

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

1. ORIGINAL APPLICATION NO. 922/94,
2. ORIGINAL APPLICATION NO. 923/94,
3. ORIGINAL APPLICATION NO. 1016/94.

DATED: 10-12-1989

S.V.Kulkarni & Ors. Applicant.

Mr.G.S.Walia. Advocate
-----Applicant.

Versus

Union of India & Ors. Respondent(s)

Mr.S.C.Dhawan and Mr.V.S.Masurkar Advocate for
-----Respondent(s)

CORAM

Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member (A).

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

(2) Whether it needs to be circulated to *no*
other Benches of the Tribunal?

(3) Library? *yes*

R.G.Vaidyanatha
(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B.

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MUMBAI BENCH, MUMBAI.

1. ORIGINAL APPLICATION NO. 922/94,
2. ORIGINAL APPLICATION NO. 923/94,
3. ORIGINAL APPLICATION NO. 1016/94.

this the 10th day of Dec 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member(A).

1. Original Application No.922/94.

1. S.V.Kulkarni,
2. S.S.Chaudhary,
3. R.J.D'Cunha,
4. N.M.Wagh.

...Applicants
(in O.A.922/94)

2. Original Application No.923/94.

1. S.T.Kamble,
2. Y.S.Takpere,
3. U.V.Singh,
4. Preetam Singh,
5. A.S.Dawar,
6. S.A.Raut.

...Applicants
(in O.A.923/94)

3. Original Application No.1016/94.

1. Mrs.Lakshmibai Prahlad Nanaware,
2. N.D.Kamble,
3. S.B.Chandekar.
C/o.G.S.Walia,
Advocate, High Court,
16, Maharashtra Bhavan,
Bora Masjid Street, Fort,
Bombay - 400 001.
(By Advocate Mr.G.S.Walia)

...Applicants
(in O.A.1016/94)

Vs.

1. Union of India, through
Secretary, Railway Board,
Rail Bhavan,
New Delhi - 110 001.
2. The General Manager,
Central Railway,
Bombay V.T.,
Bombay - 400 001.

3. The Divisional Railway Manager,
Sholapur Division,
Central Railway,
Sholapur,
Maharashtra.
(By Advocate Mr.S.C.Dhawan)

...Respondents in
O.A.922 & 923/94.

1. Union of India, through
General Manager,
Central Railway, Bombay V.T.,
Bombay - 400 001.
2. Chief Personnel Officer,
Central Railway,
Head Quarters Office,
Bombay V.T.,
Bombay - 400 001.
3. Divisional Railway Manager,
Bhusawal Division,
Central Railway,
Bhusawal - 425 201.

...Respondents in
(O.A.1016 of 94).

(By Advocate Mr.V.S.Masurkar)

: O R D E R :

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

These are three cases filed by different applicants seeking stepping up of pay. The Respondents have filed reply opposing all the three applications. We have heard Mr.G.S.Walia, the learned counsel for the applicant and Mr.S.C.Dhawan and Mr.V.S.Masurkar, the learned counsels for the respondents.

2. The point that arises for consideration in all these cases is whether the applicants are entitled to stepping up of pay on par with the pay of Mr.P.N.Kareer.

Though there are lengthy pleadings and number of documents produced on record, at the time of arguments, the learned counsel for the respondents maintained that the question raised in ^{these} each cases is squarely covered by the Judgment of the Apex Court in Union of India & Ors. Vs. O.P.Saxena & Ors. (1997 SCC (L&S) 1667). On the other hand, the learned counsel for the

applicants contended that O.P.Saxena's case is distinguishable on facts and therefore, he submitted that the applicants are entitled to the relief of stepping up of pay.

If the facts of the case are governed by O.P.Saxena's case, then there is no doubt that this Tribunal cannot grant any relief to the applicants in view of the law laid down by the Apex Court. If, however, the applicants case is distinguishable on facts from O.P.Saxena's case, then we have to go into the question whether they are entitled to the question of stepping up of pay.

After hearing both sides and going through the pleadings, we find that O.P.Saxena's case is directly applicable to the facts of these three cases and hence it is not necessary to consider the cases of the applicants on the basis of rules or on first principles. If the case is covered by the decision of the Apex Court in O.P.Saxena's case, then we cannot re-examine the question independently and take another view, even if another view is possible as contended on behalf of the applicants. In view of this position, we will mention only few bare facts, which are necessary to show that the case is squarely covered by the Rule laid down by the Apex Court in O.P.Saxena's case.

3. The applicants in all these cases were at one time working as Driver Gr.'C' in the Central Railway. There is a promotion from Driver Gr.'C' to Driver Gr.'B' and then to Driver Gr.'A'. There is also another avenue of promotions to the Drivers to the Loco Supervisory Cadre. All the applicants in these three cases except one were promoted directly from either Driver Gr.'C' or Driver Gr.'B' to Loco Supervisory Cadre. One Mr.P.N.Kareer who was junior to the applicants was promoted from

Driver Gr.'C' to Driver Gr.'B' and then to Driver Gr.'A' and then he was promoted to the Loco Supervisory Cadre. When Mr.P.N.Kareer came to the Loco Supervisory Cadre on promotion after 1.1.1986, he was drawing more pay than the applicants who had been promoted to that cadre prior to 1.1.1986. There were many officials like this. They made representations to the Railway Administration. Then, the Railway Administration granted stepping up of pay to certain officials. Subsequently, the Railway Administration reversed its decision and took the stand that those officials are not entitled for stepping up of pay. Some of the officials approached various Tribunals and obtained orders in their favour for stepping up of their pay on par with Mr.P.N.Kareer. Some SLPs were filed in Supreme Court and came to be rejected. Again in one set of cases, the Jabalpur Bench of the Tribunal granted similar relief to O.P.Saxena and Ors. That order was challenged before the Supreme Court. The Supreme Court has allowed those appeals and held that stepping up of pay is not permissible. Now, therefore, the question is whether in view of the decision of the Apex Court, the applicants can still claim stepping up of pay.

4. First, we will consider the facts and the decision in O.P.Saxena's case and then apply the same to the facts of the present case.

O.P.Saxena's case is reported in (1997 SCC (L&S) 1667). The Supreme Court noticed that admittedly Mr.P.N.Kareer was junior to O.P.Saxena and Ors. It is also an admitted case that on promotion to Loco Supervisory cadre Mr.P.N.Kareer was getting more pay than O.P.Saxena and Ors. who had been promoted earlier and were admittedly senior to Mr.Kareer in that cadre. The

(a) Both the senior and junior officers should be equal to the same tasks and the best in which they have been promoted on B. S. B. which is the same career.

Tipu, Ju Barla 15 Shab-e-Mawali Conference of the People of the Land, 1970, date:

Supreme Court noticed that O.P.Saxena and Ors. were promoted from Driver Gr.'C' directly to Loco Supervisory Cadre, whereas, Mr.P.N.Kareer was promoted from Driver Gr.'C' to Driver Gr.'B' and then to Driver Gr.'A' and then to Loco Supervisory Cadre. The Supreme Court, therefore held, the rule of stepping up of pay under Rule 1316 of the Indian Railway Establishment Code Vol.II cannot be granted to O.P.Saxena and Ors. since both the senior and junior did not belong to the same cadre and the post in which they have been promoted were not identical and further the pay scales in the lower and higher posts were not identical. The Supreme Court has given its reasoning in para 10 of the reported Judgment which reads 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. (underlining is ours)"

Then, in para 12 Supreme Court observes as follows:

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". (underlining is ours).

5. From the above reasoning of the Supreme Court what we gather is that the juniors and seniors must belong to same feeder cadre. But, the Supreme Court pointed that Mr.Kareer and Mr.Saxena and Ors. belong to two different feeder cadres in two different seniority list, since Kareer was Driver Gr.'A' when he was promoted, whereas, Saxena and Ors. were in Driver Gr.'C' when they were promoted. It is therefore, observed that when the source of recruitment to the post of Loco Supervisory Cadre is different, the principle of stepping up of pay would not arise. We have specifically underlined the portions which are directly applicable to the facts of the present case.

6. Now, we will consider the application of the above rule to the facts of the present case.

In OA 922 of 1994, the first applicant was in Driver Gr.'B' and then promoted to Loco Supervisory Cadre.

In OA 923 of 1994, all applicants were promoted from Driver Gr.'B' to Loco Supervisory Cadre.

The learned counsel for the applicants contended that since one applicant in 922 of 1994 and all applicants in OA 923

of 1994 were promoted from Driver Gr.'B' to Loco Supervisory Cadre, the decision in Saxena's case will not apply since in that case all the officials had been promoted from Driver Gr.'C' to Loco Supervisory Cadre. The further submission is that Saxena and Ors. were junior to Kareer, whereas, all the applicants in these three cases were seniors to Mr.Kareer and therefore O.P.Saxena's case is distinguishable on facts.

It is true that some of the applicants in these cases were promoted from Driver Gr.'B' to Loco Supervisory Cadre and they were senior to Mr.Kareer in Driver Gr.'B'. In our view, this distinction makes no difference. The question decided by the Supreme Court is, when a promotion is made from two distinct sources, then stepping up of pay cannot be done. It is immaterial whether the promotion was from Grade 'C' to Grade 'B', but the question is whether the junior and senior belong to same feeder cadre. Since admittedly Mr.Kareer was in Driver Gr.'A' and promoted from that grade to Loco Supervisory Cadre, applicants who were either in Driver Gr.'B' or Driver Gr.'C' cannot claim parity with Mr.P.N.Kareer in view of the law laid down by the Apex Court in O.P.Saxena's case that the feeder cadre must be identical for claiming parity of pay on promotion. Therefore, the argument of the learned counsel for the applicants that O.P.Saxena's case is not applicable and it is distinguishable on facts has no merit. We may also point out that there is difference of pay scales between the three Grades of Drivers, which has been brought on record by the Respondents. It is seen that the pay scale of Driver Gr.'C' was Rs.150-240, Driver Gr.'B' was Rs.425-640 and Driver Gr.'A' was Rs.550-700. Therefore, a person who is promoted from Driver Gr.'C' or Driver

Gr.'B' to Loco Supervisory Cadre cannot claim parity of pay with Mr.P.N.Kareer, since he was promoted to Loco Supervisory Cadre from Driver Gr.'A' as held by the Apex Court in O.P.Saxena's case. In view of this finding, the argument of the learned counsel for the applicants claiming parity of pay on the basis of Railway Board's Circulars or Railway Rules cannot be accepted and cannot be considered in view of the law laid down by the Apex Court. When the Supreme Court has interpreted the Rules and the Railway Board Circulars and has laid down a rule, then Courts and Tribunals are bound by that Judgment and cannot attempt to interpret the rules in a different way on first principles. The law laid down by the Supreme Court is binding on all of us under Article 141 of the Constitution of India. Hence, we cannot consider the question of parity of pay scale on merits on the basis of either Railway Board Circulars or Railway Rules which were pressed into service by the learned counsel for the applicants.

The learned counsel for the respondents also brought to our notice an unreported judgment of a Division Bench of this Tribunal dt. 9.7.1999 in O.A. No.857/92 and connected cases, to which one of us was a party (R.G.Vaidyanatha, Vice-Chairman) where the Division Bench has held following O.P.Saxena's case, the applicants in those cases who were, of course, promoted to Supervisory Cadre from Gr.'C' Drivers are entitled to pay parity on par with Mr.P.N.Kareer.

7. In O.A. 1016/94 except the first applicant all other applicants were Gr.'C' Drivers and from there they came directly to Loco Supervisory Cadre like O.P.Saxena. Therefore, they cannot claim parity of pay with Mr.P.N.Kareer who came to Loco

Supervisory Cadre on promotion from Driver Gr.'A'.

8. Now, as far as P.O.Nanaware, the first applicant in O.A.1016 of 1994 is concerned, his claim stands on a different footing. We may also notice that Mr.Nanaware has since died, his wife Mrs.Lakshmibai Prahlad Nanaware has been substituted as legal heir in place of the deceased first applicant. There is a specific averment in para 4.1 that the first applicant Mr.Nanaware joined service as a Fireman, then promoted as Driver Gr.'C' on 26.10.1962, further promoted as Driver Gr.'B' on 26.7.1978 and again promoted as Driver Gr.'A' on 22.5.1979 and then he was promoted to Loco Supervisory Cadre. He retired from service on 31.5.1993.

In the written statement of respondents, in para 6, the service particulars of first applicant (Mr.Nanaware) made in para 4.1 of the OA are admitted. Similarly, in paras 7 and 8 the service particulars of second applicant and third applicant made in paras 4.2 and 4.3 of the OA are admitted. That means, the service particulars of all the applicants are admitted unequivocally in paras 6, 7 and 8 of the written statement.

Therefore, the fact that Mr.Nanaware had been promoted to Driver Gr.'A' and from there he was further promoted to Loco Supervisory Cadre is an admitted and undisputed fact. We have already seen how Mr.Kareer was also promoted to Driver Gr.'A' and from there he went to Loco Supervisory Cadre. Hence, as between Mr.Nanaware and Mr.Kareer they were promoted from Driver Gr.'A' and hence Mr.Nanaware is entitled to stepping up of pay on par with Mr.Kareer who was his junior but was getting higher pay on promotion in Loco Supervisory Cadre. The rule laid down in O.P.Saxena's case by the Apex Court will not apply in the case of

Mr.Nanaware since he and Mr.Kareer belong to same feeder cadre viz. Driver Gr.'A', before getting coming to the promotional post of Loco Supervisor. Even the Railway Administration had granted that benefit to Mr.Nanaware, but subsequently the Railway Administration revised its decision. Since excess amount had already been paid to Mr.Nanaware on the basis of giving him pay parity as per the earlier order, the administration wanted to recover excess amount paid to Mr.Nanaware and therefore, when he retired from service, Mr.Nanaware's pay was reduced from Rs.3,200/- to Rs. 2,900/- as on 1.1.1986. This could be gathered from the letter of the Railway Administration dt. 4.11.1992 (page 40 of the paper book). In the written statement at para 12 it is stated that as a result of withdrawing the earlier order of stepping up of pay, the over-payment made to Mr.Nanaware to the extent of Rs.26,347/- has now been withheld from the DCRG due to Mr.Nanaware. Since we have held that Mr.Nanaware is entitled to pay parity with Mr.Kareer for the reasons mentioned above, the administration must pay whatever amount it has withheld to Mr.Nanaware's legal heir viz. his wife who is now substituted as the first applicant. In addition to the amount withheld, if any more amount has been recovered from Mr.Nanaware while he was in service, then the said amount should also be refunded to Mr.Nanaware's wife.

As far as other applicants in the three applications, they are not entitled to stepping up of pay at all.

In two cases interim orders are granted directing the administration to pay the amounts to some of the applicants after taking sureties. Since they are not entitled to stepping up of pay, we are now vacating the interim orders with liberty to the

administration to take whatever legal steps to recover whatever excess amount paid to those applicants.

9. Some arguments are addressed by the learned counsel for the respondents in OA 1016 of 1994 that joint application is not maintainable, since the appointments of applicants were different and dates of retirement is different etc. There is no merit in this argument. The Tribunal has allowed the applicants to file joint application. It cannot be questioned at the time of final hearing. The applicants are raising a common issue viz. that since their junior is getting more pay, they are also entitled to get pay parity with the junior's pay. Since it is common question of law raised by the applicants they are entitled to file joint application though the service particulars of each official may be different so far as the date of retirement, date of promotion etc. Hence, we find no merit in the contention of the respondents that the joint application is defective.

10. In the result, it is ordered as follows.

(1) The Original Application No.922/94 is dismissed.

(2) The Original Application No.923/94 is dismissed.

(3) The Original Application No.1016/94 is partly allowed, so far as the claim of the first applicant Mr.P.O.Nanaware is concerned. It is hereby declared that Mr.Nanaware is entitled to pay parity with his junior Mr.P.N.Kareer. The administration must pay whatever DCRG amount that has been withheld to Mr.Nanaware's wife Mrs.Lakshmibai Prahlad Nanaware who is now brought on record as the first applicant. If any more amount has been recovered from Mr.Nanaware while in service after rescinding the order of granting pay parity with Mr.Kareer, then the said amount also should be refunded to Mrs.Lakshmibai Prahlad Nanaware. The administration should comply with this direction so far as Mr.Nanaware is concerned within a period of three months from the date of receipt of copy of this order.

The claim of applicants No.2 and 3 Mr.N.D.Kamble and Mr.S.B.Chandekar is rejected.

(4) The interim orders dt. 28.10.1994, 18.1.1996 and 24.10.1996 passed in O.A. No.923/94 are hereby vacated, giving liberty to the Railway Administration to recover whatever excess amount that has been paid to the applicants, according to law.

(5) The interim order dt. 19.10.1995 passed in O.A No.1016/94 is hereby vacated. It is open to the respondents to recover whatever over-payment that has been made to the applicants, according to law.

(6) In the circumstances of the case, there will be no order as to costs in the above three cases.

B.N.Bahadur

(B.N.BAHADUR)
MEMBER(A)

R.G.Vaidyanatha
(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B.