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CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :
AT HYDERABAD.

O.A. No.678/97.

DATE OF ORDER : 28 -7-1999.

BETWEEN:

1. B.D. Francis
2. Philip Rabel
3. R.G. Joshi
4. Leonard Desmier

... APPLICANTS

A N D

1. Union of India,
Represented by the
Chairman,
Railway Board,
Rail Bhavan,
New Delhi -110 001.
2. Union of India,
Represented by the
General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad.
3. Chief Personnel Officer,
South Central Railway,
Rail Nilayam,
Secunderabad.

... RESPONDENTS

Counsel for Applicants : Mr. G. Ramachandra Rao

Counsel for Respondents : Mr. N.R. Devaraj, SC.

Coram :

The Honourable Mr. Justice D.H. Nasir, Vice-Chairman

The Honourable Mr. H. Rajendra Prasad, Member(Admn.).

O R D E R.

Justice D.H. Nasir, VC :

1. In this O.A. the respondents are sought to be directed to step up the pay of the applicants, 4 in number, in the Loco Supervisory posts on par with their juniors with effect from 15.4.1987 by extending the same benefit as given to the applicants in OA No.534/91 with all consequential benefits.

2. The applicants were appointed in various Loco running supervisory posts prior to 1.1.1986. The scales of pay of Loco running supervisory posts prior to 1.1.1986 were Rs.550-750, Rs.700-900 and Rs.840-1040. After the revision of scales of pay under IV Pay Commission, both the grades of Rs.550-750 and Rs.700-900 were merged as one grade, namely, Rs.2000-3200 and the grade of Rs.840-1040 was revised to Rs.2375-3500. However, the applicants were getting less pay than their juniors appointed to Loco running supervisory posts after 1.1.1986. The Railway Board on being apprised of such anomalous situation decided to resolve the anomaly by stepping up the pay of the seniors on par with their juniors and in pursuance of the said decision, the third respondent issued instructions in proceedings No.P.481/IP/CRS/III dated 7.9.1989 to all the Divisions to step up the pay of the senior Loco supervisors on par with their juniors.

3. However, according to the applicants, the third respondent addressed a letter dated 12.4.1990 to the first respondent seeking certain clarifications. Thereafter the first respondent again issued proceedings dated 14.9.1990 referring to its earlier proceedings dated 16.9.1988 and withdrew, without any notice to the applicants, the benefit of higher pay on par with the juniors by proceedings dated 13.9.1990. Some employees who were similarly placed as the applicants herein, filed O.A.No.534/91 before this Tribunal which was allowed by an order passed on 21.7.1995 directing the respondents to restore the benefit of stepping up of pay of the senior Loco Supervisors on par with their juniors. Against the

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said order dated 21.7.1995, the respondents filed a Special Leave Petition in the Supreme Court of India under Article 136 of the Constitution of India which was, however, dismissed on 2.12.1996 on the ground of delay and on merits, according to the applicants. However, the respondents did not extend the benefit of the judgment in O.A.No.534/91 dated 21.7.1995. According to the applicants, they were similarly placed as the applicants in O.A.No.534/91 and therefore, they were entitled to the benefit of the order passed in O.A.No.534/91 and pleaded that the said decision was in the nature of judgment in ^{ad} rem and not a judgment in personam. Against this inaction on the part of the respondents which is challenged in the present O.A.

4. The learned Standing Counsel Mr. Devaraj for the respondents while dealing with the submissions made on behalf of the applicants, drew the attention of this Bench to the decision of the Hon'ble Supreme Court in UNION OF INDIA v. O.P. SAXENA & ORS (AIR 1997 SC 2798) which reads as follows :

" Railway Establishment Code Rule 1316 - Pay/promotion/stepping up - promotion to the post of Loco Supervisor while holding the post of Driver Cadre 'C', one another employee Shri Karar was placed in the cadre of Loco Supervisor after being promoted from the post of Driver Grade 'A' whom the feeder posts of Sri Karar and that of the other Respondents were different, the applicability of principle of stepping up cannot apply."

Mr. Devaraj further submitted that the implementation of the Board's orders by the Administration was misconceived and on receipt of subsequent clarification of the Board, the Divisions were advised to maintain status quo and that stepping up of pay be allowed only to those Supervisors working in various Units who fulfil the conditions laid down in the clarification. He further submitted that since the

payment made to the staff was erroneous, action had to be taken by the Administration to recover the wrong payment made to the staff. The respondents do not deny that the Special Leave Petition filed by the Railway against the judgment of CAT, Hyderabad in OA No.534/91 had been dismissed by the Hon'ble Supreme Court of India and that the Railway Board while communicating the order of the Supreme Court advised that the judgment dated 21.7.1995 of CAT, Hyderabad in OA No.534/91 be implemented in respect of the petitioners only treating the same as judgment in personam and in compliance with the order of the CAT, Hyderabad in OA No.534/91 the pay of the 90 applicants had been stepped up since the order in OA No.534/91 had become final due to dismissal of the SLP against it. It is further submitted on behalf of the respondents that since the applicants in this OA had not fulfilled the conditions stipulated in Para-1316 of IREM as clarified vide Board's letter dated 10.9.1990 and since the present applicants were not parties to OA No.534/91, their case for stepping up of pay on par with their juniors could not be considered.

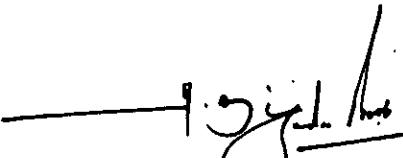
5. In O.A.Nos.819/96 and 285/96 filed before this Tribunal which were disposed of in terms of the decision in O.A.No.534/91 dated 21.7.1995 directing the respondents to apply the orders of the Railway Board dated 16.9.1998 for stepping up the pay of the applicants in these two O.As and to bring it on par with that of their juniors promoted after 1.1.1986. This decision was challenged before the High Court of A.P. by filing W.P.No.9087/98 in which an interim direction was given as follows :

"The interim order already granted on 22.4.98 shall continue until further orders."

6. The learned counsel Mr. Ramchandra Rao for the applicants submitted that an application has already been made in the aforesaid writ petition seeking vacation of the interim direction given by the Hon'ble High Court and that the same was pending.

7. With the above situation in view, we believe that it would not be legal and proper for us to give any direction in the present O.A. having regard to the fact that the issues involved in the present O.A. and the above writ proceedings before the High Court of A.P. are similarly in nature and therefore, possibility could not be ruled out that a situation of conflict of opinions may arise if any observations are made and conclusions are arrived at in the present O.A. during the pendency of the writ proceedings before the High Court of A.P. In our opinion, therefore, the present O.A. before us could be disposed of with a direction that the decision which may be taken by the Hon'ble High Court of A.P. in Writ Petition No. 9087/98 shall be binding on the present applicants, as well as the Respondents.¹⁰

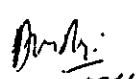
8. Subject to the aforesaid observations, this O.A. is dismissed. No costs.


(H. RAJENDRA PRASAD)
MEMBER (ADMN.)


(D.H. NASIR)
VICE-CHAIRMAN.

Dated the 28th day of July, 1999.

DJ/



1st AND 2nd COURT

COPY TO:-

1. H.D.H.N.J

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

2. H.H.R.P.M.(A)

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH, HYDERABAD.

3. H.C.S.D.P.M.(J)

4. D.R. (A)

5. SPARE

THE HON'BLE MR. JUSTICE D.H. NASIR
VICE - CHAIRMAN

THE HON'BLE MR. H. RAJENDRA PRASAD
MEMBER (ADMN)

THE HON'BLE MR. R. RANGARAJAN :
MEMBER (ADMN)

THE HON'BLE MR. B.S. JAI PARAMESHWAR:
MEMBER (JUD)

ORDER: Date. 28/7/99

ORDER / JUDGMENT

MA./RA./CP.NE

IN

CASE NO. 678/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED.

C.P. CLOSED

R.A. CLOSED.

D.A. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED / REJECTED

NO ORDER AS TO COSTS.

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