

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.1773 OF 1994  
TUESDAY, THIS THE 7TH DAY OF OCTOBER, 2002

HON'BLE MR. S. DAYAL, MEMBER-A  
HON'BLE MR. A. K. BHATNAGAR, MEMBER-J

B.D. Rastogi,  
aged about 53 years,  
son of B.K. Rastogi,  
House No.654, Ward No.36,  
Mohalla Madhinath,  
District-Bareilly.

..... Applicant

(By Advocate Shri B. Tewari)

Versus

1. D.M.E., N.E. Rly.,  
Izatnagar,  
Bareilly.

2. Union of India  
through the General Manager,  
N.E. Rly, Gorakhpur.

..... Respondents

(By Advocate Shri A.K. Gaur)

O R D E R

HON'BLE MR. S. DAYAL, MEMBER-A

This application has been filed for a direction to the respondents to fix the pay of the applicant equal to Shri J.K. Gangwar, who is next junior to the applicant and difference of salary may be paid to the applicant with 12% interest.

2. The applicant has claimed that he as well as Shri J.K. Gangwar were appointed as Chargeman 'B' in the scale of Rs.425-700/- after completing prescribed training by order dated 01.08.1974. Shri Gangwar was promoted on ad-hoc basis in the scale of Rs.550-750/- in 1978 by means of local arrangements while the applicant was promoted as Chargeman 'A' on ad-hoc basis in the scale of Rs.550-750 vide letter dated 30.03.1980. It is claimed that when restructuring was implemented, the applicant was shown senior to Shri Gangwar but the pay

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of Shri Gangwar was fixed more by two increments higher than the applicant. The applicant seeks the benefits of paragraph 1316 of Railway Establishment Code Vol-II to raise the level of his pay to that of his junior.

3. We have heard the arguments of Shri B. Tewari, learned counsel for the applicant and Shri A.K. Gaur, learned counsel for the respondents.

4. Learned counsel for the applicant has referred to the letter of D.R.M.(P) Izatnagar addressed to General Manager, Gorakhpur dated 19.10.1990 in which it has been mentioned that Shri Gangwar was promoted as Chargeman-'A' on 07.09.1977 by Lucknow Division and Shri Rastogi was promoted as Chargeman-'A' on 20.03.1980 by Izatnagar Division. Since Shri Gangwar started getting pay in the scale of Rs.550-750/- earlier than the applicant on his ad-hoc promotion, he got the benefit of two increments before the applicant could get his promotion on 20.03.1980 and his pay was fixed in the pay scale of Rs.550-750/-.

5. The learned counsel for the applicant has also contended that as the applicant was shown senior to Shri Gangwar in all the seniority list including the seniority list of Foremen published in 1988 in which Shri B.D. Rastogi is shown at serial no.1 while Shri Gangwar is shown at serial no.7.

6. The learned counsel for the applicant has placed reliance upon para 1316 of Indian Railway Establishment Code Vol II. Certain clarifications were given by the Railway Board on certain points of doubt by letter no. PC/65/PP-1 dated 18.09.1965 and PC-65/PP-1 dated 19.3.1966 in item 5. A doubt was raised as to how the orders of stepping up were to be applied in case of seniority in

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which  
in the lower grade / was maintained locally on promotion to  
higher post on regular basis. The clarification reads  
as under:-

"According to the provisions of stepping up orders, both the juniors and senior railway servants should belong to the same cadre. To illustrate, in a case where senior employee of one Senior Group maintained locally he is promoted earlier to the higher posts on the basis of list of seniority which is maintained on all railway basis, he can get his pay step up only with reference to the seniority belonging to the same seniority group in the lower post which was maintained locally."

7. The learned counsel for the applicant has mentioned that the above provisions will apply to the case of the applicant and relied upon the judgement of Karnataka High Court in N.N. Navani Versus State of Karnataka and another 1987 Lab IC 335 which lays down that when a decision is rendered without noticing particular provisions of law having a bearing on the point decided it to be a valid and binding precedent on the point so decided.

8. Counsel for the applicant has also relied upon the judgement in P. Jagdish Versus U.O.I. and others (1997) SCC.(L&S) 701. Here the issue was fixation of pay on promotion when special pay in the better post was received by the junior and not by the senior and, therefore, the issue in this case is different from the one before us.

9. The learned counsel for the respondents, on the other hand, raised the issue of limitation on the ground that the pay of the applicant was less than the pay of Shri Gangwar right from the time Shri Gangwar was given ad-hoc promotion in the pay scale of Rs.550-750/- in 1977. Therefore, any application filed in 1984 is highly barred by limitation.

10. Learned counsel for the applicant has referred

to letter at annexure A-4 in the O.A. which is dated 26.11.1991 in which it has been stated that the applicant was not entitled to stepping up of pay. Thereafter, the applicant addressed a representation dated 27.05.1993 to the General Manager seeking stepping up<sup>at</sup> / proforma fixation of pay on the ground that some other persons were given the same. The applicant sent a reminder on 05.09.1993 and thereafter filed this O.A. The applicant have been pursuing his case all through. In the circumstances, delay is condoned and the application is considered on merits.

9. Learned counsel for the respondents, on the other hand, mentioned that para (iii) of Board's letter no.PC-65/PP-1 dated 18.09.1965 and PC-65/PP-1 dated 19.03.1966 has drawn attention to the contents of this paragraph, which provides that if<sup>as</sup> / a result of the application of proviso II and explanation below rule 1313, the pay of the junior is higher on lower post, there would be no question of stepping up of the pay of the senior in the higher post.


10. Learned counsel for the respondents has also relied upon the judgement of Apex Court in U.O.I. and others Versus R. Swaminathan and others 1997 SCC (L&S) 1852. It has been held in this case that the seniors were not entitled to have their pay<sup>stepped</sup> / up under the government order because difference in the pay drawn by them and the higher pay drawn by the junior is not as a result of any anomaly nor it is the result of Fundamental Rules 22(I) (A) (I). In this judgement the issue was whether the juniors officiating on a higher<sup>✓</sup> post on account of their local ad-hoc promotion while seniors were not so officiating before the regular promotion.

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Such/<sup>a</sup> situation was not recognised as an anomaly by Government of India's Orders. The judgement examines Government of India's Orders dated 4.2.1966 and 4.11.1993.


11. Learned counsel for the respondents has also placed reliance on the judgement of the Apex Court in U.O.I. and others Versus Susil Kumar Paul and others AIR 1998 Supreme Court 1925. It has been laid down based on Government of India's letter dated 4.11.1993 that whether a junior had been promoted on ad-hoc basis and was getting higher pay because of the higher promotion, the benefit of stepping up will not be available to the senior.

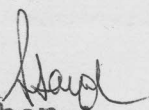
12. Hence we are back to the basic question as to whether the benefit of Board's letter dated 18.9.1965 and 19.03.1966 and 19.03.1966 which have been referred to earlier are applicable in this case or not. This paragraph also envisages a situation whether a senior employee of one seniority group maintained locally is promoted earlier to a higher post on the basis of all railway seniority, he can get his pay stepped up with reference to the junior belonging to the same seniority group in the lower post which was maintained locally. The situation in the case before us is not what is envisaged in this paragraph. The applicant admittedly was not promoted on ad-hoc basis in 1977 because he was in a different division and came to be subsequently promoted on ad-hoc basis and on fixation of pay, the junior was fixed higher because he has started receiving pay in the scale of Rs.550-750/- earlier. Therefore, the applicant is not entitled to the benefit of Rule 1316 of Indian Railway Establishment Code VOL II. The



application is, therefore, fails and is dismissed.

13. There shall be no order as to costs.

  
Member-J

  
Member-A

/Neelam/