

# Union Of India And Ors vs O.P. Saxena, ... on 5 August, 1997

**Bench: J.S Verma, Sujata V. Manohar, B.N. Kirpal**

PETITIONER:  
UNION OF INDIA AND ORS.

Vs.

RESPONDENT:  
O.P. SAXENA, R.D.CHODHARY,K.PEREIRA,HARBANS LAL & ORS.

DATE OF JUDGMENT: 05/08/1997

BENCH:  
J.S VERMA, SUJATA V. MANOHAR, B.N. KIRPAL

ACT:

HEADNOTE:

JUDGMENT:

W I T H CIVIL APPEAL NO 4662/97 (@ Special Leave Petition (c) No. 14262/97 1601/96) W I T H CIVIL APPEAL NO.4663/97 (@ Special Leave Petition (c) No.24606 of 1996) W I T H CIVIL APPEAL NO. 4664/97 (@ Special Leave Petition (c) NO. 12463/97 CC 23426/94) J U D G M E N T KIRPAL, J.

Civil Appeal No. 8852/96 with C.A.Nos...../97 (arising out of SLP (c) CC No. 1601/96 and SLP (c) No. 24606/96) Leave granted.

The issue which arises in these appeals from the orders of the Central Administrative Tribunal, Jabalpur, relates to stepping up of the pay of the respondents who were promoted as Loco Running Supervisor prior to 1st January, 1986 vis-a- vis the pay of one Sh. P.N. Kareer who was promoted to that post after 1st January, 1986 but was drawing higher pay than the respondents.

As the questions of facts and law in these appeals are the same, therefore, we propose to dispose of these appeals by a common judgment.

In the Railway Administration there is a category of staff called the running staff which is involved in the Running of trains. It includes drivers, guards, firemen, shunters and brakesmen. The running

staff are entitled to an allowance called the 'running allowance' in view of the nature of their duties pertaining to the running of trains. The pay scales of the running staff are considered to be incommensurable with the ordeal of their duty and, therefore, to balance that element the Running allowance is given to encourage greater efficiency in the running staff.

The locomotive drivers are eligible for promotion, amongst other posts, to those of Loco Supervisors. The aforesaid Sh. Kareer and the respondents, at one time, were holding the running post of Driver Grade-C. Sh. Kareer had been promoted as Driver Grade-C on 29th August, 1961. In other words, Sh. Kareer was senior to the respondents as Driver Grade-C. The respondents then opted to be promoted to the 'stationary post' of Loco Supervisor directly from the post of Driver Grade-C which they were holding. Their promotion was made prior to 1st January, 1986 and they were placed in the grade of Rs. 550 - 750.

Sh. Kareer chose to remain in the running staff. On 1st January, 1981 he was promoted as Driver Grade-B in the scale of Rs. 425-640 and his pay was fixed at Rs. 580/-. Thereafter on 28th November, 1984 Sh. Kareer was promoted as Driver Grade-A in the scale of Rs. 550-700. With effect from 1st January, 1986 revised pay scales came into existence as a result of the fourth pay commission report. At that time the respondents were working on the stationary post of Loco Supervisors while Sh. Kareer was working on the running post of Driver Grade-A. The pay of running staff on promotion to Loco Supervisor's post is fixed under Rule 1316 of Indian Railway Establishment Code after fixation of an additional component of thirty per cent of basic pay last drawn in the running cadre, which represents the pay element in the running allowance. On introduction of the revised pay scales with effect from 1st January, 1986 this thirty per cent addition in the pay element of the running allowance increased which resulted in higher fixation of pay of running staff appointed as Loco Supervisors after 1st January, 1986 than those appointed as Loco Supervisors before 1st January, 1986. Therefore, when Sh. Kareer was appointed as a Loco Supervisor, his pay as Loco Supervisor was fixed after taking into account the aforesaid thirty per cent addition which resulted in his getting higher pay than the respondents. It appears that in the pay of respondent - O.P. Saxena was stepped up but when the department discovered that the benefit had been wrongly given to him his pay was re-fixed and recoveries were made of the excess amount paid to him. Sh. O.P. Saxena challenged the aforesaid decision by filing OA No. 462 of 1994 before the Central Administrative Tribunal, Jabalpur. O.A. Nos. 191/94 and 768/93 were filed by the other respondents seeking the benefit of stepping up.

The Tribunal first decided the case of Sh. O.P. Saxena and came to the conclusion that stepping up of the pay was admissible to him. It did not accept the contention of appellant that Sh. Kareer was senior to the respondent - O.P. Saxena and, furthermore, on a correct interpretation of the Railway Board's letter dated 16th August, 1988 the principle of stepping up was not applicable. Following that decision relief was given by the Tribunal to the other respondents herein and, while allowing their OA Nos. 768/93 and 191/94 the appellant was directed to step up their pay keeping the pay of Sh. Kareer in view.

In our opinion, the decision of the Tribunal directing stepping up of the pay of the respondents herein was not correct. It had been classified by the Ministry of Railways in its letter dated 14th

September, 1990 that the principle of stepping up referred to in its earlier of 16th August, 1988 was "subject to codal conditions being fulfilled". The principle of stepping up of pay is contained in Rule 1316 of Indian Railway Establishment Code Vol. II which also contains conditions which have to be followed while ordering stepping up. Two of the conditions contained therein are:

- (a) Both the senior and junior officers should belong to the same cadre and the post in which they have been promoted on a regular basis should be identical in the same cadre;
- (b) The scales of pay of the lower and higher posts in which they are entitled to draw should be identical.

By a Presidential decision given under Rule 1316 the aforesaid conditions were further explained as follows:

" If as a result of application of the proviso to and the exception below Rule 1316 (F.R.22) the pay of the juniors more than that of the senior in the lower post, there would be no question of stepping up the pay of the senior in the higher post. If despite the application of the proviso to and the exception below Rule 1313 (F.R.22) the junior's pay is less than that of the senior and on promotion the former's pay happens to be prater than the pay of latter by virtue of the provisions of Rule 1316 (F.R.22 C), stepping up will have to be done with reference to the actual pay drawn by the junior in the higher post."

It is not in dispute that as driver Grade C Sh. Kareer was senior to and was drawing more salary than the respondents. Thereafter while Sh. Kareer remained in the cadre of running staff the respondents by choice as Loco Supervisors. Thereafter Sh. Kareer on the one posted as Loco Supervisors. Thereafter Sh. Kareer on the one hand and the respondents on the other belonged to two different cadres having their own seniority list. The pay of Sh. Kareer was fixed according to the scales which were approved for the running staff including the running allowance. Sh. Kareer was drawing more salary as Driver Grade-A, just before his appointment as a Loco Supervisor, than the respondents. With the revision of pay scales with effect from 1st January, 1986 Sh. Kareer's pay was fixed at Rs. 2360/- as on 1st January, 1986 while the salary of respondent - O.P. Saxena on the stationary to the post which he was holding was Rs. 2300/-. The sources of the recruitment to the post of Loco Supervisor in the case of Sh. Kareer vis-a-vis the respondents being different the principle of stepping up of pay would not arise. Whereas the respondents were promoted as Loco Supervisors from Driver Grade-C, Sh. Kareer on the other hand was placed in the cadre of Loco Supervisor after being promoted from the post of Driver Grade-A. When the feeder posts of Sh. Kareer and that of the other respondents were different the applicability of the principle of stepping up cannot apply. The pay of Sh. Kareer had to be fixed with reference to what he was last drawing as Driver Grade-A, a post which was never held by any of the respondents. In our opinion, therefore, the Tribunal was not justified in applying the principle of stepping up and in directing there fixation of the pay of the respondents.

For the aforesaid reasons the appeals are allowed. The orders dated 18th May, 1995 and 4th October, 1995 of the Tribunal in OA Nos. 462 of 1994, 191 of 1994 and 768 of 1993 are set aside. There will be no order as to costs.

Leave granted The question involved in this case is similar to the one in Civil Appeal No. 8852 of 1996. The only difference is that the respondent in this appeal claimed stepping up of his salary by contending that his junior one Sh. S.K. Sood was getting higher pay than him.

The respondent was appointed as a Fireman Grade-I in the running cadre in the year 1949. He was promoted to the post of Driver Grade-C and on 27th June, 1965 he was promoted to the stationary job as ALF. Thereafter he was appointed to various stationary posts and was allowed the benefit in fixation of pay in the respective posts and grades. His salary as on 1st January, 1986, after the fourth Pay Commission report, was fixed at Rs. 2900/-. He ultimately retired from service from 31st march, 1988 on which date he was drawing a salary of Rs. 3050/-

Sh. S.K. Sood, with reference to whom the respondent made a claim for stepping up of his pay, was initially appointed as boy fireman in the year 1948 in Ferozpur Division, whereas the respondent was appointed at Lucknow Division. Sh. Sood was promoted as Driver Grade-C, then Driver Grade-B and lastly Driver Grade-A. He was promoted to the stationary post of CFI with effect from 5th May, 1977 in grade of Rs. 700-900. As in the running cadre he was drawing the maximum of Rs. 700/- in the grade, his pay on the stationary post was fixed at Rs. 900/-.

At the respondent had been posted on the stationary post from the running post of Driver Grade-C, while Sh. Sood had been posted on the stationary post from the running post of Driver Grade-A, this had resulted in Sh. Sood getting higher pay than the respondent.

The respondent did not make any claim for stepping up of his salary as long as was in service. Having retired on 31st March, 1988, in July, 1991 he filed an application before the Central Administrative Tribunal for stepping up of his pay to bring it at par with that of Sh. Sood and also to give him consequential benefits.

The Tribunal by the impugned judgment allowed the application and directed that the pay of the respondent should be stepped up and he should be given all the consequential benefits.

Apart from the fact that the application of the respondent before the Central Administrative Tribunal which was filed in July 1991 was highly belated, the position in this case is no different from that of Union of India and Ors. Vs. O.P. Saxena. In this case also the respondent and Sh. Sood were appointed to the stationary post from two different sources. The respondent was Driver Grade-C when he was so appointed while Sh. Sood was appointed to the stationary post from the post of Driver Grade-A. Therefore, for the reasons contained in judgment in CA No. 5582 of 1996 the order of the Tribunal has to be set aside.

We accordingly allow this appeal, set aside the order dated 27th January, 1993, of the Central Administrative Tribunal, Lucknow Bench with result that OA No. 322 of 1991 filed by the

respondent stands dismissed. There will be no order as to costs.