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RESERVED *12/1*

Central Administrative Tribunal, Allahabad Bench,
Allahabad

Dated: Allahabad this the *5th* day of *July* 1986

CORAM: Hon'ble Mr T.L. Verma, Member - J
Hon'ble Mr D.S. Baweja, Member - A

ORIGINAL APPLICATION NO. 824 OF 1988

M.P. Raikwar, son of Sri Bhagvan Das,
Executive Engineer, Tie Tampering Jhansi,
R/O 41, Mohalla Khatriyayana, Jhansi City.

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Applicant

(Through Advocate Sri H.P. Chakravorty)

Versus

1. General Manager, Central Railway,
Bombay V.T.

2. D.R.M., Central Railway, Jhansi

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Respondents

(Through Advocate Sri V.K. Goel)

ORDER

(By Hon'ble T.L. Verma, Member-J)

HL
This application under Section 19 of the Administrative Tribunal Act, 1985, has been filed for a declaration that the applicant is entitled to difference of pay and other allowances at the rate of Rs. 146/- per month with effect from 25.10.1980 as has been given to S/ Sri R.S.P. Singh, Phool Singh, P.N. Chaubey. The applicant was appointed as Khalesi in the Engineering Department, Jhansi Division of the Central Railway. He was promoted to Class III post and was appointed as Union Clerk on 12.3.1962. He was promoted to the grade of Sr. Clerk of Rs. 330-650 on 7.10.1980 and thereafter

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he was posted as DepotStore Keeper in the same rank with effect from 20.1.1983. Sri Laxman Singh and Sri Ghanshyam Dass, it is stated, were promoted as Junior Clerk with effect from 16.1.1963, and thereafter promoted as Depot Store Keeper in the grade of Rs.205-280 on 19.6.1966 and 11.12.1966 respectively. In or about 1966, ministerial cadre was bifurcated and two separate cadres ministerial non-ministerial cadres were created. On formation of the separate non-ministerial cadre, options were invited for transfer to the non-ministerial cadre (Depot Store Keeper). Those, who opted for non-ministerial cadre, were utilised as Depot Store Keeper in the lower grade and were given further promotion in the grade of Rs.205-280 which was subsequently merged in the scale of Rs.350-560. The proposal for creation of separate ministerial cadre was subsequently abandoned and those who had given option for their transfer to the newly created non-ministerial cadre reverted back and merged in the ministerial cadre in 1980. Some of the employees, who had opted for non-ministerial cadre had in the meantime, received accelerated promotions and their pay on the post on which they were promoted was fixed at higher level than the applicant. On their reversion to the ministerial cadre, their seniority position remained the same but they continued to draw higher pay than the applicant. It is stated that as Sri Laxman Singh and Sri Ghanshyaam Dass, who were junior were drawing higher pay than the applicant, he submitted several representations to the appropriate authority for stepping up of his pay and bringing the same at par with Sri Ghanshyam Dass. The representation submitted did not receive any attention from the respondents and have remain^{ed} pending. The applicant contends that he had no information of either the ministerial cadre having been bifurcated into two separate cadres and

Sri Laxman Singh and Sri Ghanshyam Dass having opted for their transfer to the non-ministerial cadre and also their reversion to the ministerial cadre. He, it is said learnt of the same in 1987 when judgement was pronounced in Central Government Industrial Tribunal, Jabalpur. The applicant, thereafter requested, the Divisional Railway Manager, Central Railway, Jhansi to extend the benefit of stepping up of pay as has been granted to Sarvsri R.S.P. Singh, Phool Singh and others by submitting representation.

2. The applicant contends that denial of the same benefit to the applicant by the respondents is arbitrary and against the principles contained in Article 14 and 16 of the Constitution of India. Hence this application for the relief mentioned above.

3. The respondents have appeared and contested the case of the applicant. There is no denial of the facts averred by the applicant. The respondents have contended that this application is barred by limitation inasmuch as the merger has taken place in 1980 and this application has been filed in 1988 nearly 9 years after the accrual of cause of action. Further case of the respondents is that there were quick promotions in the non-ministerial cadre and that Sri Laxman Singh and Sri Ghanshyam Das, who got accelerated promotion in the non-ministerial cadre were drawing higher pay on the date two cadres merged in 1980. The applicant, therefore, has no cause of action for claiming parity with Laxman Singh and Ghanshyam Dass.

4. The only question that falls for our consideration is whether the applicant is entitled to the benefit of the provision of stepping up. Provisions of stepping

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up of pay are invoked for removing anomaly of a Government servant promoted or appointed to a higher post, drawing a lower rate of in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post. In such cases the pay of the Senior Officer in the higher post is stepped up to a figure equal to the pay as fixed for the junior officer in that higher grade subject to the following conditions:

"(a) Both the junior and senior Officer should belong to the same cadre and the post in which they have been promoted or appointed should be identical and in the same cadre.

(b) The scales of pay of the lower and the higher post in which they are entitled to draw pay, should be identical.

(c) The anomaly should be directly as a result of the application of F.R.22-C.

In other words, where the junior Officer draws from time to time a higher rate of pay, than the senior by virtue of grant of advance increment, the provisions relating to stepping up of pay of the senior will not be invoked."

5. The applicant was admittedly senior to both Sri Laxman Singh and Sri Ghanshyam Das. Sri Ghanshyam Dass and Sri Laxman Singh opted for their transfer from ministerial cadre to non-ministerial cadre in 1962 and they were accordingly transferred to non-ministerial cadre in lower scale and they remained in the said cadre till 1980 when the cadre was abandoned and those who were transferred to non-ministerial cadre reverted to their parent cadre and were merged again in ministerial cadre. After their transfer to non - ministerial cadre they were in the normal course.

promoted to scale Rs. 205-280. This scale was subsequently upgraded and merged in grade Rs. 330-560. The salary of said Sri Laxman Singh and Sri Ghanshyam Dass in the upgraded scale of Rs. 330-560 was fixed at higher level. They continued to receive salary at higher rate than the applicant so long they remained in the non-ministerial cadre. They, and the applicant did not belong to the same cadre and also the post to which they were promoted, were not identical to the post, the applicant was holding at the time promotion were made.

That apart the anomaly in the pay of the applicant and the said Sri Laxman Singh and Sri Ghanshyam Dass was not directly as a result of application F.R. 22-C. The said Sri Laxman Singh and Sri Ghanshyam Dass were in higher pay than their senior (the applicant), by virtue of their promotion in non-ministerial cadre (Depot Store Keeper).

6. In addition to the above, according to FR 22-C, pay on promotion of a Government servant is to be fixed at the stage next above the pay notionally arrived at by increasing the pay of the Government servant in respect of the lower post by one increment at the stage at which such pay has accrued. The anomaly in the pay of the applicant and Sri Laxman Singh and Sri Ghanshyam Dass was not directly as a result of application of FR - 22 C inasmuch as said Sri Laxman Singh and Sri Ghanshyam Dass were drawing higher pay than their erstwhile seniors by

virtue of their promotion in the non-ministerial cadre. From the above, it is thus absolutely clear that the case of the applicant does not fall within the scope of the provisions of F.R. 21D.C.

17. We may look at the case from other angle also Sri Laxman Singh and Sri Ghanshyam Dass had earned accelerated promotion in the non-ministerial cadre which subsequently merged in the ministerial cadre. While working in the non-ministerial cadre, they had earned promotion in higher scale of pay. On their reversion to the parent cadre, in the ministerial cadre, they would have been entitled to fixation of pay in the said cadre on the basis of their length of service. Pay so fixed, may have been less than what they were receiving in the non-ministerial cadre. They were, therefore, entitled to protection of the pay they were receiving before their reversion to the ministerial cadre. This precisely appears to be the reason why Lakshman Singh and Ghanshyam Dass were ^{allowed to receive pay which they were} drawing at the time of their reversion to the ministerial cadre. The applicant though junior, were drawing pay at a higher rate than the applicant by virtue of their promotion in the non-ministerial cadre in the normal course in the said cadre. The provision of stepping up of pay, therefore, has no application to their case.

FL 18. The learned counsel for the applicant relying on the decision of a bench of the Central Administrative Tribunal, Jabalpur Bench in O.A. No. 209 of 1987 and other connected cases, reported in A.T.R. 1990 (1) C.A.T. 136 and A.K. Khanna and others vs Union of India reported in A.T.R. 1988 (2) C.A.T. 518 urged that the applicant should also be allowed the benefit of the judgement of the Central Government Rates Tribunal, Jabalpur, which has allowed the claim of the employees. In the decisions relied upon

by the applicant, it has been held by the Jabalpur Bench and the Principal Bench of the Central Administrative Tribunal that benefit of a judgement should also be extended to those, who were not aggrieved, ^{litigation} in the earlier/ but, were similarly placed as the petitioner therein. Denial of such a benefit would amount to discrimination and violative of Article 14 and 16 of the Constitution of India. The judgement of the Central Government Rates Tribunal has not been annexed to the application. However, a judgement of the Central Government Industrial Tribunal Cum - Labour Court, Jabalpur, in case No. C.G.I.T. /L.C.(C)-503 of 1981 and connected cases (Annexure - 10) has been annexed to the application. The aforesaid cases were filed under section 33(c)(2) of the Industrial Disputes Act 1947. The controversy involved in those cases also was identical. In that case ~~one~~ the applicants were claiming parity in pay with their juniors, who had been transferred to non-ministerial cadre pursuant to the bifurcation of the ministerial cadre into two way back in 1962. The Industrial Tribunal accented the claim and directed that the applicant be brought at par with their juniors with effect from 25.10.1980 and be paid difference of pay at the rate mentioned in the application.

9. The respondents have contended that the merger of the ministerial and non-ministerial cadre had taken place in 1980 and that the applicant did not raise the matter till 1980. Therefore, the claim has become barred by limitation. The applicant has annexed photo copies of letters dated 23.10.1989, 31.3.1988, 23.1.1990, 23.10.89 and 17.1.90. In the above communications from the respondents, the applicant has been informed that his representation regarding stepping up of pay to Engineering Clerical staff of the Jhansi with Sri Laxman Singh and Sri Ghanshyam Dass of the same unit is under process.

The respondents have not stated anything in the counter - affidavit whether any decision on the representation of the applicant has been taken so far or not. Therefore we find no merit in this contention and hold that the application is not barred by limitation.

10. In view of our conclusion recorded above, that the case of the applicant is not covered by the provisions of stepping up of pay, we are not inclined to issue a direction to the respondents to step up the pay of the applicant and bring the same at par with the pay of his juniors Sri Laxman Singh and Sri Ghanshyam Dass. We however, consider it appropriate to direct the respondents to dispose of the representation of the applicant for ~~extending~~ ^{extending} the benefit of the judgment of the Central Government Rates Tribunal, Jabalpur *within a reasonable time*

14. In the result, we dispose of this application with a direction to the respondents to consider the representation of the applicant to extend the benefit of the decision of the Rates Tribunal, Jabalpur, as has been given to Sarvsri R.S.P. Singh, Phool Singh and Sri P.N. Chaubey within a period of three months from the date of communication of this order. There shall be no order to costs.

(Signature)
MEMBER - A

(Signature)
MEMBER - J

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