohrill,
6. H.S.Sandhu,
7. M.C.Sharma,
8. V.D.Salunke,
9. D.A.Hiwale,
10. H.S.Padam,
11. U.C.Bhatnagar,
12. N.G.Kulkarni,
13. D.N.Chopde,
14. A.K.Ahluwalia,
15. A.B.Rashatwar,
16. A.K.Singh,
17. A.G.Harnev,
18. P.S.Sharma,
19. S.B.Rao,
20. V.V.Jawdekar,

21. V.R.Kavra,
22. J.E.Rodrigues,
23. Z.T.Lohar,
24. S.S.Choudhari,
25. C.N.Deshpande,

Address for service of
notices of all the
applicants :
C/o. N.K.Singh,
D-229, Railway Filter House Road,
Bhusaval,
Dist. Jalgaon - 425 201.

...Applicants.

(By Advocate Shri Y.R.Singh)

Vs.

1. Union of India, through
General Manager,
Central Railway,
Bombay V.T.

...Respondents
in all the
4 OAs.

2. Senior Divisional Accounts Officer,
Central Railway,
Bhusaval.

...Respondent
in OA 857/93.

3. Chief Personnel Officer,
Personnel Branch,
Central Railway,
Bombay V.T.

...Respondents
in all the
4 OAs.

(By Advocate Shri S.C.Dhawan)

: O R D E R :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

These are four cases filed by the applicants claiming the same relief. Respondents have filed reply opposing all the applications. Subsequently, some amendments have been carried out only in O.A. 857/92 and the learned counsel for the applicant submitted that he will adopt the said amendment to all the other OAs. We have heard Mr.Y.R.Singh, the learned counsel for the applicants in all the cases and Mr.S.C.Dhawan, counsel for the Respondents.

2. The first three OAs are filed by the respective

applicants S.K.Jain, S.J.Mohammed and D.B.Jahagirdar, whereas, the fourth case O.A. 1103/92 has been filed by 25 applicants viz. N.K.Singh and 24 Ors.

The common case of the applicants briefly is that they were appointed as Foreman and came to be promoted as Driver 'C', then from Driver 'C' they came to be directly promoted as Loco Supervisor, prior to 1.1.1986. After 1.1.1986 they were fixed in the revised pay scale of Rs. 2,375-3,500. It is their further case that one P.N.Kareer who was a Driver in Jabalpur Division was promoted as a Junior Loco Running Supervisor few months after 1.1.1986 and in particular on 25.9.1986, his pay was fixed at Rs.3,200/- in the revised pay scale of Rs.2,000-3,200. His pay, was therefore, higher than the applicants who were working as Senior Supervisors and had been promoted long back prior to 1.1.1986. Then these Senior Supervisors made a grievance to the Administration, subsequently the Administration issued orders fixing the pay the applicants on par with their junior Mr.P.N.Kareer as provided under the rules. One of the rules is that the pay of the senior should be stepped up to the same pay as that to the junior in cases where the junior is getting more pay than the senior. After having fixed the pay of the applicants on par with their junior P.N.Kareer, now the Administration has decided to again revise the pay of the officials to the original pay drawn by them and they have taken steps to recover the excess amount paid to applicants. Most of the applicants have retired and the excess amount has been recovered from the gratuity due to them. Therefore, the

applicants have filed this OA for a direction to the respondents to restore the pay of the applicants to the original pay which had been fixed on par with the pay of their junior P.N.Kareer and for a direction to the respondents not to make any recoveries from the retirement dues of the applicants and release the retirement dues forth with.

3. The respondents in the reply have asserted that applicants are not entitled to fixation of higher pay scale on par with their junior P.N.Kareer as per rules. It is stated that as per Rule 1316 of Indian Railway Establishment Code (for short, IREC) the pay of the applicants could not have stepped up to be on par with the pay of P.N.Kareer. The applicants and P.N.Kareer did not belong to same seniority group and therefore, they were not entitled to stepping up of pay. Number of reasons are given in the written statement to point out that the stepping up of pay of the applicants was not as per rules and therefore, action has been taken to correct the mistake and fix the pay of the applicants as done previously and steps has been taken to recover the excess amount paid to the applicants.

4. Though the records and these cases are very bulky and contains number of pages of pleadings and number of documents, we do not find it necessary to consider them in detail since the point is covered by a direct authority of the Supreme Court by a recent Judgment of the Supreme Court.

5. The learned counsel for the applicant maintained that the pay of the applicants having been already stepped up on par with P.N.Kareer, the same could not be revised or reduced to the dis-advantage of the applicants. It was further contended that there are number of judgments of different benches of this

Tribunal which have upheld the case of Senior Loco Supervisors getting their pay stepped up on par with the pay of Karez and those judgments have become final and therefore respondents cannot now take steps to recover alleged excess payment made to the applicants. The learned counsel for the applicant also took us through portions of pleadings and number of documents and number of judgments of various Benches of this Tribunal in support of his contention. On the other hand, the learned counsel for the respondents pointed out that though different Benches of the Tribunal have given relief to many of the officials, the matter is now set at rest by the recent Judgment of the Supreme Court in O.P.Saxena's case and hence the action of the administration in recovering the excess amount from the applicants is fully justified and does not call for interference.

6. In the light of the arguments addressed before us, the short point for consideration is whether the action of the Railway Administration in taking steps to recover the excess amount paid to the applicants is justified or not.

7. The learned counsel for the applicants brought to our notice number of judgments of Division Bench of this Tribunal, in particular of the Principal Bench, New Delhi, Jabalpur Bench, Hyderabad Bench etc. where a view has been taken that if junior is getting more pay senior should get the same pay and directed the administration to step up the pay of the seniors. It is also brought to our notice that in some cases the Department filed SLP in the Supreme Court which came to be dismissed. In all those cases applicants have got the benefit of the orders of the Tribunal in stepping up their pay. That is how, even the pay of the applicants in these cases came to be stepped up by the

Railway Administration. But, now they have realised the mistake and taken steps to recover the amount from the applicants and that is how they have approached this Tribunal.

Though number of Benches of this Tribunal have taken such a view, that view is no longer a good law in view of the latest decision of the Supreme Court in Saxena's case which we have referred to presently in detail.

7. In the case reported in JT 1997 (6) SC 586 (Union of India & Ors. Vs. O.P.Saxena), it is seen that many officials approached the Jabalpur Bench of this Tribunal seeking stepping up of pay on identical ground like the present applicants viz. their junior P.N.Kareer has been getting more pay. The Supreme Court analysed the relevant rules and in particular Railway Board's Circular and Rule 1316 of IREC and came to the conclusion that these Loco Supervisory Staff cannot get stepping up of pay on par with P.N.Kareer for more than one reason. The Supreme Court noticed that O.P.Saxena and Ors. who were in Driver Gr.'C' and then directly went to Supervisory Grade. As far as Mr.Kareer is concerned he was promoted from Driver Gr.'C' to Driver 'B' and then to Driver Gr.'A' and after the implementation of the IVth Pay Commission viz. after 1.1.1986 he came to be promoted to the Loco Supervisory Post. The Supreme Court, therefore, held that since Saxena and other officials are coming to Supervisory Staff from a different post or different grade viz. Driver Gr.'C' and Mr.Kareer came to Loco Supervisory staff from different post or different grade viz. Driver 'A', the Loco Supervisory Staff cannot ask for stepping up of pay on par with Mr.Kareer. It is

further held that both the Senior and Junior Officers do not belong to same cadre and post and were not promoted in the same cadre. The Supreme Court also found that the lower and higher post did not have same scales of pay. The observations of the Supreme Court in paras 5, 6 and 7 are very relevant and directly applicable to the facts of the case and they are as follows :

"5. The locomotive drivers are eligible for promotion, amongst other posts, to those of Loco Supervisors. The aforesaid Sh. Kaireer and the respondents, at one time, were holding the running post of Driver Grade-C. Sh. Kaireer had been promoted as Driver Grade-C on 29th August, 1961 and was placed in the grade of Rs.150-240 and the respondents had been promoted and appointed as Drivers Grade-C from a date subsequent to 29th August, 1961. In other words, Sh. Kaireer was senior to the respondents as Driver Grade-C.

6. The respondents then opted to be promoted to the 'stationary post' of Loco Supervisor directly from the post of Driver Grade-C which they were holding. Their promotion was made prior to 1st January, 1986 and they were placed in the grade of Rs. 550 - 750.

7. Sh. Kaireer chose to remain in the running staff. On 1st January, 1981 he was promoted as Driver Grade-B in the scale of Rs.425-640 and his pay was fixed at Rs.580/- . Thereafter, on 28th November, 1984 Sh. Kaireer was promoted as Driver Grade-A in the scale of Rs.550-700 with effect from 1st January, 1986 revised pay scales came into existence as a result of the fourth pay commission report. At that time the respondents were working on the stationary post of Loco Supervisors while Sh. Kaireer was working on the running post of Driver Grade-A."

Then the Supreme Court referred to Rule 1316 and observed as follows in para 8 :

"8. The pay of running staff on promotion to Loco Supervisor's post is fixed under Rule 1316 of Indian Railway Establishment Code after fixation of an additional component of thirty per cent of basic pay last drawn in the running cadre, which represents the pay element in the running allowance. On introduction of the revised pay scales with effect from 1st January, 1986 this thirty per cent addition in the pay element of the running allowance increased which resulted in higher fixation of pay of running staff appointed as Loco Supervisors after 1st January, 1986 than those appointed as Loco Supervisors before 1st January, 1986. Therefore, when Sh. Kaireer was appointed as a Loco Supervisor, his pay as Loco Supervisor was fixed after taking into account the aforesaid thirty per cent addition which resulted in his getting higher pay than the respondents. It appears that in the pay of respondent - O.P. Saxena was stepped up but when the department discovered that

the benefit had been wrongly given to him this pay was re-fixed and recoveries were made of the excess amount paid to him. Sh. O.P. Saxena challenged the aforesaid decision by filing O.A. No. 462 of 1994 before the Central Administrative Tribunal, Jabalpur. OA Nos. 191/94 and 768/93 were filed by the other respondents seeking the benefit of stepping up."

Then the Supreme Court laid down the conditions under which which stepping up of pay can be claimed as per Rules in paras 10 and 11 which are as follows :

"10. In our opinion, the decision of the Tribunal directing stepping up of the pay of the respondent herein was not correct. It had been clarified by the Ministry of Railways in the letter dt. 14th September, 1990 that the principle of stepping up referred to in its earlier letter of 16th August, 1988 was "subject to codal conditions being fulfilled". The principle of stepping up of pay is contained in Rule 1316 of Indian Railway Establishment Code Vol.II which also contains conditions which have to be followed while ordering stepping up. Two of the conditions contained therein are:-

- (a) Both the senior and junior officers should belong to the same cadre and the post in which they have been promoted on a regular basis should be identical in the same cadre.
- (b) The scales of pay of the lower and higher posts in which they are entitled to draw should be identical.

11. By a Presidential decision given under Rule 1316 the aforesaid conditions were further explained as follows:

"If as a result of application of the proviso to the exception below Rule 1313 (F.R. 22) the pay of the junior is more than that of the senior in the lower post, there would be no question of stepping up the pay of the senior in the higher post. If despite the application of the proviso to and the exception below Rule 1313 (F.R.22) the junior's pay is less than that of the senior and on promotion the former's pay happens to be greater than the pay of latter by virtue of the provisions of Rule 1316 (F.R.22 C), stepping up will have to be done with reference to the actual pay drawn by the junior in the higher post."

Then the Supreme Court has explained the difference between Mr. Kareer on the one side and other Loco Supervisors in para 12 which reads as follows :

"12. It is not in dispute that as driver Grade - C Sh. Kareer was senior to and was drawing more salary than the respondents. Thereafter while Sh. Kareer remained in the cadre of running staff the respondents by choice opted for being promoted to the supervisory cadre and posted as

Loco Supervisors. Thereafter Sh.Kareer on the one hand and the respondents on the other belonged to two different cadres having their own seniority list. The pay of Sh.Kareer was fixed according to the scales which were approved for the running staff including the running allowance. Sh.Kareer was drawing more salary as Driver Gr.A, just before his appointment as a Loco Supervisor, than the respondents. With the revision of pay scales with effect from 1st January, 1986 Sh.Kareer's pay was fixed at Rs. 2360/- as on 1st January, 1986 while the salary of respondent - O.P.Saxena on the statutory post which he was holding was Rs.2300/-. The source of the recruitment to the post of Loco Supervisor in the case of Sh.Kareer vis-a-vis the respondents being different the principle of stepping up of pay would not arise. Whereas, the respondents were not promoted as Loco Supervisors from Driver Grade-C, Sh.Kareer on the other hand was placed in the cadre of Loco Supervisor after being promoted from the post of Driver Grade-A. When the feeder posts of Sh.Kareer and that of the other respondents were different the applicability of the principle of stepping up cannot apply. The pay of Sh.Kareer had to be fixed with reference to what he was last drawing as Driver Grade-A, a post which was never held by any of the respondents. In our opinion, therefore, the Tribunal was not justified in applying the principle of stepping up and in directing the re-fixation of the pay of the respondents".

8. We have therefore, extracted the reasoning of the Supreme Court in the above para which clearly shows that O.P.Saxena's case is identical to the case of the present applicants who are also Senior Loco Supervisory Staff and claiming stepping up of pay on the sole ground that their junior Kareer was getting higher pay. In view of the reasoning given by the Supreme Court we have no difficulty to hold that the applicants in the present case cannot claim stepping up of pay on par with Mr.Kareer in view of the conditions explained by the Supreme Court.

We may also notice that in para 8 of the Judgment reproduced above, even Saxena had already been given higher pay by stepping up of his pay and subsequently the Railway Administration discovered that he was given benefit wrongly and recovered the excess amount. Similarly, even in the case of present applicants the Railway Administration has already paid

the amount and now they are recovering the same. Applying the same principle as in Saxena's case, we do not find any illegality in recovering the amount from the applicants.

9. At one stage applicants counsel contended that even for recovering the excess amount the Department should have issued a show cause notice and there is violation of principles of natural justice. He placed reliance on the Judgment of a Single Bench of this Tribunal of Principal Bench in OA 1896/95 dt. 19.1.1992, though the order was quashed, the Tribunal gave liberty to the Administration to issue show cause notice as per law.

In the present case, we find that show cause notice has been given to the applicant in OA 1021/92 Mr. S.T. Mohammed and there is reference to this show cause notice in the OA.

Now to quash the order and direct the administration to issue a fresh show cause notice and then recover the amount will be purely formality in view of the law declared by the Supreme Court in Saxena's case and in the view we have taken in the present case that the administration has full right to recover the excess amount. No useful purpose would be served in quashing the order and for issuing show cause notice at this belated stage. If it was ⁱⁿ the admission stage, the matter would have been different. The OAs were filed in 1992 and at the admission stage Tribunal could have given such a direction. Now we are in 1999, even if we give such a direction the administration will issue a show cause notice, in view of the law declared by the Supreme Court in Saxena's case and the law re-affirmed by the Judgment that they can recover the amount. It will be an exercise in futility, it won't help the applicants in

any manner. Further, we find that some representations have been given by the applicants jointly where they have objected to the action of the administration in recovering the amount. Therefore, the applicants know as to why the amount is being recovered and they have given their representation, but it has not been accepted by the administration.

10. In this connection, we may also refer to hundreds of cases in which the Tribunals all over India granted stepping up of pay on a pure technical ground that juniors were getting higher pay than the seniors. Even in many of such cases SLPs were filed in Supreme Court and came to be dismissed. The applicants in those hundreds of cases got the benefit of stepping up of pay on the basis of various judgments of different benches of this Tribunal.

But in Swaminathan's case (1997(2) SC SLJ 383) when the matter went to Supreme Court again, the Supreme Court while considering the question came to the conclusion that if junior is getting more pay because junior is getting more pay because of officiating or ad-hoc promotion, then the seniors cannot get stepping up of pay. In view of the subsequent judgment in Swaminathan's case our Bench has dismissed number of cases filed by officials claiming stepping up of pay on the basis of the earlier judgments of this Tribunal.

11. Similarly, as far as Loco Supervisory Staff are concerned there are many judgments of the Tribunal giving reliefs. But, now Supreme Court has ruled in Saxena's case that if the junior is getting more pay, but he comes to the Loco Supervisory channel from a different grade than the senior supervisory staff who came from another channel, cannot get stepping up of pay. Therefore,

in view of the latest law declared by the Supreme Court we hold that the applicants in the present four cases are not entitled to the reliefs prayed for by them. In view of this position, it is not necessary to consider the question on first principles by referring to Railway Board Circulars, provisions of Railway Establishment Code etc. When the field is covered by a direct authority of the Supreme Court, this Tribunal need not go into the question on first principles.

12. The respondents counsel also brought to our notice that in an identical case filed by the Loco Supervisory Staff seeking stepping up of pay on par with Mr.Kareer, following the decision of the Supreme Court in Saxena's case, a Division Bench of this Tribunal of which one of us was a party (R.G.Vaidyanatha, Vice-Chairman), by order dt. 11.2.1998 in OA 816/93 held that the Loco Supervisory Staff cannot get the stepping up of pay on par with the pay of Mr.Kareer in view of the law declared by the Supreme Court in Saxena's case.

13. In the result, all the four OAs viz. 857/92, 1021/92, 1025/92 and 1103/92 are dismissed. In the circumstances of the case there will be no order as to costs. Interim order granted in OA 1103/93 stopping recovery of the amount on the basis of the impugned orders is hereby vacated.

(D.S.BAWEJA)

MEMBER(A)

(R.G.VAIDYANATHA)

VICE-CHAIRMAN