

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

original Application No. 590 of 2001

Jabalpur, this the 6th day of September, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

1. Prashant, s/o. N. Shri Hari Pasta Bishwas, aged 34 years, resident of House No. 1515/L, Road No. 9, Old Railway Colony, Ratlam.
2. Sanjeewan Kotam Atamal, aged 32 years, Diesel/Electrical Driver, C/o. CTCC Office, Western Railway, Ratlam.
3. Alok Kumar Brijkishore Bansal, aged 35 years, C/o. CTCC Office, Western Railway, Ratlam.
4. Ram Shiromani Gautam, aged 34 years, C/o. CTCC Office, Western Railway, Ratlam.
5. Lal Baboo Singh Moujilal, aged 36 years, C/o. CTCC office, Western Railway, Ratlam.
6. Visnu Prakash Shrivastava, aged 36 years, C/o. CTCC Office, Western Railway, Ratlam.
7. Jagdish Prashad Gerilal, C/o. CTCC Office, Western Railway, Ratlam.
8. Narendra Dfeghde, C/o. CTCC, Ratlam, aged 35 years.
9. Rajendra Prasad M, aged 37 years, c/o. CTCC, UJN. ... Applicants

(By Advocate - Shri A.N. Bhatt)

V e r s u s

Union of India - represented by :-

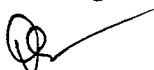
1. The General Manager, Western Railway, Headquarters Office, Churchgate-Mumbai-20.
2. The Divisional Rail Manager, Western Railway - Do-batti, Ratlam. ... Respondents

(By Advocate - Shri Y.I. Mehta rep. by Shri D.S. Patel)

O R D E R

By Madan Mohan, Judicial Member -

By filing this Original Application the applicants have claimed the following main reliefs :



"8.1 to declare that the letters issued for the cancellation of pay fixation dated 28.9.2000 and 13.12.2000 may kindly be quashed being illegal, void and in-operative,

8.2 the respondents may kindly be directed to extend the benefits of pay fixation at par and from the date of their early promotions,

8.3 all the arrears may kindly be ordered to pay to the applicants,

8.4 all the consequential benefits with interest may kindly be allowed."

2. The brief facts of the case are that the applicants working under the respondent No. 2 as Railway Engine Drivers in the scale of Rs. 1350-2200/5000-8000/- . The respondent No. 2 has issued a seniority list under letter dated 18.4.1994 and the same is still in existence. The applicants are placed and shown senior to the rankers and assigned seniority position at serial numbers 145, 146, 147, 148, 149, 152 and 155 respectively. The applicants while were working as Assistant Drivers were sent for Goods Driver Training from 17.4.1995. They cleared the examination on 5.5.1995. On completion of the training the applicants again joined their duties as Diesel Assistants in the scale of Rs. 950-1500/- and started working as such. The respondent No. 2 issued an order under which certain Diesel Assistants who were junior to the applicants have been promoted as Goods Drivers. Also another promotion letter was issued dated 25.5.1995 ignoring the applicants who were senior. The applicants being aggrieved represented the department against this unjust and unfair dealing. The department has issued promotion orders of Goods Drivers in respect of the applicants also on 13.7.1995. The applicants again represented and requested the respondents for promotion from the date of promotion of the juniors from 3.5.1995. The departmental officers assured the applicants that their case is under examination and will be considered shortly. The respondent No. 2 issued an

office order dated 28.12.1999 and extended the benefits from the date of promotion of juniors and fixation was also revised. On account of this revised pay fixation the applicants were eligible for arrears. The same was also paid to the applicants. The applicants were receiving the pay and allowances from the date of promotion of juniors as per rules but all of a sudden without assinging any reason, rule and show cause notice, the Department has cancelled the letter of pay fixation which was issued on 28.12.1999, vide letter dated 28.9.2000 and also recovered the payment made. Against this cancellation the applicants submitted their detailed representation and the respondent No. 2 without considering the same rejected the representation vide letter dated 13.12.2000. Hence, this OA is filed.

3. Heard the learned counsel for the parties and perused the records carefully.

4. It is argued on behalf of the applicants that according to the seniority list issued by the respondents Annexure A-3 apparently the applicants are senior to those employees who were granted promotions ignoring the seniority of the applicants. The serial Nos. of the applicants are 145, 146, 147, 148, 149, 152 and 155 respectively. The applicants completed the training examination on 5.5.1995 for the Goods Driver successfully and respondent No. 2 had issued the office order dated 28.12.1999 by which all the benefits were extended to the applicants from the date of promotion of their juniors and fixation was also revised. But subsequently vide letter dated 28.9.2000 the respondents cancelled the letter of pay fixation of the applicants and recovered the payment made. The applicants were not given any opportunity of hearing. No show cause notice was



issued to them. The whole action of the respondents is arbitrary, unjust and illegal.

5. In reply the learned counsel for the respondents argued that the employees junior to the applicants were given adhoc promotion not by ignoring the applicants but because those juniors had completed the training earlier than the applicants and because of exigencies of service. The applicants when completed the training, they were also given the adhoc promotion as per Annexure A-8. The applicants have not clarified as to which officers gave the alleged assurance for their promotions. The respondent No. 2 did issue order dated 28.12.1999 and the same was found to be wrongly issued. In the matter of adhoc promotion even if junior employee is given such promotion earlier than the senior employees, when the senior employees are subsequently promoted they are not entitled to get their pay fixation from the date such promotion was given to the junior employee. Such stepping up of pay is given only in the case of regular promotion i.e. when the Juniors are regularly promoted earlier than the seniors then on such regular promotion the seniors are given the pay fixation on the lines of their juniors as would be clear from Railway Board circular dated 20.6.1990/9.7.1990. This benefit of stepping up is not available in the matter of such adhoc promotion. The order of Annexure A-9 was not in accordance of Annexure R-1 and hence, the order of Annexure A-1 was passed to rectify the mistake. The respondents have rightly turned down the representation of the applicants. No irregularity or illegality has been committed by the respondents while passing the impugned orders.

6. After hearing the learned counsel for the parties and on careful perusal of the records, we find that the



alleged juniors had completed the training earlier than the applicants. However, as the applicants completed the training they were also given the adhoc promotion and subsequently vide order dated 28.12.1999 the applicants were also given the same benefit as where granted to their juniors. But this order was found to be wrongly issued as the alleged junior employees completed the training earlier than the applicants and due to exigency of service they were promoted on adhoc basis. In the matter of adhoc promotion even if junior employee is given such promotion earlier than senior employees, when the senior employees are subsequently promoted they are not entitled to get their pay fixation from the date such promotion was given to the junior employee. Such stepping up of pay is given only in the case of regular promotion i.e. when the juniors are regularly promoted earlier than the seniors then on such regular promotion the seniors are given the pay fixation on the lines of their juniors. The benefit of stepping up is not available in the matter of such adhoc promotion. Hence, the order dated 28.12.1999 was cancelled and the respondents are duly empowered and authorised to rectify any mistake which is committed against the rules. The applicants have not made the alleged junior employees as party in this OA as it is necessary because if any order is passed in favour of the applicants then it may adversely effect them.

7. Considering the facts and circumstances of the case, we are of the opinion that the applicants have failed to prove their case and the OA is liable to be dismissed as having no merits. Accordingly, the OA is dismissed. No costs

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman