

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 364/1997

Dated this _____, the _____ day of November, 2001.

P.H.Suri & 3 ors. Applicant.

Shri G.S. Walia Advocate for the
Applicant.

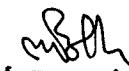
VERSUS

GM, WR, Mumbai & Anr. Respondents.

Shri V.S.Masurkar Advocate for the
Respondents.

CORAM :

- (i) To be referred to the Reporter or not ? Yes.
- (ii) Whether it needs to be circulated to other —
Benches of the Tribunal ?
- (iii) Library. Yes


(M.P. Singh)
Member(A)
9.11.2001

OS*

CENTRAL ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH

OA No.364/1997

Mumbai, this 20th day of November, 2001

Hon'ble Shri S.L. Jain, Member(J)
Hon'ble Shri M.P. Singh, Member(A)

1. P.H. Suri
2. D.B.N.Karnani
3. P.K.Nema
4. T.Gopinathan
all c/o G.S.Walia, 16, Maharashtra Bhavan
Bora, Masjid Street, Fort, Mumbai .. Applicants

(By Shri G.S.Walia, Advocate)

versus

Union of India, through

1. General manager
Western Railway
Churchgate, Mumbai
2. Divisional Railway Manager
Mumbai Division
Western Railway, Mumbai .. Respondents

(By Shri V.S. Masurkar, Advocate)

ORDER

Shri M.P. Singh

Applicants have filed this OA challenging the orders dated 9.10.96 and 8.11.96.

2. Facts of the case in brief are that applicant No.1 had retired on superannuation from Railway service w.e.f. 30.11.1996 as a Safety Counsellor in the pay scale of Rs.2375-3500 and re-appointed in Konkan Railways. Applicants No.2 to 4 are still working under DRM, Mumbai in the pay scale of Rs.2375-3500. According to the applicants, their basic pay was stepped up equal to that of one Shri N.J. Dadlani, who was junior to the applicants in the pay scale of Rs.2375-3500 and accordingly their pay was fixed at Rs.3200 w.e.f. 1.3.93. Pay of applicant No.1 was fixed at Rs.3300 w.e.f. 1.5.93 while that of other applicants also fixed at Rs.3300 w.e.f. 1.8.93. Shri Dadlani was senior to



the applicants in the initial scale of Rs.425-700, which was revised to Rs.1400-2300 as per the recommendations of 4th Pay Commission. Subsequently, applicants were promoted to the pay scales of Rs.1600-2600, Rs.2000-3200 and Rs.2375-3500 which are in the normal channel of promotion. For the pay scale of Rs.2000-3200, which is a selection post, applicants as well as Shri Dadlani appeared for selection. Applicants passed in the selection while Dadlani failed. Applicants were promoted on regular basis between 1.9.81 and 30.8.83. Shri Dadlani was subsequently promoted on regular basis on 1.1.84.

3. All the applicants and Dadlani were further promoted to the scale of Rs.2375-3500 w.e.f. 1.3.93 and their pay was fixed at Rs.3050. However, Shri Dadlani started getting more pay than the applicants w.e.f. 1.3.93 by virtue of direct application of Rule 1316 of Indian Railway Establishment Code vol.II. The pay of the applicants was also stepped up as Shri Dadlani was not getting higher pay than the applicants at any time prior to 1.3.93. It is stated by the applicants that on 9.10.96, an objection was raised by Accounts Branch regarding the said stepping up of pay of the applicants and their basic pay was sought to be lowered. Thereafter, respondents issued the impugned order dated 8.11.96 reducing the basic pay of the applicants and the alleged overpayment was sought to be recovered from the settlement dues of applicant No.1 and from the salary of other applicants. According to the applicants, action of the respondents is against the rules inasmuch as the pay of the applicants was correctly stepped up. Aggrieved by this, they have filed this OA seeking

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directions to quash and set aside the impugned orders and hold that the stepping up of pay of the applicants done by letter dated 3/94 (Ex.'B') is legal, valid and binding.

4. Respondents in their reply have contested the case and have stated that the Sr. Divisional Accounts Officer, Mumbai vide his letter dated 12.4.96 has stated that the memo dated 3/94 has been issued without vetting of the accounts and the said memo is incorrect. Thereafter, the DRM was requested to review the memo and fix the pay and arrange payment to the four applicants. It is also stated by them that due to administrative error, the pay of applicants was stepped up equal to that of Dadlani vide letter dated 11.3.94, which was subsequently withdrawn. It is also stated that all the applicants were promoted on regular basis as per normal channel of promotion in the selection to CTXR in the pay scale of Rs.2000-3200. But Shri Dadlani failed in the selection and was promoted on regular basis on the basis of subsequent selection of CTXR w.e.f. 1.1.1984. Although Shri Dadlani failed in the category of CTXR, he was continued on ad hoc basis against leave, reserve post etc. and was never reverted to his substantive post. Later on all the applicants as well as Dadlani were promoted as Carriage Wagon Supervisor(Rs.2375-3500) w.e.f. 1.3.93. However, since Shri Dadlani was appointed prior to applicants and was drawing more pay, it is quite obvious that his pay would be more than applicants and hence his pay was correctly fixed and paid on various occasions as per Rule 1316 of IREC Vol.II. It is further stated by them that consequent upon revision of pay vide letter dated 8.11.96,



necessary recovery has to be made from applicants. In view of this, the OA has no merit and the same may be dismissed.

5. Heard both the learned counsel for the rival contesting parties and perused the records.

6. During the course of the arguments, the learned counsel of the applicants stated that Dadlani, though working in the grade of Rs.2000-3200 along with the applicants, was junior to the applicants as he had failed in the selection for the said grade and was promoted to that grade on regular basis w.e.f. 1.1.84 as a result of subsequent selection. This position is quite clear from the chart at Ex.R-IX. He also submitted that Shri Dadlani was drawing less pay than the applicants in the grade of Rs.2000-3200. All the applicants were promoted in the grade of Rs.2375-3500 earlier than Shri Dadlani (Ex.R-IX). Further, when Shri Dadlani was promoted to the grade of Rs.2375-3500 w.e.f. 1.3.93, his pay was fixed in accordance with Rule 1316 (FR 22C), as a result of which he was given one additional increment while fixing his initial pay and therefore he started getting more pay. It was for these reasons that applicants' pay was stepped and rightly fixed at Rs.3200 w.e.f. 1.3.93.

7. On the other hand, learned counsel for respondents stated that although Dadlani failed in the selection for the grade of Rs.2000-3200 he continued in that grade on ad hoc basis and also got annual increments and therefore was drawing more pay than the applicants. In view of this, the benefit of Rule 1316 of IREC could not

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have been given to the applicants. The same was given due to an administrative error but the order was withdrawn on the advice of Accounts authority. Moreover, stepping up of pay was issued without being vetted by Accounts authority. He also submitted that the order giving benefit of stepping up has now been withdrawn and recovery of overpayment has to be made on the advice of Accounts department. Therefore action has been rightly taken in accordance with rules and instructions on the subject.

8. Now the question for consideration before us is whether the order passed by the respondents for stepping up of the pay of the applicants to bring them at par with Dadlani w.e.f. 1.3.93 is in accordance with rules or not.

Rule 1316 (FR 22C) relating to stepping up of pay provides as under:

(ii) In order to remove this anomaly it has been decided that in such cases the pay of the senior employee in the higher post should be stepped up to a figure equal to the pay as fixed for the junior employee in that higher post. The stepping up should be done w.e.f. the date of promotion or appointment of the junior employee and will be subject to the following conditions, namely:-

(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 scale of pay of the lower and higher posts in which they are entitled to draw pay should be identical; and

(c) the anomaly should be directly as a result of application of Rule 1316 (FR 22C). 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.



9. In the present case, both the applicants as well as Shri Dadlani belong to the same cadre and the lower and higher posts in which they are entitled to draw pay are also identical. The respondents have submitted the service books of Shri Suri and Shri Dadlani for our perusal. We have very carefully examined the service books of both the persons to ascertain as to whether the contention made by the applicants in 4.8 of the OA that 'as per information of the applicants Shri Dadlani was not getting higher pay than that of applicants even in the scale of Rs.2000-3200. This is subject to the verification by the respondents'. The above averment of the applicants in para 4.8 is, however, not denied by the respondents and they have given a very vague and evasive reply to para 4.8 of the OA. But on perusal of the records, we find that Shri Dadlani was drawing higher pay than the applicants all along in the grade of Rs.2000-3200. He was drawing more pay than the applicants in the same grade even before the revision of pay scale of that grade w.e.f. 1.1.86.

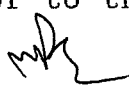
10. Shri Suri was drawing the pay of Rs.700 w.e.f. 1.9.81 in the grade of CTRX (Pay scale of Rs.700-900). He started drawing pay at Rs.880 w.e.f. 1.5.86 on promotion to the grade of Rs.840-1040. This pay scale of Rs.840-1040 was revised to Rs.2000-3200 w.e.f. 1.1.86 on the recommendations of IVth Pay Commission and his pay was fixed at Rs.2450/-. His pay was also fixed at Rs.2450 w.e.f. 1.1.86 in the higher revised pay scale of Rs.2375-3500. It was a wrong fixation of pay at Rs.2450 w.e.f. 1.1.86 in the scale of Rs.2000-3200 which was subsequently refixed correctly at Rs.2375 w.e.f. 1.1.86 vide order dated 15.6.87. Shri Suri was



promoted to the grade of Rs.2375-3500 in the year 1987 and started getting pay of Rs.2750/- w.e.f. 1.5.1988 after getting the benefit of Rule 1316 (FR 22C).


11. Shri Dadlani was promoted to the grade of CTXR in the pay scale of Rs.700-900 w.e.f. 19.12.80 and the pay was fixed at Rs.700/- from that date. He started drawing pay at Rs.730 w.e.f. 1.12.81. His pay was fixed at Rs.2525 w.e.f. 1.1.86 in the revised pay scale of Rs.2000-3200. He started drawing Rs.2600 w.e.f. 1.12.86 in the aforesaid pay scale of Rs.2000 -3200. The annual rate of increment being Rs.75/- the pay of Shri Dadlani reached at the stage of Rs.3050 w.e.f. 1.12.92 in the pay scale of Rs.2000-3200. When he was promoted to the grade of Rs.2375-3500 w.e.f. 1.3.93 at Divisional Training Centre, his pay was fixed at Rs.3200 w.e.f. 1.3.93 in terms of Rule 1316 of IREC. Shri Dadlani retired from service on superannuation on 31.10.96.

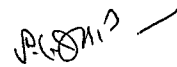
12. From the above facts, it is amply clear that Shri Dadlani was drawing higher rate of pay than the applicants all along even in the lower pay scales of Rs.1600-2660 and Rs.2000-3200. The applicants are, therefore, not entitled for stepping of pay to the stage of Rs.3200 in the pay scale of Rs.2375-3500 w.e.f. 1.3.93 with reference to Shri Dadlani (pay scale of Rs.2375-3500 pre-revised), in terms of Rule 1316 [FR 22C] (9)(ii)(c) of IREC Vol.II. Therefore, the respondents have rightly withdrawn this benefit of stepping up of pay of the applicants vide order dated 8.11.86. In other words, we can say that Shri Dadlani was senior to the applicants and was drawing much higher



rate of pay than applicants all along. It was only at the time of promotion to the grade of Rs.2000-3200 that he failed in the selection whereas the applicants passed in the selection. He became junior to the applicants in that grade but he continued to draw the pay and increment, of the grade because of his continued ad hoc appointment. The applicants were promoted to the grade of Rs.2375-3500 between the period from 1987 and 1992 and got the benefit of Rule 1316 while fixing their pay in that grade. Since they were drawing less pay than Shri Dadlani, their pay always remained lower than that of Shri Dadlani even in the scale of Rs.2375-3500.

13. In view of the facts stated above, OA fails being devoid of merit and is accordingly dismissed.


(M.P. Singh)
Member(A)


(S.L. Jain)
Member(J)

/gtv/

CENTRAL ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH

RA No.80/2001 in OA No.364/1997

Mumbai, this 24 day of January, 2002

Hon'ble Shri S.L. Jain, Member(J)
Hon'ble Shri M.P. Singh, Member(A)

P.H. Suri & three others .. Applicants

(By Shri G.S.Walia, Advocate)

versus

Union of India & Another .. Respondents

ORDER(in circulation)

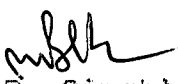
By Shri M.P. Singh, Member(A)

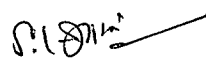
The present RA is filed on behalf of the applicants for review of our judgement dated 20.11.2001 by which OA No.364/1997 was dismissed being devoid of merit and for the detailed reasons given at para 12 therein.

2. Review is sought on the reiterated ground that Shri Dadlani was drawing less pay than the applicants as has been reflected in the comparative chart given by the review applicants, which is again annexed to the present RA. However, to satisfy ourselves with regard to the so-called comparative chart, we have requisitioned the service books of the concerned persons and we found that Shri Dadlani was drawing much higher rate of pay than the review applicants all along and, therefore, we have rightly held that though he failed in the selection and became junior to the applicants in the grade of Rs.2375-3500, he continued to draw the pay and increments of that grade because of his continued ad hoc



appointment. Thus we find that the review applicants are only trying to build up a case on the same of set of facts and grounds which have already been taken care of by us before pronouncing the judgement. In view of this situation, the present RA is not maintainable under Rule 22(3)(f) of AT Act, 1985 read with Order 47, Rule 1 CPC and is accordingly dismissed.


(M.P. Singh)
Member(A)


(S.L. Jain)
Member(J)

/gtv/