

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1252 of 1998

Allahabad this the 21st day of December 2004

Hon'ble Mr.A.K. Bhatnagar, Member (J)
Hon'ble Mr.D.R. Tiwari, Member (A) -

Radhey Shyam Srivastava, Son of Sri Janardan Lal Srivastava resident of M-11/59-D/2 Ranipur, Mahmeeganj, Varanasi, presently posted as Travelling Ticket Examiner (T.T.E.) Northern Railway at Varanasi.

Applicant

By Advocate Shri H.S. Srivastava

Versus

1. Union of India through the Secretary-Ministry of Railways (Railway Board), New Delhi.
2. General Manager, Northern Railway, Baroda House, New Delhi.
3. Divisional Railway Manager, Northern Railway, Lucknow Division, Lucknow.

Respondents

By Advocate Shri Prashant Mathur

O R D E R

By Hon'ble Mr.D.R. Tiwari, Member (A)

By this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985 the applicant has prayed for the following reliefs:-

- (a) issuing/passing of an order or direction to the respondents to refix the salary of the applicant in the scale of Rs.330-560 (R.S.) Rs.950-1500 (R.P.S.), Rs.1200-2040 (R.P.S.) and Rs.1400-2300 at the same stage and from the same date from which the pay of Sri U.S.Gupta,

junior to the applicant, has been fixed and pay the arrears of such re-fixation within a period of 3 months."

2. The necessary factual matrix to decide the controversy is that the applicant was initially recruited as Probationary Ticket Collector Grade Rs.260-400(R.S.) during the year 1981, through the Railway Service Commission. After completion of training he was posted to Firozpur Division, Northern Railway, and he joined on 08.04.1981. One Shri U.S. Gupta also joined Firozpur Division, N.Rly. on 09.04.1981.

3. Due to non-availability of vacancy, the applicant and said Shri Gupta were directed to report to the General Manager(P), Northern Railway, New Delhi by Divisional Railway Manager, Firozpur(annexure A-1). The applicant was posted to Delhi division Northern Railway temporarily against the summer rush of current year up to 31.07.1981 and thereafter he was posted to Lucknow division by respondent no.2(annexure A-2). Similarly U.S. Gupta was also posted to Lucknow division. The name of the applicant is at serial no.14 and that of Shri U.S. Gupta is at serial no.17 in the letter. Annexure A-3 indicates that the applicant was temporarily appointed as Ticket Collector and was posted at Lucknow vide letter dated 19.08.1981 and since then he is serving continuously. It has been submitted in the pleadings of the applicant that during 1983 two writ petitions no.53276 of 1983 and 6008 of 1983 were filed before the High Court of Allahabad at Lucknow Bench and in pursuance of the interim order dated 31.10.1985 applicant and others were temporarily appointed to officiate provisionally to the grade of

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Rs.330-560 as a T.T.E./T.C. Grade I vide letter dated 25.11.1985(annexure A-4). Vide letter dated 27/28.09.89 the applicant was promoted at Varanasi itself and was shown at serial no.24(annexure A-5). In the year 1992, the applicant came to know that he was being paid less salary than his junior-Shri U.S. Gupta. This was being done since 1985. The applicant made several requests orally as well as in writing to the Assistant Personnel Officer against this but no action was taken. However, in response to the representation dated 28.08.92 the respondent no.3 vide letter dated 23.12.92 intimated him that it was not possible to pay salary to the applicant equal to Shri U.S. Gupta as Shri Gupta was promoted under the orders of the Court(annexure A-6).

4. The applicant has been complaining against this less payment of salary ^{than} to his junior since then, however, nothing appears to have been done. A rejoinder has been filed and efforts have been made to show that the applicant has all along been senior to Shri U.S.Gupta. This may be briefly stated as under:-

(i) 08.04.1981 - applicant appointed as T.C.

09.04.1981 - Shri U.S.Gupta appointed as T.C.

(ii) Seniority list of 1982(notified on 23.06.82)
in the grade of Ticket Collector(ann.R.A.-1)
The applicant is at serial no. 109.
Shri U.S. Gupta is at serial no.133.

(iii) Seniority list of 1990(notified on 10.08.90)
vide annexure R.A.-2.

The applicant is at serial no.139.

Shri U.S. Gupta is at serial no.145.

(iv) Seniority list of 1992(notified on 17/18.09.92)

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in the scale of Rs.1200-2040 for T.T.E.
vide annexure R.A-3

The applicant is at serial no.169.

Shri U.S. Gupta is at serial no.174.

5. It has been submitted that Shri U.S. Gupta was promoted to the grade of Rs.330.560/- w.e.f. 31.10.85 in pursuance of High Court's interim order and drew the benefit of higher pay, whereas the applicant was promoted to that grade w.e.f. 28.09.1989, and as such, applicant continued to draw less pay. The pay of the applicant was fixed at Rs.1480/- and that of Shri Gupta at Rs.1560/-.

6. In view of these facts, the applicant has prayed for stepping up of his salary so that he could get equal pay as his junior was getting.

7. The respondents on the other hand have resisted the claim of the applicant by filing a detailed counter reply. They have argued that Shri Sita Ram Verma and Shri Uma Shankar Gupta filed a Writ Petition No.6008 of 1983(T.A.No.4 of 1988) and Shri Dri Raj Shukla and another filed Writ Petition No.5376 of 1983(T.A.No.05 of 1988) before the Hon'ble High Court and Hon'ble Court was pleased to pass the interim order dated 31.10.1985 providing therein that while making promotion in the grade of Rs.330-560/- in accordance with the revised Seniority List, the ~~respondents~~ [✓] ~~appointments~~ while making promotion on 81 available posts, also simultaneously promoted all the four petitioners, subject to ultimate decision in these two writ petitions(annexure R-1) and Shri U.S. Gupta

was promoted out of turn through notice dated 25.11.85 (annexure-4 of the O.A.) in the grade of Rs.330-560/- revised to Rs.1200-2040/- whereas other were promoted keeping in view the revised seniority. The aforesaid writ petitions were decided by this Tribunal through Judgment dated 31.01.1990 and in the meanwhile, the applicant on his turn was promoted in the grade of Rs.1200-2040/- by an order dated 28.09.1989(annexure-5 of the O.A.). Thus, Shri U.S. Gupta was continuing to work in the said grade of Rs.330-560/-(RPS) since November, 1985, whereas the applicant was promoted in the said grade in September, 1989. The applicant and Shri Gupta were temporarily promoted on ad hoc basis as Head T.T.E. in the grade of Rs.1400-2300/- by order dated 25.11.1983(annexure-7 of the O.A.) A regular selection was initiated for the post of Head T.T.E. in the grade of Rs.1400-2300/- in which applicant and Shri U.S. Gupta were called for selection. The applicant was not empanelled in regular selection whereas Shri U.S. Gupta was empanelled, as such, Shri Gupta was regularised vide order dated 09.09.96 (annexure R-2). They have also submitted that it is not the case of the applicant to claim promotion through Office Notice dated 25.11.1985 as the applicant was promoted in September, 1989 in the grade of Rs.1200-2040/- and the pay was accordingly fixed. Hence, the request for stepping up of the pay in the case of the applicant equal to the pay of junior, cannot be allowed and the higher pay drawn by Shri Gupta was because of the Court order and the applicant was not a party in the writ petition, which allowed higher pay to Shri U.S. Gupta. They have submitted specifically vide paragraph no.2 of the counter affidavit that the applicant's claim

for higher pay and equal to the pay of Shri B.S. Gupta cannot be covered by stepping up and he actually wanted the pay protection, and his pay cannot be protected because Shri Gupta was empanelled for regular selection whereas the applicant was not.

8. We have heard very carefully the counsel for either sides and considered the rival submission made by them. We have perused the records also.

9. During the course of arguments, learned counsel for the applicant reiterated the facts and grounds mentioned in the pleadings of the applicant whereas the counsel for the respondents also reiterated the facts and grounds taken by respondents in the counter affidavit. Counsel for the applicant relied on the following Judgments:-

1. J.T. 1989 (1) S.C. 512 Mewa Ram Kanojia Vs. All India Institute of Medical Sciences.

2. A.I.R. 1990 S.C. 495 U.P. Rajya Sahkari Bhumi Vikash Bank Ltd. Vs. Its Workman .

3. (1995) 5 S.C.C. 628 M.R. Gupta Vs. U.O.I. & Ors.

10. We have seen the Judgments cited by counsel for the applicant and we find that decisions in these Judgments are on the basis of different facts and are not of much help to the applicant. As a matter of fact, the case of M.R. Gupta (^{supra}) has decided on the basis of facts in the ~~that~~ ^{that} case that pay fixation even if claimed after a long delay, is not barred by limitation as the cause of action for this arises from month to month. It has been held that grievance regarding pay fixation

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is a continuing wrong giving rise to a recurring cause of action every month on the occasion of payment of salary, and the case of U.P. Rajya Sahakari Bhoomi Vikas Bank Ltd. U.P. (supra) relates to award under Industrial Disputes Act. Hence these two cases do not assist the case of the applicant.

11. Learned counsel for the respondents submitted that the higher pay scales were allowed to Shri U.S.Gupta because of the Judgment of Hon'ble High Court, hence the same benefit cannot be extended to the applicant, as he was not a party in that writ petition. He confined his argument to the effect that the interim order of High Court cannot be applied in the case of the applicant. He concluded his argument by saying that in view of these facts, the O.A. is devoid of merit and may be dismissed.

12. From the perusal of pleadings and argument of counsel for both the parties, it is clear that the crucial question which survive for adjudication is whether the denial of stepping up of pay of the applicant is legal and justified. In this connection, it may be stated that by filing rejoinder affidavit, the applicant vide annexure R.A.-1, 2 and 3 have demonstrated beyond doubt that at every stage the applicant has got the seniority over Shri U.S. Gupta. It has not been refuted by the respondents and it goes to establish that the applicant is entitled for stepping up of pay.

13. In so far as the question of applying the interim order of High Court to the case of the applicant is concerned, on the same issue, the Principal Bench

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of this Tribunal in the case of Man Singh Vs. Union of India and Others (O.A. No. 1018/03) has held that extention of benefit of a decision to a similarly situated person cannot be denied on the ground that he was not a party to the original proceedings. While deciding this case, the Principal Bench has relied on the Judgment of Hon'ble Apex Court in K.C. Sharma Vs. Union of India and Others J.T. 1997(7) S.C. 58. In view of these facts and circumstances, O.A. is bound to succeed.

14. In the result, O.A. succeeds on merit and the respondents are directed to re fix the salary of the applicant in the scale of Rs.330-560/- (Rs.1200-2040/-), Rs.950-1500/- (RDS), Rs.1200-2040 (RPS) and Rs.1400-2300 (RPS) at the same stage and from the same date from which his junior Shri U.S. Gupta has been getting, and pay arrears after such refixation. The entire exercise should be completed within a period of 4 months from the date of communication of this order. No order as to costs.

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Member (A)

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Member (J)

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