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**Central Administrative Tribunal
Principal Bench**

OA No.824 of 2003
MA No. 1308/2003
MA No. 1812/2003

New Delhi this the th 11 day of October, 2004.

Hon'ble Mr. V.K. Majotra, Vice-Chairman (A)
Hon'ble Mr. Shanker Raju, Member (J)

1. Mr. R. ^{he} S. Jolly,
s/o late Sh. Sohan Singh Jolly,
Retired T.F.R., Central Railway,
New Delhi.
R/o H.No. 94-B, Sector 15-A,
Faridabad.
2. Shri B.R.Kapoor,
Sr. Loco Inspector,
Central Railway, New Delhi
R/o A-2/238, First Floor,
Janakpuri,
New Delhi.
3. Shri R.P. Pathak,
Ex-Sr. Loco Inspector,
Central Railway, Agra,
R/o D-120, Kamlanagar,
Agra.

...Applicants

(By Advocate: Shri B. S. Mainee)

-versus-

Union of India through

1. The General Manager,
Central Railway,
CST, Mumbai.
2. The Divisional Railway Manager,
Central Railway,
Jhansi.
3. The Divisional Railway Manager,
Central Railway,
Bhopal.

....Respondents

^{he} (By Advocate: Shri R.L. Dhawan)

O R D E R

By Mr. Shanker Raju, Member (J)

Applicants impugn respondents' orders dated 15.07.2002 and 12.09.2002 whereby their pay has been reduced and as a consequence retrial benefits are also reduced with recovery.

2. Applicants, before superannuation, were working as Loco Supervisor. The juniors of the applicants, who could not be promoted as Loco Supervisor along with applicants, were subsequently promoted after 1.1.1986 and on account of merger of pay scales, including 30% of the pay in lieu of running allowances, their pay was fixed on a higher stage.

3. In the light of Railway Board's instructions, the pay of the applicants was stepped up to the level of their junior, namely, Shri B. D. Singh, who was working at Bhopal in Jhansi Division as Loco Supervisor. On bifurcation of Bhopal Division, Shri B.D. Singh was promoted as Loco Supervisor w.e.f. 1.1.1986 and his pay was fixed at Rs. 2825/-. However, the respondents, vide their order dated 30.11.1990, withdrew stepping up of pay and reduced the salary. Though it was not implemented, the aforesaid order was challenged before the Tribunal in OA 69/98. The Tribunal vide its order dated 6.5.1999, for want of observance of principles of natural justice, set aside the said order. Thereafter, a show cause notice was served upon the applicants and on reply the impugned orders have been passed, which are assailed herein.

4. After retirement of the applicants, the respondents not only effected recovery from their gratuity but also reduced their salary, which act on the part of the respondents has led to the filing of OA 934/93, which was disposed of on 2.12.1996. Accordingly, by an order passed on

21.7.1997, the request of the applicants for benefit of stepping up of pay at par with Shri B.D. Singh was rejected.

5. On filing of C.P. No. 155/97, the respondents restored the salaries of the applicants. The applicants made representations to the respondents to rectify the mistake and re-calculate their retrial benefits.

6. Applicants preferred representations against the order dated 21.7.1997 and filed OA No. 69/98, which has culminated into the present OA.

7. In Review Application filed by the applicants, it is contended on behalf of the respondents that Shri B.D. Singh had been given one additional increment erroneously which had been withdrawn reducing the pay of Shri B.D. Singh from Rs. 2825/- to 2240/-. As the review was allowed, OA No. 69/98 was listed and allowed by quashing the order dated 21.7.1997.

8. According to the learned counsel for the applicants, the grievance of the applicants is that the respondents had correctly stepped up the pay of the applicants at par with Shri B. D. Singh and three others vide their letter dated 1.7.1997. Now on reduction of their salaries on the ground that the pay of Shri B.D. Singh has already been reduced giving no particulars of other three persons (though specific names have not been mentioned by the applicants), it is stated on behalf of the applicants that the show cause notice issued is a mere formality and has not been served upon them.

9. Learned counsel of the applicants states that as per Para 2308 of the I.R.E.M. Volume-II, only the President of India is vested with the powers to effect recovery from the retrial benefits. He assails competence of the authority.

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10. Learned counsel further states that the applicants had been promoted as Loco Supervisor after having been promoted as Driver Grade-A and in similar cases where Drivers Grade-A were promoted as Loco Inspector, the pay has been revised. Learned counsel, by placing reliance on a decision of the Apex court in **M.S. Gill vs. Chief Election Commissioner**, AIR 1978 (SC) 851, states that certainly the stand, which is taken in the order, shall be maintainable but cannot be supplemented by additional reasons. It is, in this backdrop, stated that the respondents' plea that another mistake had been detected in the pay of Shri B.D. Singh is incorrect as pay of Shri B. D. Singh was reduced from Rs. 2825/- to Rs. 2675/- and said pay fixation was higher than the applicants and even after rectification, the pay of Shri B.D. Singh as on 11.9.1986, was higher than the applicants.

11. Learned counsel has asserted that as per respondents' letter dated 7.8.2003 whereby pay of Shri B.D. Singh was reduced to Rs. 2240/- as on 1.1.1986 and a recovery of Rs. 1,00,569/- has been recorded is incorrect as Shri B.D. Singh has filed OA No. 626/2003 before the Jabalpur Bench of this Tribunal and the said Bench vide its order dated 12.11.2003, set aside the order dated 7.8.2003 as wrong fixation had not been found to be on misrepresentation of facts and recovery of over payment had been stayed.

12. In the above backdrop, Shri Mainee, learned counsel for the applicants, contends that the action of the respondents is based on conjectures and surmises. Shri Mainee further states that in the light of respondent's order dated 20.6.1989, the pay of Shri B.D. Singh and three others was fixed at Rs. 2875/- as on 11.7.1986 and accordingly the pay of the applicants was stepped up. It is stated that S/Shri Gulab Khan,

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M.J. William and J.P. Prashar are not those persons at whose instance the pay of the applicants was stepped up.

13. On the other hand, learned counsel of the respondents vehemently opposed the contentions and stated that as per Note-II of Para 1316 of I.R.E.C. Volume-II, the applicants have failed to fulfil the conditions of stepping up of pay. The erroneous pay fixation of Shri B.D. Singh would not confer an indefeasible right upon the applicants to claim the same parity. Accordingly, after issuance of the show cause notice and considering the grounds raised by the applicants, orders have been passed, which are legal. It is contended, relying upon the decision of the Apex Court in **State of Haryana vs. R.K. Mann**, 1997(2) (SC SLJ) 257 that a wrong cannot confer indefeasible right in favour of another person. Learned counsel states that applicants are not entitled to claim parity and stepping up of pay at par with Shri B.D. Singh, who was Driver Grade B at Bhopal from 11.9.1986. It is further submitted that following the law laid down by the Apex Court in **Union of India vs. O.P. Saxena**, JT 1997(6) SC 586, competent authority had decided that over-payment made to the applicants on account of administrative order due to erroneous stepping up of pay, should be recovered from dearness relief.

14. The respondents, by filing additional reply, contend that the applicants have claimed stepping up of pay at par with S/Shri Gulab Khan, M.J. William and J.P. Prashar whereas they had earlier sought the same at par with Shri B.D. Singh. These four persons belong to Bhopal Division. A comparison has been made by the respondents between the applicants and other four persons and contended that Shri B.D. Singh was junior to the applicants whereas Shri J. P. Prashar and M.J. William were senior. In case of Shri Gulab Khan, who was senior to applicant no.

1 Shri R.S.Jolly, was promoted as Controller on 9.5.1983 with fixation of

pay at Rs. 2300/- on 1.1.1986. The pay of Shri B.D. Singh is not higher than the applicants having been reduced to Rs. 2240/- and in this view of the matter, learned counsel has produced the relevant record, according to which, in compliance of the decision of Jabalpur Bench of this Tribunal (supra), vide order dated 7.8.2003 deduction has been made from the pension.

15. In rejoinder vehement arguments have been put forth to belie the stand taken by the respondents.

16. We have carefully considered the rival contentions of the parties and perused the material on record.

17. Article 14 of the Constitution of India forbids unreasonable classification and also invidious discrimination without an intelligible differentia and reasonable nexus with the object sought to be achieved. However, concept of negative equality i.e. equal treatment in cases where wrong action has resulted in conferment of rights and relief has been deprecated by the Apex Court in **Union of India vs. International Trading Company**, 2003(8) SCC 437, with the following observations:

“Two wrongs do not make a right. A party cannot claim that since something wrong has been done in another case; direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters there is no discrimination involved. The concept of equal treatment on the logic of Art.14 of the Constitution cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a part. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the respondents cannot strengthen their case. They have to establish strength of their case on some other basis and not by claiming negative equality.”

18. In view of the above settled position of law, we have to ~~devolve~~ ^{devolve} on the facts of the present case. Though the applicants have been accorded benefits of pay revision and consequent pensionary benefits on the ground of parity in pay at par with Shri B.D. Singh, now the respondents have decided that Shri B.D. Singh was wrongly conferred the benefits and he has been directed vide order dated 7.8.2003 to get the excess amount recovered from his pensionary benefits and also reduce his pay and consequent fixation of pension in reduced pay as well. The said order has been challenged by Shri B.D. Singh in OA 626/2003 before the Jabalpur Bench of this Tribunal which has culminated in an order passed on 13.11.2003 whereby the order dated 7.8.2003 has been set aside but for a limited purpose of a restraint to the respondents not to recover the excess amount as the wrong fixation has not resulted on account of any misrepresentation or fraud by the applicant therein. In nutshell, the reduction in pay, which was wrongly done, has been upheld.

19. Accordingly, in the present case, as the applicants have been found to have been brought, by the revision of pay scale, at par with Shri B.D. Singh but as Shri B.D. Singh's pay scale was erroneously revised the same does not confer indefeasible right to the applicants to claim the same parity.

20. Moreover, the applicants have miserably failed to indicate that their pay scales have been revised not at par with Shri B.D. Singh but with those, who are admittedly senior to them.

21. However, as far as recovery is concerned, they have referred to the decision of the Apex Court in **Sahib Ram vs. State of Haryana & Ors.**, 1995 SCC (L&S) 248 and the decision of the Jabalpur Bench of this Tribunal (Supra). We are, therefore, of the considered view that the

wrong fixation of pay and accordingly payment of retrial benefits at enhanced rates are not attributed to the applicants as they have neither practiced any misrepresentation nor fraud and it was the fault of the respondents, no recovery can be effected.

22. In the result, OA is partly allowed. We uphold the fixation, reduction of pay and retrial benefits but restrain the respondents from effecting any recovery from the retrial benefits of the applicants and we accordingly direct to restore back the recovery already effected from the applicants to them within a period of two months from the date of receipt of a copy of this order. M.A. No. 1308/2003 and MA No. 1812/2003 accordingly stand disposed of. No costs.

S. Raju

(Shanker Raju)
Member (J)

/na/

V.K. Majotra

(V.K. Majotra) 11.10.04
Vice Chairman (A)