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CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT COURT SITTING AT INDORE

Original Application No. 157 of 2005

Indore, this the 20th day of April, 2006

Hon'ble Dr. G.C. Srivastava, Vice Chairman
Hon'ble Shri K.B.S. Rajan, Judicial Member

F. D'Cruz, aged 70 years,
S/o. Shri B.J. D'Cruz,
Retired Driver, W. Railway,
House No. 66, Vardan Nagar,
Indira Nagar - Ratlam (MP).

2. Dalchand Sharma, aged 70 years,
S/o. Shri B.L. Sharma,
Retired Driver, Western Rly.
811/C, Ghatla Colony, Ratlam.

3. Mathura Prasad, S/o. Gauri,
aged 69 years, Retired Rly.
Driver, Sraaham Apartment, A. No. 4,
Mitra Niwas Colony, Near Kalka Mata
Temple, Ratlam.

4. Ranjeet Singh, S/o. Kalyan Singh,
aged 67 years, Devra Deo Nagar
Colony, Near Temple, Ratlam.

5. Shyam Sunder, S/o. Chhedilal,
aged 69 years, Saai of Mithibai,
Behind Police Line, Baghana,
Nimach (MP).

6. Ramchandra Afle, S/o. Gopiji,
aged 72 years, House No. 23, 23
Nyaya Nagar, Sukhalia Gram,
Indore (MP).

7. M.D. Nasim A, Kabir Marg,
Gali No. 2, Baghana, Nimach. ... Applicants

(By Advocate - Shri A.N. Bhatt & Shri C.P. Lashkari) for

V e r s u s

The Union of India - Represented by :

1. The General Manager,
Western Railway, HQ Office,
Churchgate, Mumbai - 20.

2. The Divisional Rail Manager,
Western Railway,
Divisional Office - Ratlam.

... Respondents

(By Advocate - Shri Y.I. Mehta, Sr. Advocate alongwith Shri
D.S. Patel)

ORDER

By K.B.S. Rajan, JM.-

Seven applicants, in their seventies have approached this Tribunal for redressal of their grievances, the grievances being that notwithstanding their having been ordered to perform duties in the higher grade (Driver Grade A) for a substantially long period of over seven years, they have not been paid their salary as applicable for the said post of Driver Grade A, nor have their pension been paid on the basis of the higher pay.

2. A thumbnail sketch of the facts of the case is as under:-

The applicants were all working as Driver Grade B and their next promotion is Driver Grade A and 'A' special, in the scale of Rs 1600 - 2660 and Rs 1660 - 2900 respectively. Sometimes in early eighties, there were some court cases relating to seniority of Drivers consequent to which, regular promotion to the post of Driver grade A could not take place. And, the applicants who were senior in the grade of Driver 'B' were required to work in the higher post since 1985. According to the applicants, they were not paid their pay and allowances of the higher grade till the date of their superannuation and consequently, their pension was also on the basis of their pay in the lower grade i.e. as for Driver Grade 'B'. In 1998, these applicants together with certain others filed

OA No. 297 of 1998 before this Tribunal and the said OA was disposed of by order dated 14th May, 1998 with a direction to the respondents to consider the pending representation filed by the applicants, by a reasoned and speaking order. As the order passed by the respondents in compliance with the aforesaid order of the Tribunal was not to the taste of the applicants (the grievances of the applicant still remaining), with the liberty given to them, vide order dated 06-02-2001 in M.A. No. 1755/2000 in OA 297/1998, a fresh OA No. 223/2001 was filed, The respondents had submitted that the pending case filed by the respondents before the Apex Court was dismissed and hence, "the present OA be disposed off accordingly, as the respondents are implementing the directions therein." On the very same day, when the above submission was made by the respondents, the Tribunal had disposed of the OA 223/2001 to implement the order of the Hon'ble Madhya Pradesh High Court 140/84 against which the respondents' Special Leave Petition was dismissed by the Apex Court. Order dated 13-04-2004 refers. The Divisional Railway Superintendent, in his order dated 13-01-2005 had rejected the case of the applicants holding that the case of the applicants is not covered by the Judgment of the Madhya Pradesh High Court. Hence this O.A. by the applicants, challenging the decision of the Respondents.

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3. Respondents have contested the OA. According to them, the applicants were required to perform the duties of higher grade on account of pendency of the case relating to seniority in the Court, However, they were not entitled to any benefit.

4. Arguments were heard and documents perused. The decision of Madhya Pradesh High Court in WP No. 140/84 relates to preparation of a combined seniority list of Shunters Grade A and B w.e.f. 01-01-1973 (for promotion to Driver C) and fix their respective seniority as Driver 'C'. Though the applicants herein were said to be parties thereto, in so far as the grievance of the applicants is concerned, the same relates to their having been asked to perform the duties of Driver Grade 'A' they should be paid the higher pay scale with due promotion in that grade. According to the counsel for the applicants, right from 1985 there were no regular selection to the said grade, though, as per the rules, vacancies should be filled up on annual basis. And, it was just immediately after the retirement of the applicants, the respondents conducted DPC and promoted the juniors to the post of Driver 'A' even during the pendency of the court cases. The contention of the applicants is that if the railways could consider and promote the juniors in 1992 when the court cases were not finalized, the same they could have done even during the service of the applicants, in which event, the applicants too could have been afforded the benefit of the promotion. According to the counsel for the applicants, that such a step should have been taken is in

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accordance with the Railway Board's instructions dated 26-12-1979 vide Annexure A-7 to the OA.

5. Per contra, the counsel for the respondents has stressed that as the seniority issue was pending before the Courts, the applicants were required to perform the higher duties and they are not entitled to any benefit.

6. We are unable to appreciate the stand taken by the respondents. Admittedly, the applicants were senior Drivers Grade 'B' and they were eligible to be considered for promotion. Equally it is the admitted fact that they were given the higher post of Driver 'A' which they performed for a substantial period of seven years plus. The fact that they were entrusted with this higher responsibility is on the sole ground that they were the senior most Driver Grade 'B'. When in 1992 the Respondents chose to hold DPC and promote certain other Drivers Grade 'B' whose promotions were subject to the outcome of the pending cases in the courts, there was no change in the situation as occurred prior to the retirement of the applicants. It is not that the applicants were performing the duties for a short spell, such as against leave vacancies etc., Orders directing them to perform the duties of Driver Grade 'A' were passed by the competent authority. Under these circumstances, the question arises, as to what are the benefits that should percolate to the applicants for their having enshouldered the higher responsibilities of Driver Grade 'A' for such a long time. Minimum benefits are -

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(a) Pay and allowances on the higher pay scale as of Driver Grade 'A'/Driver Spl 'A' in which the applicants were performing the duties.

(b) Fixation of pension and other terminal benefits on the basis of the higher pay applicable to the applicants.

7. As regards (a) above, it is settled law that when an employee was asked by the competent authority to perform the duties of a higher post, the employee is entitled to the pay and allowances attached to the said post.

8. In the case of *Selvaraj v. Lt. Governor of Island, Port Blair*, (1998) 4 SCC 29, the Apex Court has held as under:-

Fact remains that the appellant has worked on the higher post though temporarily and in an officiating capacity pursuant to the aforesaid order and his salary was to be drawn during that time against the post of Secretary (Scouts). It is also not in dispute that the salary attached to the post of Secretary (Scouts) was in the pay scale of 1640-2900. Consequently, on the principle of quantum meruit the respondents authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee.

In *Jeet Singh v. M.C.D.*, 1986 Supp SCC 560 the order of the Apex Court is as under:-

Petitioners claim that they have been in continuous employment ever since the year 1979 and that they are entitled to the salary and allowances are paid to regular and permanent employees on the principles of equal pay for equal work. Following the order made in the Writ Petition Nos. 3077-3111 of 1985 we direct that these petitioners shall be entitled to the salary and allowances on the same basis are paid to regular and permanent employees from the date of their continuous employment.

and in Jaswant Singh v. Punjab Poultry Field Staff

Assn.,(2002) 1 SCC 261 the Apex Court has held -

"..... given the fact that the appellant had discharged the duties of a Chick Sexer, he was at least entitled to the pay and other allowances attributable to that post during the period he carried out such duties."

9. As regards (b) above, the same is governed by the Railway Pension Rules, 1993. Rule 50 of the Railway Services (Pension) Rules, 1993 reads as under:

"50. *Average emoluments.*—Average emoluments shall be determined with reference to the emoluments drawn by a railway servant during the last ten months of his service.

Note 1.—If during the last ten months of his service a railway servant had been absent from duty on leave of which leave salary is payable or having been suspended had been reinstated without forfeiture of service, the emoluments which he would have drawn, had he not been absent from duty or suspended, shall be taken into account for determining the average emoluments:

Provided that any increase in pay (other than the increment referred to in Note 3) which is not actually drawn shall not form part of his emoluments.

Note 2.—If, during the last ten months of his service, a railway servant had been absent from duty on extraordinary leave, or had been under suspension the period whereof does *not* count as service, the aforesaid period of leave or suspension shall be disregarded in the calculation of the average emoluments and equal period before the ten months shall be included."


(The Apex Court has occasion to consider the said Rule in the case of *R.P. Kapur v. Union of India*, (1999) 8 SCC 110 in connection with the appellant in that case who retired on 25-11-1992.)

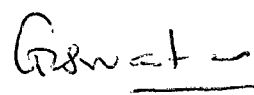
10. The above rule clearly stipulates that pension is based on last ten months' average pay. Once the applicants are entitled to higher pay scale, they are, as a logical corollary and a natural

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consequence thereof, are entitled to terminal benefits on the basis of the average emoluments last drawn.

11. In view of the above the OA is allowed to the extent that the respondents shall work out the pay of the applicants in the pay scale of Rs 1600 - 2660/1660 - 2900 ~~as the capacity in~~ which capacity the applicants were working from the date they had been ordered to work in the post of Driver Grade 'A'/Driver Grade Special 'A' and pay the difference in pay and allowances to them. The respondents are also directed to calculate the pension/family pension and other terminal benefits on the basis of the pay drawn by the applicants in the afore said pay scale and afford the same to the applicants. Time scheduled for compliance of this order is six months from the date of communication of this order. No costs.


(K.B.S. RAJAN)
JUDICIAL MEMBER


(Dr. G.C. SRIVASTAVA)
VICE CHAIRMAN