

O.A. No. 20/93

Date of Decision: 12.4.93

KANHIYA LAL

: Applicant.

Mr. J.K. Kaushik

: Counsel for the applicant.

VERSUS

UNION OF INDIA

: Respondents.

Mr. K.N. Shrimal

: Counsel for the respondents.

PER HON'BLE MR. JUSTICE D.L. MEHTA, VICE-CHAIRMAN:

Heard the learned counsel for the parties.

2. Applicant No. 1 and No. 2 were posted vide Annexure A-1 and A-2 respectively on the post of Chargemen from the posts which they were holding in Shop Floor. The posts on which the applicants were posted vide Annexure A-1 and A-2 were ex-cadre posts. Applicant, have prayed that the respondent may be directed to protect and regulate the pay in Shop Floor in accordance with the Railway Board's P.S. No. 5915 (Annexure A-5) and the order of recovery, if any, may be quashed.

3. Mr. Kaushik, appearing on behalf of the applicants, has invited my attention to Serial No. 5915 Circular dated 16.5.1973 (marked A-5). In this circular, in para 2, there is a reference that counting of service rendered in an ex-cadre post for increment in a cadre post on an identical scale is no longer admissible except to the extent the conditions laid down therein are fulfilled. However, in order to avoid hardship, it has been decided that the difference, if any, between the pay as already fixed and the pay as now fixed under the revised orders, should be treated as personal pay to be absorbed in future increments or increases in pay. Mr. Kaushik submits that he is having no grievance against reduction in the pay on account of his reversion to his parent department but he submits that higher salary he was drawing should be adjusted to the future grade increments.

4. Mr. Shrimal, appearing on behalf of the respondents has invited my attention to Annexure R-2, a circular of the Railway Board dated 30.1.74. The Railway Board has clarified

that regarding counting for initial fixation of pay service rendered by an officer in an ex-cadre post in a scale of pay higher than or identical with that of a post in the parent cadre after reversion to the parent department, the officer should be treated in a way referred to in para (i) and (ii). Para (i) provides that benefit of the ex-cadre service rendered in an identical time scale of pay or in higher scale upto 17.11.66 should count for pay fixation and increments in the post in the parent service/cadre to which the officer reverts to the extent admissible under the orders in force prior to 18.11.66. The above benefit would be admissible irrespective of the fact whether the officer on reversion to parent cadre is re-promoted to a post on an identical time scale of pay. Subsequently, in para (iii), there is a further reference that only the actual officiating service rendered upto 17.11.66 will, therefore, count as service for the purpose of para 1 above. As far as Annexure R-2 is concerned, this

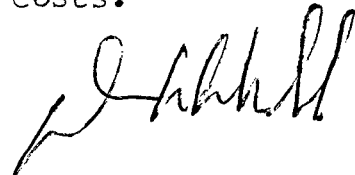
is applicable to the persons who are getting benefit upto 17.11.66. This circular R-2 is not applicable to the persons who have served on ex-cadre post after 17.11.66 and reverted to their parent department. There is a specific order that the applicants will not get the benefit on ad-hoc promotion. It is not in dispute and they are not getting benefit of adhoc promotion because they are not asking for continuation on adhoc promoted post. They want that the benefit of Annexure A-5 should be extended. Last five lines of Annexure A-5 carves out an exception to a general policy and directs that in order to avoid hardship that the difference, if any, between the pay as already fixed and the pay as now fixed under the revised orders, should be treated as personal pay. The applicant are entitled for the same.

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5. In the result, the O.A. is accepted in part that the difference, if any, between the pay as already fixed and the

pay as now fixed under the revised orders, should be treated as personal pay to be absorbed in future increments or increases in pay. The amount recovered, if any, should be refunded.

6. There shall be no orders as to costs.



(D.L. MEHTA)
Vice-Chairman