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SURENDER KUMAR

v.

UNION OF INDIA AND ORS.

JANUARY 13, 2005

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[K.G. BALAKRISHNAN AND P.K. BALASUBRAMANYAN, JJ.]

Service Law:

Railway Establishment Code, 1965; Rule 1316:

C

Stepping up of pay—Drivers Grade—C promoted to the post of Loco Supervisor—Drivers Grade-A though promoted later but getting higher pay—Justification of—Held: Drivers Grade-A, Drivers Grade-B and Drivers Grade-C constitute different sources of recruitment to the post of Loco Supervisors—Since sources of recruitment were different, principle of stepping up of pay inapplicable.

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Appellant-Divers Grade-C were promoted to the post of Loco Supervisors in the Central Railways. Later, Drivers Grade-A were also promoted. In the meantime, the Railways accepted the recommendations of the Fourth Pay Commission, as a result of which appellants were getting lesser pay than those promoted later. Aggrieved, appellants made representations to Railway Authorities for stepping up of their pay and also for payment of arrears. Authorities issued a Circular whereby their pay was stepped up. However, the Circular was later withdrawn on the ground that the conditions necessary for stepping up of the pay as provided under Rule 1316 of the Railway Establishment Code were not fulfilled. Aggrieved, some of the Loco Supervisors, other than the appellants, filed petitions before the Central Administrative Tribunal against the order of withdrawal of the Circular. CAT upheld their claim. Union of India preferred appeal before this Court which was allowed by the Court setting aside order of CAT. Subsequently, petitions were filed by the appellants before CAT, challenging the order of withdrawal of the Circular. Petitions were rejected by CAT. Appeals against the order of CAT were allowed by the High Court. Hence the present appeals.

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Appellants contended that the case of *Union of India and Ors. v. O.P.*

Saxena, [1997] 6 SCC 360 requires reconsideration since this Court, while dealing with that case had assumed that Codal Conditions as per Rule 1316 of the Railway Establishment Code could be applied to persons similarly situated as the appellants, and that erroneous assumption has led to the erroneous conclusion in that case; and that the decision of this Court does not apply to the facts and circumstances of the present case.

Dismissing the appeals, the Court

HELD: 1.1. It is not possible to accept the distinction sought to be made by the appellants between those involved in the decision in *Union of India and Ors. v. O.P. Saxena* and in the present case. The appellants also opted to be promoted to the stationary post of Loco Supervisors directly from the post of Drivers Grade-C and their promotions were also made prior to acceptance of recommendations of the Fourth Pay Commission, viz. 1.1.1986. It was the claim of such persons that was considered by this Court in the said reported decision and this Court held that those who were promoted before 1.1.1986 did not satisfy the Codal conditions and Rule 1316 of the Railway Establishment Code governing the principle of stepping up of pay. Hence, the persons promoted from Drivers Grade-C to the post of Loco Supervisors were not entitled to stepped up pay and could not claim the benefit of the Circular, the withdrawal of the Circular regarding persons similarly situated was justified. Besides, the sources of recruitment to the post of Loco Supervisors were Drivers Grade-A, Drivers Grade-B and Drivers Grade-C. Thus the sources were different and that made the principle of stepping up of pay inapplicable. Hence, the claim of the appellants is squarely covered by the decision in that case necessarily justifying the rejection of their claim by the Central Administrative Tribunal and the High Court. [471-G-H; 472-A-D-E]

1.2. No justification is found in doubting the correctness of the decision rendered by the Bench of three Judges of this Court in the case of *Union of India and Ors. v. O.P. Saxena* and for not applying the ratio of the decision to the present case. Thus, the argument that the decision requires reconsideration, is without substance. Hence, the decision of the Central Administrative Tribunal as affirmed by the High Court is sustained. [472-F-G; 473-A]

Union of India and Ors. v. O.P. Saxena, [1997] 6 SCC 360, relied on.

A From the Judgment and Order dated 22.12.1999 of the Bombay High Court at Aurangabad in W.P. No. 5998 of 1999.

M.N. Krishnamani, B.S Jain, Ajay Veer Singh for Goodwill Indeevar for the Appellant.

B P.P. Khurana, Vikas Sharma and S.N. Terdal for the Respondents.

The Judgment of the Court was delivered by

P.K. BALASUBRAMANYAN, J. 1. The appellants were working as Drivers Grade-C in the Central Railways. They, along with Drivers Grade-A and Drivers Grade-B, were entitled to be considered for selection to the higher post of Loco supervisors. The appellants as drivers, in addition to the scale of pay at Rs.150-240, were also entitled to a running allowance of 30% of the salary which was liable to be added to their basic pay. They were promoted between the years 1970 and 1974 as Loco Supervisors in the Grade of Rs.700-900.

D 2. The Railways accepted the recommendations of the IV Pay Commission with effect from 1.1.1986. This increased the pay of the Drivers as well as their running allowance, being 30% of their basic pay. Certain persons who were working as Drivers Grade-A were promoted as Loco Supervisors in the year 1986. The pay revision with effect from 1.1.1986 not only increased their pay, but also the running allowance of those working as Drivers as on that day, it being 30% of their increased basic pay. This resulted in the appellants getting a lesser pay as Loco Supervisors than those promoted after 1.1.1986 since they did not have the advantage of the increased 30% addition in their running allowance and they had to be content with the 30% running allowance on their pay prior to the pay revision. Representations were made by the appellants pointing out that though they were promoted as Loco Supervisors earlier, they were getting lesser pay than those Drivers promoted subsequent to 1.1.1986 and some of whom were their juniors. The General Manager took up their grievance and a circular was issued authorizing the stepping up of the pay of the appellants. The pay was thus stepped up and arrears paid. But subsequently in the year 1992, the said circular was withdrawn on the basis that Codal Conditions had to be fulfilled for getting stepped up pay and they did not fulfil that condition. A person similarly situated as the appellants along with certain others, approached the Central Administrative Tribunal, Jabalpur challenging the withdrawal of the stepped up pay. The Administrative Tribunal upheld their claim. The decision of the Administrative

Tribunal was challenged by the Union of India in this Court. By Judgment dated 14.7.1997 reported as *Union of India and Ors. v. O.P. Saxena*, [1997] 6 SCC 360, this Court allowed the appeal, set aside the order of the Administrative Tribunal and dismissed the applications filed before the Administrative Tribunal by persons similarly situated as the appellants.

3. In these cases the Central Administrative Tribunal, Bombay rejected the challenge of the appellants to the withdrawal of the stepped up pay. The appellants challenged the said decision before the High Court of Bombay. The High Court dismissed the writ petitions. It is the dismissal of those writ petitions that are challenged before us.

4. Learned counsel for the respondents, at the outset, submitted that the question raised by the appellants is covered against them by the decision of this Court in *Union of India and Ors. v. O.P. Saxena* (supra) and these appeals have only to be dismissed in the light of the said decision. Learned counsel for the appellants in that context argued that the decision in *Union of India and Ors. v. O.P. Saxena* (supra) was distinguishable. He alternatively contended that the said decision requires reconsideration since this Court had assumed that Codal Conditions, especially Rule 1316 of the Indian Railway Establishment Code (for short "the Code"), applied to persons similarly situated as the appellants and this erroneous assumption has led to the conclusion in that case, which was also erroneous. It was submitted that the said decision related to claims by those who were juniors to one Mr. Kareer who got promoted as a Loco Supervisor from Driver Grade-A whereas in the present case, the appellants were seniors to Mr. Kareer when they were promoted as Loco Supervisors from the post of Drivers Grade-C. Since the claim is by those who were seniors to Mr. Kareer, the decision of this Court did not apply to the appellants.

5. On going through the decision in *Union of India and Ors. v. O.P. Saxena* (supra) we find that it is not possible to accept the distinction sought to be made by the learned counsel for the appellants between those involved in the said decision and in the present case. The appellants also opted to be promoted to the Stationary Post of Loco Supervisors directly from the post of Drivers Grade-C and their promotions were also made prior to 1.1.1986. It was the claim of such persons that was considered by this Court in the said reported decision and this Court held that those who were promoted before 1.1.1986 did not satisfy the codal conditions and Rule 1316 of the Code Vol.II, governing the principle of stepping up of pay. This Court held that

A going by Rule 1316, the persons promoted from Drivers Grade-C to the post of Loco Supervisors before 1.1.1986 were not entitled to stepped up pay and could not claim the benefit of the circular dated 8.4.1988 and the withdrawal of that circular regarding persons similarly situated in the year 1992 was justified. The factum of seniority of Mr. Kareer was only incidentally referred to. The decision was not rested on that fact or aspect at all.

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6. The argument that the codal conditions and Rule 1316 did not apply to the appellants and that they were assumed to apply in that decision, could not also be accepted. The argument that it was assumed that Rule 1316 applied, is found to be not tenable. The Court considered the question whether Rule 1316 applied and noticed the conditions to be fulfilled to enable the seniors to claim parity of pay with those subsequently promoted. This Court held that the conditions were not satisfied in the case of persons similarly situated as the appellants and based on it, the conclusion was arrived at that they were not entitled to the stepped up pay. This Court also noticed that the sources of recruitment to the post of Loco Supervisors in the case of drivers took in Drivers Grade-A, Drivers Grade-B and Drivers Grade-C and hence the sources were different and that made the principle of stepping up of pay inapplicable. Thus, we find that the decision of this Court in the *Union of India and Ors. v. O.P. Saxena* (supra) cannot either be distinguished or taken to be based on an assumption regarding applicability of Rule 1316. We find that the claim of the appellants is squarely covered by the decision in *Union of India and Ors. v. O.P. Saxena* (supra) necessarily justifying the rejection of their claim by the Central Administrative Tribunal and the High Court. We are also in respectful agreement with the view that Rule 1316 has application and that the appellants do not satisfy the conditions of that Rule.

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7. Having considered the arguments in that behalf and having carefully gone through the decision in *Union of India and Ors. v. O.P. Saxena* (supra), we do not find any justification in doubting the correctness of the said decision rendered by a Bench of three Judges. On a consideration of the relevant aspects, we find that this Court had considered all the relevant aspects while rendering the said decision and there is no reason for not applying the ratio of the said decision or for doubting its correctness. We are, therefore, of the view that the argument that the said decision requires reconsideration, is without substance.

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8. In the light of the decision in *Union of India and Ors. v. O.P. Saxena* (supra) the decision of the Central Administrative Tribunal as affirmed

by the High Court of Bombay, challenged before us, has only to be sustained. A
We, therefore, confirm the decision of the High Court and dismiss these
appeals. However, in the circumstances, we make no order as to costs.

S.K.S.

Appeals dismissed.