

CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCHOA No. 060/00785/2014

Pronounced on : 6.8.2015
Reserved on : 04.08.2015

CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MRS.RAJWANT SANDHU, MEMBER(A)

1. Subhash Chander aged 62 years, s/o Sh. Ram Saran, R/o Plot No. 9, Defence Enclave, Ambala Cantt. Haryana.
2. Satish Kumar Puri, s/o Sh. Mulakh Raj, R/o 55/17-7, Preet Colony, Model Town, Ambala City.
3. Bir Jaspal Singh Walia s/o Sh. Pirthipal Singh, 383, Surya Vihar, Solan.
4. Kishan Lal Mehta, R/o 37-B, Naveen Nagar, Saharanpur, UP.

.....Applicants

BY ADVOCATE: MR. KARNAIL SINGH

VERSUS

1. Union of India through General Manager, Northern Railway, New Delhi.
2. Divisional Railway Manager, Northern Railway, Ambala Cantt.
3. Sr. Divisional Personnel Officer, Northern Railway, Ambala Cantt.

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.....Respondents

BY ADVOCATE: MR. SURESH VERMA

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER(A):-

1. This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

- (i) Quash and set aside the impugned order dated 19.02.2014 being violative of the orders dated 24.07.2009 and 1.5.2007 specifically issued with regard to the Local Supervisory Staff appointed prior to 1.1.2006.
- (ii) Issue the directions to the respondent No. 2 for restoration of pay of the applicants in accordance with order dated 05.08.2011 and to make the payment of arrears of pay with interest of 12% in accordance with well settled law.
- (iii) Issue the directions to the respondent No. 2 to refund the amount of recovery made alongwith interest of 12% p.a. from the salaries and grant difference of retiral dues such as DCRG, commutation of pension, leave encashment etc. to the applicants.

2. Averment has been made in the OA that the applicants were promoted as Senior Loco Inspectors (SLI) in the pay band of Rs. 9300-34800 + Grade Pay of Rs. 4600. Vide Annexure A-4, the fixation of pay of the applicants was as per the following table:-

Sr.No.	Applicants	Design.	Pay before 1.1.2006	Pay fixed w.e.f. 1.1.2006	Entitle to w.e.f. 9.6.2006	Recovery made, if any
1.	Subhash Chander	SLI	9700	22650	28570	66000 approx.
2.	Satish Kumar	SLI	11500	25990	28570	NIL
3.	Bir Jaspal Singh	SLI	21860	28570	NIL
4.	Kishan Lal Mehta	SLI	10600	24320	28570	NIL

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3. It is further stated that there were some anomalies in the implementation of the recommendations of the 6th Pay Commission in the pay scales of Loco-Supervisors/Loco Inspectors and representations were filed in this regard. These were considered by the Railway Board and letter dated 1.5.2007 (Annexure A-3) was issued. The applicants were paid their salaries in accordance with the pay fixed vide order dated 5.8.2011 (Annexure A-4) but before the arrears of pay could be released, this order was withdrawn through order dated 21.3.2012 without any justified reason and the pay of the applicants was reduced. Without issuing any show cause notice to the applicant No.2, the recovery of Rs. 66000 approximately was made.

4. Since the juniors, Sh. Hari Kumar and Sh. Prabhu Dayal, were granted the higher pay than the applicants as shown in Annexure R-5, the applicants again filed joint representation/individual representations, but respondent No. 3 issued order dated 19.02.2014 (Annexure A-1) declining the claim of the applicants for stepping up of pay in terms of Railway Board order No. RBE No. 236/2009. Hence this OA.

5. In the grounds for relief, it has interalia been stated as follows:-

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- (i) That the impugned order dated 19.02.2014 (Annexure A-1) issued in terms of RBE-236/2009 is liable to be quashed and set aside as the Ministry of Railway/Railway Board has not issued any such order under the reference No. RBE-236/2009. Moreover, the respondents have not supplied the copy of any orders in terms of which the legitimate claim of the applicants was rejected.
- (ii) That before making any recovery from the salaries or retiral dues of the applicants, no Show Cause Notice was issued to the applicants which is bad in the eyes of law.
- (iii) The Ministry of Railways vide its order No. 136/2009 (Annexure A-2) clarified w.r.t. anomaly in fixation of pay of Loco Supervisory Staff appointed prior to 01.01.2006 w.r.t. their juniors appointed after 01.01.2006 and drawing more pay than the seniors. Para 3(b) of this order reads as under:-

3(b) The stepping up of pay will be allowed to running staff only appointed as Loco Supervisors in whose cases 30% of basic pay is taken as pay element in the running allowance. The stepping up of pay will not be admissible to the non-running staff of Mechanical Department appointed as Loco Running Supervisors as in their cases the question of pay element in the running allowance does not arise.

- In terms of para 3(b) above, the applicants fulfil all the qualifications/eligibility conditions contained therein such as date of appointment, post held as running staff, Deptt./Section for which applicable, w.r.t. Running Allowance.
- (iv) That the recovery from pay made from the applicants is in violation of the impugned order dated 01.05.2007 (Annexures A-3 and A-2) issued by the Ministry of Railways for stepping up of pay of seniors from the date juniors were drawing more pay as shown in the table 4.10 of the OA.

6. In the written statement filed on behalf of the respondents, it has been stated that pay of the applicants was erroneously stepped up on

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5.8.2011 w.e.f. 9.6.2009 in the Grade of Rs. 9300-34800 + Grade Pay of Rs. 4600 at par with Sh. Hari Kumar. However, after re-examining the matter in terms of RSRP Rules, 2008, dated 04.09.2008 (RBE No. 103/2008) Para 10(b), the earlier letter dated 05.08.2011 vide which the applicants were allowed stepping up of pay, was withdrawn/cancelled and recovery was made accordingly. Railway Service (Revised Pay) Rules, 2008, deal with the subject of stepping up pay. Rule 7, note No. 10(1) required that both the junior and senior Railway servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre. However, in the present case, the applicants and Sh. Hari Kumar, Ex-CLI/SRE belong to different cadres and seniority prior to their promotion of Loco Inspector. The applicants were working in LP Goods in Grade of Rs. 5000-8000, LP Passenger 5500-9000, respectively, while their alleged junior, Sh. Hari Kumar, is working as Loco Pilot (Mail) in the Grade of Rs. 6000-9800.

7. Arguments advanced by the learned counsel for the parties were heard. Learned counsel for the applicants stated that the respondents were relying on RBE No. 103/2008 dated 4.9.2008 (Annexure R-2) which was of a general nature. The claim of the applicants was covered by RBE No. 136/2009 dated 24.7.2009 (Annexure

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A-2) and RBE No. 69/2007 dated 1.5.2007 (Annexure A-3). He further stated that the Notice dated 5.8.2011 regarding stepping up of the pay of the applicants alongwith others at par with junior Sh. Hari Kumar had been withdrawn by the respondents without issuing any Show Cause Notice or allowing opportunity to be heard to the applicants and hence, withdrawal order should be quashed. Even the letter dated 24.2.2014 (Annexure A-1) was a non-speaking order.

8. Learned counsel for the respondents relied on Annexure R-2 stating that Sh. Hari Kumar and the applicants were not on the same footing and hence, the claim of the applicants for stepping up of pay to bring the same at par with their junior, Sh. Hari Kumar, could not be considered. Hence, Notice dated 5.8.2011 had rightly been withdrawn by the respondents.

9. We have given our careful consideration to the matter. From the material on record, it is not clear whether the respondents have considered the RBE Nos. 136/2009 dated 24.7.2009 (Annexure A-2) and 69/2007 dated 1.5.2007 (Annexure A-3) while considering the claim of the applicants for removal of anomaly in their pay fixation. Moreover, the notice dated 5.8.2011, stepping up the pay at par with Sh. Hari Kumar had been withdrawn without affording the applicants an opportunity of

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being heard. Hence, the respondents are directed to re-examine the claim of the applicants with specific reference to RBE Nos. 136/2009 dated 24.7.2009 (Annexure A-2) and 69/2007 dated 1.5.2007 (Annexure A-3) and pass reasoned and speaking orders regarding the claim of the applicants for stepping up of pay/rectification of anomaly in their pay fixation as a result of implementation of 6th CPC's recommendations. The respondents may also ensure that the applicants are afforded an opportunity of being heard regarding their claim before the final orders are passed in the matter. Action in this regard may be completed within a period of two months from the date of a certified copy of this order being served upon the respondents. No costs.

**(RAJWANT SANDHU)
MEMBER(A)**

**(SANJEEV KAUSHIK)
MEMBER(J)**

Dated: 6. 8. 2015
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