

(2015) 10 DEL CK 0054

In the Delhi High Court

Case No : Review Pet. 377/15, CM Appl. 14276-14277/15 in W.P. (C) 2937/07,
Review Pet. 376/15, CM Appl. 14274, 14275/15 in W.P. (C) 3979/08,
Review Pet. 328/15, CM Appl. 11823, 11824/15 in W.P. (C) 8363/07,
Review Pet. 396/15, CM Appl. 13081, 13082, 15878, 15879/15

UOI and Others

APPELLANT

Vs

Kishan Lall Sharma and Others

RESPONDENT

Date of Decision : 09-10-2015

Acts Referred:

Citation : (2015) 10 DEL CK 0054

Hon'ble Judges : S. Ravindra Bhat and Suresh Kait, JJ.

Bench : Division Bench

Advocate : Jagjit Singh, Shivanshu Bajpai, Nisha and J.K. Singh, Advocates, for the Appellant

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—In these review petitions, the Indian Railways seeks recall of the previous orders of the Court which had upheld the various decisions and orders of the Central Administrative Tribunal ("CAT"). The Indian Railways had approached the Supreme Court by filing SLPs against these judgments, i.e., SLP No. 11805/2009 along with a batch of other cases. Those were disposed of by an order dated 29.04.2015 permitting liberty to the Indian Railways to approach this Court by filing Review Petitions.

2. The controversy concerns grant of pensionary benefits by way of special allowance to be added to the emoluments drawn in the ten months period prior to retirement. The Indian Railways contend that the orders disposing of the writ petitions are erroneous because they did not take into consideration (A) a decision of the Supreme Court in *Union of India and others Vs. O.P. Saxena and Others*, and (B) the terms of the Circular issued on 25.11.1992.

3. Mr. Jagjit Singh and Mr. J.K. Singh, learned counsel for the Indian Railways

urged that this Court should intervene and recall the judgments to the extent that they held that Loco Supervisors/Loco Inspectors retiring as such would be entitled to the running allowance in addition to their last pay and emoluments drawn at par with the Loco Running staff. It is submitted that the Railways has traditionally and historically maintained a distinction between the two and that according to all the prevailing instructions in that regard, Loco Running staff were entitled to the higher mark up of the allowances at the stage of retirement. In support of this contention, learned counsel relied upon the guidelines/instructions of 25.11.1992. Stating that the distinction or classification was based upon sound principles, learned counsel urged that once an individual opts for the position of Loco Supervisor/Loco Inspector, he ceases to be a running staff and consequently is disentitled to a running allowance.

4. Learned counsel for the respondents/successful parties contended that the review petitions are without merit. It was firstly submitted in this regard that the main decision in Union of India v. Kishan Lall Sharma & Ors. - W.P.(C) 960/2002 - took note of the decision of the Supreme Court in G.C. Ghosh & Ors. v. Union of India & Ors. 1991 Supp (2) SCC 497. The Supreme Court in the latter case frowned upon the discrimination ensuing on account of the unequal implementation of the directions of the Allahabad High Court in Union of India v. Smt. Afsar Jahan Begum, Spl. Appeal No. 9/1975 delivered on 12.03.1979 (whereby parity between Loco Running staff and those who opted for Loco Inspectors was held to be fair). It was submitted that besides, a close reading of the instructions relied upon by the Indian Railways - dated 25.11.1992 itself shows that Loco Inspectors - regardless of their grade would be entitled to actual foot-plate duties indicated in Rule 1514 of the Indian Railway Establishment Code. Urging that this Court should not interfere in these Review Petitions, learned counsel submits that Loco Inspectors are drawn from the running staff precisely of imparting training to those freshly recruited as running staff. If they are denied higher pensionary benefits that are admissible, the inevitable conclusion would be unjust discrimination.

5. The Instructions dated 25.11.1992 to the extent they are relevant are extracted below:-

"The problem of filling up the posts of Loco Running Supervisors on account of drop in emoluments of running staff on coming over as Loco Running Supervisors has been engaging attention of Railway Board for quite some time. This issue was raised by the recognized labour federations, viz. National Federation of Indian Railwaymen and All India Railwaymen's Federation in the Department Council meeting on 19th /20th December, 1989 also. Consequent upon the second report of the Committee of The Departmental Council (JCM) set up to consider the issue, the Ministry of Railways have taken the following decisions in consultation with the recognized labour federations, viz., NFIR and AIRF.

2. The decisions communicated herein take effect from 1st January 1993.

3. Filling up the posts of Loco Inspectors, Power Controllers, Crew Controllers, ALF and LF:

3.1 The posts of Loco Inspectors, Crew Controllers and Power Controllers will be exclusively filled only from the Loco Running Side. The posts of ALF and LF will be exclusively filled from the loco maintenance side.

3.2 Loco Inspectors will be required to perform, inter alia, duties directly connected with the training and monitoring of loco running staff on foot-plate of the locomotive cab of the moving trains. The other duties to be performed by these staff shall generally be as per the duties list drawn at Annexure "A" and "B" and shall also include any other duties assigned by the respective Railways/divisions taking into consideration the local conditions.

3.3 With the prescribing of the duty list as above, there would be no separate category of Fuel Inspectors and the category will be merged with Loco Inspectors.

3.4 There shall be a common selection from the Loco Running Side for filling up the posts of Loco Inspectors, Crew Controllers and Power Controllers in grade Rs. 2000-3200. The staff will be drawn from the following categories:

(i) Mail/Express Driver (Rs. 1640-2900)

(ii) Passenger Driver (Rs. 1600-2660)

(iii) Goods Driver (Rs. 1350-2200) with at least five years experience as Driver.

XXX XXX XXX

5. Allowances and retirement benefits for Loco Inspectors.

5.1 The Loco Inspectors, irrespective of their grade, shall be credited with actual foot plate duties as indicated in the Rule 1514 of Indian Railway Establishment Code, as amended by Advance Correction Slip No. 21 and paid Running Allowance accordingly at the rate to be notified from time to time and as applicable to Mail/Express Drivers. At present, this rate is Rs. 36.10 per hundred kilometres.

5.2 The Loco Inspectors shall be given an Allowance in Lieu of Kilometrage (ALK) at the rate of 160 kilometres per day for other than foot plate duties performed by them outside their headquarters beyond a radius of 8 kilometres.

5.3 Where the Loco Inspectors are deployed for other than foot plate duties at outstations for part of the day and also on foot plate duties for another part of the same day, payment of Kilometrage Allowance shall be made either in terms of para 5.1 or para 5.2 above, whichever is higher."

6. It is apparent from the above that the posts of Loco Inspectors, Crew Controllers etc. have to be filled only from Loco Running Side and they are inter alia required to perform duties directly connected with the training and monitoring of loco running staff on foot-plate duties of the locomotive cab of the

moving trains. Therefore, it established beyond doubt that Loco Inspectors' suitability on the basis of their performance and expertise as loco running staff. Paragraph 5.1 of the above guidelines is further explicit that Loco Inspectors would be credited with actual foot-plate duties and also entitled to Running Allowance at the rate notified from time to time. Apparently, it was in these circumstances that this Court affirmed the decision of the CAT, that concluded that creating a disparity between the Loco Inspectors and Loco Running staff at the time of their retirement in terms of addition of the element of running allowance (Loco Running Staff being entitled to 55% and Loco Inspectors being entitled to the reduced quantum of 30%) was discriminatory.

7. Having considered the instructions, we are of the opinion that the arguments of the Indian Railways are unmerited. So far as the reliance upon the decision in O.P. Saxena's case (*supra*) is concerned, we note that the Supreme Court was concerned with the issuing of stepping up of pay and had no occasion to deal with the question of discrimination at the stage of retirement in fixation of retirement benefits.

8. For the above reasons, the review petitions are dismissed as unmerited.