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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT HYDERABAD

ORIGINAL APPLICATION No.887/93

Date of Judgement: 19-12 1994

Between

A.Surya Rao

.. Applicant

and

1. Union of India rep. by its
General Manager, South Eastern Rly
Garden Reach, Calcutta-43.
2. Secretary (Establishment)
Railway Board, New Delhi
3. Divisional Personnel Officer
South Eastern Railway, Waltair .. Respondents

Counsel for the Applicant :: Sri P.B.Vijayakumar

Counsel for the Respondents :: Mr N.R.Devraj, SrCGSC.

CORAM:

HON'BLE SHRI A.V. HARIDASAN, MEMBER(JUDL.)

HON'BLE SHRI A.B. GORTHI, MEMBER(ADMN)

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JUDGEMENT

(As per Hon'ble Shri A.V. Haridasan, Member (Judl.))

The applicant joined the services on South Eastern Railway on 10.04.1952. While working as Driver, in running cadre, he was promoted as Power Controller on 25.12.1972. He was further promoted as Junior Fuel Inspector and as ^{Senior} Fuel Inspector and was regularised as Senior Loco Inspector with effect from 01.04.1984. He retired from service on superannuation on 31.03.1990, While working as Senior Loco Inspector in the scale of Rs.840-1040(A.S) which is corresponding to Rs.2375-3500(RPS). The basic pension of the applicant was fixed at Rs.1665/- per month. But the element of running allowance was not taken into consideration in fixing his pension as he was then a Loco Inspector. As the running staff were getting running allowance, there would be a steep fall in the total emoluments ~~xxxxxx~~ when the officials in the running cadre ^{were} ~~are~~ drafted for working as Loco supervisors. Therefore, there was difficulty in drafting staff in the running cadre to work as Loco supervisors. This problem engaged the attention of the Railway ^{administration} ~~authorities~~ since 1986 onwards and was discussed by the National Federation of Indian Railway Men and All India Railway Mens Fedration in the departmental council meeting (JCM) on 19/20 December, 1989. As a result of the ~~xxxxxx~~ ^{or} deliberation ^{of} the matter and on the basis of the report of the JCM, the Railway Board issued a Circular dated 25.11.92 bearing No.(E) P&A II/83/RS-10. According to para 5.5 of the said Circular, for the purpose of pensionary benefits, the basic pay in the case of loco inspectors would include with effect from 1.1.1993 an add-on

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element of 30% of basic pay. Since the applicant retired on 31.03.1990, his pension was fixed on the basis of the rules then in existence and therefore, he did not get the benefit of 'add-on' element of 30% of basic pay which was conferred on the Loco Inspectors drafted from running cadre. Coming to know of the Railway Board Circular, the applicant made a representation on 15.1.1993 praying that his pension may be re-fixed with effect from 1.1.1993, taking into account the element of running allowance, viz., 30% of the basic pay in his scale of Rs.2375-3500/-. The third respondent on the ground that the applicant retired from railway service on 31.3.1990, much prior to 1.1.1993 on which date the Railway Board circular took effect, rejected the claim of the applicant for re-fixation of his pension giving the benefit of 'add-on' element of running allowance. Aggrieved by the above and challenging the vires of the Railway Board Circular dated 25.11.92, to the extent it was given effect only with effect from 1.1.1993 and not retrospectively in the case of all loco inspectors who were drafted from running cadre and retired prior to 1.1.1993, the applicant has filed this application under Section 19 of the Administrative Tribunals Act, for a direction to the respondents to extend the benefits of Railway Board Circular dated 25.11.92 to the applicant declaring the condition in the above said circular, that it would come into force on 1.1.93 as arbitrary, irrational and discriminatory. The applicant has suggested in the application that fixing up a cut off date ~~xxxx~~ viz., 1.1.1993 for the purpose of granting the benefit of adding 30% of basic pay in the case of loco-inspectors, for the purpose of calculation of pension is unreasonable and violative of Art.14 and 16 of the Consti-

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tution as it discriminates in a hostile manner the pensioners who retired prior to 1.1.1993.

2. The respondents have filed a detailed reply statement. The material contentions are as follows:

i) The Railway Board Circular dated 25.11.92 (Annexure A-I) was issued after due deliberations with the re-cognised unions at the National level as a measure of improvement of the system of drafting running staff for supervisory duties. The scheme was to take effect from 01.01.1993 and therefore, would not apply to employees like the applicant who retired prior to that date.

---, the above Railway Board Circular is not ~~A~~ one which confers any benefit to pensioners in general, but contains a complete scheme in itself to provide for selection and appointment of the supervisory posts, fixing their pay and also the method of fixing their pension of those who opted to accept posting as Supervisory staff, the contention of the applicant that that he has been discriminated against in not extending the benefit of the scheme to him is baseless because, the applicant had retired way-back on 31.03.1990 when the scheme had not been even contemplated.

3. The applicant has filed a rejoinder in which he has re-iterated the contentions raised by him in the OA.

4. We have perused the pleadings and have also heard at length the arguments of Shri P.Vijayakumar ~~and~~ learned counsel for the applicant and Shri NR Devraj, Standing Counsel for the respondents.

5. The fact that the applicant while working as a Driver was promoted as Power Controller on 25.12.1972 and after securing certain promotions finally retired as a confirmed Loco Inspector on 31.03.1990 are not in dispute. The applicant also does not dispute the fact that the Railway Board Circular dated 25.11.92 is prospective in operation. Shri. PB Vijayakumar, counsel for the applicant invited our attention to paragraph 5.5. of the ^{Railway Board} Circular dated 25.11.92 which reads as follows:

"For the purpose of pensionary benefits, the basic pay shall also include with effect from 1.1.1993 an add-on element of 30% of basic pay in the case of Loco Inspectors. If a Loco Inspector retires before completing a period of 10 months under this scheme, he shall be permitted the benefit of add-on element to basic pay on a pro-rata basis ~~the actual period of service under the scheme.~~ The benefit of add-on element to basic pay shall not be admissible for any purpose other than computation of pensionary benefits."

He argued that, had the applicant retired on 1.1.1993, he would ~~xxx~~ have got the benefit of fixation of ~~xxx~~ pension with an add-on element of 30% ~~xx x~~ of his basic pay for the purpose of commutation of pension. He therefore, argued that if the Railway Board, in its circular had not stated in the above said paragraph w.e.f. "1.1.1993" the applicant would have got the benefit. By putting the cut off date as 1.1.1993 which has no reasonable nexus the applicant has been discriminated against in a hostile manner and that, therefore, following the dictum of the ruling of the Supreme Court in DS Nakara Vs Union of India reported in AIR 1983 SC 130, the cut off date of 1.1.1993 for the purpose of extending the benefit of add-on element of 30% of basic pay for the purpose of commutation of pension in the case of Loco Supervisors has to be declared illegal and ultra-vires and the respondents have to be

directed to give the applicant the benefit of re-fixation of his pension adding the 30% of basic pay for the purpose of commutation of his pension with consequential benefits.

6. Shri NR Devraj, learned counsel for the ^{respondent's} applicant argued that the Railway Board Circular dated 25.11.92 is not a general circular, ~~xxxx~~ ^{and not} was issued conferring any benefits on the pensioners, but is a circular which contains a scheme for drafting of loco-inspectors, power controllers and crew controllers, etc., from the running staff which was to take effect only on 1.1.1993 and there is no merit in the argument of the learned counsel for the applicant that the cut off date is arbitrary or irrational.

7. At the first ~~flash~~ ^{appearance}, the arguments of the learned counsel for the applicant Shri PB Vijayakumar are tempting because, if a cut off date is fixed without any basis for extension of benefit of liberalisation of pension without any nexus to the objects sought to be achieved, the differentiation of pensioners between those who retired prior to 1.1.1993 and those who retired after 1.1.1993 would appear to be ^h ~~discriminatory~~ ^{discriminatory} one. But, a perusal of the ~~xx~~ scheme contained in the said Railway Board Circular dated 25.11.92 would make it clear that this argument advanced on behalf of the applicant has no force at all. The first paragraph of the said Railway Board Circular dated 25.11.1992 which sets out the objective and reason for issue of the circular containing the scheme ~~xxxxxxx~~ reads as follows:

"Sub: Filling up the posts of Loco Running Supervisors

The problem of filling up the posts of Loco Running Supervisors on account of drop in emoluments or running staff on coming over as Loco Running Supervisors has been engaging attention of Railway Board for quite some time. This issue was raised by the recognised Labour

federations, viz., National Federation of Indian Railway men and All India Railway men's federation in the Departmental Council meeting on 19th/20th December, 1989 also. Consequent upon the second report of the Committee of the Departmental Council (JCM) set up to consider the issue, the Min. of Railways have taken the following decisions in consultation with the recognised Labour Federations, viz., NFIR and AIRF.

2. The decisions communicated herein take effect from 1st January, 1993.

3. xx xx xx xx
 xx xx xx xx
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 "

The remaining paragraphs of the circular deal with the Controller, etc., from the Loco running staff, the duties and responsibilities to be performed by ~~the~~ such staff, the method of selection to subh posts, the medical standards required for these posts, pay fixation on such drafting, provisions for option to adopt the scheme, etc. The scheme also contains paragraph 5.5. which is referred in the earlier part of this Judgement which provides for adding 30% of the basic pay as an add-on element for the purpose of commutation of pensionary benefits to running staff who opt to come ^{over} to the supervisory cadre, w.e.f. 1.1.1993. This shows that a scheme for drafting loco supervisors and inspectors from running cadre providing certain conditions and offering certain additional benefits, ^{that would} ~~was~~ and the scheme comes into effect for the first time with effect from 1.1.1993. ^{framed} Only those who opt under the scheme would be governed by the provisions of the shcme contained in the circular. This circular was issued


after due deliberations with a view to obviate the difficulties in drafting running staff as loco-supervisors and loco inspectors. Such a wide organisation as the Railways, have to introduce several schemes for improving the efficiency of the staff, as also, for updating the administration. Such a scheme ~~for whom~~ would apply to the persons who would be in service on the date on which the scheme is introduced. If some benefit is given under the scheme that would accrue only to those who are in service and who opted for it and not for all the employees who had long back prior to the introduction of the scheme served the railways and retired. The reliance placed by the learned counsel for the applicant on DS Nakara's case as also *TS Thiruvengadam Vs. Sec. to Govt.* of India reported in 1993(3) SLJ 41 is mis-conceived and mis-placed because, in these cases, the pensioners as a class *or employees as a class* were discriminated against on the basis of a cut off date. In this case such a question does not arise. As stated earlier, the Railway Board circular dated 25.11.92 is not a scheme for liberalisation of pension or for conferring any additional benefits to retirees. It actually contains a scheme for improvement in the conditions of existing running staff drafted for manning supervisory posts which was to take effect with effect from 1.1.1993. It is true that as a part of the scheme it was decided that such of the running staff who are drafted to man the supervisory posts would get the benefit of an add-on element of 30% of the basic pay, for commutation of pension. This though would afford an additional benefit to the running staff drafted to man supervisory posts in commutation of their pension when they retire, cannot be considered as a scheme for improvement in the pension of the pensioners in general. Therefore, the argument based on the dictum in Nakara's case *loose its importance* when the Railway Board Circular deciding to implement a scheme

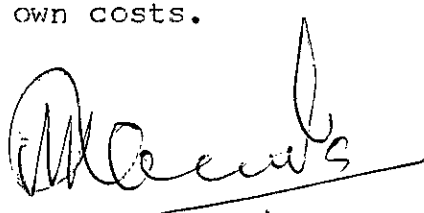
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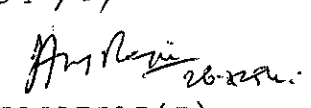
that
it is necessary a date should be fixed for such scheme to take effect. The Railway Board has fixed a future date namely 1.1.1993 when it issued a circular. We do not find any discrimination or violation of Art.14 and 16 in the matter.

8. In the light of what is stated in the fore-going paragraphs, we find that there is no merit in this application; ^{and} therefore, we dismiss this application leaving the parties to bear their own costs.


(A.B. GORTHI)
Member(Admin)


(A.V. HARIDASAN)
Member(Judl.)

Dated: 19-12 94


DEPUTY REGISTRAR(J)

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Copy to:

1. The General Manager, South Eastern Railway, Union of India, Garden Reach, Calcutta - 43.
2. The Secretary, (Establishment) Railway Board, New Delhi.
3. Divisional Personnel Officer, South Eastern Railway, Waltair.
4. One copy to Mr.P.B.Vijaya Kumar, Advocate, CAT, Hyderabad.
5. One copy to Mr.N.R.Devraj, Sr.CGSC, CAT, Hyderabad.
6. One copy to Library, CAT, Hyderabad.
7. Copy to All the Reporters as per the list of CAT, Hyderabad.
8. One spare copy.

YLKR

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

[TYPING]

THE HON'BLE MR.A.V.HARIODASAN : MEMBER(3)

AND

THE HON'BLE MR.A.B.GORTHIL : MEMBER(1)

DATED: 19.12.94

ORDER/JUDGMENT.

M.A/R.P/C.P.No.

in
O.A.NO. 887/93.
T.A.NO.

Admitted and Interim Directions
issued.

Allowed.

Disposed of with Direction.

Dismissed. ✓

Dismissed as withdrawn

Dismissed for default

Rejected/Ordered

No order as to costs.

