

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 1286/93

26.10.99
Date of Decision:

| | |
|--------------------------------|-------------------------------|
| <u>S.B.Parate & Ors.</u> | .. Applicant |
| <u>Shri G.S.Walia</u> | .. Advocate for Applicant |
| -versus- | |
| <u>G.M. C.RLY. Bombay V.T.</u> | .. Respondent(s) |
| <u>Shri S.C.Dhawan</u> | .. Advocate for Respondent(s) |

CORAM:

The Hon'ble Shri D.S.Baweja, Member (A)
The Hon'ble Shri S.L.Jain, Member (J)

- (1) To be referred to the Reporter or not ? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?
- (3) *diagram* ✓

D.S. Baweja
(D.S.BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO.1286/93

Dated this the 26th day of October 1999.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)
Hon'ble Shri S.L.Jain, Member (J)

1.Shantaram Balwant Parate
2.Vijay C.Kanya
3.Jochim Rusario D'Souza
4.Pandurang Govind Patil
Ex.Senior Loco Inspectors,
Central Railway, Bombay V.T.,
Bombay.

... Applicants

By Advocate Shri G.S.Walia

V/s.

The General Manager,
Central Railway,
Bombay V.T., Bombay.

... Respondents

By Advocate Shri S.C.Dhawan

ORDER

(Per: Shri D.S.Baweja, Member(A).)

This application has been filed jointly by 4 applicants who had retired from Central Railway as Loco Running Supervisors. The dates of retirement of Applicants No. 1 to 4 are 30.4.1990, 31.10.1990, 30.6.1991 and 30.6.1991 respectively. Prior to appointment as Running Loco Supervisors, all the applicants were working as Loco Drivers in the category of Running Staff. All the Loco Drivers are eligible for promotion on the basis of selection for the post of Loco Running Supervisors which includes the categories of Loco Inspectors, Power Controllers, Crew Controllers, Assistant Loco Foreman, Loco Foreman, Junior Fuel Inspectors and Senior Fuel Inspectors. The

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Loco Drivers are entitled to an allowance which is called Running Allowance which is based on kilometrage run or covered by a Driver while working on a train. The Running Allowance is paid on the actual basis at the prescribed rate. The element of Running Allowance is also treated as pay for some benefits such as enhanced basic pay for railway passes, eligible for selection and pensionary benefits. For the purpose of pensionary benefits, 50% of the Running Allowance is added to the basic pay. In case of Loco Running Supervisor when he is promoted from the post of Loco Driver is allowed fixation of pay by adding 30% of the Running Allowance to the basic pay. However, the Loco Running Supervisors were not allowed any benefit of adding an element of Running Allowance to the basic pay for the purpose of pensionary benefits as allowed to the Loco Drivers. As a result, though the Loco Running Supervisors ^{who} control and supervise the working of the loco drivers, yet their pay and pensionary benefits were much less than the Loco Drivers. In this situation, the Loco Supervisors had been representing the matter to the Railway Board. The applicants submit that their case was also taken up at the Railway Board's level by the recognised unions. The Railway Board keeping in view the grievance of the Loco Running Supervisors with regard to drop in the emoluments as compared with Loco Drivers issued order dated 25.11.1992 through which the benefit of adding of 30% of the basic pay for the purpose pensionary benefits with a view of arriving at the average emoluments has been allowed. However, this order has been made

(d)


effective from 1.1.1993. Since the applicants had retired before this date, the applicants are not entitled for the benefit. Feeling aggrieved by this order, the applicants have filed the present OA. on 24.11.1993 seeking the following reliefs :-(a) to hold and declare that the order dated 25.11.1992 is applicable to the applicants and they are entitled of adding of 30% of basic pay for the purpose of pensionary benefits. (b) to direct the respondents to recalculate the pensionary benefits as a result of grant of prayer (a) above and pay pension accordingly and also the arrears thereof from the dates the applicants have retired.

2. The main ground advanced by the applicants in support of their reliefs prayed for is that all those Supervisors who were promoted along with the applicants and fortuitously in service on 1.1.1993 and retiring thereafter would be availing the benefit as per the order dated 25.11.1992 and thus a hostile discrimination has been made between those persons who retired before 1.1.1993 and those retired after 1.1.1993. Those who will be retiring after 1.1.1993 will be getting about Rs.500/- more pension. The discrimination is entirely based on the cut off date which has been fixed not only arbitrarily but is also not based on intelligent differentia. The order dated 25.11.1992 has carved out two classes out of one homogeneous group of the pensioners and this action of the respondents is therefore patently in violation of Articles 14 and 16 of the Constitution of India.



3. The respondents have opposed the claim of the applicants through the written statement. The respondents while furnishing the details with regard to entitlement of the Running Allowance and other benefits to the Loco Drivers and mode of selection of the Supervisors and their duties have stated that the Drivers were very reluctant to come as Running Loco Supervisors as there was a considerable drop in emoluments when compared to that of Drivers. Though some of the Drivers still used to opt for Running Loco Supervisors but number of posts remained unfilled. The Zonal Railways had to resort to fill up the post^s by non-running category of staff. The Railway Administration ~~therefore~~ felt that in the interest of the efficiency and safety of train running, it was imperative to fill up all the posts of Loco Running Supervisors from the cadre of Loco Drivers ^{for this} and ~~it~~ was necessary to evolve a scheme to attract the Loco Drivers for the Supervisors' cadre. ~~With~~ this objective, Railway Board had set up a Committee of experts and based on the recommendations of this Committee and in consultation with the recognised Unions, the Railway Board laid down a Scheme as per order dated 25.11.1992 to be effective from 1.1.1993. As per this Scheme, all the posts of the Running Supervisors are to be necessarily filled from Loco Drivers only. All the Loco Running Supervisors will have a common seniority. Initially, all the Supervisors will be posted on the stationary posts and then shifted as Loco Inspectors who perform the duty of training and monitoring of Drivers on the ~~foot-plate of the locomotive cab of the moving train and these~~

duties are similar to that of the Drivers. The Loco Inspectors are entitled for running allowance similar to the Loco Drivers and have been also given additional benefit of adding of 30% of the basic pay for the purpose of pensionary benefits. The other Loco Running Supervisors who will perform stationary duties are not entitled for this benefit. With this scope of the Scheme laid down by the Railway Board, the respondents deny that the Scheme was introduced to compensate for drop of emoluments for those Supervisors who had already opted for Loco Running Supervisors but was to attract competent Drivers for the posts of Loco Running Supervisors. The respondents contest the submission of the applicants that the cut-off date has been fixed arbitrarily and is not based on any intelligent differentia. The respondents further add that only because some set of employees are benefitted as a result of the Scheme with the cut-off date of 1.1.1993, it is not correct to infer that there is any discrimination or the said order violates Articles 14 and 16 of the Constitution. The respondents state that for any progressive legislation, besides other factors, the financial implications are required to be taken into account before fixing the cut-off date for implementation. The respondents in the present case have fixed the cut-off date after taking into account all the relevant factors. There is a nexus of the cut-off date with the objectives to be achieved as per the Scheme laid down and the cut-off date does not create any class legislation as alleged by the applicants. With these submissions, the respondents plead that the applicants have no case and the OA. deserves to be dismissed.



4. The applicants have not filed any rejoinder reply.

5. We have heard Shri G.S.Walia, learned counsel for the applicants and Shri S.C.Dhawan, learned counsel for the respondents.

6. After considering the rival contentions and the material brought on record, the question which needs to be answered is whether the cut-off date of 1.1.1993 allowing the benefit of add on of 30% of basic pay for the purpose of pensionary benefits to the category of Loco Inspectors belonging to the cadre of Loco Running Supervisors as per the Railway Board's order dated 25.11.1992 is arbitrary and discriminatory and whether the applicants who have retired before this cut-off date are entitled to the benefits as claimed for through this OA.

7. The learned counsel for the applicant Shri G.S.Walia ^{the} strenuously argued that ^{the} order dated 25.11.1992 of the Railway Board allowing add on of 30% of basic pay for working out the pensionary benefits in respect of Loco Inspectors changes the formula for working out the average emoluments for computation of the pensionary benefits. ^{of} Fixing cut-off date of 1.1.1993 is discriminatory and arbitrary as this order creates two classes of persons from the homogeneous group of pensioners belonging to the Loco Running Supervisors. He further submitted that selection of the cut-off date is arbitrary and has no nexus with the objectives to be achieved and is not based on any intelligent



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differentia. The action of the respondents therefore violates the provisions of Articles 14 and 16 of the Constitution of India. Relying heavily on the judgement of the Hon'ble Supreme Court in the case of D.S.Nakara & Ors. vs. Union of India, 1983 SCC (L&S) 145, the counsel for the applicants argued that the action of the respondents in fixing the cut-off date of 1.1.1993 is not legally sustainable in view of the law laid down by their Lordships of the Hon'ble Supreme Court in D.S.Nakara's case. The applicants also relied upon the other two judgements in the case of :- (a) T.S.Thiruvengadam vs. Secretary to Government of India, Ministry of Finance, 1993 SCC (L&S) 495. (b) V.Kasturi vs. Managing Director, State Bank of India, 1998(2) SC SLJ 466.

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8. The counsel for the respondents^{has} strongly contested the ^{stating} argument of the applicants^{that} the cut-off date of 1.1.1993 for giving the benefit of add on of 30% of basic pay for the purpose of pensionary benefits has been laid down under a Scheme which has been formulated by the Railway Board not to benefit the existing Supervisors but with a purpose to make the post of Loco Running Supervisors attractive ^{so that} competent Loco Drivers come forward for being posted as Loco Running Supervisors. The counsel for the respondents further argued that the cut-off date is not arbitrary and it has nexus with the objectives to be achieved. The counsel for the respondents relied on the following judgements of the Hon'ble Supreme Court in support of his submissions :-



(a) Union of India vs. P.N.Mennon & Ors.

1994 SCC (L&S) 860.

(b) State of Punjab & Ors. vs. Ram Lubhaya Bagga & Ors.

1998 (2) SLJ 35 (SC).

(c) Commandar Headquarter Calcutta vs. Capt. Biplabendra

Chanda, 1997 (1) SLJ 143 (SC).

(d) State of Rajasthan & Anr. vs. Amrutlal Gandhi & Ors.

1997 (3) SLJ 152 (SC).

9. Before going into merits of the reliefs prayed for relying on the law laid down by the Hon'ble Supreme Court in the case of D.S.Nakara, the judgements cited by the respondents will be briefly reviewed as follows- (a) Union of India vs. P.N.Menon, in this case, the Govt. of India had issued Office Memorandum dated 25.5.1979 laying down treating a portion of dearness allowance as pay for the purpose of retirement benefits in respect of Government servants who retired on or after 30.9.1977.

The respondents in the SLP before the Hon'ble Supreme Court who had retired from service before 30.9.1977 filed a writ petition before the High Court questioning the validity of O.M. dated 25.5.1979 and claimed that the said benefit should have been extended to all the retired Government servants irrespective of their date of superannuation. The learned judge of the High Court allowed the writ petition on the basis of judgement in the case of D.S.Nakara vs. Union of India stating that said Office

Memorandum was discriminatory in nature. The appeal filed by the Union of India before the Division Bench was also dismissed. The matter thereafter was taken before the Hon'ble Supreme Court and the Hon'ble Supreme Court has allowed the appeal and the judgement of the High Court was set aside after reviewing the various earlier judgements of the Hon'ble Supreme Court and holding that law laid down in the case of D.S.Nakara does not apply in the case of the respondents. Some of the observations made by the Hon'ble Supreme Court are extracted below :-

"8. Whenever the Government or an authority, which can be held to be a State within the meaning of Article 12 of the Constitution, frames a scheme for persons who have superannuated from service, due to many constraints, it is not always possible to extend the same benefits to one and all, irrespective of the dates of superannuation. As such any revised scheme in respect of post-retirement benefits, if implemented with a cut-off date, which can be held to be reasonable and rational in the light of Article 14 of the Constitution, need not be held to be invalid. It shall not amount to "picking out a date from the hat", as was said by this Court in the case of D.R.Nim v. Union of India in connection with fixation of seniority. Whenever a revision takes place, a cut-off date becomes imperative because the benefit has to be allowed within the financial resources available with the Government."

"10..... If the stand of the respondents is to be accepted that this scheme should have been made available, without there being a cut-off date, to all including those who have retired even 20 to 25 years before the introduction of the scheme, then, according to us, the whole scheme shall be unworkable, because it is linked with the payment of dearness allowance, which is based on the level of price index."

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"14.... No scheme can be held to be foolproof, so as to cover and keep in view all persons who were at one time in active service. As such the concern of the court should only be, while examining any such grievance, to see, as to whether a particular date for extending a particular benefit or scheme, has been fixed, on objective and rational considerations."

(b) Commander Head Quarter, Calcutta & Ors. vs.

Capt. Biplabendra Chanda :- In this case, the respondent was a Commissioned Officer in the Army and retired in 1982. As per the rules in force at that time, only 2/3rd of the pre-commissioned service was allowed to be counted towards qualifying service for earning pensionary benefits. In addition, a minimum period of qualifying service was also laid down for being eligible for pension. On the basis of the said Rules, the respondent was not found eligible for grant of pension. However, later on after about four years, the Rules with regard to qualifying service were changed w.e.f. 1.1.1986. based on the recommendations of the 4th Pay Commission. As per the revised rules, the entire pre-commissioned service was to be taken into count as qualifying service for pensionary benefits. The petitioners made a claim for grant of pension on the basis of revised rules and that was ~~rejected~~. Thereafter they filed a writ petition before the High Court. The learned Single Judge allowed the writ petition relying upon the decision in D.S. Nakara's case and this order was affirmed by the Division Bench in the appeal filed by the Union of India. The Hon'ble Supreme Court has however set aside the judgement of the High Court holding that the ratio of what is

held in D.S. Nakara's case does not apply to the case of the respondents as the situation obtainable in D.S.Nakara's case is not existing in the case of the respondents. The relevant para 2 giving the observations of the Hon'ble Supreme Court for non-application of ratio of D.S.Nakara's case are extracted below :-

"2. We are of the opinion that the ratio of D.S.Nakara has no application here. D.S.Nakara prohibits discrimination between pensioners forming a single class and governed by the same Rules. It was held in that case that the date specified in liberalised pension Rules as the cut-off date was chosen arbitrarily. That is not the case here. No pension was granted to the respondent because he was not eligible therefore as per the Rules in force on the date of his retirement. The new and revised Rules (it is not necessary for the purposes of this case to go into the question whether the Rules that came into force with effect from January 1, 1986 were new Rules or merely revised or liberalised Rules) which came into force with effect from January 1, 1986 were not given retrospective effect. The respondent cannot be made retrospectively eligible for pension by virtue of these Rules in such a case. This is not a case where a discrimination is being made among pensioners who were similarly situated. Accepting the respondent's contention would have very curious consequence; even a person who had retired long earlier would equally become eligible for pension on the basis of the 1986 Rules. This cannot be."

(c) State of Rajasthan & Anr.etc. vs. Amrit Lal Gandhi & Ors.etc.:- This is a case pertaining to introduction of Pension Scheme by Rajasthan University based on the recommendations of a Committee. The Syndicate and Senate of the University had approved of the grant of pension to those employees who had

retired after 1.1.1986. The scheme was required to be approved by Government and while approving the scheme, the Government laid down that the scheme would be effective w.e.f.1.1.1990. Several writ petitions were filed in the High Court of Rajasthan. Two writ petitions were filed by the erstwhile teachers of the Rajasthan University who had retired prior to 1.1.1986 while eight writ petitions were filed by those who had retired between 1.1.1986 and 1.1.1990. The Single Judge of the High Court had allowed the petitions directing that the revised pension scheme should be made applicable to all the petitioners including those who had retired prior to 1.1.1986. In an appeal, the Division Bench however modified this order holding that the revised pension scheme should be made applicable to only those employees who had retired between 1.1.1986 and 1.1.1990. The Hon'ble Supreme Court in the SLP filed by the State of Rajasthan has allowed the appeal and set aside the judgement of the High Court stating that the policy decision of the University, making the Pension Regulations applicable w.e.f. 1.1.1990 has not been shown to be arbitrary or invalid. The Hon'ble Supreme Court has referred to the judgement in the case of P.N.Menon as brought out earlier.

(d) State of Punjab & Ors. vs. Ram Lubhaya Bagga etc.etc.:— This judgement has been cited by the respondents to support their contention that when a Government lays down a policy after considering the relevant factors including the financial resources, the same cannot be subject matter of a judicial review. In this judgement, the Hon'ble Supreme Court

while going into the policy of State Government with regard to medical reimbursement has held in para 20 as under :-

"When Government forms its policy, it is based on number of circumstances of facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if Court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belongs to the executive."

10. The judgements cited by the applicants have been detailed earlier. The applicants have mainly relied upon the judgement of the Hon'ble Supreme Court in the case of D.S.Nakara vs. Union of India. The applicants have cited the judgement of V.Kasturi vs. Managing Director, State Bank of India as the Hon'ble Supreme Court in this judgement has amplyfied the law laid down in D.S.Nakara's case ^{with regard to} application of ratio of the same. The third judgement cited by the applicant is in the case of T.S.Thiruvengadam vs. Secretary to Government of India, Ministry of Finance. In this case, the issue involved was with regard to grant of revised pensionary benefits to those of the Government employees permanently absorbed in public sector undertaking governed as per O.M. dated 16.6.1967. The revised pensionary benefits were applicable to those who were absorbed in public sector undertakings after 16.6.1967. The appellant before the Hon'ble Supreme Court had been absorbed in public sector undertaking in 1964. He had filed a writ petition first which was transfered before the Tribunal claiming benefit of his past

service in terms of the O.M. dated 16.6.1967. The relief was not allowed by the Tribunal. The Hon'ble Supreme Court, however, has allowed the benefit as claimed holding that the Memorandum dated 16.6.1967 is prospective which means that the benefits can be claimed only after 16.6.1967. It is further held that the Memorandum takes into consideration the past event that is the period of service in Central Government for the purposes of giving pro rata pension. After carefully going through this judgement, we are of the view that what is laid down in the judgement does not apply to the present case. This will be, however, dealt with subsequently at the appropriate place.

11. Now we will deliberate whether the scheme of add on of 30% of basic pay for the purpose of grant of pensionary benefits to the Loco Inspectors as per Railway Board's order dated 25.11.1992 effective from 1.1.1993 attracts the law laid down by the Hon'ble Supreme Court in the case of D.S.Nakara. In the case of D.S.Nakara, the Govt. of India, Ministry of Finance's O.M. dated 25.5.1979 was under challenge as per which the formula for computation of pension was liberalised and the same was made applicable to those who retired from service on or after the specified date of 31.3.1979. The formula also introduced a slab system. Consequently those pensioners who retired before the specified date and were governed by earlier formula for commutation of pension on the average of 36 months of salary suffered tripple jeopardy viz. lower average emoluments, absence of slab system and lower ceiling. This was challenged

before the Hon'ble Supreme Court stating that the choice of date is wholly arbitrary and would be according differential treatment to pensioners who form a class ^{of} irrespective ~~of~~ date of retirement and therefore the Government order was violative of Article 14 of the Constitution of India. The Hon'ble Supreme Court allowed the petition and held that the O.M. dated 25.5.1979 fixing a cut-off date of 31.3.1979 was violative of Article 14 of the Constitution of India as all the pensioners form a homogeneous group and ^{be miniclassification within the class} therefore there ~~could not~~ designated as pensioners. Keeping in view the law laid down in D.S.Nakara's case, the issue which requires to be examined in the present OA. is whether the scheme as laid down by the Railway Board as per order dated 25.11.1992 with cut-off date of implementation from 1.1.1993 creates any classification among the equals. After careful consideration of the features of the scheme as laid down and the underlying objectives to be achieved, we are of the view that the scheme does not create any classification among the pensioners belonging to the Loco Running Supervisors who have retired before 1.1.1993 and those who will be retiring after 1.1.1993. As brought out earlier, difficulties were being experienced in filling of the posts of Loco Running Supervisors from the Loco Drivers cadre in view of considerable drop in the emoluments when compared to that of the Drivers. Though some of the Drivers were still opting for

the Loco Running Supervisors posts but a large number of posts were remaining unfilled and the posts had to be filled by the staff belonging to other cadres. In the interest of efficiency and safety of train running, it was considered imperative by the Railway authorities that all the Loco Running Supervisors posts should be filled by Loco Drivers. With this objective in view, a committee was set up to make the post of Loco Running Supervisors objective so that competent drivers should opt for the same. Based on the recommendations of the committee and in consultation with the recognised Unions, Railway Board laid down a scheme as per order dated 25.11.1992 to come in the operation from 1.1.1993. As per this scheme, all the Loco Running Supervisors comprising of Loco Inspectors, Power Controllers, & Crew Controllers etc. are to be in single seniority group as compared to separate seniority for each category. From the common panel, the candidates are to be initially posted as Crew Controller and Power Controller etc. i.e. on the stationary posts and thereafter they will be posted as Loco Inspectors who are required to perform the duty of training and monitoring of Loco Drivers on the footplate. It is also further provided that all the supervisor during last 2 years of service would be compulsorily posted as Loco Inspectors. As a further incentive, over and above allowing 30% of basic pay for the purpose of fixation of pay on initial promotion, those who are posted as Loco Inspectors will be paid running allowance similar to the loco drivers and also allowed add on of 30% of the basic pay for the purpose of pensionary benefits. From these features of the

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scheme, it is quite clear that the scheme has been introduced with a purpose to give incentives to attract competent loco drivers to opt for the post of Loco Running Supervisors. The scheme is not intended ^{for} upward revision of the retiral benefits of the Loco Running Supervisors as such ^{but of these} posted as Loco Inspectors before the ~~retirement as per~~ ^{the scheme.} Thus the scheme has laid down the benefits as per the O.M. dated 25.11.1992 ^{it is} ~~is~~ under a new scheme and ^{benefits of the} not a case of revision of the ~~existing~~ scheme. Keeping these features in view, we are of the considered opinion that the scheme as laid down does not create any classification among the pensioners. If the benefit of add on of 30% of the basic pay had been earlier allowed to all the Loco Running Supervisors and if there is any upward revision of these existing benefits, with a ^{then} ^{of} cut-off date, ⁱⁿ such an event ^{non} application of the benefits to those retired before cut-off date, may be discriminatory and the law laid down by Hon'ble Supreme Court in D.S.Nakara's case would have been attracted. However, this is not the situation in the present OA. The applicants were not covered by the schemes as laid down from 1.1.1993 and therefore the question of extending the same benefits to those who retired before 1.1.1993 would not arise.

12. If the stand of the applicant is to be accepted then the scheme should have been implemented without any cut-off date for all those including who had retired 15 to 20 years or even earlier before the introduction of the scheme from 1.1.1993. However, considering the features of the scheme and the objectives proposed to be achieved as discussed earlier, we do not find that such an inference could be drawn. Scheme has not been evolved to benefit the pensioners belonging to the Loco Running Supervisors ^{as such} but to achieve the objective of attracting the competent Loco Drivers to opt for the post of Loco Running Supervisors. Any retrospective implementation of the scheme as claimed by the applicants who retired before 1.1.1993 would not serve the purpose for which the scheme has been laid down. The applicants can be entitled of the benefit of the scheme if they are covered by the scheme and if they had been posted as Loco Inspectors before retirement as per seniority. This is not the ^{to enhance existing pensionary benefits in general} intention of the scheme. In this connection, we refer to the observations made by the Hon'ble Supreme Court in para 10 of the judgement in the case of Union of India vs. P.N.Menon as already reproduced in para 9 above.

13. The reliefs claimed by the applicants if allowed will also result in a case of reverse discrimination. As brought out earlier, as per the scheme all the categories of Loco Running

Supervisors are to form one seniority group. On selection, initially the candidates are to be posted on stationary posts and then shifted to post of Loco Inspectors, as per seniority and entitled for additional incentives running allowance similar to the drivers as well as the benefit of add on of 30% of basic pay for pensionary benefits. If the benefit as claimed is allowed to the applicants, then it would imply that the applicants were covered by the scheme and were entitled to be posted as Loco Inspectors as per seniority before retirement. However, this is not a case of the applicants. The applicants have not brought out that they were senior to be posted as Loco Inspectors among all the Loco Supervisors in the different categories at the time when the applicants retired. If the benefit of the scheme is allowed retrospectively, then it will cause discrimination to those of the supervisors who might be senior to the applicants but were working on stationary posts at the time of retirement based on their selection and posting for the particular category, as the scheme would not be applicable to them.

14. From the above deliberations, we conclude that the present case is not of change of formula for computation of pension or giving enhanced benefits under the existing scheme but is a case of giving incentives by way of enhanced benefits under a scheme with a view to attract competent drivers for filling up the posts of Loco Running Supervisors. The Government has undoubted power to revise the salary, pay scales and also the terminal benefits. The Government has also the power to specify the date from which



such benefits would be given which may be prospective or retrospective. If such a cut-off date is challenged, the only question to be examined in a judicial review is that the cut-off date is not arbitrary or discriminatory and the same has been specified rationally. In this connection, we refer to the observations made by the Hon'ble Supreme Court in para 13 of the judgement in the case of State of Rajasthan & Anr. vs. Amrutlal Gandhi & Ors. (supra) while referring to their earlier judgement in the case of Ratan Bihari. In the present case, we are of the view that the cut-off date has been fixed by the Government based on the objectives of the scheme framed to be achieved. The cut-off date is not arbitrary and discriminatory and violative of Articles 14 & 16 of the Constitution of India as the scheme does not envisage any revision in the formula for the pension but has been laid down with a view to give incentives to induce drivers for filling up the posts of Loco Running Supervisors. Further, it was a policy decision taken by the Government considering all relevant facts as stated by the respondents including financial constraints and as held by the Hon'ble Supreme Court in the case of Ram Lubhaya Bagga, the same cannot be subject matter of judicial review.

15. The applicants have relied upon the judgement in the case of T.S. Thiruvengadam vs. Secretary, Govt. of India, Ministry of Finance (supra) which has been briefly reviewed earlier. What is laid down in this judgement has been gone into by the Hon'ble

Supreme Court in the case of V.Kasturi vs. Managing Director, State Bank of India, Bombay (supra) relied upon by the applicant. In case of T.S.Thiruvengadam, the Hon'ble Supreme Court has allowed the petition holding that all the ex-servicemen were forming the same group while working in the Central Government and therefore additional pensionary benefits if were to be available to the same class, it should be available to all the members forming the same class whether they retired earlier or after the cut-off date. The ratio of D.S.Nakara case was attracted in their case. However, as discussed earlier, the situation obtainable in the case of T.S.Thiruvengadam does not exist in the present case as the scheme does not create two classes of the pensioners out of the same homogeneous group of pensioners belonging to Loco Running Supervisors. For getting any benefit under the scheme, the existing pensioners have to first get covered by the scheme and only then the existing pensioners have a cause of discrimination if there is any upward revision of the pension prospectively. In view of this, we are of the considered opinion that the ratio of what is held in T.S.Thiruvengadam does not come to the rescue of the applicant.

16. In the light of the above deliberations and the law laid down by the Hon'ble Supreme Court in the judgements cited by the respondents above, we do not find that the scheme as laid down by the Railway Board as per order dated 25.11.1992 creates any classification among the pensioners belonging to the Loco Running

Supervisors Group and thereby the law laid down by the Hon'ble Supreme Court in the case of D.S.Nakara is attracted. The applicants therefore are not entitled of the relief prayed for.

(17) In the result of the above, we do not find any merit in the OA. and the same is dismissed accordingly. No order as to costs.

S.L. Jain
(S.L.JAIN)

MEMBER (J)

D.S. Baweja
(D.S.BAWEJA)

MEMBER (A)

mrj.