

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 1644/87  
ExxNo. 109

DATE OF DECISION 7.12.90

<u>K.L.Sachdeva</u>	Petitioner
<u>S.K.Sawhney</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India and others</u>	Respondent
<u>Inderjit Sharma</u>	Advocate for the Respondent(s)

**CORAM**

The Hon'ble Mr. S.P. Mukerji, Vice Chairman

The Hon'ble Mr. G. Sreedharan Nair, Vice Chairman.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

O R D E R  
(Hon'ble Shri S.P. Mukerji, Vice Chairman)

In this application instituted on 13.11.1987 under Section 19 of the Administrative Tribunals Act, the applicant who has been working as Inspector, Stores Account in the office of the Chief Engineer, (Construction) under the General Manager, Northern Railway has prayed that the respondents be directed to restore his pay to Rs. 775/- per month which was reduced to Rs. 725/- with effect from June, 1986, along with refund of the recoveries made and grant him further increments and other benefits on the basis of his pay of Rs. 775/- after June, 1986. He has also prayed that the respondents be directed to fix his pay on the basis of the benefit of Next Below Rule. The material facts of the case may be summarised as follows:

2. The applicant joined the Department as Clerk Grade II on 8.2.56. He was promoted as Clerk Grade I in May, 1957, the pay of which was revised to Rs. 330-560 with effect from 1.1.1973. The applicant reached the maximum of the pay scale of Rs. 330-560 at Rs. 560/- in 1973. He joined the Vigilence Branch <sup>against him</sup> ~~of~~ Ex-cadre post of Inspector, Station Account in the higher scale of Rs. 500-900 in December, 1976 and he continued there till December, 1978 when he was reverted back to the parent cadre at his own request in the same scale of Rs. 500-900. At that time he was getting a pay of Rs. 640/- (Rs. 620/- according to the respondent) and he continued to get the same pay with regular increments in his parent cadre ever since December, 1978. He was allowed to cross the Efficiency Bar in December, 1983 <sup>in</sup> and December, 1985 he was getting a pay of Rs. 775/- p.m. His next increment <sup>at</sup> ~~reached~~ the stage of Rs. 800/- was due in December, 1986 but before that in June, 1986 his pay was reduced from Rs. 775/- to Rs. 725/- per month by the pay slip for June, 1986 (Annexure-A.1 and A.2). Monthly recovery of Rs. 165/- per month was also made against alleged excess payment. He represented on 30.6.86 (Annexure-A.3), which was replied to on 29.7.86 (Annexure-A.4) <sup>from</sup> advising him that the deductions <sup>of</sup> his pay were made under the orders of the Headquarters Office and the applicant should approach that office. To his

further representation dated 12.8.86 (Annexure-5) he was intimated that the matter was under consideration (Annexure.A.6). In his representation he had stated that he had been officiating in the scale of Rs.500-900 during his deputation to the Vigilance Branch and even after his repatriation to the parent department persons ~~xx~~ junior to him had officiated in the scale of Rs. 500-900 in the parent cadre <sup>as also</sup> ~~xx~~ during the period of his deputation. He claimed the benefit of Next Below Rule for protecting his pay scale of Rs.500-900.

His further representation dated 23.6.87 (Annexure.A.7) elicited a reply dated 14.7.87 (Annexure.A.8) asking him to submit details of his service particulars. The applicant again submitted a detailed representation dated 5.10.87 (Annexure.A.9) indicating inter-alia that one Shri Mohinder Singh junior to him had been promoted on 28.2.77 on adhoc basis as Inspector, Store Account in the scale of Rs. 500-900 while the applicant was working in <sup>a</sup> ~~similar~~ <sup>but</sup> ex-cadre post in the Vigilance Branch.

Shri Mohinder Singh continued to officiate in that scale till he voluntarily got himself reverted in June, 1978 (the applicant) but was repromoted in October, 1978. He claimed that under the benefit of Next Below Rule the applicant was entitled to the higher pay scale between 18.2.77 and December, 1978. The respondents ~~have~~ finally rejected <sup>6</sup>

his representation on 30.10.87 (Annexure A.10). The  
applicant's contention is that <sup>beside the pay slip</sup> no formal order indicating  
reasons has been issued for reducing his pay from  
Rs. 775/- to Rs. 725/- with effect from June, 1986  
and that he was not given any notice before the pay  
was reduced and the monthly deduction of Rs. 165/-  
also is being made in breach of the principles of  
natural justice and Article 311 of the Constitution of  
India. By being denied the pay equal to what his  
juniors are getting, <sup>his</sup> ~~the~~ rights under Articles 14 and  
16 of the Constitution of India have been violated.

3. According to the respondents, the applicant's  
pay had not been correctly fixed in accordance with  
Railway Board's letter dated 29.4.74 ~~but~~ due to over-  
sight when he was reverted from the Vigilence Branch.  
This omission came to light in May, 1986 and his pay  
was refixed in the parent cadre in June, 1986. They  
have wrongly quoted the proviso to Rule 2017 of the  
Indian Railway Establishment Code (hereinafter referred  
to as 'Railway Code') to say that service rendered out-  
side the parent cadre will count only from the date the  
applicant's junior was promoted in his parent cadre and  
the benefit will be limited to the period the Railway  
servant could have held the post in his parent cadre  
had he not been appointed to the ex-cadre post. The

applicant's pay was fixed on that basis. They have clarified that the applicant was given proforma promotion under the benefit of Next Below Rule with effect from 15.4.78 as Inspector, Stores Accounts when his immediate junior Shri J.D. Manglik was promoted on a regular basis in the parent cadre. Regarding Shri Mohinder Singh they have stated that he was promoted as I.S.A. out of turn on adhoc basis when persons senior to him declined the promotion as I.S.A. at Ferozpur. Shri Mohinder Singh joined at Ferozpur on 22.6.77 and continued there till 2.6.78 when he sought reversion. He was repromoted as I.S.A. <sup>on</sup> regular basis with effect from 27.10.78. The respondents, however, conceded that Shri Mohinder Singh was allowed the benefit of adhoc promotion for purpose of fixation of pay and increments in terms of Rule 2022(a). They have further clarified that since Shri Mohinder Singh's adhoc promotion was not followed by regular promotion without any break the adhoc promotion could not be extended to the applicant for purposes of pay fixation in terms of Railway Board's letter dated 5.10.76 at Annexure R.2.

4. In the rejoinder the applicant has stated that <sup>take</sup> his case is not <sup>covered</sup> by the Railway Board's letter dated 29.1.74 at Annexure R.1 or letter dated 5.10.76 at Annexure R.2 but that his claim is <sup>of</sup> ~~based~~ giving him the benefit of the Next ~~Below~~ Rule.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. In the course of the arguments the learned counsel for the applicant clarified that he was seeking relief only under the principle of Next Below Rule and not protection of pay and counting his entire service while on deputation to ex-cadre post after his repatriation to the parent cadre. In that light the Railway Board's letter of 29.1.74 at Annexure R.1 cannot be applied. We are also inclined to accept his contention that the Railway Board's order dated 5.10.76 at Annexure R.2 regarding stepping up of the pay of the senior to the pay drawn by the junior cannot be applied to this case in which the applicant is seeking the benefit of promotion from the date his juniors were promoted while he was working in an ex-cadre post. The respondents have given the applicant the benefit of Next Below Rule with effect from 15.4.78 when the person immediately junior to him was promoted on a regular basis to the higher scale. However, the respondents have conceded that another official Shri Mohinder Singh admittedly junior to the applicant was promoted as Inspector, Store Accounts though on an adhoc basis at Firozpur on 26.2.77 and continued on promotion till 2.6.78 when he on his request got himself transferred. He was regularly promoted as Inspector on 27.10.78. It has also come out that before

promoting Shri Mohinder Singh, all the ~~available~~ eligible persons senior to him were consulted and only on their refusal Shri Singh was promoted. Obviously the applicant could not be consulted as he was working against an ex-cadre post in an equivalent grade. It is, therefore, evident that from 26.2.77 till 15.4.78 from which date the applicant was given benefit of Next Below Rule, there was a vacancy in the higher grade to which Shri Mohinder Singh, junior to the applicant had been promoted on an adhoc basis. There was thus a vacancy to which the applicant could have been promoted had he remained in the parent department. The learned counsel for the respondents fairly accepted the position that all officials in the parent cadre senior to the applicant had been consulted <sup>and they</sup> had declined the promotion and no senior was left out for this promotion. Thus the applicant in law and equity has a justiciable claim to the benefit of Next Below Rule for the <sup>entire</sup> period between 26.2.77 and 15.4.78. The fact that Shri Mohinder Singh was promoted during this period on adhoc basis should not make any difference in accordance with the respondents' own averment in the Counter Affidavit as quoted below:

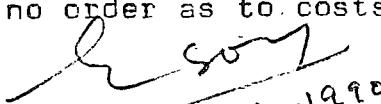
"It is further submitted that proviso to Rule 2017-RII (FR 22) of the Indian Railway Establishment Code provides that service (rendered

by the railway servant outside his parent cadre) will count from the date his junior is promoted in his parent cadre and the benefit will be limited to the period the railway servant would have held the post in his parent cadre had he not been appointed to the ex-cadre post." (emphasis added)

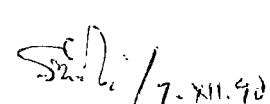
The above averment does not exclude adhoc promotion of the juniors. We feel that it is not necessary for the benefit of Next Below Rule that only one junior should continue in the higher grade without any break.

The governing factor is whether where there was a vacancy in the higher grade in the parent cadre it could have been given to the official who was working outside the parent cadre. The promotion of Shri Mohinder Singh cannot be taken to be fortuitous as continued from 26.2.77 right upto 2.6.78 and would have continued beyond that date if he had not opted for reversion.

6. In the eye of law also the reduction of pay of the applicant and recovery of alleged over-payment without any formal order and without giving him any prior notice is illegal being against the principle of natural justice. In the conspectus of facts and circumstances, we allow the application to the extent of directing the respondents to accord to the applicant the benefit of Next Below Rule with effect from 26.2.77 instead of 15.4.78. His pay should be refixed on this basis and excess recoveries refunded accordingly. There will be no order as to costs.

  
(G. Sreedharan Nair)  
Vice Chairman

7.12.90

  
(S.P. Mukerji)  
Vice Chairman

Ks.