

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 186/93

28.10.99
Date of Decision:

N.C.Garg

.. Applicant

Shri G.K.Masand

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri S.C.Dhawan

.. 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) Library ☒

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

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.186/93

Dated this the 28th day of October 1999.

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

Hon'ble Shri S.L.Jain, Member (J)

N.C.Garg,
Senior Mechanical Engineer,
Bombay V.T., Bombay.

...Applicant

By Advocate Shri G.K.Masand

V/S.

1. Union of India through
the General Manager,
Central Railway,
Bombay V.T., Bombay.
2. Chief Personnel Officer,
Central Railway,
Bombay V.T., Bombay.
3. Divisional Railway Manager(P),
Personnel Branch, Solapur.

...Respondents

By Advocate Shri S.C.Dhawan

ORDER

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

The applicant through this OA. while praying for quashing of the impugned order dated 6.4.1992 is seeking the relief of stepping up of his pay equivalent to his junior Shri P.N.Kareer at Rs.3200/- with effect from 25.9.1986 with grant of consequential benefits of increments and arrears of pay.

2. The applicant has claimed the above reliefs advancing his case as follows :- The applicant was initially appointed as Loco Driver on Jhansi Division, Central Railway. In 1975, the applicant was promoted as Loco supervisor in the scale of Rs.550-750 on adhoc basis and was allowed fixation of pay by taking 30% of the running allowance allowed to the applicant as a Driver. Thereafter, he was confirmed as Loco Supervisor and further promoted to the scale of Rs.700-900. In June 1983, after undergoing selection, the applicant was promoted to Group 'B' service as Assistant Mechanical Engineer in the scale of Rs.650-1200. In December, 1988 he was promoted as Divisional Mechanical Engineer in the pay scale of Rs.3000-4500 with pay at Rs.3750/-. As per the Fourth Pay Commission recommendations, the scale of Rs.550-750 and Rs.700-900 were merged into a single scale of Rs.2000-3200. Similarly, the junior scale of Assistant Mechanical Engineer was revised to Rs.2000-3500. The applicant states that one Loco Running Supervisor, Shri P.N.Kareer of Jabalpur Division was promoted as Loco Supervisor while working as Driver after 1.1.1986 in the grade of Rs.2000-3200 and his pay was fixed at the maximum of the scale, i.e. Rs.3200/-. Some of the seniors of Shri Kareer who were promoted in the scale of Rs.2000-3200 earlier to 1.1.1986 and were drawing less pay than Shri Kareer made representation to Railway Ministry for stepping up of their pay equal to that of Shri Kareer. Railway Board as per order dated 16.9.1988 permitted stepping up of pay of the seniors in the situation as referred to above. In view of the order dated 16.9.1988, some of the seniors of Shri Kareer,

namely S/Shri A.S.Dawar, S.S.Raut, U.V.Singh and Pritam Singh were allowed stepping up of the pay to that of Rs.3200/-. All these persons were not only junior to the applicant but were drawing lesser pay at every stage as a Supervisor were allowed pay of Rs.3200/- on 25.9.1986 while the applicant was only at Rs.2975/-. The applicant submits that Railway Board's letter dated 14.9.1990 issued some clarifications to the earlier letter dated 16.9.1988. The applicant's case is that in terms of Railway Board's Circular dated 16.9.1988 and 14.9.1990, he is entitled for stepping up of his pay with reference to Mr.Kareer and entitled for pay of Rs.3200/- on 25.9.1986. The applicant made a representation for the same on 29.11.1990 which was followed by reminders dated 12.3.1991 and 29.5.1991, 26.7.1991. The applicant's representation was rejected as per letter dated 31.10.1991. The applicant, however, represented again on 8.1.1992 explaining as to how he is entitled for the stepping up of pay. This representation was also rejected as per letter dated 6.4.1992.. Feeling aggrieved, the applicant has filed the present OA. on 23.2.1993 seeking the above referred relief.

3. The respondents have opposed the application through the written statment. The respondents submit that the stepping up of pay as envisaged in the order dated 16.9.1988 in respect of Loco Running Supervisors is to be allowed only in case the codal provisions with regard to stepping up of pay are complied with as clarified by the Railway Board in the subsequent letter dated 14.9.1990. The applicant had been promoted to Group 'B' service

from 3.6.1983 and therefore applicant's claim of stepping up of pay with reference to Mr.Kareer cannot be admissible as both belong to different cadres with different pay scales and thus the codal provisions are not complied with. Further, the applicant as a Loco Running Supervisor belonged to Jhansi Division while Shri. Kareer. belonged to Jabalpur with different seniority unit from 1.1.1986 when decentralisation of the cadre was done. In view of these submissions, the respondents plead that the applicant has no case and OA. deserves to be dismissed.

4. The applicant has filed rejoinder reply controverting the submissions of the respondents and reiterating his grounds advanced in the OA.

5. Heard the arguments of Shri G.K.Masand, learned counsel for the applicant and Shri S.C.Dhawan, learned counsel for the respondents.

6. The learned counsel for the respondents during arguments brought out that the controversy raised in the present OA. with regard to stepping up of pay with reference to Shri Kareer has been already settled by the Hon'ble Supreme Court in the case of Union of India vs. O.P.Saxena (JT 1997 (6) SC 586). He also drew our attention to recent order of this Bench dated 9.7.1999 in the OA. 857/92 S.K.Jain vs. Union of India and other connected OAs. which has been decided based on the law laid down by the Hon'ble Supreme Court in the case of O.P.Saxena.

7. In the present case, the applicant has been promoted to Group 'B' as Assistant Mechanical Engineer from 3.6.1983 while working as Loco Running Supervisor. His pay as on 1.1.1986 was fixed at Rs.2900/- in terms of Fourth Pay Commission recommendations and his pay on 1.10.1986 was Rs.2975/-. Loco Running Supervisors who were promoted before 1.1.1986 to the scale of Rs.700-900 (Rs.2000-3200) were drawing less pay than those promoted subsequent to 1.1.1986. One such anomaly arose with respect of Shri Kareer whose pay on 25.9.1986 on promotion was fixed at Rs.3200/-. On representation of the Loco Running Supervisors, Railway Board allowed stepping up of the pay as per the order dated 16.9.1988 to set right the anomaly of the junior drawing more pay than the senior. Clarifications to the letter dated 16.9.1988 were issued by the Railway Board as per letter dated 14.9.1990 stating that the benefit is to be given only if the codal provisions with regard to stepping up of pay are met with. In pursuance of these letters of the Railway Board, some Loco Running Supervisors were allowed the stepping up of pay with reference to Shri Kareer. The case of the applicant is that Shri Kareer was junior to the applicant as a Loco Running Supervisor and therefore the applicant who is drawing less pay than Shri Kareer is entitled to stepping up of his pay from Rs.2975/- to Rs.3200/- on 25.9.1986. From these facts, it is clear that the applicant on promotion to Group 'B' from 3.6.1983 as Assistant Mechanical Engineer belongs to a different cadre, seniority group and having different pay scales. For stepping up of pay with

respect to junior drawing higher pay, codal provisions as laid down in Rule 1316 of Indian Railway Establishment Code Vol.II and clarifications given under President's decision No. 3 under Rule 1316 ibid are to be complied with. The provisions of Rule 1316 have been extracted by the respondents in the written statement and are reproduced below :-

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

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the anomaly should be directly as a result of the application of Rule 1316 (FR-22(C)). For example, if even in the lower post the junior employee draws from time to time a higher rate of pay than the senior by virtue of fixation of pay under the normal rules, say due to grant of advance increments or due to accelerated promotion etc., the provisions contained in this letter will not be invoked to step up the pay of the senior employee."

8. The applicant on 25.9.1986 was in Group 'B' service and in the scale of Rs.2000-3500 while Shri Kareer was in non-gazetted Group 'C' belonging to the cadre of Driver in a different scale and promoted as Loco Running Supervisor. Thus the codal provisions for stepping up of pay are not met with in the case of the applicant and the applicant is not entitled for the benefit claimed for. In fact the claim of the applicant based on the Railway Board's letters dated 16.9.1988 and 14.9.1990 is not sustainable at all as these letters lay down the

entitlement of stepping up of pay within the cadre of Loco Running Supervisors in view of the anomaly ^{having} arisen due to promotions after 1.1.1986. The applicant does not belong to this cadre and therefore we fail to appreciate as to how he can seek benefit of stepping up of pay comparing himself with the Loco Running Supervisors based on his erstwhile status before promotion to Group 'B' as Assistant Mechanical Engineer.

9. In the O.P.Saxena's case cited by the respondents, the issue was with regard to stepping up of pay with reference to Shri Kareer. Shri O.P.Saxena was allowed the stepping up of pay initially but subsequently it was withdrawn. He challenged the same through OA. before the Tribunal. The Tribunal had allowed the relief of stepping up of pay which was challenged by the Union of India in a SLP. The Hon'ble Supreme Court set aside the order of the Tribunal holding that the stepping up of pay is admissible only if the codal provisions are complied with. In the OA.NO. 859/92 and connected OAs., this Bench has already gone into details of what is held by the Hon'ble Supreme Court in O.P.Saxena's case and we (one of us D.S.Baweja, was Member of this Bench) are in respectful agreement with order dated 9.7.1999. In view of this, we need not go into the issue from the first principles...

10. The counsel for the applicant during arguments though conceding that as per the law laid down by the Hon'ble Supreme Court in O.P.Saxena's case the applicant is not entitled for stepping up of pay, but he pleads for the relief on the basis of

equality. He submitted that applicant by securing promotion to Group 'B' is at a disadvantage in respect of pay wherein his juniors who are still working as Loco Running Supervisors are drawing more pay than him. He advocated that provisions of Articles 14 & 16 of the Constitution of India are attracted in the case of the applicant and therefore he deserves the relief prayed for. We are not impressed by this argument of the counsel of the applicant. In this connection, we refer to the judgement of the Hon'ble Supreme Court in the case of State of Haryana vs. Ram Kumar Mann, 1997 (1) SC SLJ 466, where it is held by their Lordships that the Doctrine of discrimination is found upon the existence of an enforceable right. Article 14 would apply only when invidious discrimination is meted out to equals and in similar circumstances without rational basis. This is not the situation in the present case. As deliberated earlier, the applicant belongs to different cadre with different pay scale and seniority unit. He is not entitled for the benefit claimed as per the provision of rules. Thus, there is no enforceable right as per rules and the question of discrimination therefore does not arise. In view of what is laid down by the Hon'ble Supreme Court in the case of Ram Kumar Mann (supra), the applicant's plea of equality does not have any force or substance.

11. In the result of the above discussion, we are unable to find 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.