

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the ~~10~~¹⁰ day of November, 2004.

QUORUM : HON. MR. JUSTICE S.R. SINGH, V.C.
HON. MR. D. R. TIWARI, A.M.

O.A. No. 295 of 2001

Hari Shanker, aged about 64 years, son of Swami Nath R/O Village & Post Baliawa Tehsil and District Deoria.

..... Applicant.

Counsel for applicant : Sri R.N. Tripathi.

Versus

1. Union of India through Secretary Establishment, Railway Board, Ministry of Railway, New Delhi.
2. Chairman, Railway Board, Rail Bhawan, New Delhi.
3. General Manager, N.E. Railway, Gorakhpur.
4. Financial Advisor and Chief Accounts Officer, N.E. Railway Gorakhpur.
5. General Manager (Vigilance), N.E. Railway, Gorakhpur.

..... Respondents.

Counsel for respondents : Sri K.P. Singh.

ORDER

BY HON. MR. D. R. TIWARI, A.M.

By this O.A. filed under section 19 of the A.T. Act, 1985, the applicant has prayed for the following relief

- "a) to quash the impugned order dated 25.7.95, 4/5. 12.96 and 17.10.2000 passed by the respondents.
- b) to issue a direction to the respondents that they should pay the salary and service benefits to the petitioner as per order dated 2.6.94 by which the salary of the petitioner was stepped up since 2.6.87 @ Rs.2180/- till the date of superannuation dated 31.7.95 @ Rs.3050/-.
- c) to issue a direction to the respondents that they should refund the deducted amount Rs.22964/- as stepping down pay by the order dated 25.7.95 and Rs.4221/- deducted by the respondents as damage rent since 1.4.96 to 26.4.96, Rs.464/- deducted by them as lawn charges and Rs.213/- water charges and Rs.432/- interest on advance w.e.f. 1.8.95 to 31.3.96. The total amount is

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Rs.28294/- to the petitioner @ 22% compound interest till the date its payment to the petitioner."

2. Filtering out the unnecessary details, the relevant factual matrix for adjudicating the controversy in the O.A. is that the applicant was appointed to the post of Clerk Grade-II on 28.4.58 and promoted as ~~Sub Head~~ on 1.10.1962. He was further promoted as Sub Head on 1.3.1984 and on 18.6.1984 he was promoted as Section Officer in Accounts Department, N.E. Railway, Gorakhpur whereas one junior person Sri S.C. Srivastava was appointed as Clerk, Grade-II on 9.7.56 who was promoted as Clerk, Grade I on 27.4.1959. Subsequently, he was promoted as Sub Head on 1.1.1984 and on 2.6.87 he was promoted as Section Officer (A) in the revised scale. Comparative chart showing the promotion of the applicant as well as Suresh Chand Srivastava is at Annexure-4.

3. The main grievance of the applicant is that the applicant was promoted as Section Officer earlier to his junior and he has been denied the stepping up of his pay equal to that of his junior. He has relied on the provisions contained in the Note 7 of the Rule 7(1) of the notification dated September, 19, 1986. It is necessary to ^{Quoted} get the relevant provisions which is being relied on by the applicant and the same is as under :-

NOTE 7: In cases, where a Senior Railway servant promoted to a higher post before the 1st day of January, 1986 draws less pay in the revised scale than his junior who is promoted to the higher post on or after the 1st day of January, 1986, the pay of the Senior Railway servant should be stepped up to an amount equal to the pay as fixed for his junior in that higher post. The stepping up should be done with effect from the date of promotion of the junior Railway servant subject to fulfilment of the following conditions, namely,

(a) both the junior and the senior Railway servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre,

~~Dr. J. C. C. G.~~

(b) the pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical; and
(c) the anomaly should be directly as a result of the application of the provisions of Rule 2018B (FR22C) of Indian Railway Establishment Code Volume II or any other Rule or order regulating pay fixation on such promotion in the revised scale. If even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provisions of this Note need not be invoked to step up the pay of the senior officer."

4. He contends that he was drawing salary of Rs. 2060/- p.m. on 2.6.87 while his junior was drawing the salary of Rs.2180/- p.m. in the revised scale. The applicant aggrieved by the discrimination in the payment of salary provided under the IVth Pay Commission Report as well as the Railway Board's letter quoted above, filed representation before the authorities concerned on 5.9.91, 11.5.93, 6.9.93, 5.10.93 and lastly on 21.2.94 for raising his grievance for payment of equal salary provided under the said rule equal to the junior person Sri S.C. Srivastava. The representation dated 21.2.94 is at Annexure-7 of the O.A. The authorities concerned taking into account the genuine grievances of the applicant passed an order dated 2.6.94 stepping up his salary to Rs.2180/- w.e.f. 2.6.87 which was equal to the pay of his junior person Sri S.C. Srivastava (Annexure-8) and this stepped-up salary continued till the date of his retirement on 31.7.95 and the last salary drawn was Rs.3050/- for the month of June 1995 and a photo copy of the service certificate dated 31.7.95 is at Annexure-9.

5. To his utter surprise, the Respondents arbitrarily and illegally ~~passed~~ opposed the order dated 25.7.95 at the instance of the report of General Manager (Vigilance) dated 12.7.95 destepped the salary of the applicant w.e.f. 1.6.87 @ Rs.2060 till the excess payment could not be recovered (Annexure 10). The applicant has stated that General Manager

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(Vigilance) has no concern or the control on the services of the applicant. His service is regulated by Financial Advisor and Chief Accounts Officer who is the authority to pass an independent order with regard to service benefit of the applicant. The order dated 25.7.95 was affirmed by the Appellate Authority on 4.12.96 which was a non-speaking order. The order dated 25.7.95 did not disclose any reason as to why the salary of the applicant had been destepped and the applicant aggrieved by the impugned order filed a departmental appeal dated 11.9.95 before the General Manager, N.E. Railway, Gorakhpur. He followed it by many reminders which are at Annexure 11, 12, 13 and 14. Finally, he received a copy of the speaking order dated 4/5.12.1996 and the applicant immediately filed an objection before the Chairman, Railway Board. The speaking order dated 4/5.12.96 stated that Rs.35/- was being paid to his junior Sri S.C. Srivastava as a special pay for arduous duty. Hence, the provisions of Note 7(1) RSP Rules notified on 19.9.86 can not be taken into account for stepping up of the pay of the senior. Finally, he received a reply from the Respondents on 17.10.2000 which stated that no stepping up of salary benefit was permissible to him and he was told not to correspondence in future. The order dated 17.10.2000 was received by the applicant on 19.12.2000 which is at Annexure-31.

6. The applicant has challenged the impugned orders on various grounds mentioned in para 5 and its sub paragraphs. The basic ground of his challenge is that the respondents have not been able to interpret the provisions of Note 7 Rule 7(1) of RSP correctly. He has stated that special pay of Rs.35/- payable to his junior person S.C. Srivastava was ~~ceased~~ on 31.12.85 as per the Railway Board letter dated 27.11.87. He has further contended that by order dated 22.9.89 the junior person got the benefit of Rs.70/- as qualification pay which created an anomaly as defined in

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last clause of the provision of Note 7 Rule 7(1). According to the applicant, Note 7 (Rule 7(1)) provided equal salary to a senior person and the conditions laid down in the above provision is fulfilled because the special pay of Rs.35/- which is excluded in the above rule had already been ~~seized~~ ^{& ceased} in respect of his junior Sri S.C. Srivastava from 31.12.85 and the difference is only because of the qualification pay being granted to his junior amounting to Rs.70/- whereas in his case he was given only Rs.35/-. In view of this reason, the impugned orders passed by the Respondents are illegal, arbitrary and unjustified and they are liable to be set aside

7. The Respondents, on the other hand, have resisted the contentions of the applicant by filing a detailed counter reply. They have submitted that the applicant has sought claim that he was senior to Sri S.C. Srivastava in Section Officer grade as such, his pay should be stepped-up equal to his junior on the ground that his junior on promotion to the grade of Section Officer was drawing more pay than the applicant. By Annexure-I of the counter, a comparative chart of the applicants vis-a-vis his junior has been given. That would show that Sri Srivastava was senior to the applicant up to the grade of Sub Head and he was in receipt of special pay of Rs.35/- for complexed or arduous nature of work while he was working as Clerk, Grade-I and the applicant was not allowed the special work as he was junior for consideration of the same. This special pay of Rs.35/- was taken into account as per existing rules during the fixation of pay of Sri Srivastava on promotion to higher scale i.e. Sub Head grade and his pay as Sub Head was fixed on Rs.620/- w.e.f. 1.1.84 in the pay scale of Rs.425/- to 700/- whereas the pay of applicant as Sub Head was fixed on Rs.580/- w.e.f. 1.3.84 on the basis of pay drawn as Clerk, Grade-I. As the applicant was not granted the special pay as complexed nature of work in Clerk, Grade-I.

8. They have further argued that the applicant had

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passed Appendix-III (IREM) Exam in Section Officer group in the year 1980 and Sri Srivastava passed the same examination one year later i.e. in the year 1981. Both were awarded qualification pay of Rs.20/- for the first year and Rs.35/- for the second year and onwards for passing Appendix-III examination and waited for promotion as S.O.(A) due to non-availability of vacancy from the date following the last date of the said examination. Subsequently, the qualification pay was enhanced to Rs.40/- for the first year and Rs.70/- for the second year and onwards w.e.f. 1.1.86 or the date from which the employee elected for the revised pay scale. It has been mentioned that as per page 317 of IREM, if any junior employee passes Appendix-III examination earlier than his senior, the junior employee will be re-treated as senior. Since the applicant passed Appendix-III examination earlier in 1980 he became senior than Sri S.C. Srivastava and he was promoted as Section Officer w.e.f. 18.6.84 and his pay was fixed on Rs.640/- on the basis of pay drawn as Sub Head + qualification pay. Subsequently, his pay was fixed in the revised scale at Rs.1940/- in the scale of Rs.1640-2900 which was at Rs.2060/- w.e.f. 1.6.87. On the other side Sri Srivastava being junior than the applicant who passed the Appendix-III examination in 1981 and was promoted as Section Officer on 2.6.87 whose pay was fixed at Rs.2180/- on the date. This was on the basis of the pay drawn as Sub Head including Rs.35/- special pay for complexed nature of job/qualification pay. It has been clearly mentioned that the applicant was promoted before 1.1.86, the pre-revised rate of qualification pay of Rs.35/- was taken into account while fixing his pay in Section Officer grade whereas Sri Srivastava, who was promoted after 1.1.86 got the enhanced rate of qualification pay of Rs.70/- while fixing the pay in Section Officer grade.

9. The respondents have further clarified that the contents of Note 7 below Rule 7(1) RSP Rules, 1986 circulated vide Railway Board letter No. PC-IV/86/RSRP/1 dated 19.9.86

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read with Railway Board letter No. PC-IV/89/RSRP/2 dated 17.8.89 (Annexures-3 and 4 of the CA) provided that anamoly can be set to exist only if a senior employee drawing equal or more pay than his junior in the lower post promoted earlier, starts drawing less pay, such junior promoted later on regular basis. It is obvious that applicant was drawing less pay than Sri Srivastava hence there was no anamoly because applicant had no occasion to draw more or equal pay than Sri Srivastava in lower post. They have pleaded that the anamoly of pay between applicant and Sri Srivastava has arisen only due to special pay granted to Sri Srivastava for complex ^c nature of work in Clerk, Grade-I and in reckoning the same for fixation of pay in Sub Head grade as per existing Rules. Subsequently, the case of the applicant on complaint was investigated by the Vigilliance Department as regard the admissibility of stepping-up of the pay of the applicant and the Vigilliance Department directed that the stepping up of the pay of applicant is *prima facie* not proper and the matter was being investigated. It was further directed that the arrears already drawn in view of the order dated 2.6.94 may be withheld from his retirement gratuity. The retiral benefit of the applicant were accordingly, calculated after setting a part, the benefit of stepping-up which had been paid on account of arrear of pay and D.A. etc. by virtue of stepping up as earlier allowed, was withheld from his DCRG by the Railway Administration. Finally, the case was referred to the Railway Board for seeking clarification and the applicant was informed accordingly vide letter dated 6.8.96. The Railway Board after careful consideration of the matter clarified that vide their letter dated 11.11.96 (Annexure-10 of CA) the applicant is not entitled for stepping-up of pay with reference to his junior, Sri S.C. Srivastava because the so called anamoly the junior drawing more pay than his senior has arisen only due to the fact that Sri Srivastava

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was in receipt of special pay of Rs.35/- p.m. for arduous nature of duties in Clerk, Grade-I and got the benefit of pay as Sub Head after reckoning the element of special pay which has resulted in higher pay as Sub Head than applicant who was then his junior in lower grade. The Railway Board has further clarified that had the applicant been entitled for the special pay of Rs.35/-, the anamoly of his drawing less pay than Sri Srivastava would not have arisen.

10. The contention of the applicant that the anamoly has arisen because he was in receipt of only Rs.35/- as qualification pay whereas his junior was in receipt of Rs.70/- as qualification pay has been strongly opposed by the Respondents. Vide para 28 of the CA they have submitted that since applicant had been promoted in higher grade before 1.1.86 w.e.f. 18.6.84, he was not entitled to get enhanced rate of qualification pay of Rs.40/-/Rs.70/- which was effective from 1.1.86 onwards. On the other hand, as Sri S.C. Srivastava was promoted after 1.1.86 i.e. with effect from 2.6.87, therefore, he was entitled to get the enhanced rate of qualification pay. They have further pleaded that the perusal of the comparative chart enclosed as Annexure-I to the counter would clearly indicate that the anamoly has not arisen due to grant of enhanced rate of qualification pay to Srivastava. In view of this fact, it has been submitted that the O.A. fails on merit and be dismissed.

11. We have heard carefully the arguments of the counsel from either side and perused the records.

12. The crucial question, which arises for decision, is whether the respondents are justified in not stepping-up of the pay of applicant. During the course of the argument, counsel for applicant emphasised that the special pay given to his junior had ^{censur} ~~ceased~~ w.e.f. 1985 and the argument of the respondents that he was drawing higher pay because of the special pay cannot be countenanced. It may be mentioned here

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that he got the special pay when he was working on the post of Clerk, Grade-I and got its benefit when he was promoted as Sub Head and his pay was fixed taking into account the special pay which resulted in his case the receipt of higher pay than the applicant. Even if it was stopped in the year 1985, the effect of this special pay did not end as when his pay was fixed on the post of Sub Head, this was taken into consideration and he was drawing more pay than the applicant. In view of this contention of the applicant that since it was stopped in 1985, it would have no effect is negatived.

13. During the course of the argument, counsel for the applicant relied on clause 'C' of the provisions contained in Note 7 below Rule 7(1) of the Notification dated September, 19, 1986. His argument is self defeating as it clearly provides that the stepping-up would not be attracted by virtue of any advance increment granted to a junior Officer and the provision of this Note need not be invoked to step-up the pay of the Senior Officer. In this connection, it may also be mentioned that on the question of stepping-up, the Railway Board has issued clarification vide their letter dated 17.8.89 which is at Annexure-4 of the CA. The relevant provision is reproduced below :-

- "(a) both the junior and the senior Railway servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre.
- (b) the pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical and
- (c) the senior Railway servant promoted before 1.1.1986 has been drawing equal or more pay in the lower post than his junior promoted after 1.1.1986."

14. From the above it would be clear that the contention of the counsel for the applicant is against the provisions contained in Sub Para 'C' above which clearly

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provides that the senior Railway servant promoted before 1.1.1986 has been drawing equal or more pay in the lower post than his junior promoted after 1.1.1986. This is undisputed fact that before his promotion to the grade of Section Officer, the applicant was junior to Sri Srivastava and there had been no occasion for him to draw more or equal pay.

15. In view of the above discussion, the O.A. fails on merit and is accordingly dismissed. We do not find any good ground for interference with the impugned order.

No order as to costs.

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A.M.

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