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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of Decision: 29.01.2015.

1.

CWP No.8563 of 2014

Union of IndiaPetitioner
Vs.
Darshan Lal Bali & othersRespondents

2.

CWP No.2105 of 2014

Union of IndiaPetitioner
Vs.
Tilak Raj & othersRespondents

3.

CWP No.25072 of 2014

Union of India & othersPetitioners
Vs.
Banarsi Dass & anotherRespondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. Puneet Jindal, Sr. Advocate with
Ms. Sakshi, Advocate
for the petitioner(s).

Mr. Vikas Singh, Advocate
for respondents.

Mr. S.S. Slar, Advocate
for respondents No.1 & 2 in CWP Nos.2105 &
for respondent No.1 in CWP No.25072 of 2014.

- 1. *Whether Reporters of local papers may be allowed to see the judgment ?***
- 2. *To be referred to the Reporters or not ?***
- 3. *Whether the judgment should be reported in the Digest?***

SURYA KANT, J. (ORAL)

This order shall dispose of CWP Nos.8563, 2105 & 25072
of 2014 as common question of law and facts are involved in these

cases.

[2]. The question that arises for consideration is whether the respondents who stood retired from service on attaining the age of superannuation before 01.01.1996 from the posts of Mistry-cum-Supervisor are entitled to revised pension w.e.f. 01.11.2003 on resultant upgradation of their posts as Junior Engineer-II in the higher pay scale of ₹5000-8000 in terms of the Railway Board circular dated 09.10.2003?

[3]. For the sake of brevity the facts are being briefly extracted from CWP No.8563 of 2014.

[4]. It is an admitted fact that 43 retirees, namely, Agia Ram and others, some of whom had retired before 01.01.1996 (while the others thereafter), approached the Central Administrative Tribunal, Chandigarh Bench (hereinafter referred to as 'the Tribunal') seeking benefit of the Railway Board circular dated 09.10.2003 whereunder the post of Mistry-cum-Supervisor which they held before retirement, was upgraded to the post of Junior Engineer-II. They sought consequential refixation of their pension but the Tribunal rejected their claim.

[5]. The aggrieved retirees approached this Court in **CWP No.9581 of 2011 (Agia Ram and others vs. Union of India & others)**. The respondent-Railway Authorities took a specific stand before this Court that the restructured pay scale on upgradation of the post as Junior Engineer-II “would be available only to the Mistry-

cum-Supervisor who are working as such and has enjoyed the designation of Junior Engineer-II.”

[6]. This Court, however, rejected the above stated plea as is discernible from paras 4 and 5 of the judgment and allowed the writ petition vide order dated 24.08.2011 directing the respondents to treat the writ-petitioners in the pay scale of `5000-8000 under the new nomenclature of Junior Engineer-II and consequently refix and revise their pension but only w.e.f. 01.11.2003, namely, the date when the Railway Board circular dated 09.10.2003 became effective.

[7]. It would be useful at this stage to reproduce the following relevant extracts of Railway Board circular dated 09.10.2003 (Annexure R-1):-

“Sub: *Restructuring of certain Group 'C' & 'D' cadres.*”

The Ministry of Railways have had under review cadres of certain Group 'C' & 'D' staff in consultation with the staff side with a view to strengthening and rationalising the staffing pattern on Railways. As a result of the review undertaken on the basis of functional, operational and administrative requirements, it has been decided with the approval of the President that the Group 'C' & 'D' categories of staff as indicated in the Annexures to this letter should be restructured in accordance with the revised percentages indicated therein. While implementing these orders the

following detailed instructions should be strictly and carefully adhered to :

- | | | |
|---|--------------|--|
| <p><i>Date of effect
(hereinafter referred
sanctioned cut-off date)</i></p> | <p>1.</p> | <p><i>This restructuring of cadres will be with reference to the cadre strength as on the date following the date on which the cadres in the headquarter offices of new Zonal Railways / new Divisions are closed. The benefit of restructuring will be restricted to the persons who are working in a particular cadre on the cut-off date.</i></p> |
| <p><i>Applicability to
various cadres</i></p> | <p>2.</p> | <p><i>These orders will be applicable on the regular cadres (excluding surplus & supernumerary posts) of the Open Line establishments including Workshops and Production Units. These orders will, however, not be applicable to staff of RDSO for which separate orders will be issued.</i></p> |
| | <p>2.1</p> | <p><i>These orders will not be applicable to ex-cadre & work-charged posts which will continue to be based on worth of charge.</i></p> |
| | <p>2.2</p> | <p><i>These instructions will also not be applicable to construction Units and Projects, where posts are generally created on worth of charge basis, though those should broadly be conforming to these percentage distributions.</i></p> |
| <p><i>Upgradation of the
posts of Supervisor
(erstwhile Mistries)</i></p> | <p>13(a)</p> | <p><i>Subject to provisions of Para-13.2 below, all the posts of Supervisors (erstwhile Mistries) in grade Rs.4500-7000 + Rs.100 Special Allowance (excluding Supervisors P.Way) should</i></p> |

enbloc be upgraded to the posts of Junior Engineer Gr.II in the pay scale of Rs.5000-8000 and merged with the respective cadre of Technical Supervisors with its spread effect in higher grades Rs.5500-9000, 6500-10500 & 7450-11500 as per the revised percentage distribution of posts prescribed for Technical Supervisors in these orders.

13(b) XX.....XX.....XX.....XX
 XX.....XX.....XX.....XX
 XX.....XX.....XX.....XX.”

[8]. This Court in **Agia Ram's case** (supra) after noticing the contents of its forwarding letter, interpreted the relevant clauses of the above stated circular to conclude as follows:-

“4. *From the aforesaid facts, it is clear that the post of Mistry-cum-Supervisor has acquired new name of Junior Engineer-II, which was also in the same scale of ₹1400-2300, in the pre-revised pay scale. However, the case of the respondent was that on the restructuring the pay scale granted to the post of Junior Engineer-II because it would be available only to the Mistry-cum-Supervisor who are working as such and has enjoyed the designation of Junior Engineer-II.*

5. *Having heard learned counsel for the parties, we are of the considered view that once the post of Mistry-cum-Supervisor has acquired a new nomenclature and it has also been given higher scale of pay then the cosmetic cover which has been put forward by the*

respondent cannot be permitted to hide the real face of the erstwhile Mistri/Supervisor. For all instants and purposes, they would all be treated as Junior Engineer-II. Once the pay scale of the post of Mistri/Supervisor is deemed to be revised then their pension is also be required to be re-fixed w.e.f. 1.11.2003.

(emphasis by us)

[9]. The petitioner-authorities also sought review of the above stated order but this Court declined the same.

[10]. The review order dated 19.09.2012 was assailed by the petitioner(s) in Special Leave to Appeal (Civil) No.29160 of 2012 before the Hon'ble Supreme Court which was dismissed with the following order:-

“Taken on board.

Mr. Siddharth Luthra, learned ASG, states, on instructions, that the petitioners are willing to comply with the directions contained in judgment dated 24th August 2011 in CWP No.9581 of 2011. He, however, prays that since the amount to be deposited in terms of the said judgment is substantial, six weeks' time may be granted to the petitioners to make the requisite deposit. In view of the prayer, while dismissing the special leave petition, we request the High Court to defer further proceedings in Contempt Petition No.COCP 35/2012 by a period of six weeks, by which time the petitioners propose to comply

the aforesaid judgment.”

(emphasis applied)

[11]. It may be seen from the above reproduced order that the Railway Authorities (petitioner(s) herein) at their own took a conscious decision to implement the decision of this Court in **Agia Ram and others'** case and made an unqualified statement to that effect before the Apex Court.

[12]. The respondent-retirees herein are also most of those Mistry-cum-Supervisors who retired from service before 01.01.1996. They approached the Tribunal for the grant of revised pension as per the pre-revised pay scale of Junior Engineer-II on the strength of the decision of this Court in **Agia Ram's case.** Their claims have been accepted by the Tribunal, giving rise to this batch of writ petitions.

[13]. It is urged by learned Senior counsel appearing for the petitioner(s) that the Railway Board circular dated 09.10.2003 is inapplicable in the case of those who retired before 01.11.2003. He contends that the classification based upon the cut-off date of retirement does not *per se* suffer from any vice of arbitrariness and it does not offend Articles 14 or 16 of the Constitution. According to him, Railway Board circular in so many words clarifies that the nomenclature of the post of Mistry-cum-Supervisor was changed and it was upgraded as Junior Engineer-II prospectively for the benefit of the existing incumbents and the benefit of such upgradation cannot be extended to the retirees by way of a deeming fiction when none of the clauses of Railway Board

Circular operates retrospectively either through an express provision or by implication.

[14]. On the other hand learned counsel for the respondent-retirees reiterate their claim adopting the reasoning given by the Tribunal.

[15]. We have given our thoughtful consideration to the rival submissions and perused the record. The Competent Authority can undoubtedly classify the retirees for the purpose of admissibility of retiral or other incidental benefits by fixing the cut-off date under a new Pension Scheme save that such classification is reasonable and can sustain the rigours of other Constitutional provisions. But such a recourse to divide the retirees in two groups may not be permissible while granting the benefits under a liberalised Pension Scheme (Re: V. Kasturi vs. Managing Director, State Bank of India, Bombay & Anr. (1998) 8 SCC 30). These principles need not be elaborated further as the point in issue appears to be slightly different.

[16]. Suffice to say that the above summerised principle(s) will not be applicable in the instant case for more than one reason. Firstly, in Agia Ram's case (supra) this Court was conscious of the fact that some of the writ-petitioners had retired before the Circular came into force yet after taking notice of that fact, they were held entitled to upgradation of their post(s) for upward revision of retiral benefits. The benefit of refixation or consequential revision of

pension was, therefore, restricted only from the date the Circular came into force on 01.11.2003. Secondly, this Court did not give any retro-active effect to the Circular to relate it back to the date when the writ-petitioners retired from service on attaining the age of superannuation. Thirdly and most importantly, the petitioner(s) themselves took a categoric stand before the Hon'ble Supreme Court on 27.09.2012 (Annexure A-3) and 'instructed' their Ld. counsel to make a statement that the Authorities were willing to implement the order dated 24.08.2011 passed by this Court in **Agia Ram's case.**

[17]. Having taken a conscious decision to implement the decision of this Court in **Agia Ram's case** (supra) and after granting the resultant benefits to some of the writ-petitioners who were admittedly pre-1996 retirees, the question that arises for consideration is whether the petitioner-Authorities can deny the same benefit to other similarly placed persons only on the ground that the left out pre-1996 retirees had not earlier approached the Tribunal or this Court?

[18]. The petitioner(s) cannot, in our considered view, restrict the benefit of their decision qua those pre-1996 retirees only who were parties before this Court in **Agia Ram and others'** case (supra). Once the petitioner(s) acknowledged that the decision in **Agia Ram and others'** case has laid down correct statement of law, they are obligated to extend the benefit of their such voluntary decision uniformly qua all the pre-1996 retirees.

[19]. In this regard, we are fortified by the view taken in **K.C. Bajaj and Ors. vs. Union of India and Ors. (2014) 3 SCC 777,**

where the Hon'ble Supreme Court has ruled as follows:-

“28. However, the fact of the matter is that the Union of India did challenge the order passed by the Delhi High Court in Dr. K.C. Garg's case and other connected matters by filing special leave petitions, which were converted into Civil Appeal Nos.1972-1974/2003 and during the pendency of the appeals, a conscious decision was taken by the Government of India not to pursue the appeals and implement the order of the High Court. It is neither the pleaded case of the Respondents nor it has been argued before us that the Government of India had taken decision to withdraw the appeals filed in the cases of Dr. K.C. Garg and others because the financial implications were negligible or that the concerned officers were misled in doing so on account of wrong legal advice. At the cost of repetition, we consider it necessary to observe that during the pendency of the appeals, the matter was referred to the Attorney General for his opinion whether the judgment of the High Court is correct and the same should be implemented. The Attorney General examined the matter keeping in view the relevant rules and the policy decisions taken by the Government of India and opined that the judgment of the High Court was correct and should be accepted in preference to the view taken by the Tribunal. The issue was then considered at the highest level of the Government and the Prime Minister ordered implementation of the High Court's order. Thereafter, the appeals were withdrawn. It is a different thing that the proposal for withdrawal of O.M. dated 29.10.1999 was shelved in view of the judgment in Col. B.J. Akkara's case.

In other words, the Government of India had taken a well considered decision not to pursue the appeals filed against the order of the Delhi High Court and implement the same on the premise that the proposition laid down therein was correct.

29. In view of the above discussion, we hold that the ratio of the Digambar's case cannot be invoked to justify the pick and choose methodology adopted by the Union of India in resisting the claim of similarly situated doctors that NPA payable to them shall be taken into consideration for calculating the pension. Such an approach by the Union of India is ex-facie arbitrary, unjust and has resulted in violation of Article 14 of the Constitution.”

(emphasis applied)

[20]. The petitioner(s) are a welfare State. They cannot and ought not to expect the respondent-retirees to roam in the corridors of Courts. The conscious decision taken by the petitioner(s) to extend benefit of their 2003 Circular to a batch of pre-1996 retirees amounts to shift in their policy, therefore, also the respondents being similarly placed retirees, are entitled to the benefit of revised Policy decision, even if such decision has emanated out of the command issued by this Court in **Agia Ram and others'** case. The denial of benefit of revised higher pension etc. to the respondents when it stands granted to other similarly placed retirees, certainly does violence to Articles 14 and 16 of the Constitution.

[21]. Since the Tribunal vide its orders dated 19.11.2013 (Annexure P-3), 10.10.2013 (Annexure P-1) 11.02.2014 &

08.07.2014 (Annexures P-3 & P-4) respectively, has directed what the petitioner(s) ought to have themselves volunteered, we do not find it a fit case to interfere with the impugned orders. However, keeping in view the facts and circumstances, petitioner(s) are granted three months time to give effect to the orders passed by the Tribunal.

[22]. Ordered accordingly.

**(SURYA KANT)
JUDGE**

January 29, 2015
Atik

**(RAJ MOHAN SINGH)
JUDGE**