

[RESERVED]

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 1st DAY OF June 2012)

Present

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

ORIGINAL APPLICATION NO. 1198 OF 2006
(U/S 19, Administrative Tribunal Act, 1985)

Gyan Chand Khanna, aged about 57 years, S/o Late P. C. Khanna, R/o 601, Malvia Nagar, Allahabad.

.....Applicant

V E R S U S

1. Union of India, through General Manager, North Central Railway, Allahabad.
2. Divisional Railway Manager, North Central Railway, Allahabad.
3. Divisional Personnel Officer, North Central Railway, Allahabad.
4. Divisional Commercial Manager, North Central Railway, Allahabad.
5. Shri R. P. Singh, aged about 49 years, s/o Shri Ram Kripal Singh, C/o Senior Divisional Commercial Manager, North Central Railway, Allahabad.

.....Respondents

Advocates for the applicants:- **Shri K. K. Mishra.**

Advocate for the Respondents:- **Shri B. Tiwari.**
Shri S. K. Anwar.

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ORDER**(DELIVERED BY:-****HON'BLE MR. SANJEEV KAUSHIK, MEMBER-J)**

By means of present O.A. applicant seeks following reliefs:-

"i). That this Hon'ble Court may graciously be pleased to direct the respondent extend the benefit of Judgment and order dated 1.12.2000 passed in O.A. No.347 of 1997 R. P. Singh and others Vs. Union of India and others in the light of Judgment of the Hon'ble Supreme Court passed in the case of Union of India and others Vs. P. Jagdish and others 1997 (3) SCC Pg-176 and Union of India and others Vs. B. Sarkar 1999 SCC (L&S) Pg-936.

ii). That this Hon'ble Court further be pleased to direct the Respondents No.1 to 4 to step up the pay of the applicant to Rs.1640/- per month with effect from 1.12.93 when the pay of his Juniors i.e. Respondent No.5 namely Mr. R. P. Singh fixed at Rs.1640/- per month, with all consequential arrears.

iii). That this Hon'ble Court further be pleased to pass such other and/or further order as may be deemed necessary in the circumstances of the case.

iv). Award costs to the applicant."

2. The facts summarized as follows:-

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The applicant joined the respondents' department as Junior Clerk in the year 1979 on compassionate ground. He along-with other eligible candidates were given proforma promotion to the post of Senior Clerk w.e.f. 21.10.1982. The pay of the applicant along-with other six eligible candidates were fixed @ Rs.360/- w.e.f. 21.10.1982 in the pay scale of Rs.330-560 (OS) vide Office noting dated 12.3.1987. He was promoted in the grade of Head Clerk in the grade of Rs.1400-2300/- vide order dated 3.11.1993. One Shri Shiv Kant Shukla was promoted as Head Clerk w.e.f. 13.12.1993 and similarly situated Shri B. P. Tiwari was also promoted as Head Clerk w.e.f. 09.01.1995. The Head Clerks junior to the applicant in the grade of Rs1400-2300/- filed Original Application No.347 of 1997 for removal of anomaly in the pay scale of the persons junior to the applicant. It is averred that since the persons junior to the applicant are getting higher pay than the senior (applicant), therefore, the O.A. was filed. As per Railway Board's letter No.PO/10/79/SP/UPG dated 14.01.1981 circulated by the General Manager, the senior most senior clerk is to be granted a special pay of Rs.70/- per month after pinpointing of such posts and as such the benefits of special pay of Rs.70/- per month has been given to senior most Senior Clerks (Annexure-A-4). The above O.A. i.e. O.A. No.347 of 1997 was allowed vide order dated 01.12.2002 (Annexure-A-

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6). The applicant made representation on 19.04.2006 to the respondents to extend the benefits granted by the Tribunal and remove the anomaly. When respondents did not remove the anomaly, then applicant approach this Tribunal by way of present Original Application.

3. Pursuant to notice respondents filed detailed Counter Affidavit. In para No.7 of the Counter Affidavit in reply to para Nos.4.8 and 4.9 of the Original Application respondents submitted that the salary of the juniors has rightly been fixed in the higher scale than the senior employees on account of counting the special pay of Rs.70/-per month which he was drawing prior to promotion. Therefore, applicant cannot allege that his pay has been fixed less than his juniors. In para No.9 it is averred that 10% of the total sanctioned strength of the Senior Clerk are granted special pay of Rs.70/- Per month. In para 15 respondents have categorically stated that in terms of rule 1316 of I.R.E.M. Vol-II and as per Railway Board's letter dated 31.10.1988 applicant is not entitled for stepping up/equal to the pay what their juniors are getting. Para 7, 8, 9 and 15 reads as under:-

"7. That the contents of paragraph nos. 4.8 and 4.9 of the original application as stated are incorrect and denied. It is submitted in reply thereof that the pay of Junior employees

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was correctly fixed higher than Sr. Employees on account of counting the special pay of Rs.70/-p.m. which he was drawing prior to his promotion for the purpose of pay of junior in higher grade w.e.f.03-11-93 whereas the applicant of present O.A. along-with applicants of O.A. No.347/97 were straightway promoted as Hd. Clerk Gr. 1400-2300 w.e.f. 3-11-93 without getting special pay Rs.70/- per month. As such the pay of Seniors were correctly fixed lesser than junior on their date of promotion.

8. That the contents of paragraph no.4.10 of the original application as stated are incorrect and denied. The reply has already given in preceding paragraphs are correct.

9. That the contents of paragraph no.4.11 of the original application as stated are incorrect and denied. It is submitted in reply thereof that special pay Rs.70/- was to be given to the senior most senior clerk in grade Rs.1200-2040/- RPS to the extent of 10% of total sanctioned post of senior clerk Grade Rs.1400-2040/- RPS. The applicant while working as Senior Clerk Grade Rs.1200-2040(RPS) was straightway promoted as Head clerk Grade 1400-2300/- without sanction of special pay Rs.70/- in his favour and without attending the work of complex and important nature for want of vacant post of special pay Rs.70/-. On the other hand after effect of promotion of the applicant

alongwith others and on occurrence of vacancies of 10% post of special pay Rs.70/- the next senior most senior clerk were sanctioned special pay Rs.70/- on account of attending the work of more complex and important nature.

15. That the contents of paragraph nos.4.19 and 4.20 of the original application as stated are incorrect and denied. It is submitted in reply thereof that rule 1316 of IREC Vol.II does not apply in the case of applicant. The Railway Board vide their letter No.PC 111/79 SP-1/UDC dated 31.10.88. Photo copy enclosed have already decided that if the pay of junior employees is increased as a result of counting of special pay Rs.70/- per month than Senior Employee, in such circumstances the pay of Senior is not to be stepped up in reference to pay of Junior Employees. As such the applicant is not entitled to step up of his pay in reference to the pay of his junior whose pay has been increased as a result of counting of special pay rs.70/- as pay. A true copy of Rly Board's letter dated 31.10.88 and 27.11.87 are being filed herewith as Annexure Nos.CA-1 and CA-2 to this counter reply respectively."

4. We have heard Shri K. K. Mishra, learned counsel for applicant and Shri B. Tiwari, learned counsel for respondents.

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5. Shri Mishra, learned counsel for applicant vehemently argued that it is settled law that a junior cannot get more salary than what his seniors are getting, therefore, the respondents are bound to remove the anomaly by fixing the pay of the senior equal to what his juniors are getting. To substantiate his arguments, he placed reliance upon the judgment of Union of India and Ors. Vs. B. Sarkar 1999 SCC (L&S) 936.

6. On the other hand Shri B. Tiwari argued that the Special pay is attached to 10% post of Senior Clerk and those employees who worked there are entitled for having special pay of Rs.70/-, since the applicant did not work on that post, therefore, he was getting less pay than the persons who worked on the pinpointed posts. He further argued that in terms of Railway Board's letter dated 11.07.1979 only those applicants is to be given the benefit who worked on the pinpointed post and the total number of such post posts should be limited to 10% of the posts in the seniority group of the respective clerical cadre. He placed reliance on the judgment of the Hon'ble Apex Court in the case of Chief Commissioner of Income Tax (Administration), Bangalore Vs. V. K. Gururaj and Ors. reported as (1996) 7 SCC 275.

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7. We have considered the rival submissions and have gone through the record. The questions arise for our consideration is whether the applicant is entitle for stepping up of pay and to fix his salary equal to what his junior's are getting on the principal of Steeping Up?

8. 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 entitle 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

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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 re-fixation 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 re-fixation of pay. This principle becomes applicable when the junior officer and 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 judgment 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 herein below:

(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:

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"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 his 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

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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 of Head Clerks and their pay was fixed on higher slabs than that of the respondents."

9. We also find support from the judgment 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 is placed upon judgment of the Hon'ble Apex Court in the case of Gurcharan Singh Grewal vs. Punjab Electricity Board 2009 (3) SCC 94. 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:

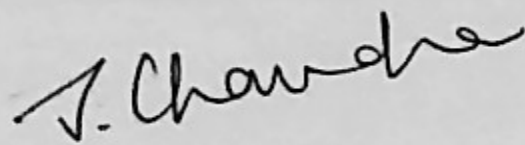
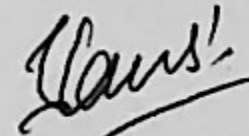
"4 We have heard Mr. Anil Rathee, learned counsel for the petitioners.

*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."*

10. Even otherwise the action of the respondents in not extending benefit of stepping up to the applicant is in violation of Article 14 of Constitution of India as admittedly person junior to the applicant i.e respondent No. 5 when was getting lesser salary when his junior was given stepping up pursuance to the order of this Tribunal in O.A No. 347/1997 decided on 01.12.2000 and his salary was fixed at par with his immediate junior . Once the respondents have accepted the principle that senior cannot get the lesser salary than his junior then they have to apply the principle of stepping up to other similarly situated persons also. In case in hand

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respondent No. 5 admittedly junior to the applicant getting higher salary therefore, in terms of the judgment of Hon'ble Supreme Court in case of P. Jagdish and Ors (Supra) the salary of the applicant is to be fixed at par with that of his junior i.e. respondents No. 5. In view of above O A is allowed, respondents are directed to fix salary of the applicant in view of the observation made above within a period of three months from the date of receipt of certified copy of this order. There shall be no order as to cost.

**Member-A****Member-J**/Dev/