

\$~3

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) 2052/2012 & C.M. No.4471/2012

UNION OF INDIA AND ORS

..... Petitioners

Through: Mr.Jagjit Singh with Mr.Ashok
Singh, Mr.Preet Singh & Ms.Savita
Nagar, Advocates.

versus

SURINDER KUMAR DHINGRA

..... Respondent

Through: Mr. S.P. Sethi with Mr.Bhagwan
Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

%

05.09.2017

The present writ petition is directed against the order dated 24.10.2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.3857/2010. The said original application of the respondent was allowed by the Tribunal and the petitioner herein was directed to step up the pay of the respondent-applicant to the level of his junior Shri Ravinder Sharma w.e.f. 20.12.2006, when Shri Sharma got his promotion to the post of Loco Inspector.

The facts of the case taken note by the Tribunal are, that the respondent was senior to the said Shri Ravinder Sharma, firstly, as Fireman- 'A', then as Driver-Goods and thereafter as Loco Inspector. Consequently, upon his promotion as Loco Inspector, the pay scale of the respondent had been revised to Rs.7450-11500/- when the pay scale of Shri Ravinder Sharma as Driver was stood at Rs.5000-8000/-. After the implementation of

the Sixth Pay Commission, the posts of Senior Loco Inspector and Loco Inspector were merged on 01.01.2006 and given the designation of Chief Loco Inspector with the combined pay scale of Rs.9,300-34,800/- and grade pay of Rs.4,600/- which was given to the respondent. His pay was fixed at Rs.24,320(Rs.19,720+4,600) which went up to Rs.25,050/- (Rs.20,450+4,600) as on 20.12.2006. At this stage also, Shri Ravinder Sharma was junior to the respondent and was getting Rs.20,910/- (Rs.16,740+4,200) as Driver Passenger on 01.01.2006. Shri Ravinder Sharma was thereafter promoted to the post of Loco Inspector on 20.12.2006 and his pay was fixed at Rs.29,290/- (24,690 + Rs.4,600). Thus, as on 20.12.2006, both the respondent and the said Shri Ravinder Sharma were in the same post of Loco Inspector, but the pay of Shri Ravinder Sharma was Rs.29,290/-, whereas that of the respondent was Rs.25,050/-. The respondent was aggrieved by the said anomaly and sought stepping up of his pay under FR-22 read with Rule 1316 of the Railway Service(Revised Pay Scale) Rules, 2008. Since the said demand of the respondent was rejected, he preferred the aforesaid original application. The petitioner had rejected the request for stepping up of the respondent's pay by contending that the respondent did not fulfill the conditions that are laid down in Note 10 below rule 7 of the aforesaid rules. Note 10 below rule 7 of the said rules *inter alia* laid down the following conditions:-

“(a) That both the junior and senior railway servants should belong to the same cadre and the posts to which they had been promoted should be identical in that cadre;

(b) The pre-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.”

According to the petitioner, the said conditions are not fulfilled in the case of the respondent.

The Tribunal, however, allowed the original application of the respondent by placing reliance on the decision of the Coordinate Bench of the Ernakulam Bench of Kerala in the O.A No.1002/2010.

The submission of Mr. Singh, learned counsel for the petitioner is that the Supreme Court in *Union of India & Ors. vs. O.P. Saxena*, (1997) 6 SCC 360 has interpreted Rule 1316 of the aforesaid rules and the Supreme Court, in that case, in the similar circumstances, had declined the request for stepping up of pay on the grounds that the senior did not fulfill the requirements of Note 10 to Rule 7 of the said rules. Mr. Singh submits that the cadre of the respondent and that of Shri Sharma were not the same before they came to be promoted as Loco Inspector. The career progression of the respondent, according to the petitioner was as follows:-

Designation	Date
Fireman-A	18.08.1977
Shunter	01.11.1979
Driver 'C'	24.01.1985
Assistant Traction Loco Controller (Stationary Post)	20.05.1987
Re-designated Crew Controller/Loco Inspector (Stationary post)	05.01.1993
Senior Loco Inspector (Stationary post)	31.01.1997

Whereas the career progress of Mr. Ravinder Sharma was as follows:-

Designation	Date
Cleaner/KH	19.03.1969

Fireman 'C'	28.04.1977
Fireman 'B'	18.08.1979
Fireman 'A'	1.06.1981
Elect. Asstt.	01.01.1986
Driver Goods	28.11.1993
Passenger Driver	19.03.2001
Senior Passenger Driver	1.03.2005
Loco Inspector	20.12.2006

Mr. Singh submits that the respondent was on a 'running post' only till the post of Driver 'C', whereafter he was promoted as Assistant Traction Loco Controller which is a stationary post. Shri Ravinder Sharma however, continued on the running post and reached beyond the post of Driver 'C' up to Senior Passenger Driver from 01.03.2005. Mr. Singh submits that the decision of the Supreme Court in *O.P. Saxena (supra)* has subsequently been followed in *Surendra Kumar vs. Union of India & Ors.*, (2005) 2 SCC 313 as also by this Court in *Union of India & Ors. vs. Gurbax Singh*, W.P(C) 2163/2002.

On the other hand, learned counsel for the respondent submits that similarly situated persons who had approached the Tribunals in other parts of the country, have all been granted the relief of stepping up of their pay and in all those cases, the Supreme Court has dismissed the Special Leave Petitions preferred by the Union of India. Counsel for the respondent has placed before this Court, the decision of the Calcutta High Court in WPCT No.224/2010 dated 07.12.2011 in the case of *Shyamapada Roy & Ors. vs. Union of India & Ors.* as well as the order passed by the Supreme Court in SLP(Civil) 590/2013 dated 11.02.2014 arising out of the said decision titled (*Union of India & Ors. vs. Shyamapada Roy & Ors.*). The Supreme Court

dismissed the Special Leave Petitions by leaving the question concerning the interpretation of the relevant rules open. Thereafter, review petition was also dismissed by the Supreme Court by the order dated 03.12.2014 in Review Petition(C) No.2137/2014.

The respondent has also placed before this Court, the decision of the Ernakulam Bench of the Tribunal in O.A No.134/2012 decided on 25.09.2012, the Special Leave Petition against the said decision i.e. SLP(C) No.33654/2014 which was dismissed on 23.02.2016 alongwith another Special Leave Petition titled as *Union of India & Ors. vs. V. Murugesan & Anr.*, being SLP(C) No.4568-4569/2014; Special Leave Petition related to another similar order passed by the Madras High Court dated 19.02.2013 in W.P(C) 3528/2013. The review petition being Review Petition (C) No.2924/2016 preferred before the Supreme Court in the case of *K.S. Rajendra Kumar* was also dismissed on 23.08.2016. The respondent has also placed before this Court the order passed by the Madras Bench of the Tribunal in the case of *V. Murugesan* dated 07.08.2012.

Learned counsel for the respondent has also placed on record, the communication dated 25.11.1992 issued by the Government of India, Ministry of Railways which contains the decision taken by the Government in consultation with the National Federation of Indian Railwaymen and All India Railwaymen's Federation in the Departmental Council Meeting held on 19/20th December, 1989. The decision communicated by this letter was directed to take effect from 01.01.1993. One of the decisions taken by the petitioner therein, was that Loco Inspectors irrespective of their grade, shall be credited with actual foot plate duties as indicated in the Rule 1514 of the Indian Railway Establishment Code, as amended by Advance Correction

slip and paid Running Allowance accordingly at the rate to be notified from time-to-time and as applicable to Mail/Express Drivers.

The submission of the respondent thus, is that the post of Loco Inspector is not a stationary post as claimed by the petitioner. Learned counsel for the respondent has further submitted that on implementation of the Sixth Pay Commission Report, the post of Driver 'A' to 'C' have been merged in a single post and similarly the post of Loco Inspector and Senior Loco Inspector have also been merged and re-designated as Chief Loco Inspector. What emerges from the record is that even though the respondent was promoted as a Loco Inspector almost 20 years before the said Shri Ravinder Sharma, but only on account of fixation of pay under the Sixth Pay Commission report, the pay of the said Shri Ravinder Sharma was fixed at Rs.29,290/- as on 20.12.2006 whereas that of the respondent was fixed at Rs.25,050/-. There is no dispute to the fact that the respondent was senior to the said Shri Ravinder Sharma and the denial of stepping up of pay to him was clearly discriminatory. As noticed herein above, the Tribunals, High Courts at Ernakulam, Madras as well as Calcutta High Court have taken the same view and their decisions have also been affirmed by the Supreme Court with the dismissal of the Special Leave Petition against all those decisions.

In these circumstances, we find no reason to interfere with the impugned order. The petition is accordingly dismissed.

C.M. No.4471/2012

The application is dismissed as infructuous.

VIPIN SANGHI, J

REKHA PALLI, J

SEPTEMBER 05, 2017/gm
gm