

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.**

ORIGINAL APPLICATION NO.769/04

Dated this *Thursday* the *17*th day of February, 2011.

CORAM:

HON'BLE SHRI S.N. SHUKLA, MEMBER (A)
HON'BLE SHRI SANJEEV KAUSHIK, MEMBER (J)

Shri S.K. Agarwal L/R of
Late Shri A.S. Gupta
S/o Sagarmal Gupta,
Ex. Office Superintendent of the
Office of D.T.S.,
Northern Railway (Now North Central Railway)
Tundla, resident of C/o S. K. Agarwal,
House No. RB IV/258-B, North Railway Colony,
Agra Cantt. Agra. ... Applicant
(By Advocate B.L. Kulendra)

Versus

1. Union of India through G.M. N.C. Railway, Allahabad.
2. C.P.O. Northern Railway, at Baroda House, New Delhi.
3. D.P.O. North Central Railway, Allahabad.
4. A.P.O. North Central Railway, Allahabad.

... Respondents

(By Advocate A.C. Mishra).

ORDER

PER MR. SANJEEV KAUSHIK, MEMBER (J):

By way of this instant Original Application the applicant seeks a direction from this Tribunal to direct the respondents to grant him special pay of Rs. 35/- per month admissible on the pinpointed post as his junior was granted and his pay has been fixed higher than that of the applicant.

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2. Brief facts of the case are that the applicant was appointed as Clerk on 21.8.1952 in the grade of Rs. 55-105/- which was subsequently revised to the grade of Rs. 250.400/-. The applicant was further promoted in the grade of Rs.330-560/-. The applicant further submitted in the O.A. that being senior man in his cadre he is entitled to be appointed against the pin pointed post with a special pay of Rs.35/- per month. The applicant has specifically stated in the O.A. that by ignoring his claim a person junior to him viz. Shri H.K. Vaish was appointed against the pinpointed post. Admittedly he is junior to the applicant and his pay was fixed higher than that of the applicant and therefore, there is anomaly in the pay scale as his junior is getting more pay than the applicant. To substantiate his above stated claim for appointing junior on the pinpointed post, the applicant placed reliance on the seniority list which was circulated vide letter dated 18/22.9.1986 in which Shri H.K. Vaish has been junior to the applicant. The claim of the applicant was firstly rejected by the Pension Adalat on 13.12.1994. Aggrieved by the above stated order the applicant stated to have made a representation to the Chairman, Railway Board, New Delhi on 16.12.1998. Hence the present Original Application.

3. Respondents filed their detailed Counter Affidavit. They have taken a categorical stand that against total 52 sanctioned strength of Senior Clerks of the Operating Branch, 10% posts i.e. 5 posts are declared as pinpointed posts with special pay of Rs.35/- w.e.f. 5th May, 1979. Against these posts the only those persons who were senior and were not having any adverse entry or DAR proceedings were pending against the applicant between

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16.11.1982 to 4.11.1985, his case was not considered against the pinpointed post. It is further submitted that the applicant was directly promoted as Office Superintendent, in the grade of Rs. 1600-2660 w.e.f. 19.9.1986 and accordingly his pay was fixed at Rs.1600/-. Since he did not work against the pinpointed post, he is not entitled for the benefit which is attached to that post.

4. We have heard Shri B.L. Kulendra Learned Counsel for the applicant and Shri A.C. Mishra, Standing Counsel for Union of India and perused the record.

5. Admittedly the applicant did not work against the pinpointed post. Between 26.11.1982 to 4.11.1985 DAR proceedings were pending against him. Therefore, in terms of the policy the respondents have not considered his case for appointment against the above stated post. Since Shri H.K. Vaish who is admittedly junior to the applicant worked against the pinpointed post and was granted special pay of Rs. 35/- his pay was accordingly fixed higher than that of applicant when he was promoted as Office Superintendent in the grade of Rs. 1600-2660. On identified post of Senior Clerk carrying on discernible duties and responsibilities had fallen vacant on 21.1.1987. The applicant was the senior most Clerk as on that date and as such he was due and entitled for the said special pay of Rs.35/-. Instead of giving applicant the said special pay, next person Mr. H.K. Vaish, applicant's junior was given. The applicant was further promoted as Office Superintendent-I in the grade of Rs.2000-3200 on 19.9.1986. The denial of Rs.35/- has resulted in heavy loss to the applicant as Shri Vaish who is junior to the applicant is getting more than the applicant.



6. The law on the subject is clear, when junior enjoys Special Pay, there is no question of senior getting any notional Special Pay. However, when the junior gets higher promotion subsequent to the senior, if his pay is fixed taking into account the Special Pay consequent to which the junior draws more pay, the senior is entitled to stepping up of pay. This law has been crystallized in case of **Union of India vs. P. Jagdish vs. 1997 (3) SCC 176**, wherein the Apex Court has held as under:

"5. The question for consideration, therefore, would be:

(1) Whether the respondents who had not been posted against the identified posts carrying a special pay of Rs. 35 per month can even claim fixation of their pay in the promoted cadre of Head Clerks when their juniors who were later promoted were fixed up at a higher slab in the cadre of Head Clerks taking into account the special pay which they are drawing in the lower category of Senior Clerks.

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7. So far as the second question is concerned it depends upon the applicability of the principle of stepping up. Admittedly, the respondents had been promoted earlier to the category of Head Clerks and some of their juniors who were continuing as Senior Clerks against the identified posts carrying special pay of Rs 35 per month on being promoted to the post of Head Clerks later than the respondents got their pay fixed at a higher level than the respondents. Under the provisions of Fundamental Rules to remove the anomaly of a government servant promoted or appointed to a higher post earlier drawing a lower rate of pay in that post than another government servant junior to him in the lower grade and promoted or appointed subsequently to the higher post, the principle of stepping up of the pay is applied. In such cases the pay of the senior officer in the higher post is required to be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up is required to be done with effect from the date of promotion or appointment of the junior officer. On refixation of the pay of the senior officer by applying the principle of stepping up, the next increment of the said officer would be drawn on completion of the requisite qualifying service with effect from the date of the refixation of pay. This principle becomes applicable when the junior officer and

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the senior officer belong to the same category and the post from which they have been promoted and in the promoted cadre the junior officer on being promoted later than the senior officer gets later than the senior officer gets a higher pay. This being the principle of stepping up contained in the Fundamental rules and admittedly the respondents being senior to several other Senior Clerks and the respondents having been promoted earlier than many of their juniors who were promoted later to the post of Head Clerks, the principle of stepping up should be made applicable to the respondents with effect from the date their juniors in the erstwhile cadre of Senior Clerks get promoted to the cadre of Head Clerks and their pay was fixed at a higher slab than that of the respondents. The stepping up should be done in such a way that the anomaly of juniors getting higher salary than the seniors in the promoted category of Head Clerk would be removed and the pay of the seniors like the respondents would be stepped up to a figure equal to the pay as fixed for their junior officer in the higher post of Head Clerk. In fact the Tribunal by the impugned order has directed to apply the principle of stepping up and we see no infirmity with the same direction subject to the aforesaid clarifications. This principle of stepping up which we have upheld would prevent violation of equal pay for equal work but grant of consequential benefit of the difference of salary would not be correct for the reason that the respondents had not worked in the post to which 35% [sic Rs 35 as] special pay was attached in the lower cadre. But by reason of promotion the promotee- juniors who worked on the said posts, in fact, performed the hard duties and earned special pay. Directions to pay arrears would be deleterious to inculcation of efficiency in service. All persons who were indolent to share higher responsibilities in lower posts, on promotion would get accelerated arrears that would be deleterious to efficiency of service. Therefore, though direction to step up the pay on notional basis is consistent with Article 39(d) of the Constitution, it would be applicable only prospectively from the date of the promotion and the fixation of the scale, stepping up of the scale of pay would be prospective to calculate future increments on the scale of pay in promotional post only prospectively. The appeal is dismissed but in the circumstances there would not be any order as to costs."

The above judgement has been referred to in the following two cases of the Apex Court viz. **Union of India and Ors vs. M.**

Suryanarayana Rao 1998 (6) SCC 400 and **Union of India**



and Ors. vs. B. Sarkar 1999 SCC (L&S) 936 Para 6. Relevant paragraphs are reproduced hereinbelow:

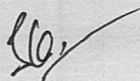
(i) UOI & Ors. vs. M. Surayarayana Rao (supra)

“6. The second contention of the learned counsel is that the Central Administrative Tribunal has in several case taken the view that if a junior had been promoted on ad hoc basis on a long term and his pay is fixed at a higher scale, the senior is entitled to get his pay stepped up on a par with the junior. He has placed reliance on the judgement of the Tribunal in **T. Atchutaramaiah v. Regional Director, ESI Corpn.** It is stated by the Tribunal in para 4 as follows:

“We have examined the case and heard rival sides. In an exactly similar case like this, this Bench had ordered stepping up of pay in allowing O.A. No. 607 of 1990 by order dated 3.9.1991 (this order had subsequently been upheld by the Hon'ble Supreme Court by orders dated 31.3.1991 in SLP No. 645 of 1992). We had held that where the pay of a junior is fixed on regular promotion at a higher stage than hi seniors on account of his having earned increments by virtue of his earlier ad hoc promotions the pay of the senior should be stepped up while fixing his pay on regular promotion. Hence applying the same principles we have to order stepping up of pay in this case also from 1.1.1986.”

(ii) Union of India and Ors. vs. B. Sarkar (supra):

“6. Shri Patel, the learned counsel for the respondents has, however, submitted that the respondent is entitled to succeed in view of the decision of this Court in **P.Jagdish** on Question 2. The said question was in the following terms: (SCC p. 179 para 5).



"(2) Whether the respondents can claim for stepping up of their pay in the promoted cadre of Head Clerks when their juniors who were later promoted were fixed up at a higher slab in the cadre of Head Clerks taking into account the special pay which they are drawing in the lower category of Senior Clerks.

7. While dealing with the said question, this court has held that the principle of stepping up of pay should be made applicable to the respondents with effect from the date their juniors in the erstwhile cadre of Senior Clerks get promoted to the cadre or Head Clerks and their pay was fixed on higher slabs than that of the respondents."

The co-ordinate Bench of this Tribunal in O.A.No. 1466/2002 in the case of *Paras Nath Rai vs. UOI & Ors* has decided identical controversy vide its order dated 4.2.2011 which is also squarely applicable in the instant case. Thus junior was drawing more pay as on 21.1.1987 and the same is due to the Special Pay drawn by the junior. Though the respondent have denied the above without any support documents.

7. We also find support from the judgement of the Hon'ble Punjab and Haryana High Court in Civil Writ Petition No. 22379/10 decided on 16.12.2010 in the case of **Chief General Manager, B.S.N.L. vs. C.A.T. and Ors.** wherein reliance on the

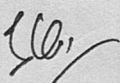
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Hon'ble Apex Court judgment in the case of Gurcharan Singh Grewal vs. Punjab Electricity Board 2009 (3) SCC 94 has been placed. It has been held by the Hon'ble Apex Court that senior officer in the same cadre cannot be paid less than what his junior even if anomaly in the pay of the senior is due to difference of incremental benefits. Accordingly directions were issued by their Lordships of Hon'ble Apex Court in the case of **Gurcharan Singh Grewal (supra)** to step up the pay of such an officer. The operative part of the judgement of the CWP No. 22379/2010 in the case of **Chief General Manager, B.S.N.L. vs. C.A.T. and Ors** is reproduced hereinbelow:

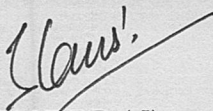
"4 We have heard Mr. Anil Rathee, learned counsel for the petitioners.

*He made feeble attempt to distinguish the facts revealed by the judgment of Hon'ble the Supreme Court in **Gurcharan Singh Grewal's case** (supra) but could not point out any distinguishing feature to take a view different than the one taken by the Tribunal. It is, in fact, conceded position that the petitioners did not provide any opportunity to the original applicant-respondent No. 2 to exercise option and, therefore, it could not be regarded as a disqualification to deprive him of his entitlement for all times to come. In that regard reliance may be placed on the judgment of this Court rendered in the case of instant petition **Ram Kumar v. Uttar Haryana Bijli Vitran Nigam Ltd., 2006 (4) SCT 628**. Therefore, we do not find any ground warranting admission of the Petition."*

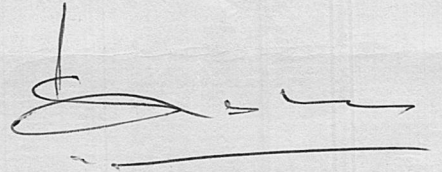
8. So applicant is not entitled to any claim entitled under the Rule because applicant was not entitled for Special Pay of Rs.35/-. Thus, it is the admitted fact that junior was drawing more pay in the promotional post and that was due to the drawal by the junior of the Special Pay of Rs. 35/-. Applying the above law laid down by the Apex Court, the applicant is entitled to stepping up of Pay.



9. In view of the above, the O.A. is allowed to the extent that applicant is entitled to stepping up of pay at par with Shri Vaish. The applicant would be entitled to his pay fixed from the date his junior was drawing more pay in the post of Office Superintendent and the Pay would be notional. This exercise shall be complied with within a period of three months from the date of receipt of a copy of this order. No order as to costs.



MEMBER (J)



MEMBER (A)

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