

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 21st day of October 2010

Original Application No. 227 of 2002

Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr. S.N. Shukla, Member (A)

N.R. Sharma, S/o Sri Motilal Sharma, Retired Sr. Accounts Officer (Const) C. Rly Bhopal under FA & CAO Central Rly Mumbai, R/o 1380 (1) Bhayanchand Colony, Sipri Bazar, Jhansi (UP).

..... **Applicant**

By Adv: Sri A.D. Prakash and Sri H.P. Pandey

V E R S U S

1. Union of India through General Manager, Central Rly, Hqrs, Office Central Rly Mumbai, CST.
2. Financial Advisor & Chief Accounts Officer Central Rly, Mumbai.

..... **Respondents**

By Adv: Sri K.P. Singh.

O R D E R

Delivered by Hon'ble Dr. K.B.S. Rajan, Member (J)

The applicant was promoted to the post of Section officer in the then grade of Rs 500 – 750 w.e.f. 16-12-1966. This scale of Rs 500 – 750 was in the wake of the III Pay Commission Recommendations revised to Rs 700 – 900, with a further selection grade scale of Rs 775 – 1000/- called Senior Section Officer, the later being purely to avoid stagnation in the cadre. This selection grade had intermediate degree of 'non functional' and 'functional', In the IV Pay Commission, the two pay scales i.e. Rs 700 – 900 and Rs 775-1000 were merged together to form a single revised grade of Rs 2000 – 3200. The IV Pay Commission's recommendations came into effect from 01-01-1986. Persons in the non functional grade on personal basis were promoted to functional grade as Senior Section Officers (Accounts) w.e.f. 01-04-1987 and while so promoting, these persons were afforded the

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benefit available under F.R. 22 -C, under the Railway Board Circular dated 20-09-1986 (Annexure A-2). Curious enough, those who were promoted from non functional to functional grade prior to 20-09-1986 were not afforded the benefit of FR 22-C as at that time the order dated 20-09-1986 was not available. Perhaps to rectify this anomaly, Annexure A-5 of the Railway Board dated 18-02-1990 came to be passed. The said order inter alia reads as under:-

"The question of stepping up of pay of senior with reference to his junior in such cases was under consideration of Board of some time past. It is now been decided in consultation with Ministry of Finance and Department of Personnel and Training that the pay of senior staff may be stepped up on par with that of juniors in cases where the anomaly of seniors drawing less pay than juniors in cases where the anomaly of seniors drawing less pay than juniors has arisen consequent on the introduction of the intermediary functional grade of Rs. 2,000-3,200 with effect from 1.4.1987 in the Organised Accounts Cadre (80:20), subject to the following conditions.

- (i) *The scale of pay of the lower grade (before introduction of intermediary posts) and the higher post in which the junior and senior are entitled to draw should be identical;*
- (ii) *The senior person should have been eligible for appointment to the intermediary post but for this working in the higher grade on or before the date on which the junior was appointed by the intermediary post;*
- (iii) *The junior person should not have drawn more pay than the senior by virtue of fixation of pay under normal rules or any advance increments granted to him in the lower posts as a result of the junior person holding the intermediary post at the time of his promotion to the higher grade;"*

2. The applicant submitted his representation dated 27-12-1988 vide annexure A-6. Citing an order dated 17-01-1989, respondents rejected the claim stating that the applicant was not eligible for fixation on 01-01-1986. The applicant thereafter requested through communications that his stepping up of pay be effected w.e.f. 01-04-1987. In response, he was informed that since similar representations have been received from various corners, the matter has been referred to the Railway Board, vide Annexure A-8 letter dated 21-05-1992. The applicant by then superannuated w.e.f. 30-11-1991.

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3. It was by certain orders passed in 1993 followed by 1995 that the benefit of fixation under FR 22 (C) was extended to serving and other employees. Annexure A-9 refers. With the sanguine hope that the respondents would then consider the case of the applicant, he had penned another representation, vide Annexure A-10. This was however rejected by the FA & CAO on 23-02-1999, followed by another communication dated 27th October, 2001. While the first order related to the reason that the applicant was not drawing less pay than any of his juniors, the second one was as to the non availability of fresh option as sought for by the applicant.

4. Aggrieved by the above order of rejection, the applicant has filed this O.A. on the following grounds:-

- (a) Applicability of FR 22 C to his case,
- (b) If for the benefit of FR 22 C under the order dated 21-08-1986 (Annexure A-2) promotion was to be effected posterior to the said date of 21-08-1986, the same is fulfilled in his case as his promotion anterior to the said date of 21-08-1986 was only on officiating basis and it was on regular basis only posterior to the afore said date of 21-08-1986.
- (c) In so far as exercise of option in the wake of the acceptance of the Fourth Pay Commission is concerned the same was given w.e.f. 01-10-1986, but by that time, the Board's letter dated 20-09-1986 was not published.
- (d) Fixation of cut off date as those promoted prior to and posterior to 01-04-1987 is discriminatory and violative of Art. 14 and 16 of the Constitution of India. The applicant has been put to heavy and recurring loss due to the discrimination meted to him.



5. Respondents have contested the O.A. Their stand is as under:-

- “1. Railway Board vide their letter No. PC/IV/86/IMP/30 dated 18.06.87 have destracted the Accounts cadre of SO(A/cs), ISAs, TIAs by ratio of 80% of posts in the higher grade of Rs. 2000-3200 (RPS) and 20% in the lower grade of Rs. 1640-2900(RPS) with effect from 01.04.87. The post in grade Rs. 2000-3200(RPS) were made functional from 01.04.87. The persons who were holding selection grade in the grade Rs. 775-1000 (RS) were allowed suitable revised grade of Rs. 2000-3200 (RPS) on personal basis with effect from 01.01.86. The persons who are in nonfunctional selection grade Rs. 2000-3200 (RPS) on personal basis as SO(A/cs), ISAs and TIAs were promoted to functional grade as Sr. SOs, Sr. TIAs and Sr. ISAs with effect from 01.04.87. The fixation of pay on promotion as Sr. ISAs Sr. TIAs, Sr. SOs was allowed under FR-22c in terms of Railway Board's letter No. PC-IV/86/IMP/42 dated 20.09.86 since these posts are considered as functional posts.
2. The applicant was promoted to Group 'B' service as AAO with effect from 27.08.86 and he had opted for fixation of pay after accrual on next increment in the substantive grade i.e. from 01.10.86.
3. Railway Board vide their letter dated 14.08.89 had clarified that as regards persons who were holding the non -functional selection grade of Rs. 2000-3200(RPS) on personal basis and promoted to Group 'B' service before 01.04.87, there is no question of application of FR-22C in the substantive grade with effect from 01.04.87 as there is no appointment on functional basis in such cases involving promotion as per normal rules. Since the applicant had already been promoted to Group 'B' service before 01.04.87, his pay cannot be re-fixed in the substantive grade as Sr. Section Officer.
4. Railway Board vide their letter No. PC/IV-86/IMP/42 dated 18.12.90 have allowed stepping up of pay of persons who were holding non-functional selection grade on personal basis and promoted to Group 'B' service as AAO before 01.04.87 and drawing less pay than their juniors who were promoted to Group 'B' service after 01.04.87 and getting fixation under FR 22C in substantive grade, on proforma basis but the actual benefit would be admissible from the date of issue of Board's letter dated 18.12.90, irrespective of date of anomaly. As the applicant was not drawing less pay than his juniors, he was not entitled for stepping up of pay.”

6. The applicant has filed his rejoinder to the counter, maintaining his contentions and grounds of challenge of the impugned order and also furnished a chart indicating the difference in pay drawn by his junior and himself, (his being less than that of his junior).

7. Counsel for the applicant, in a very brief but crisp manner submitted that the discrimination meted to the applicant cannot be permitted for the following reasons:-

(a) The cut off date is discriminatory.



- (b) Assuming that the same is not so, even then, the applicant was not functioning in a substantive capacity as AAO when he was promoted to that post prior to 20-09-1986; and, in such pay matters, the position of holding substantive post alone is considered.
- (c) The respondents are not right in contending that no junior had been drawing less pay. They have failed to compare the pay of the applicant with that of his junior one R.G. Sabhani.
- (d) Second option is available but the respondents have stated as if such an option is not available. In this regard para 3 of the Railway Board letter dated 28-07-1999 is relevant and the same reads as under:-

"3. The matter has been examined carefully by the Board and it has been decided that the Section Officer (Accounts), Inspector of Stores Accounts and Inspector of Station Accounts (TIA) in the scale of Rs 2000 – 3200 promoted to Group B posts during the period from 1-1-1986 to 31-03-1987 and whose pay to be fixed under Rule 1313 (FR 22(l)(i) – RII 1987 Edition may be given another opportunity for exercising fresh option for fixation of pay."

8. Counsel for the respondents submitted that the applicant has not preferred the OA within time. His claim is to refix his pay sometimes in 1987 and afford higher pay and consequently higher pension. Apart from this technical objection, the counsel argued that the applicant is not entitled to any relief even on merit and he was accordingly informed well in time. He was not drawing less pay than his junior and that no subsequent option could be granted to him.

9. Arguments were heard and documents perused. First as to the limitation aspect. It is seen that the respondents have issued the order relating to stepping up of pay vide order dated 18-02-1990 referred to in Annexure 8 of the counter. Again, in 1992 communication was given to the



applicant that in pursuance of representation by some retired Railway employees, the matter has been referred to the Railway Board, vide communication dated 21st May 1992 at Annexure 8 of the O.A. Again, there was some amendment to the SOO in regard to the subject matter in question, vide SOO 99/95 at Annexure A-9. Lastly, the applicant filed his representation which has been finally rejected in 1999 followed by another letter in 2001, vide Annexure A and A 1 respectively. In any event, as this relates to fixation of pay which has proximate link with the quantum of pension, this is a recurring cause of action caused by wrong fixation of pay. Thus, the decision of the Apex Court in the case of **M.R. Gupta vs Union of India (1995) 5 SCC 628** applies. Again, Relief, if given to the applicant on the basis of the merit of the case is not going to affect any third party interest. In this regard, reference is invited to the decision in the case of **Union of India v. Tarsem Singh,(2008) 8 SCC 648** wherein the Apex Court has explained the point in the following words:-

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring-successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

10. Thus, limitation does not operate against the case of the applicant herein.

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11. As regards merit, it is to be pointed out here that the respondents have not considered the contention of the applicant that his pay was less than that of R.G. Sabhani, vide Annexure RA-1. Again, the respondents have not considered the Board's letter dated 28-07-1999 relied upon by the applicant's counsel.

12. The principle underlying the stepping up of pay has been given by the Apex Court in many a case. Even as recently as in 2009, in the case of **Gurcharan Singh Grewal v. Punjab SEB, (2009) 3 SCC 94**, the Apex Court has held it is settled principle of law "*that a senior cannot be paid a lesser salary than his junior.*" In that case, the Court has further added "*even if there was a difference in the incremental benefits in the scale ... such anomaly should not have been allowed to continue and ought to have been rectified*" so that the pay of senior was also stepped up to that of the junior.

13. Vide the judgment of the Apex Court in **Union of India v. O.P. Saxena, (1997) 6 SCC 360** the principle of stepping up of pay has been explained with reference to the relevant rule in the Railways and the same is as under:-

"The principle of stepping up of pay is contained in Rule 1316 of the Indian Railway Establishment Code Vol. II which also contains conditions which have to be followed while ordering stepping up. Two of the conditions contained therein are:

- (a) *Both the senior and junior officers should belong to the same cadre and the post in which they have been promoted on a regular basis should be identical in the same cadre;*
- (b) *The scales of pay of the lower and higher posts in which they are entitled to draw should be identical.*

11. By a Presidential decision given under Rule 1316 the aforesaid conditions were further explained as follows:

"If as a result of application of the proviso to and the exception below Rule 1313 (FR 22) the pay of the junior is more than that of the senior in the lower post, there would be no question of stepping up the pay of the senior in the



higher post. If despite the application of the proviso to and the exception below Rule 1313 (FR 22) the junior's pay is less than that of the senior and on promotion the former's pay happens to be greater than the pay of the latter by virtue of the provisions of Rule 1316 (FR 22-C), stepping up will have to be done with reference to the actual pay drawn by the junior in the higher post."

14. There are certain exceptions whereby senior drawing less pay than junior would not constitute any anomaly. Such exceptions are such that there is an element of act or omission by the senior concerned. Some of the instances are as under:-

- (a) Where a senior proceeds on Extraordinary Leave which results in postponement of date of next increment in the lower post, consequently he starts drawing less pay than his junior in the lower grade itself. He, therefore, cannot claim pay parity on promotion even though he may be promoted earlier to the higher grade:
- (b) If a senior foregoes/refuses promotion leading to his junior being promoted/appointed to the higher post earlier, the junior draws higher pay than the senior. The senior may be on deputation while the junior avails of the ad hoc promotion in the cadre.
- (c) 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 the senior cannot claim stepping up of pay on a par with the junior.

15. The case of the applicant does not fall under any such category. Again, without rebutting the contention of the applicant the respondents cannot negate the claim of the applicant. For example,



as to the availability of opportunity to exercise fresh option, the applicant has brought to the notice of this Tribunal the existence of Board's letter dated 28-7-1999. Of course, this has not been in the pleadings. Nevertheless, since reliance has been placed on the respondent's policy letter, it is only appropriate that the respondents consider the same.

16. The applicant had retired from service as early as in November, 1991. His benefit is only with reference to refixation of pension if stepping up of pay is allowed. Verification of the details of pay drawn by the applicant and his junior may not pose insurmountable problems to the respondents. Service records of the individuals (viz the applicant and his junior mentioned in the RA1) must be available with the respondents. A mere comparison would suffice. Again, option made available vide the Railway Board letter 28-07-2009 may also be verified and the same was so issued, the applicant should be given an opportunity to exercise his option.

17. In view of the above, interest of justice would be met if the respondents are given the following directions:-

- (a) The service records shall be verified to compare the pay of the applicant and his junior and if the applicant's pay was less than that of the junior the anomaly should be rectified.
- (b) On the basis of the stepped up pay, the applicant's pension shall be worked out.

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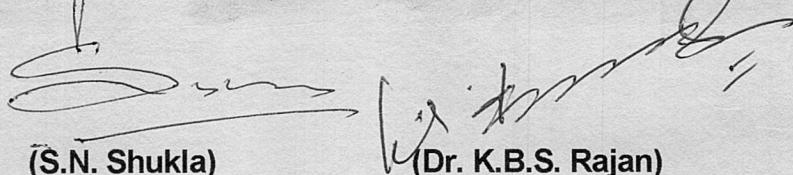
(c) The applicant would not be entitled to arrears of pay and allowance during his service career nor is he entitled to any arrears of pension upto the date of filing of the OA. His entitlement to arrears of pension would commence only w.e.f. his pension for the month of March, 2002 payable on or after 1st April, 2002 as he had moved this O.A. only on 25th February, 2002.

(d) The applicant would be entitled to any enhancement in the pension arisen out of the increase in the last pay drawn as per the latest rules governing pension.

(e) Difference in the other terminal benefits such as gratuity or leave encashment too would not be admissible as the applicant had retired as early as in 1991 and such a benefit is not a recurring feature unlike monthly pension.

18. Accordingly we dispose of the O.A. with the above directions which the respondents shall comply with, within a period of four months from the date of communication of this order.

19. Under the circumstances, there shall be no orders as to cost.



(S.N. Shukla)

Member (A)

(Dr. K.B.S. Rajan)

Member (J)

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