

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 31st day of May, 2002.

Original Application No. 1112 of 1996.

C O R A M :- Hon'ble Maj. Gen. K.K. Srivastava, Member- A.
Hon'ble Mr. A.K. Bhatnagar, Member- J.

1. Smt. Vimla Pathak W/o Late Shiv Nath Pathak
2. Shailendra Kumar Pathak { All sons of Late
3. Kaushal Kumar Pathak { Shiv Nath Pathak
4. Vinod Kumar Pathak {

All R/o Moh. Basaratpur Purvi
behind Dr. S.K. Sen Gupta's residence
P.O Geeta Vatika, Gorakhpur City
Distt. Gorakhpur.

.....Applicants

Counsel for the applicant :- Sri S.N. Srivastava

V E R S U S

1. Union of India through the W/o Railways,
Rail Bhawan, Railway Board, New Delhi.
2. The General Manager, North Eastern Railway,
Gorakhpur.
3. Chief Personnel Officer, North Eastern Railway,
Gorakhpur.

.....Respondents

Counsel for the respondents :- Sri G.P. Agarwal

O R D E R (Oral)

(By Hon'ble Maj. Gen. K.K. Srivastava, Member- A.)

In this O.A filed under section 19 of the
Administrative Tribunals Act, 1985, the deceased
applicant has challenged the orders dated 23.05.1996
and 25.06.1996 passed by the General Manager (P)

refusing the benefit of stepping up of pay vis-a-vis applicant's junior. The applicant has prayed the direction be issued to respondents to step up pay of the applicant equal to the pay drawn by a junior on the post of Head Clerk in the year 1983 and to pay the entire arrears since 1983 with 18% interest.

2. The facts giving rise to this O.A. that the applicant was appointed as junior clerk on 24.01.1956 in the office of Chief Public Relation Officer (CPRO). He was promoted as Senior Clerk on 05.05.1965. He was granted special pay of Rs. 35.70 and his pay was fixed at Rs. 565/- on 20.09.1982. The applicant was promoted as Head Clerk on 11.05.1983 and his salary was fixed at Rs. 580/- . One Sri Kripa Shankar was promoted as Head Clerk on 03.09.1983 and his salary was fixed at Rs. 620/-. The applicant represented to the authorities that since the applicant happens to be senior to Sri Kripa Shankar ^{because of date} ~~by virtue of~~ his promotion as Head Clerk earlier, his pay should be stepped up from Rs. 580/- to Rs. 620/- . The representation of the applicant was rejected and he was informed by the impugned letters dated 23.05.1996 and 25.06.1996 that the applicant was not entitled for the same and no stepping up could be granted.

3. Sri S.N. Srivastava, learned counsel for the applicant submitted that as per the A.V.C filed as annexure- III, the cadre of Managing Branch and Publicity/Advertising Branch are merged at ^{in the} stage of Head Clerk and since the Head Clerk is the first post, the seniority has to be reckoned from the date one ~~Sri Kripa Shankar Tripathi~~ ^{as Head Clerk} is promoted. Accordingly,

the applicant is senior to Sri Kripa Shankar Tripathi because he was promoted as Head Clerk on 11.05.1983 earlier than Sri Kripa Shankar Tripathi who was promoted on 03.09.1983.

4. The learned counsel for the applicant further submitted that as per Railway Board's Circular dated 14.10.1992 (annexure- 4), the applicant is entitled for stepping up of pay. Since Kripa Shankar was not granted any advance increment, he could not draw higher salary. In case the higher salary was allowed to Sri Kripa Shankar Tripathi, the applicant is fully entitled for stepping up of pay. .

5. Resisting the claim of the applicant Sri G.P. Agarwal, learned counsel for the respondents invited our attention to the impugned order dated 25.06.1996 and submitted that the respondents have clarified as to why the applicant could not be allowed stepping up of pay in impugned order dated 25.06.1996.

6. The learned counsel for the respondents further submitted that the applicant cannot claim stepping up of pay because the pay of Sri Kripa Shankar Tripathi on promotion as Head Clerk was fixed at a higher stage, keeping in view the salary he drawing as a Senior Clerk. Sri Kripa Shankar Tripathi ~~was~~ joined the respondents' establishment about 2-1/2 year earlier than the applicant and both the applicant and Sri Kripa Shankar Tripathi belong to different cadres up to the stage of Senior Clerk. Sri Kripa Shankar Tripathi was receipt of higher pay than the applicant from the very beginning stage of initial appointment. In such circumstances, though it is not disputed that the applicant was

promoted as Head Clerk earlier than Sri Kripa Shankar Tripathi, he cannot claim the stepping up of his pay.

Learned counsel for the respondents has placed reliance ^{on the} judgment of ^{Honble Supreme Court in} U.O.I and Ors. Vs. R. Swaminathan AIR (1997) SC 3554, in which it has been held that the stepping up is to be done if there is anomaly and ^{if} there is no anomaly, ^{the} senior drawing less pay than junior is ^{not} entitled to stepping up of ~~his~~ pay.

7. We have heard learned counsel for the parties, considered their submissions and perused records.

8. The short controversy involved in this case is whether the applicant is entitled for stepping up of pay under the provision of Railway Board's Circular dated 14.10.1992. The principle of stepping up is as under:-

"Where a senior employee draws lesser pay than his junior promoted after him, due to application of rule 2018-B, his pay may be stepped up to the extent of the pay of his junior from the date of junior's promotion.

Provided that (a) junior and senior belong ^{to} the same cadre and promotion posts are identical and in the same cadre.

(b) scales of pay of lower and higher posts are identical.

(c) Anomaly is a direct result of application of rules.

(d) Junior was not drawing more pay than the senior in the lower post."

9. From the above it is clear that Sri Kripa Shankar Tripathi who is junior to the applicant was drawing more pay than the applicant. Besides the applicant and Sri Kripa Shankar Tripathi ^{do not} belong ^{to} the same cadre. Therefore, the applicant cannot claim ^{parity} ~~priority~~ as

^h regards ^h the pay with Sri Kripa Shankar Tripathi, ^h and ^h We also ^h
do not find ^h ~~there is~~ ^h any anomaly in the application of
rule. The respondents have correctly decided the
representation of the applicant, ^h though ^h impugned order
dated 25.06.1996 which is speaking order. We also agree
with the ^h submission^s ^h of learned counsel for the
respondents that the stepping up is to be done in case
there is an anomaly. In ^h view ^h of the judgment of Hon'ble
Supreme Court in case of R. Swaminathan (Supra), their
^h Lordship^s ^h in para 13 of their judgment ^h have ^h observed
in clear terms that senior is ^h ~~is~~ ^h entitled for stepping up
of pay, if it is not as a result of any anomaly.

10. In the facts and circumstances and ^h in ^h our
aforesaid observations, the O.A is devoid of merit
and is liable to be dismissed. The O.A is dismissed
accordingly.

11. There shall be no order as to costs.

^h
Member- J.

^h
Member- A.

/Anand/