

Central Administrative Tribunal
Principal Bench, New Delhi

OA No.765/2016

New Delhi, this the 7th day of August, 2019

Hon'ble Mr. S.N.Terdal, Member (Judicial)
Hon'ble Mr.A.K. Bishnoi, Member (Administrative)

1. Nirmal Kumar Sinha, Aged -73 Years
S/o Late A.C. Sinha
Retired Loco Pilot (Passenger)
From S.E. Railway, Adra Division
R/o Vill.Chapuri PO Anara(R.S.)
Distt. Purulia (WB).
2. Megh Nath Acharjee, Aged-74 Years
S/o Sh.Chotu Lal Acharjee,
Retired Driver (shunter), from S.E. Railway,
Adra Division, R/o Vill& PO Arraha
Distt. Purulia (WB)
3. Syed Mahboob, Aged -77 Years
S/o Late Syed Ibrahim,
Retired Loco Pilot (Passenger)
From S.E. Railway, Adra Division
R/o D.V.C Colony, Kata Raguni,
PO Adra, Distt. Purulia (WB)
4. Nazamuddin, Aged -75 Years
S/o Sh. S.K. Abdul,
Retired Loco Pilot (Goods)
From S.E.Railway, Adra Division
R/o Chunabhati, Post Adra, Distt.
Distt. Purulia (WB)
5. Miss. Sima Mukherjee , Aged 44 Years
D/o Late Sh. B.K. Mukherjee,
Retired Loco Pilot
From S.E. Railway, Adra Division
R/o Vill. Shyampur, PO Anara,
Distt. Purulia (WB)- 723126.
6. Smt. Mira Mukherjee, Aged -55 Years
W/o Late Sh. P.K. Mukherjee,
Retired Loco Pilot(Passenger)
From S.E. Railway, Adra Division
R/o Q No. L-136/C, Anara Old Colony,
Post Anara(RS) Distt.Purulia (WB)

7. Smt. Purnia Ganguly, Aged -70 Years
 W/o Late Sh. P.Ganguly,
 Retired Loco Pilot (Goods)
 From S.E. Railway, Adra Division
 R/o Vill Tamaltala, PO Sanbandha
 Distt. Bankura (WB) 722180

8. Maguni Jena, Aged 67 Years
 S/o Late Sh. Sanyasi Jena,
 Retired as Tech-I
 From S.R. Railway, Chandersekhpur DN.
 R/o Vill & PO Badakodanda Ganjam
 Odisaha-761125. -Applicants

(By Advocate: Mr. Yogesh Sharma)

Versus

1. Union of India through the Secretary
 Railway Board, Rail Bhawan, New Delhi.

2. The General Manager
 South Eastern Railway,
 Garden Reach, Kolkatta-43

3. The Divisional Railway Manager,
 South Eastern Railway, Adra Division
 Adra (WB)

4. The Divisional Railway Manager
 South Eastern Railway Chandersekhpur
 Chandershekhpur(WB)

5. The Chairman
 Railway Board, Rail Bhawan
 New Delhi. - Respondents

(By Advocate: Mr. S.M. Arif)

O R D E R (ORAL)

By Hon'ble Mr. S.N. Terdal, Member(J):-

Heard the learned counsel for both parties. Perused the documents and judgments filed by both the parties. The applicants have prayed for the following relief(s);-

(i) That the Hon'ble Tribunal may graciously be pleased to pass an order declaring to the effect that the whole action of the Railway Board not issuing any fresh circular at the place of circular dt.20.06.1994 for granted due increments

between the intervening period that from the date of removal to date of reinstatement in the light Hon'ble Jodhpur High Court judgment 25.09.2007 upheld by Supreme Court is illegal, arbitrary and discriminatory and consequently, pass an order directing the railway Board to issue fresh order for extending the benefits of Hon'ble Jodhpur High Court judgment to all the similarly situated persons.

(ii) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 29.1.15 (A/1 & A/2) and consequently pass an order directing the respondents to grant the due increments to the applicant No. 1 to 4 & 8, father of applicant No.5 and husband of applicant No.6 & 7, during the period from the date of removal from service to the date of re-instatement in service with all the consequential benefits including the revision of pay and allowances, revision of pensionary benefits, with interest, by way of extending the benefits of Hon'ble Jodhpur High Court judgment dated 25.09.2007 in Civil Writ Petition No. 81/99 and 183/99 with interest as granted by the Hon'ble Delhi High Court in the case of Smt. Kailash Soni & ors. Versus Union of India & ors., vide judgment dated 30.10.2013 in WP (C) No. 5427/2013 (Annex. A/9)

(iii) That the Hon'ble Tribunal may graciously be pleased to pass an order directing the respondents to grant the life time arrears to the applicant No.5 in respect to her father and life time arrears to the applicant No. 6&7 in respect of their husband with interest, as done in the case of Smt. Kailash Soni & Ors. Versus Union of India & Ors, vide judgment dated 30.10.2013 in W.P. (c) No. 5427/2013 by Hon'ble Delhi High Court.

(iv) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant along with the costs of litigation.

2. The counsel for the applicants submitted that the applicants are entitled for the benefits of the law laid down by the Hon'ble Supreme Court in the case of Union of India vs. R. Raddapaa. The relevant para of the said judgment is extracted below:-

(iii) Although the employees shall not be entitled to any promotional benefit but they shall be given notional continuity from the date of termination till the date of restoration for purposes of calculation of pensionary benefits. This benefit shall be available to retired employee as well as to those who are dead by calculating the period till date of retirement or death.

Though, the learned counsel for respondents vehemently and strenuously submitted that clarification issued by the Railway Board on 20.06.1994 is correct and is as per the law laid down by the Hon'ble Supreme Court in the aforementioned case of R. Raddapaa (supra), but however when the said clarification come for consideration before the Hon'ble High Court of Judicature for Rajasthan at Jodhpur in D.B. Civil Writ Petition No. 81/1999, the Hon'ble High Court held to the effect that the said clarification of the Railway Board dated 20.06.1994 is contrary to the directions of the Hon'ble Supreme Court in the R. Raddapaa(supra) case. The relevant portion of the judgment of the Hon'ble High Court of Rajasthan is extracted below:-

10. Thus, we are of the view that the clarification issued by the Railway Board is contrary to the directions of the Hon'ble Supreme Court. Even no recovery can be effected from the petitioners as there was no mistake, fraud or misrepresentation on the part of the petitioners.

11. Consequently, the present writ petitions as well as original applications are allowed. The judgment of the Central Administrative Tribunal as well as the impugned orders refixing the pay of the petitioners as also directing recovery of excess payment from the petitioners are set aside. The respondents are directed to revise the pension of the petitioner as per earlier pay fixation made prior to the clarification of the Railway Board, within a period of three months from the date of supply of certified copy by the petitioners. Cost is made easy.

An SLP (Civil) No. 1493-1494/2009 filed by the respondents against the aforesaid judgment passed by the Hon'ble High Court of Rajasthan at Jodhpur was dismissed by the Hon'ble Supreme Court on 17.04.2009.

3. In view of the above judgment of the Hon'ble Supreme Court, the clarification dated 20.06.1994 issued by the Railway Board is against the said law as laid by the Hon'ble High Court in the case of R. Raddapaa(supra) referred to above. In so far as some of the applicants the facts stated in the reply affidavit which are not disputed by the counsel for the applicants are as follow:-

- (i) In regard to Applicant No.1, Sri Nirmal Kr. Sinha was removed from Railway service w.e.f. 13/02/1982 vide Sr. DEE/TRD/Adra's P/ Note No. RS/IR/9/81/NKS dated 02/02/1982 and was re-instated in service w.e.f. 08/11/1993 vide No.E/CC/ADA/SLP/LRSA dated 08/11/1993.
- (ii) in regard to Applicant No.2, Sri Megh Nath Acharjee was removed from Railway service w.e.f.22/02/1982 vide Sr. DME(P)/Adra's No. M/565/ADA dated 04/02/1982 and was re-instated in service w.e.f. 05/11/1993 vide No.E/CC/ADA/SC/SLP/LRSA dated 03/11/1993.
- (iii) In regard to Applicant No.3, Syed Mahboob, Retired Loco Pilot (Passenger)of the instant OA, it is stated that he had participated in Running Staff "Mass Sick " agitation of 1981 from 21/01/1981 to 24/02/1981 but he was not removed from service, he was all along on duty from 25/02/1981 till the date of superannuation i.e. upto 31/10/1995.
- (iv) In regard to Applicant No. 4, Nazamuddin was removed from Railway service w.e.f. 22/02/1982 vide Sr.DME (P) Adra's No. M/565/ADA dated 04/02/1982 and was re-instated in service w.e.f. 05/11/1993 vide No. E/CC/ADA/SC/SLP/LRSA dated 08/11/993.
- (v) In regard to Applicant No.7, Sri Parasar Ganguly was removed from Railway service w.e.f. 13/02/1982 vide Sr. DEE/TRD/Adra's No. RS/IR/8/81 dated 02/02/1982 and was re-instated in service w.e.f. 05/11/1993 vide No. E/CC/ADA/SC/SLP/LRSA dated 08/11/1993.

4. In view of the facts and circumstances of the case as narrated above, all the applicants are entitled for notional increments from the date of their removal from service to the date of reinstatements. Accordingly, the OA is allowed directing the respondents to re-fix pension and calculate the arrears to be paid

to each of the applicants as per directions given by the Hon'ble High Court of Rajasthan at Jodhpur in Writ Petition (Civil) No. 81/1999 extracted above, within three months from the date of receipt of a certified copy of this order. No order as to the costs.

(A.K.Bishnoi)
Member(A)

(S.N. Terdal)
Member (J)

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