

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 586/92

Transfer Application No.

Date of Decision 3.12.1997

A.M.Naidu

Petitioner/s

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri S.C.Dhawan

Advocate for
the Respondents

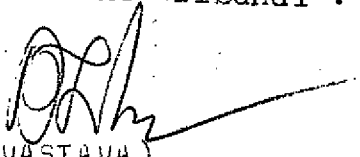
CORAM :

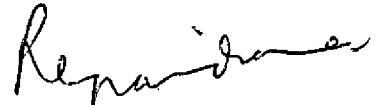
Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri. P.P.Srivastava, Member (A)

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to
other Benches of the Tribunal ?


(P.P.SRIVASTAVA)
MEMBER (A)


(R.G.VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO.586/92

Wednesday this the 3rd day of December, 1997

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri P.P.Srivastava, Member (A)

Alagiri Muthukrishnan Naidu,
R/o 343, Rasthapet, Pune.

... Applicant

V/S.

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

By Advocate Shri S.C.Dhawan
C.G.S.C.

... Respondents

O R D E R

(Per: Shri Justice R.G.Vaidyanatha, VC)

This is an application under Section 19 of the A.T.Act. Today when the matter is taken up for final hearing, neither the applicant nor his counsel is present. Since it is very old case, we have heard the learned counsel for the respondents and perused the pleadings and material on record.

2. This application is filed by the applicant claiming that he is entitled to stepping up of pay on par with his junior Shri Kareer in the grade of Rs.2975/- with all consequential benefits. He also claimed arrears

.. 2/-



of pay during service prior to his retirement. His main case is that he was promoted as Loco Foreman on adhoc basis in 1983 and subsequently regularised in September, 1985 but his juniors Mr. Bhupendra Singh and Mr. Kareer were promoted as Loco Forman subsequent to the promotion of the applicant. It is stated that those two juniors both in the lower grade and also in the higher grade are drawing more pay after the implementation of the 4th Pay Commission Report and therefore the applicant is entitled to higher pay scale by stepping up of his pay as per rules.

3. The respondents' case is that the applicant due to medical disability was posted as Shedman, which is non-running cadre. It is stated that the other two persons Mr. Bhupendra Singh and Kareer were working in the running cadre. It is stated that when the two promotees are from two different cadres and from two different service, then the question of senior getting lower pay than the junior will not arise. Then, it is further stated that even the Note 4 of the Notification dated 19.9.1986 is not attracted to this case since the applicant was never getting more pay than the juniors either in the feeder cadre or in the promotional cadre. It is, therefore, seen that the applicant has not made out any case for stepping up of pay.

4. It is seen that the applicant retired from service on 31.7.1988. He has filed the present application four years later, namely, in 1992. Now he is claiming arrears of pay from 1.1.1986. On the face of it, the application is barred by limitation and further suffers from latches and delay. However, the applicant has filed M.P.483/92 for condonation of delay. The only reason given ^{by} ~~is~~ the applicant is ~~that~~ ^{he} suffering from hypertension and was not in a position to come to Bombay to file this application. The medical certificate produced shows that the applicant was under treatment from January, 1992. The cause of action arose in 1988 and he retired in 1988 but no explanation is given for the delay between 1988 and 1992 and hence in the circumstances, we hold that the application is not only barred by limitation but also by latches and delay.

5. Even though we have come to the conclusion that the application suffers from latches and delay, we have examined the case of the applicant on merits and find that he has not made out a case for getting higher pay.

It ~~has~~ also stated that the applicant was a Shedman which was a non-running cadre whereas other two persons Bhupendra Singh and Kareer was from running cadre. When promotions are made from two different cadres or from two different sources, then the promotees cannot claim same pay and the question of stepping up of pay of a senior to that of a junior does not arise as explained


for

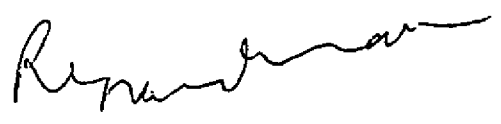
by the Apex Court in the case of Union of India & Ors. vs. O.P.Saxena etc. reported in JT 1997(6) S.C.586.

6. The applicant is placing reliance on Note 4 to the Notification dated 19.9.1986. In the written statement respondents have extracted Note 4. A perusal of Note 4 shows that if a Railway servant getting more pay than his junior prior to 1.1.1986 and if in the revised scale the junior gets more pay, then the senior's pay should be stepped up to be on par with the junior.

In view of Rule 4, the applicant has ^{to} established that prior to 1.1.1986 he was getting more pay than his juniors Bhupendra Singh and Kareer. But the applicant has not placed any material to attract Rule 4. On the other hand, since these two juniors were from different cadre and that too working in running cadre, they were naturally getting more pay than the applicant who was in a non-running cadre. Hence, in the circumstances, Note 4 is not attracted to the present case. Hence, from taking any way the applicant has not made a case for stepping up his pay on par with his juniors.

7. In the result, the OA. is dismissed. M.P. No. 483/92 is also dismissed. No costs.


(P.P.SRIVASTAVA)
MEMBER (A)


(R.G.VAIDYANATHA)
VICE CHAIRMAN