

(29)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL-APPLICATION-NO.961-OF-1996

DATE-OF-ORDER: - - - April, 1997

BETWEEN:

M.K.RAMASWAMY

.. APPLICANT

AND

Union of India rep. by

1. The Secretary, Railway Board,
New Delhi,

2. The General Manager,
South Central Railway,
Secunderabad,

3. The F.A.& C.A.O, FA&CAO Office,
S.C.Railway,
Secunderabad.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.S.LAXMA REDDY

COUNSEL FOR THE RESPONDENTS:Mr.N.R.DEVRAJ, Sr.CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

ORDER

ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Shri S.Laxma Reddy for the applicant and
Shri N.R.Devaraj for the Respondents.

2. Initially this OA was filed by 49 applicants and
an M.A.No.718/96 in this OA was also filed along with the
application for filing a single OA. As this OA was filed



challenging the Raiwlay Board letter dated 8.5.96 wherein it is clarified that additional increments granted to the Stock Verifiers for passing Appendix 4-A (IREM) examination will not be treated as a part of basic pay and is, therefore, not to be reckoned for calculating the Dearness Allowance etc. In view of the nature of the relief asked for, the impugned letter is treated as a general letter which is applicable to all Stock Verifiers. Hence, it was considered sufficient that only one of the Stock Verifiers can challenge that letter in a representative capacity and the challenge decided on merits. The result of the petition will be equally applicable to all the Accounts Stock Verifiers under the control of R-3. Hence the learned counsel for the applicant was directed to delete all the applicants except Applicant No.1. Accordingly, the M.A. was withdrawn and the OA was admitted with the first applicant only as the representative of the Accounts Stock Verifiers' category.

3. By Memorandum No.PC-IV/87/Imp/7 dated 3.3.89 (Annexure IV at Page 21 of the OA) sanction of the President was communicated to the effect that "Stock Verifiers in the grade of Rs.1400-2600 shall be given three advance increments after their passing Appendix 4 examination. This will be effective from 1.1.86 or the date from which the employee opts for the revised pay scales". By letter No.PC-IV/95/PNM/AIRF/5 dated 25.7.95 it was decided by R-1 in the P.N.M. meeting held with A.I.R.F. with the Board that the three advance increments granted under Board's letter dated 3.3.89 to Stock Verifiers in the grade of Rs.1400-2600 for passing the Appendix 4 A



examination may be treated as additional increments not to be absorbed in future increments. By the impugned letter of R-1 bearing No.PC.ILV/87/Imp/7 dated 8.5.96 (Annexure I at page 18), it was clarified that the three additional increments granted to the Stock Verifiers in the grade of Rs.1400-2600 for passing Appendix 4-A examination will not be treated as part of the basic pay and is, therefore, not to be reckoned for calculating Dearness Allowance etc. That clarificatory letter was circulated by R-3 by his impugned letter NO.AAD/E.05 dated 11.7.96 (Annexure I at page 18).

4. This OA is filed to set-aside the impugned proceedings of R-1 bearing letter No.PC.IV/87/Imp/7 dated 8.5.96 (Annexure I) and also the proceedings of R-3 bearing No.AAD/kE.05 dated 11.7.95 (Annexure I) by holding them as illegal without jurisdiction and violative of Articles 14 and 16 of the Constitution of India and principles of natural justice.

5. M.A.No.853/96 in this OA was filed for suspension of the impugned order No.PC.IV/87/Imp/7 dated 8.5.96. It was directed in the M.A. that the dearness allowance so far paid on the additional increments granted to the Stock Verifiers should not be recovered if such a recovery is contemplated until further orders.

6. A reply has been filed in this OA. The respondents submit that the three additional increments granted to the Account Stock Verifiers are to be treated as qualification pay as an incentive for passing the Appendix



4-A examination. Accounts Stock Verifiers who were granted the incentive of additional increment for passing the Appendix 4-A examination are not entitled for D.A. etc. on that additional increment in view of the Raiplay Board's letter NO.PCIV/86/DA/1 dated 25.11.86 (Annexure R-II to the reply) as such increments are not to be treated as basic pay. They further submit that the above is in accordance with the definition of pay defined in para 1303 (F.R. 9(21)(a) read with para 1321 (F.R. 27) of Indian Railway Establishment Code, Volume II). The above was also agreed to in the PNM meeting with the recognised labour federations. The circular issued by the Railway Board in agreement with the JCM with the approval of the President of India has statutory force as held by the Calcutta Bench of this Tribunal in the case of Somanath Mukhopadhyay and others V. Union of India in T.A.No.1840/86. They also submit that increments granted as incentives for passing Hindi examinations under Hindi Teaching Schemes and also for passing Hindi Typing and Hindi Stenography examination are in the form of personal pay which do not qualify for calculation of allowances. To substantiate their statement, the respondents have enclosed the Railway Board's letter NO.PC.IV/88/Increment/1 dated 27.10.89 (Annexure R-VI of the reply) wherein it was clarified that additional advance increments granted as incentive to Stenographers in subordinate offices for acquiring higher speed in short hand will not count as pay for allowances and as emoluments for pension/gratuity. It is further submitted in the reply that the Railway administration in fact has taken a liberal view in not recovering the excess amount received by the Accounts Stock Verifiers in the form



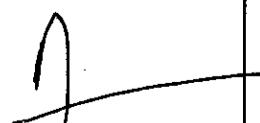
of D.A. on the three additional increments upto July 1996 and ordered disallowance of D.A. from August 1996. The allowance was granted on the additional increments by error and when the error was detected, the same was discontinued from August 1996 onwards. The Government reserves the right to correct the errors even if it is detected after a long time. Hence the respondents submit that the impugned proceedings are legal, in accordance with the law and the benefit derived by the Accounts Stock Verifiers upto July 1996 are not taken away by issue of the impugned proceedings dated 11.7.96.

7. A rejoinder has been filed by the applicant. It is stated that the duties of the Accounts Stock Verifier are of arduous nature in that he has to visit out stations frequently, collect the information and verify the stocks. The Stock Verifiers do not have any further channel of promotion. Considering all such issues only, Justice Wanchoo's Committee had recommended additional increments for passing the Appendix 4-A examination. The recommendations of the Committee were accepted and the award came into force from February 1973. Hence, the disallowance of the D.A. on the increment at this late stage is not called for. The respondents do not dispute the grant of additional increments on the basis of the Wanchoo Committee's report. However, the respondents deny that the work of Accounts Stock Verifiers is of arduous nature and they have enclosed job descriptions (Annexure R1) of the Stock Verifiers to state that the work performed by them is a routine one. Going to out stations is not considered strenuous as similar inspection routines are



prescribed for other categories in the Railways. As regard to the promotional avenues for the Stock Verifiers, the respondents submit that the Stock Verifiers if qualify in the Appendix 3-A examination, they can be posted in the inspectorial cadre. The above contentions and counter contentions are not of much importance in this OA. Hence it is not necessary to elaborately go into the above issues.

8. The applicant further submits that the order dated 3.3.89 granting three advance increments to Stock Verifiers does not stipulate that the allowances cannot be given on the additional emoluments. Even the letter dated 25.7.95 issued in consultation with the recognised unions does not provide for disallowance of allowances on the additional increments. The para 1321 (F.R. 27) states that disallowance of allowances on the additional increments can be ordered only if any general or special orders that may be made by the President in this behalf. In the order dated 3.3.87 for grant of incentives issued by the President of India, there is no mention in regard to non payment of allowances on the additional increments, even if it is treated as qualification pay. Even presuming that in view of the memorandum dated 25.11.86, the D.A. cannot be granted on the additional increments, such orders can take into effect only prospectively and cannot be given effect to retrospectively as the accrued rights cannot be taken away giving effect to those circulars retrospectively. They further submit that the qualification pay is to be treated as part of pay for purposes of fixation of pay on promotion to the higher post as held by the Calcutta Bench



of the Tribunal in T.A.No.148/88 (Kanti Ranjan Dasgupta and others v. Union of India and others) (Page 53). If the qualification pay can be treated as part of pay for fixation of pay on promotion to higher posts, then that qualification pay is definitely eligible for grant of allowances.

9. The point for consideration in this OA is whether the qualification pay granted to the Stock Verifiers in the form of three additional increments qualifies for payment of D.A. etc.

10. The incentive was ordered by R-1 by the letter dated 3.3.89 with retrospective effect from 1.1.86. Thus the incentive issued by letter dated 3.3.89 is said to have come into force from 1.1.86. Hence the extant instructions prevailing on 1.1.86 are applicable to the Stock Verifiers in regard to grant of allowances etc. on the qualification pay. The letter dated 3.3.89 issued with the sanction of the President reads as follows:-

"The matter regarding grant of incentive to Stock Verifiers on passing Appendix 4 examination was under examination and pending issue of final orders, instructions were issued vide this Ministry's letter of even number dated 26.11.1987 for not paying any amount as incentive in the Revised pay Scales, 1986.

It has now been decided with the sanction of the President that Stock Verifiers in the grade Rs.1400-2600 shall



be given three advance increments after their passing Appendix 4 examination. This will be effective from 1.1.1986 or the date from which the employee opts for Revised Pay Scales.

Appendix 3 (IREM) qualified staff of Inspectors of Stores Accounts will be exempt from passing Appendix 4 examination on promotion as Stock Verifiers, in terms of Rule 7 of Appendix 4 of Indian Railway Establishment Manual."

The respondents do admit that the letter does not indicate disallowance of D.A. etc on the additional emoluments and it is also a fact that the said letter was issued with the sanction of the President. But it is the contention of the respondents that the instructions applicable for grant of qualification pay is equally applicable to the incentive granted to the Stock Verifiers also. They further submit that in case of advance increments granted to Stenographers for acquiring higher qualification, passing of the Hindi examination under Hindi Teaching Scheme etc. no D.A. is permitted on the additional increments. Such condition is also applicable in this case. They further add that specific orders issued by the Ministry of Finance as circulated by Board's letter dated 25.11.86 relating to Dearness Allowance clearly spelt out that in case of Railway Servants who elect or are brought on the revised scales of pay, Dearness Allowance shall be calculated on basic pay as defined in F.R. 9(21)(a)(i). The letter dated 25.11.86 is at Annexure R-II. Para 2 of the said letter is relevant. That para is extracted below:-

"2. These orders shall apply to the Railway servants who elect or are brought

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on to the revised scales of pay under the Railway Services (Revised Pay) Rules, 1986 with effect from 1.1.1986 and also to those who elect to retain the scales of pay which prevailed prior to 1.1.1986. In the case of former, basic pay for the purpose of calculation of Dearness Allowance shall be as defined in Rule 2003(21)(a)(i) [FR 9(21)(a)(i)] RII and in the case of latter, it will include, in addition to pay in the pre-revised scales, dearness pay, dearness allowance, additional dearness allowance, Ad-hoc dearness allowance and interim relief appropriate to that pay admissible under orders in existence on 31.12.1985."

11. The word pay as defined in the Railway Establishment Code, Vol.II, 1987 Edition reads as follows:-

"1303(F.R.9 (21)(a) - "Pay means the amount drawn monthly by a government servant as :

(i) the pay other than special pay or pay granted in view of the personal qualifications, which has been sanctioned for a post held by him substantively or in any officiating capacity or which he is entitled by reason of his position in the cadre; and

(ii) overseas pay, special pay and personal pay; and

(iii) any other emoluments which may be specifically classified as pay by the President."

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12. This para does not indicate clearly whether the qualification pay is to be treated as a basic pay or not, though it says that "the pay other than the special pay or pay granted in view of personal qualification.... In this definition, for special pay or pay granted in view of personal qualification, no explanation is given. Whether the term special pay or pay granted in view of personal qualification includes the qualification pay or not, cannot be gauged from this para. The respondents themselves submit that this para has to be read with para 1321 (F.R.27) of the Code Vol.II in regard to the definition of pay. Para 1321 (F.R. 27) of the Code Vol.II reads as follows:-

"1321. (F.R. 27) - Premature increments - Subject to any general or special orders that may be made by the President in this behalf, an authority may grant a premature increment to a railway servant on a time-scale of pay if it has power to create almost in the same cadre on the same scale of pay."

If both the paras are read together, it would mean that the special pay granted is subject to any general or special orders that may be made by President in this behalf. This would mean inclusion of general or special orders in the memorandum to treat the incentive increment as basic pay or not. The Presidential order dated 3.3.89 extracted above does not state any instruction in regard to the treatment of this incentive increment. In view of the provisions in Para 1321 (F.R. 27) of I.R.E.C, Vol.II in the absence of any general or special orders made by the President in the memorandum dated 3.3.89, it has to be held that there is no bar in treating the incentive increment



granted to stock Verifiers as basic pay for purpose of granting allowances etc. The clarification given later by R-1 by the impugned letter dated 8.5.96 appears to be an after thought. While granting advance increment for acquiring higher qualification in some other cases, it has been clearly stated in the memorandum itself that the additional increments will not count as pay for allowances. One such memorandum at Annexure R-VI dated 27.10.89 clearly stipulates in Para 4 of that memorandum that the additional advance increments to Stenographers for acquiring higher speed in short-hand will not count as pay for allowances. Similar stipulation is also indicated as can be seen from Annexure R-VIII. Hence it is to be held that R-1 does not think it necessary to disallow D.A. etc. on the increment granted to Stock Verifiers at the time of issue of letter dated 3.3.89. Even in the letter issued on 25.7.95, ^{for non-absentee} additional increments granted to Stock Verifiers in future increments, no condition in regard to denial of D.A. on the additional increment was indicated.

13. The respondents submit that the additional increments do not carry the grant of D.A. etc. has been clearly spelt out in the Board's letter dated 25.11.86. The letter for granting additional increment was issued on 3.3.89, much later to the issue of letter dated 25.11.86. Hence it cannot be said that the respondents are not aware of the existence of the letter dated 25.11.86 while issuing the letter dated 3.3.89. Hence there is no reason for non inclusion of any general or special order prohibiting payment of D.A. on the additional increment granted to Stock Verifiers in their letter dated 3.3.89. Hence the clarification as given in the impugned letter dated 8.5.96



was not contemplated while issuing the letter of grant of incentives to Stock Verifiers. If, at a later date, it became essential to issue the clarification in view of the Board's letter dated 25.11.86, then, that clarification can come into force only from that date. If the impugned letter dated 8.5.96 was necessitated in view of the Board's letter dated 25.11.86, then it is fair if the clarification is restricted to incentives granted on or after 25.11.86. The clarification cannot relate back to a retrospective date. Incentives granted to Stock Verifiers earlier to 25.11.86, had started enjoying that benefit. That accrued right cannot be taken away by a memorandum issued with retrospective effect. If at all the restriction as per the impugned letter is to put into effect, it can only be prospectively to those Stock Verifiers who were granted incentives for passing Appendix 4-A examination on or after 25.11.86.

14. The Calcutta Bench of the Tribunal in Kanti Ranjan Das Gupta's case had held that the qualification pay was to be treated as part of pay for the purpose of fixation of pay on promotion to higher posts. The learned counsel for the applicant submitted that when the qualification pay was to be treated as part of pay for fixation of pay on promotion to higher posts, then that qualification pay will also entail D.A. There is force in this argument. I do consider that the initial letter dated 3.3.89 was issued only after considering all the points without any restriction on payment of D.A. on the incentive increment.

15. As stated earlier, the restriction as per the impugned letter can be imposed in view of the letter dated 25.11.86

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wherein it has been clearly indicated that in case of Railway servants who elect or are brought on revised scales of pay, D.A. should be calculated on the basic pay. This letter may be treated as special order issued in accordance with Para 1321 (F.R. 27) of I.R.E.C. Vol.II to be incorporated in the letter dated 3.3.89 as the letter dated 25.11.86 was also issued with the sanction of the President of India. But that special order will come into force only with effect from 25.11.86 and not earlier to that date. Hence it has to be observed that the Stock Verifiers who qualified in the Appendix 4-A examination earlier to 25.11.86 are to be granted D.A. on the incentive increment whereas those who passed that examination on or after 25.11.86 may be denied that allowance.

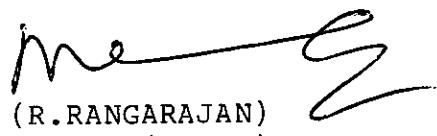
16. The next question arises whether denial of D.A. on the incentive increment to those Stock Verifiers who passed the Appendix 4-A examination on or after 25.11.86 and paying these allowances to those who passed the examination earlier to 25.11.86 may mean discrimination as both the groups belong to the category of Stock Verifiers in the scale of pay of Rs.1400-2600. Reasonable classification is permitted. The letter dated 25.11.86 was issued with the sanction of the President clearly spelling out the policy and a decision taken on valid grounds has to be implemented from that date. Hence the cut off date 25.11.86 cannot be treated as arbitrary and those who qualified later than that date has to be treated in accordance with rules in vogue on that date. The Apex Court had held that cut off date for granting certain privileges to pensioners is not arbitrary. That view holds good in this case also.

17. In the result, the impugned letter of the Railway Board dated 8.5.96 circulated by R-3 by letter dated 11.7.96 is

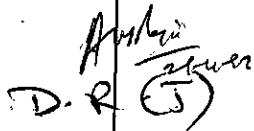
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applicable only to those Stock Verifiers who had qualified in the Appendix 4-A examination on or after 25.11.86. Those Stock Verifiers who qualified in the Appendix 4-A examination earlier to 25.11.86 are entitled for treatment of additional increment granted to them as part of basic pay, for reckoning D.A. etc.

18. The O.A. is ordered accordingly. No costs.


(R. RANGARAJAN)
MEMBER (ADMN.)

DATED: 16th April, 1997


D.R.G.

vsn

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Copy to:

1. The Secretary, Railway Board, New Delhi.
2. The General Manager, South Central Railway, Secunderabad.
3. The F.A., & C.A.O., FE & CAO Office, South Central Railway, Secunderabad.
4. One copy to Mr.S.Laxma Reddy, Advocate,CAT,Hyderabad.
5. One copy to Mr.N.R.Devraj, Sr.CGSC,CAT,Hyderabad.
6. One copy to D.R(A), CAT,Hyderabad.
7. One duplicate copy.
8. All the Reporters as per List of CAT, Hyd.

YLKR

96/97

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R.R. RAGAN : M(A)

AND

THE HON'BLE SHRI D.S. JAI PARAMESHWAR:
M(J)

DATED:

16/4/87

ORDER/JUDGEMENT

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

in

D.A. NO. 96/96

ADMITTED INTERIM DIRECTIONS ISSUED
ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLR

II COURT

