



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

Original Application No. 350/00136/2018.

Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

1. Shri Paramhans Verma,
S/o Late Tilak Dhari Verma,
Aged about 62 years,
Retired as CLI/TRS
At present residing at Vidyasagar Apartment,
4/52, Seti Bagan Road,
P.S. Dum Dum,
Kolkata - 700 030.
2. Shri Sudip Chatterjee,
Aged about 62 years,
Retired as CLI/TRS
At present residing at RBC Road,
Beside Uttarayan Apartment,
P.O. & P.S. Barasat,
District - North 24-Parganas.
3. Shri A.H. Ansari,
S/o Late Md. Nur Hasan Ansari,
Aged about 59 years,
Working for gain as CLI/TRS
At present residing at 69, Belgachia Road,
Khudiram Bose Sarani, Belgachia,
Kolkata - 700 037.
4. Shri Sumanta Sen,
S/o Shri Monoranjan Sen,
Aged about 54 years,
Working for gain as CLI/TRS
At present residing at 125, Basak Bagan,
P.O. Patipukur,
Kolkata - 700 048.
5. Shri Supriya Banerjee,
S/o Shri Sushil Brata Banerjee,
Aged about 54 years,
Working for gain as CLI/TRS
At present residing at Ganguly Sarani,
Badhaghat, Halisahar,
District : North 24-Parganas.
6. Shri Swapan Kumar Batabyal,
S/o Late Satchidananda Batabyal,
Aged about 59 years,

Working for gain as CLI/TRS
 At present residing at Napara, Kalibari Road,
 P.O. & P.S. Barasat,
 District – North 24-Parganas.

7. Shri S.P. Mukhopadhyay,
 S/o Late Anil Kr. Mukhopadhyay,
 Aged about 62 years,
 Retired as CLI/TRS
 At present residing at 83,
 Shyamnagar Ganguli Para,
 P.O. Shyamnagar,
 District – North 24-Parganas.
8. Shri Debasis Pramanick,
 S/o Shri Promode Ranjan Pramanick,
 Aged about 56 years,
 Working for gain as CLI/TRS
 At present residing at 473, Jawpur Road,
 P.O. Dum Dum,
 Kolkata – 700 074.
9. Shri Amod Kumar Singh,
 S/o Late Ram Baran Singh,
 Aged about 53 years,
 Working for gain as CLI/TRS
 At present residing at 125, Basak Bagan,
 P.O. Patipukur,
 Kolkata – 700 048.
10. Shri Shyamal Kumar Mondal,
 S/o Shri Mrityunjoy Mondal,
 Aged about 59 years,
 Working for gain as CLI/TRS
 At present residing at Vill. & P.O. Janai,
 Sasmal Para, DCM Road,
 District Hooghly.
11. Shri Samir Biswas,
 S/o Late S.P. Biswas,
 Aged about 57 years,
 Working for gain as CLI/TRS
 At present residing at 83,
 Shyamnagar Ganguli Para,
 P.O. Shyamnagar,
 District – North 24-Parganas.
12. Shri Parijat Chowdury,
 S/o Late Murari Mohan Choudury,
 Aged about 62 years,
 Retired as CLI/TRS
 At present residing at Bhagat Singh Road,
 P.O. Saktinagar, Krishnanagar,

Dist. Nadia, Pin – 741 102.

..... APPLICANTS.

By Advocate : Mr. C Sinha

-Versus-

1. Union of India,
Through General Manager,
Eastern Railway,
Fairlie Place, 17, N.S. Road,
Kolkata – 700 001.
2. The Chief Personnel Officer,
Eastern Railway,
Fairlie Place, 17.N.S. Road,
Kolkata – 700 001.
3. The Sr. Divisional Personnel Officer,
Eastern Railway,
Sealdah Division,
Kolkata – 700 014.
4. The Sr. Divisional Finance Manager,
Eastern Railway,
Sealdah Division,
Kolkata – 700 014.
5. The Assistant Personnel Officer (M&E),
Eastern Railway,
Sealdah Division,
Kolkata – 700 014.

..... RESPONDENTS.

6. Shri Uttam Kr. Chakraborty,
Working for gain as Running
Supervisor (CLI)/TRS, E. Rly. Sealdah,
Residing at 54A, K.G. Bose Sarani,
Flat No. F3, 3rd Floor,
Above Panchajanya School,
Kolkata – 700 085.

..... P. RESPONDENT.

By Advocate : Ms. C. Mukherjee

Date of Hearing : 05.11.2019

Date of Order : 25.11.2019

ORDER**MRS BIDISHA BANERJEE, MEMBER(J)**

The applicants 12 in number who are retired CLI/TRS of Eastern Railway have preferred this O.A. seeking the following reliefs :

"8.a) To set aside and quash Impugned Speaking Order dated 05.02.2015 issued by Senior D.P.O., Eastern Railway, Sealdah communicated under covering letter dated 09.02.2015.

b) To set aside and quash Impugned letter No. Court Case/2239/2010/E-18(TR) dated 27.09.2016 issued by Senior D.P.O., Eastern Railway, Sealdah.

c) To direct the respondents to grant stepping up of pay to the applicants at par with the junior (P. Respondent) in terms of Note 10 below Rule 7 of RS(RP) Rules, 2008 coupled with RBE No. 236/2009 w.e.f. 27.06.2006 i.e. date of promotion of P. Respondent to the post of Loco Inspector with all consequential benefits.

d) Liberty may be granted to file and maintain the O.A. in terms of Rule 4(5)(a) of CAT (Procedure) Rule, 1987.

e) Any other order or orders as the Hon'ble Tribunal deems fit and proper."

2. The applicants feel aggrieved as according to them they were senior but receiving lesser pay in comparison to proforma respondents due to the fact that the respondents have deprived them of legitimate pay fixation in conformity with Note 10 below Rule 7 of RS(RP) Rules 2008. They have contended that the Railway Board vide Circular No.RBE 236/2009 dated 24.07.2009 had decided that staff appointed prior to 1.1.2006 as Loco Running Supervisors (Chief Loco Inspector) in short CLI, in the pre-revised scales, whose pay has been fixed in the replacement pay structure for Loco Running Supervisors under the RS(RP) Rules, 2008, who are drawing less pay than their juniors appointed as Loco Running

Supervisors after 1.1.2006. Such anomaly has arisen due to the fact that the benefit of element of Running staff once granted at the time of promotion of running staff to a stationary post has been granted to the junior in the revised pay structure, whereas the same benefit granted to the senior is of lesser value as the same has been calculated on pre-revised pay scale. The applicant have further contended that to resolve such anomaly, it was decided to grant stepping up of pay in the pay band to the seniors at par with the juniors in terms of Note 10 below Rule 7 of RS(RP) Rules, 2008. The Note 10 is extracted herein below :

"Note 10 – In cases where a senior Railway servant promoted to higher post before the 1st day of January, 2006 draws less pay in the revised pay structure than his junior who is promoted to the higher post on or after the 1st day of January, 2006, the pay in the pay band of the senior Railway servant should be stepped up to an amount equal to the pay in the pay band as fixed for his junior in that higher post. The stepping up should be done with effect from the date of promotion of the junior Railway servant subject to the fulfilment of the following conditions, namely :-

- (a) both the junior and the 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;*
- (b) the-revised scale of pay and the revised grade pay of the lower and higher posts in which they are entitled to draw pay should be identical;*
- (c) the senior Railway servants at the time of promotion should have been drawing equal or more pay than the junior;*
- (d) the anomaly should be directly as a result of the application of the provisions of Rule 1313 (Fundamental Rule 22) of the Indian Railway Establishment Code, Volume-II or any other rule or order regulating pay fixation on such promotion in the revised pay structure. If even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provision of this Note need not be invoked to step up the pay of the senior officer.*

(2) Subject to the provisions of rule 5, if the pay as fixed in the officiating post under sub-rule (1) is lower than the pay fixed in the substantive post, the former shall be fixed at the same stage as the substantive pay."

3. Learned counsel for the applicant submitted that the issue whether the said seniors would be entitled to stepping up of pay with the juniors has already been decided in number of cases by various Benches of this Tribunal. The orders being as under :

(i) Shyamapada Roy vs. Union of India & Ors., WPCT 224/2010 rendered by Hon'ble Calcutta High Court at Kolkata and although not interfered with by the Hon'ble Apex Court in SLP(C) No.5901/2013. Hon'ble Apex Court kept the question of law concerning the interpretation of the relevant rules open.

(ii) V. Murugesan vs. Union of India & Ors. rendered by Madras Bench of the Tribunal in O.A.455/2011 decided on 07.08.2012 and upheld by the Hon'ble High Court at Madras in W.P(C) 3528 and 3529 of 2013 on 19.02.2013. The SLP filed against the same being dismissed on 23.02.2016, i.e. long after dismissing of SLP in Shyamapada Roy, and therefore settling the issue that was left open earlier.

(iii) Paramhans Verma vs. Union of India & Ors., O.A No. 2239 of 2010 rendered by Calcutta Bench of the Tribunal on 12.10.2012 on the basis of the decision in WPCT 224/2010 directing the respondents to take a decision in terms of the said decision of the Hon'ble High Court.

In the present case, it is noted that these applicants had approached this Tribunal in O.A.2239/2010 which was disposed of on 12.10.2012. In WPCT 224/2010 Hon'ble High Court at Kolkata had been pleased to hold as under :

"Mr Roy has drawn our attention to the affidavit-in-opposition, wherefrom we find that prior to joining the promotional post as above, the respondent No.7 was working in the post of Passenger Driver attracting higher pay than that of the petitioners, who were Goods Driver, being their feeder post. In our view, the past service in the feeder post became irrelevant once the incumbent joined the promotional post. The concept of stepping up is available, where the persons working in the same post get lesser pay than their junior in the same post. The eventuality and/or reason for such disparity might be different; however, such eventuality and/or reason is not relevant. The concept is that the senior must not get lower pay than the junior, while working in the same post.

The petition succeeds and is allowed. The judgment and order of the Tribunal is set aside.

The Railway authority is directed to extend the benefit of stepping up to the petitioners as per the circular of the Railway Board as above." (emphasis added)

In O.A.455/2011 Madras Bench noted two decisions of the Hon'ble High Court at Madras in WPCT 35910 and 35911 of 2005 upholding the decision of this Tribunal in O.A.936 of 2003 dated 15.05.2005, and noted that Hon'ble High Court followed Note 10 below Rule 7 of RS(RP) Rules of 2008 with the Circular dated 20.07.2004 and the view was affirmed by the Hon'ble Apex Court in CC 19108-19109/2009 on 16.04.2010, and another judgment by Ernakulam Bench in O.A.1002/2010 allowing stepping up in terms of Note 10 below Rule 7, upheld the order dated 18.11.2009, whereby and whereunder the applicants were granted stepping up at par with one Shri K. V. Venkatesh, Sr. Loco Inspector, who was junior to the applicants by virtue of his promotion on 29.04.2006. The decision of the Madras Bench in O.A.455/2011 was challenged before the Madras High court in WPC 3528 and 3529/2013 was affirmed and SLP against the said order of the Hon'ble High Court stood dismissed on 23.02.2016.

4. The applicants have further relied upon the decision rendered by the Calcutta Bench of the Tribunal in O.A.785/2012 dated 06.09.2018, Shri Pradip Kumar Mondal and ors. vs. Union of India & Ors., where under similar circumstances applicants were allowed stepping up at par with their junior Shri U.K.Chakraborty. Similar orders had been rendered by Jaipur Bench in O.A.235/2012 on 13.11.2018 and Hyderabad Bench in O.A.12/2018 on 29.08.2011, which orders had been upheld in WPC 35569/2013. Further, learned counsel would place an order dated 01.05.2019 passed by Hon'ble High Court at Madras in WPC 35569/2013 setting aside the order passed by the Tribunal dismissing the O.A and preferred to seek stepping up by similarly circumstanced employees. Hon'ble High Court had held as under :

"The prayer of the writ petitioners must accordingly be granted to the aforesaid extent. It is therefore directed that the petitioners should be accorded the same treatment as their counterparts are being accorded in the Northern Railway in regard to treating the running allowance granted to the running staff as part of the pay when they are transferred or promoted to a stationary post during the period they hold the officiating in the stationary post to the same extent and in the same manner as enjoined by the Allahabad High Court pursuant to the aforesaid judgment.

In the case on hand also, the Railway administration is not in a position to point out any special distinguishable feature to justify denying uniformity in treatment to the petitioners. In view of the ration in the above said decision also, the petitioners, who belong to South Central Railway, must be accorded the same treatment as their counter parts in other zones of Railways.

On the above analysis of facts and legal position and for the reasons assigned supra, we find that the contentions of the writ petitioners merit consideration and accordingly we hold that the order of the Tribunal

is not sustainable under facts and in law and that, therefore, the impugned order is liable to be set aside holding that the petitioners are entitled to stepping up of pay as prayed for."

5. The respondents in their reply have averred that the proforma benefit or stepping up of pay to the applicants after 1.1.2006 has not been extended because as per latest guideline of Railway Board's Sl. Circular No.236/09 circulated by the CPO/KKK's Sl. Circular No.137/09 prior to 1.1.2006 most of the applicants have been benefited once through stepping up of pay with their junior. Those who have promoted as Loco Running Supervisor prior to 1.1.2006, their pay accordingly fixed in the corresponding scale and grade pay of 6th CPC guideline and there is no anomaly in fixation of pay in 6th CPC. The pay of the running supervisors as per their status prior to 1.1.2006 and after 1.1.2006 have been fixed according to the guidelines of 6th CPC SL. Circular No.87/2008 and RBE's No.103/2008. All the applicants in O.A No.2239/2010, Shri Paramhans Verma and others were promoted as Running Supervisors/Loco Inspector prior to 1.1.2006 and Sri Uttam Kumar Chakraborty, Loco Inspector/Sealdah was promoted after 1.1.2006 as Loco Inspector.

As per guideline of 5th CPC, their pay was fixed accordingly. As per recommendation of 6th CPC, pay had been fixed to the Proforma Respondents.

As per seniority list issued on 16.6.2010 by the Assistant Personnel Officer (M&E), Est. Rly., Sealdah, the applicants are senior to the proforma Respondent Sri Uttam Kumar Chakraborty.

6. Having heard the learned counsel for the parties, having considered the rival submissions and having perused the materials placed on record including the various decisions cited by the applicants in support of their claim for stepping up at par with juniors we note the fact that although the point of law was kept open by the Hon'ble Apex Court vide its order dated 11.02.2014 in the case of Shyamapada Roy, subsequently various decisions have been rendered by High Courts and upheld by Hon'ble Apex Court including that of V. Murugesan, where the issue has been decided and set at rest. Therefore, we have no hesitation to set aside the speaking order dated 05.02.2015. Accordingly, the same is set aside and respondents are directed to extend the same benefit as extended to the applicants in the various O.As and WPCTs referred to above, by issuing appropriate orders within a period of 3 months from the date of receipt of a copy of this order, in case the applicants are identically circumstanced to the applicants in the said matters.

There shall be no order as to costs.

(DR NANDITA CHATTERJEE)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)