

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00306/16

Reserved on: 03.07.2019
Date of Order: 05.07.2019

C O R A M
HON'BLE MR. JAYESH V. BHAIKAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

1. Binod Kumar Lal, Son of Late C.P. Lal, Ex-Guard (Mail) under North East Railway, Lucknow Division, Resident of Village & PO- Ojhawal Via-Laheriasarai, District- Darbhanga (Bihar).
2. Kailashpati Prasad Karn, Son of Late Ram Narayan Prasad Karn, Ex-Guard (Passenger) under East Central Railway, Samastipur Division, Resident of Village- Madhopur, PO- Ranitola, District- Samastipur (Bihar).
3. Aditya Nath Mishra Arun, Son of Late Vishwanath Mishra Bhaskar, Ex-Guard (Passenger) Under East Central Railway, Samastipur Division, Resident of House No. 20/7, Mishra Niketan, P.O.- Bhowra, District- Madhubani (Bihar).
4. Indra Mohan Jha, Son of Late Yogendra Jha, Ex-Guard (Passenger) under East Central Railway, Samastipur Division, Resident of Village- North Digghi Tank, Professor's Colony, PO- Lalbagh, District- Darbhanga (Bihar).

.... Applicants.

By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the General Manager, East Central Railway, Hajipur, District- Vaishali (Bihar).
2. The General Manager (Personnel), East Central Railway, Hajipur, District- Vaishali (Bihar).
3. The General Manager (Personnel), North East Railway, Gorakhpur, District- Gorakhpur (U.P.).
4. The Chief Operating Manager, East Central Railway, Hajipur, District- Vaishali (Bihar).
5. The Divisional Railway Manager, East Central Railway, Samastipur (Bihar).
6. The Senior Divisional Operating Manager, East Central Railway, Samastipur (Bihar).
7. The Senior Divisional Personnel Officer, East Central Railway, Samastipur (Bihar).
8. The Senior Divisional Personnel Officer, North East Railway, Lucknow (U.P.).
9. The Senior Divisional Financial Manager, East Central Railway, Samastipur (Bihar).

.... Respondents.

By Advocate: - Mr. Vinay Kumar

ORDER

Per Dinesh Sharma, A.M:- This OA is for grant of appropriate direction to the respondents to extend the same benefits which have been granted in favour of similarly placed persons vide orders dated 12.11.2015, 03.12.2015 and 23.12.2015 issued by DRM, Varanasi following the orders passed by this Tribunal in OA 517/1996, OA 621/2005 and OA 95/2001 (these OAs are hereinafter referred to as “aforesaid OAs”) upheld by Hon’ble Patna High Court on 24.11.2009.

2. The case, in brief, is that the applicants were appointed vide orders dated 22.08.1989 against the post of Guard (Goods) under the same Employment Notice by which the other applicants in the aforesaid OAs were appointed. It was decided in the aforesaid OAs that the seniority of persons appointed subsequent to the same recruitment process will be determined as per the order of merit in the result of the examination held for their selection and not on the basis of their dates of joining even if those dates of joining happened to be earlier than the selection process. The respondents Railways have, after challenging these decisions through Review Application/Appeal before Hon’ble High Court, finally complied with the decisions of this Tribunal and have given the benefit to the applicants in those OAs of their notional seniority based on their position in the order of merit and consequent pay fixations on promotion/pay revision etc. The applicants in this OA have prayed for the grant of similar treatment and have quoted the judgments of the Hon’ble Supreme Court delivered in cases reported in 1985(2) SCC 648 **Indra Pal Yadav Vs. UOI**, 1975(4) SCC 14 **Lal**

Berry Vs. CCE, 2006(2) SCC 745 State of Karnataka Vs. C. Lalitha, according to which relief granted by a Court is to be given to other similarly situated employee without forcing them to go to courts for similar benefits.

3. The respondents have filed their reply in which they have alleged that the applicants in the present OA belong to different category than those who were granted relief in the aforesaid OAs. They have also raised the issue of limitation since the applicants have already retired and are raising an issue which was raised by others much earlier. The respondents have also contested that the applicants belong to different divisions and are therefore not entitled to the benefits claimed by them to be stemming from the earlier decisions of this Tribunal in the aforesaid OAs.

4. After going through the pleadings and hearing the arguments, it is very clear that the earlier decisions in this matter in the aforesaid OAs substantially cover the case of the applicants in this OA too. It is undisputed that the applicants did not raise their claim when the other similarly placed persons did. However, since the matter does involve continuing loss of money in the form of reduced pension, the claim is not entirely barred by the period of limitation. The other arguments raised by the respondents about differences in categories and the Division of the applicants does not make the applicants' case materially different from those of the applicants in the aforesaid OAs. Therefore, the Department is liable to apply the same treatment in cases of all similarly placed persons. We, therefore, direct the respondents to consider the claims of the applicants and revise their pensions on the basis of notional pay revised as per their seniority revised

on the basis of their order of merit in the initial selection, as done in case of similarly placed persons following the decisions in the aforesaid OAs. This should be done within three months from the date of receipt of this order. Since the applicants are also guilty of sleeping over their rights for almost two decades and of delay in seeking remedial action, we make it clear that the revision in pension will be effected only prospectively and no arrears will be paid for the past, except in cases where more than three months are taken to issue the revised orders. In such cases, the employees will be entitled to revised pension from the date of expiry of three months from the date of receipt of this order. The OA is disposed of accordingly. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member