

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 113 of 2004

Allahabad this the 24 day of November, 2011

Hon'ble Mr. Justice S.C. Sharma, Sr. J.M./HOD
Hon'ble Mr. D.C. Lakha, Member (A)

Bhuvneshwar Prasad S/o Late Sri Lakhan Prasad R/o Moh. Manraj Bigha P.O. Gaya District Gaya, Bihar last employed as Station Manager Jakhim Station E.C. Railway under D.R.M. E.C. Railway, Moghalsarai, Distt. Varanasi.

Applicant

By Advocate: Mr. Mahendra Upadhyaya

Vs.

1. Union of India through the General Manager, Eastern Central Railway, Hajipur, Bihar.
2. The General Manager, Eastern Central Railway, Hajipur, Bihar.
3. The D.R.M. Eastern Central Railway, Moghal Sarai Div. Varanasi.
4. The Senior Divisional Personnel Officer, E.C. Rly. Moghal Sarai, District Varanasi.

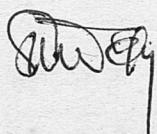
Respondents

By Advocate: Mr. K.P. Singh

O R D E R

By Hon'ble Mr. Justice S.C. Sharma, Sr. J.M./HOD
Instant O.A. has been instituted for the following relief: -

(a) *that the respondents be mandated to continue to pay stepped up salary equivalent to that of his junior Sri W. Hussain as ordered in Annexure I till the date of his superannuation 28.2.2003 from 1.1.91 as was ordered*



to be paid by the Prescribed Authority/ Labour Commissioner Varanasi and which was paid by the respondents up to 31.12.90.

- *b) that the respondents be mandated to pay the retiral benefits on so enhanced pay at the last pay drawn according to rules, including the enhanced commuted value of pension (vide para 4 (p)).
- (c) that the respondents are directed to pay compensation also @ 1% allowed earlier by the Prescribed Authority/Labour Commissioner.
- (d) any other relief which may be admissible."

2. Pleadings of the parties, in nut shell, are as follows: -

It has been alleged by the applicant that he was working as A.S.M. under Divisional Railway Manager, Mughalsarai, U.P. and in the seniority list he was allotted 46th position in the seniority list and Sri Wajahat Hussain was allotted 59th position and the seniority was promulgated by the Divisional Railway Manager, Eastern Railway Headquarter, Mughalsarai, later changed as Eastern Central Railway (for short E.C. Railway) on 26.04.1988. The salary of Sri Wajahat Hussain was fixed at a higher point in the scale of ₹ 2150/- p.m. while that of applicant was fixed at ₹ 1850/- p.m. Several representations were made by the applicant to the DRM, Mughalsarai for stepping up of his pay equal to that of his junior Sri Wajahat Hussain. He continued to send reminders to remove this anomaly in the pay up to the year 1990. When it was not considered by the respondents then the applicant filed a case under the

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provisions of Payment of Wages Act, Section 15 (3) before the Labour Court, and the Prescribed Authority, Labour Commissioner, Varanasi decided the matter and directed the DRM, Mughalsarai to grant pay to the applicant equal to that of Wajahat Hussain. In that case, pay was claimed up to 31.12.1990 amounting to ₹ 43,989.56 p and the same was allowed along with compensation. Following has been decided by the Labour Court: -

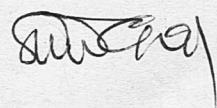
“ . . . if the salary of the senior is less than that of his junior, then benefit in pay shall be given to the senior by stepping up his pay equal to that of his junior.”

In pursuance of direction of the Labour Court, the amount was paid by the respondents equalizing the pay of applicant with that of his junior up to 31.12.1990. But the respondents refused to grant the same benefit beyond 01.01.1991 to 28.02.2003. The matter was also brought by way of making complaint in the complaint book called Station Grievance Register on 07.09.1996, and the applicant waited for redressal of his grievance but nothing has been considered by the respondents. The applicant retired on superannuation on 28.02.2003 on completion of 60 years of age, and still the applicant continued to make the representations. The Labour Court in principle held that the applicant is entitled for stepping up of pay equal to that of his juniors, and the respondents were



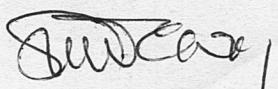
bound to follow this principle subsequently also but as the respondents are not following hence he has been compelled to file the present O.A. It is alleged that after making payment of higher salary of ₹ 2150/- p.m. equal to his junior up to 31.12.1990 the respondents are not entitled to reduce his salary to the original lower scale of ₹ 1850/- p.m. from 01.01.1991. As there is disparity in salary of the applicant from that of his junior hence he is entitled for stepping up the salary, and hence the O.A.

3. The respondents contested the case, filed the Counter Reply, and denied from the allegations made in the O.A. It has further been alleged that the applicant, Ex-Station Master, Jhakim, filed a case before the Labour Court and a sum of ₹ 43,989.56 p had already been paid along with compensation, and after receipt of this decretal amount as per direction of the Labour Court, the applicant again made a representation for fixation of his salary at par with his junior-Sri Wajahat Hussain, Ex. Deputy S.S., Mughalsarai but the request of applicant was regretted by the competent authority. No order was passed by the Labour Court for payment of salary at par with Sri Wajahat Hussain after 31.12.1990. The instructions were issued by the Railway Board on 07.12.1994 providing that if a senior joins the higher post



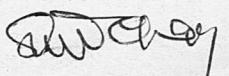
later than the junior, for whatsoever reasons, whereby he draws less pay than to this junior, in that case senior cannot claim stepping up of his pay at par with junior. It is alleged that Sri Wajahat Hussain was promoted on ad hoc basis, by local arrangement, during the period from 01.04.1974 to near about five years in the pay scale of ₹ 425-640/- and he was regularised on such post followed by his regular promotion order. Whereas applicant was working in a road side station during this intervening period and Sri Wajahat Hussain was working as G.A. at Mughalsarai on exigencies, required by the Railways. The benefit of stepping up of pay may be given on ad hoc promotion provided that ad hoc promotion of senior and junior person is followed by their regular promotion without break. It is alleged that the applicant was never promoted on ad hoc basis in higher grade hence as per existing rules applicant was not entitled to get the benefit of fixation of pay with his juniors. The O.A. lacks merit and is liable to be dismissed.

4. Afterwards Rejoinder Affidavit has also been filed on behalf of the applicant, and in the RA the facts alleged in the O.A., have been reiterated, and it shall be considered at the appropriate place.

A handwritten signature in black ink, appearing to read "S. W. C. A. /".

5. We have heard Mr. Mahendra Upadhyay, Advocate for the applicant and Mr. K.P. Singh, Advocate for the respondents, and perused the entire facts of the case. Written Argument has also been filed on behalf of the respondents, which is also being considered.

6. In the present case, from perusal of pleadings of the parties, it is evident that most of the facts have been admitted by the parties. Rather the respondents have also admitted the contention of the applicant but they have denied stepping up of pay to the applicant equal to that of his junior-Sri Wajahat Hussain due to adamant attitude. Once a judicial forum - Labour Court had already adjudicated this matter and order was passed in favour of the applicant considering that the applicant is entitled for stepping up his pay equal to his junior. But the respondents were so callous that they granted the benefit of stepping up of pay equal to his junior up to 31.12.1990, and w.e.f. 01.01.1991 the respondents refused to grant the benefit of stepping up of pay equal to that of Sri Wajahat Hussain. It has been alleged by the applicant in the O.A. that the seniority list was issued by the respondents on 26.04.1980 and according to that seniority list, the applicant has been allotted serial No. 46 whereas Sri Wajahat Hussain was at serial No. 59. It has

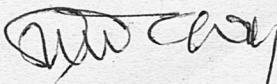


not been disputed that the applicant and Sri Wajahat Hussain does not belong to same cadre of service rather it is an admitted fact that the applicant and Sri Wajahat Hussain belong to same cadre and the seniority list was the same. Moreover, it has also not been said that Sri Wajahat Hussain and applicant belong to different cadre of service and they are not similarly situated persons rather the respondents admitted specifically that the applicant is senior to Sri Wajahat Hussain. But the respondents tried to distinguish the case of applicant from the case of Sri Wajahat Hussain on the ground that Sri Wajahat Hussain was posted and working as G.A. at Mughalsarai whereas the applicant was posted during the intervening period at some road side station. It is alleged by the respondents that it was due to exigencies, required by the railways that ad hoc promotion was given to Sri Wajahat Hussain and Sri Wajahat Hussain continued on that post for a period of 5 years and thereafter he regularised on that post by his regular promotion in higher scale of pay. But the disparity remained due to the reason that Sri Wajahat Hussain was promoted earlier to the applicant on ad hoc basis and under these circumstances, as per the respondents applicant is not entitled for identical treatment regarding pay in view of a letter of Ministry of DOP&T dated 04.11.1993 as well as

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letter issued by the respondents-Eastern Railway dated 15.10.1976. But it is a fact that there is a disparity in the pay of applicant and Sri Wajahat Hussain, and the applicant was senior to Sri Wajahat Hussain. At the relevant point, pay scale of Sri Wajahat Hussain was fixed at ₹ 2150/- per month whereas salary of the applicant was fixed at ₹ 1850/- per month and irrespective of the fact that the applicant was senior to Sri Wajahat Hussain, his salary was fixed less in comparison to Sri Wajahat Hussain-a junior person.

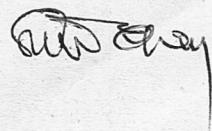
7. It will be material to place reliance on an order passed by the Prescribed Authority Labour Court in PW Case No. 49 of 1992 Bhuwaneshwar Prasad Vs. General Manager, Eastern Railway and others. By way of this Claim, before the Labour Court, applicant claimed the salary equal to his junior-Sri Wajahat Hussain w.e.f. 01.04.1974 to 31.12.1990. A sum of ₹ 43,989.56 p, as claim of the applicant was allowed by the Labour Court. We have perused the order passed by the Prescribed Authority, Labour Court, where the Labour Court was of the opinion that if there is any disparity in salary of senior and junior then the senior is entitled for stepping up in order to equalize the pay of the senior to that of his junior, and after stepping up applicant is entitled to that benefit



and with this principle claim of the applicant was allowed and the respondents admitted that whatever was claimed by the applicant in the Labour Court, had already been paid. But as there was no order of the Labour Court for further payment w.e.f. 01.01.1991 on the enhanced rate hence applicant is not entitled for that. This contention of the respondents appears unjustified. Moreover, in principle it has been decided by the Labour Court, as under: -

"The basis of the claim in the present case, as I have stated earlier, is the AWARD given by the President in which it is clearly ordered that if the salary of the senior is less than that of his junior, then benefit in pay shall be given to the senior by stepping up his pay equal to that of his junior. This order is of the supreme authority of India and in accordance with it the claimant has laid his claim. The issue is decided in accordance with it."

Hence, the Labour Court, in principle, has decided that if the salary of the senior is less than that of his junior, then he is entitled for stepping up, and following this principle the Labour Court allowed the relief claimed by the applicant and he was allowed equal pay to that of Sri Wajahat Hussain up to 31.12.1990. But the same problem applicant had to face w.e.f. 01.01.1991. Without compelling the applicant to be dragged into this litigation, when a competent Court has decided that plea of



applicant, then the same relief ought to have been continued even after 01.01.1991. But the respondents turned down the request of applicant to extend the benefit of stepping up w.e.f. 01.01.1991 irrespective of the fact that the same benefit had already been extended to the applicant up to 31.12.1990 and a sum of ₹ 43,989.56/- had already been paid.

8. Considering the facts in the background of the Order passed by the Labour Court, the respondents cannot be said justified in declining the applicant's claim for stepping up of his salary equal to his junior-Sri Wajahat Hussain beyond 01.01.1991. The order of Labour Court had not been challenged before the Hon'ble High Court or any higher forum and this principle had been accepted by the respondents and once a principle has been admitted by the respondents and the benefits have been extended to the applicant then the respondents are not justified in denying the same benefit beyond 01.01.1991. We are of the opinion that the applicant is entitled to the same benefit equal to his junior. Even beyond 01.01.1991 the applicant was entitled for stepping up of his pay at ₹ 2150/- Admittedly, the salary of applicant was ₹ 1850/- and it was lesser than the salary of Sri Wajahat Hussain. Although there is no denial of the fact that the principle of

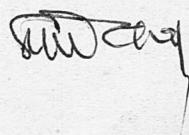
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equal pay for equal work is a prevalent practice in the service unless the respondents show that both are not similarly situated persons. But in the present case both are similarly situated persons. The learned counsel for the applicant in support of his argument cited (1999) 4 Supreme Court Cases 408 Alvaro Noronha Ferriera and another Vs. Union of India and others. The Hon'ble Supreme Court held, in para-10, as under: -

"10. The principle of "equal pay for equal work" has gained judicial recognition. The principle incorporated in Article 14 when understood from the angle provided in Article 39 (d) of the Constitution is held to be the recognition of the aforesaid doctrine. It has been held in Randhir Singh v. Union of India that the principle "equal pay for equal work" is not an abstract doctrine but one of substance. Their Lordship pointed out:

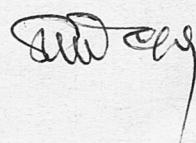
"To the vast majority of the people in India the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay."

Hence in view of the Judgment of the Hon'ble Apex Court, this principle of 'Equal pay for equal work' has been recognized, and the respondents have also not disputed this fact. Learned counsel for the applicant also cited a Judgment reported in (2010) 4 UPLBEC 2936 Yogeshwar Prasad and others Vs. National Institute Education Planning and Administration and others. In this Judgment, the Hon'ble Apex Court up-held the



principle of 'equal pay for equal work'. Hence, it is settled principle that the employees are entitled for equal pay if they are similarly situated persons meaning thereby that they are doing same work and it is also settled principle of law and moreover, the Labour Court has decided that the applicant is senior to Sri Wajahat Hussain and it is also a principle that a senior is entitled for stepping up of pay equal to his junior, and as Sri Wajahat Hussain was much junior to the applicant and his pay was fixed at ₹ 2150/- p.m. whereas applicant's salary was fixed at ₹ 1850/- obviously there is disparity in pay of senior and junior.

9. It has been argued by learned counsel for the respondents irrespective of the fact that the applicant was senior to Sri Wajahat Hussain but even then the applicant is not entitled for stepping up equal to Sri Wajahat Hussain of salary because in case of exigency required by the railway, Sri Wajahat Hussain was promoted on ad hoc basis by local arrangement during the period from 01.04.1974 and Sri Wajahat Hussain continued on that post for a period of five years and thereafter he was regularised on this post followed by regular promotion. Hence there was disparity because the applicant was not promoted on ad hoc basis. Firstly, it will be material to



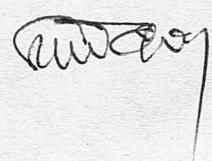
state that the respondents are not justified to decline the stepping up of the applicant equal to that of his junior because the applicant had already been allowed stepping up w.e.f. 01.04.1974 to 31.12.1990 by the Labour Court and the respondents had admitted this decision of the Labour Court and they have paid the salary as per order of the Labour Court, as claimed by the applicant. When once a principle has been settled by the Labour Court and the respondents have admitted it and complied with the order, now subsequently the respondents cannot be permitted to dispute this stand and principle. A reliance has been placed by learned counsel for the respondents on certain circular letters issued by the Railway, and Ministry of DOP&T. One circular was issued by the Eastern Railway on 15.10.1976 and it has been provided in this circular: -

“... it has been decided that the benefit of stepping up of pay may also be given on ad hoc promotions provided that the ad hoc promotions of senior and junior persons are followed by their regular promotion without break. The pay of the senior person will in such cases be stepped up from the date of occurrence of the anomaly i.e. from the date of promotion of the junior and not from the date of regularisation of his promotion. This has the sanction of the President.”

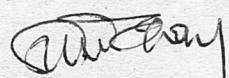
Hence from perusal of this circular, it is evident that that stepping up of pay may be given on ad hoc promotions provided that the ad hoc promotions of senior

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and junior persons are followed by their regular promotion without break. The pay of the senior person will in such cases be stepped up from the date of occurrence of the anomaly. In our opinion, this circular dated 15.10.1976 is helping the applicant and not the respondents because the principle has been admitted by the respondents in the circular. Moreover, a letter was issued by the Ministry of DOP&T on 04.11.1993 and certain parameters have been provided in which parity can be refused to a senior in case there is disparity of salary from his junior. We have perused the parameters and conditions provided in this letter of Ministry of DOP&T and we are of the opinion that the case of applicant is not covered in the conditions provided in this circular. It has been provided that anomaly should be directly the result of fixation of pay under rule 2018B (FR-22 C), and if in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments or on any other account, will not be entitled to step up. But how on the strength of this provision, applicant can be refused stepping up. It has also been provided in para-2 (a) of the circular that if a senior proceeds on Extra Ordinary Leave which resulted in postponement of increment of next date; or a senior foregoes/refused promotion leading to his junior being promoted/appointed

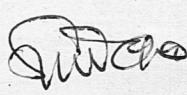


to the higher post earlier; or if a senior joins the higher post later than the junior, for whatsoever reasons, whereby he draws less pay than the junior, in such cases senior cannot claim stepping up of pay or the senior is appointed later than the junior in the lower post itself or where a person is promoted from lower to a higher post his pay is fixed with reference to the pay drawn by him in the lower post under FR-22-C and he is likely to get more pay than a direct appointee whose pay is fixed under different set of rules. But in our opinion this circular of the DOP&T is of no help to the respondents in declining the claim of the applicant. It has been alleged by learned counsel for the respondents that ad hoc promotion was given to Sri Wajahat Hussain-a junior to applicant on local arrangement basis in exigencies of railway. But even ad hoc promotion must first be offered to senior and if senior refuses then it may be offered to next junior. The benefit cannot be bestowed on a person only on the basis that he is posted on a particular post and in the local arrangement promotion is offered to that person, then in that case what is the fault of the senior. The position would be different if a senior offered ad hoc promotion but he refuses. Then in view of the circular of the Ministry of DOP&T, such person can be said to be disentitled for the benefit of stepping up. It has been alleged by the



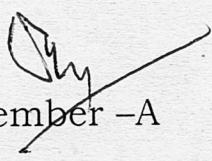
respondents that this principle has been followed in all four corners up to the limited period i.e. 31.12.1990. However from the facts and circulars cited above, it is clear that even beyond 31.12.1990 applicant is entitled for the same relief of stepping up of pay and he cannot be deprived from the same benefit. It was a callous act on the part of the respondents.

10. For the reasons mentioned above, we are of the opinion that as the principle had already been accepted by the respondents in the PW case before the Labour Court that applicant is senior to Sri Wajahat Hussain, he is entitled for stepping up of his pay equal to that of his junior Sri Wajahat Hussain hence respondents are not entitled to decline the same benefit to the applicant beyond 31.12.1990. The principle of 'equal pay for equal work' is fully applicable in the present case, and the applicant is also entitled for stepping up. The respondents are most unjustified in denying the applicant same benefit. It was a callous act on the part of respondents. Moreover, the respondents forced the applicant to approach this Tribunal and against the settled position, action has been taken by the respondents by not granting the stepping up to applicant beyond 31.12.1990, which is detrimental to the interest of



applicant. In our opinion, O.A. deserves to be allowed with cost.

11. O.A. is allowed with cost of ₹ 5000/- to be paid to the applicant. The respondents are directed to step up the salary of applicant equivalent to that of his junior Sri Wajahat Hussain till the date of his superannuation on 28.02.2003 with effect from 01.01.1991, and thereafter applicant shall be paid the retiral benefits on so enhanced pay at the last pay drawn at the date of superannuation. This retiral benefits includes enhanced commuted value of pension and also revision of pension at the enhanced salary. The pension of the applicant shall be fixed at the last pay which the applicant might be drawing on 28.02.2003 after stepping up. The annual increment shall also be payable to the applicant as per rules. The respondents are directed to comply with the order passed by this Tribunal within a period of three months from the date when a copy of this order is produced before them. The applicant shall also produce a copy of the order before the respondents at the earliest.


Member - A

/M.M/


Sr. Member (J) / HOD