

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
AHMEDABAD BENCH

**O.A. NO.** 311 OF 1992

~~**T.A. NO.**~~

DATE OF DECISION 9.1.1995.

Shri Durlabhbai Shaladia Petitioner

Mr. P.K. Handa Advocate for the Petitioner (s)

Versus

Union of India & Others Respondent

Mr. N.S. Shevde Advocate for the Respondent (s)

**CORAM**

The Hon'ble Mr. V. Radhakrishnan, Member (A)

The Hon'ble ~~Mr.~~ Dr. R.K. Saxena, Member (J)

**JUDGMENT**

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Shri Durlabhbai Shaladia,  
Block No.2,  
Bhakti Nandan Park Society,  
G.I.D.C., Odhav,  
Ahmedabad.

..... Applicant

(Advocate : Mr. P.K. Handa)

Versus

1. Union of India,  
Through General Manager,  
Western Railway,  
Churchgate,  
Bombay - 400 020.
2. Divisional Railway Manager,  
Western Railway,  
Pratapnagar,  
Vadodara - 390 004.
3. Sr. Divl. Commercial Supdt.,  
DRM Office, Western Railway,  
Pratapnagar,  
Vadodara - 390 004.

..... Respondents

(Advocate : Mr. N.S. Shevde)

J U D G M E N T

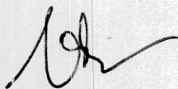
O.A. NO. 311 OF 1992

Date : 09.01.1995.

Per : Hon'ble Mr. V. Radhakrishnan, Member (A)

Heard Mr. P.K. Handa and Mr. N.S. Shevde, learned advocates for the applicant and the respondents respectively.

2. The applicant was working as Head Book Clerk at the Railway Booking Office at Ahmedabad, when he filed the O.A. He claims that he is senior to one Shri S.P. Gupta. Shri Gupta was promoted as Sr. A.C.C. in March 1983 and the applicant was promoted in June 1981. However, the pay of



the applicant was Rs.455/- per month on 1-1-84 while the pay of his junior Shri S.P. Gupta was fixed at Rs.500/- per month. Hence the applicant prays for stepping up his pay to the level of his junior i.e. Rs.500/- per month from 1-1-84. The applicant has quoted his number in the seniority list as 107 while that of Shri S.P. Gupta as 126 (Seniority list Annexure A/1).

3. To support his contention, the applicant has quoted note no.7 of the recommendation of the Fourth Pay Commission which was accepted by the Railway Board and published in the Extraordinary Gazette dated 20-10-1985 which is reproduced below:-

"Note 7:- In cases, where a senior railway servant promoted to a higher post before the 1st day of January, 1986 draws less pay in the revised scale than his junior who is promoted to the higher post on or after the 1st day of January, 1986, the pay of the senior railway servant should be stepped up to an amount equal to the pay as fixed for his junior in that higher post. The stepping up should be done with effect from the date of promotion of the junior railway servant subject to fulfilment of the following conditions, namely, -

- (a) both the junior and the senior railway servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre,
- (b) the pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical, and
- (c) the anomaly should be directly as a result of the application of the provisions of Rule 2018 (FR 22-C) of Indian Railway Establishment Code, Volume II or any other rule or order regulating pay fixation on such promotion in the revised scale. If even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provisions of this Note need not be invoked to step up the pay of the senior officer."

4. The case of the applicant is that he satisfies all the conditions as per the note above and is, therefore, entitled for stepping up of pay to that of his junior. The applicant had represented to the authorities for stepping up of pay but it was rejected on the ground that his junior, Shri S.P. Gupta was promoted on ad-hoc basis and as such the applicant is not entitled for the benefit. The applicant has contested this contention. According to him, as per para 320 of IREM, ad-hoc promotions should not normally exceed four months. In case the period exceeds four months the seniormost person should be given promotion. On the other hand, his junior Mr. Gupta was continued on ad-hoc promotion for years together in violation of the rules. This resulted in higher pay fixation of Shri Gupta compared to the applicant which was unfair. He, therefore, claimed the following reliefs :-

- (i) In view of the facts mentioned in para 6 of the application, the applicant prays to quash and set aside and direct the respondents to step up the pay of the applicant equal to his junior Shri S.P. Gupta with effect from 1-1-1984 from the date of promotion in the same grade as Head Booking Clerk, with all other consequential benefits.
- (ii) Any other relief which the Hon'ble Tribunal deems fit.
- (iii) The cost of the suit may please be awarded.

5. The respondents have filed reply. They have

first taken the contention that the application is time barred. The applicant has challenged order dated 13-4-1988 and he should have filed O.A. before 13-4-1989. The O.A. is actually filed on 23-6-1992 and as such there is delay of more than three years, it should be dismissed on grounds of limitation. The respondents have admitted that the applicant was at Sr. No.69 in the seniority list compared to Shri Gupta who was at Sr. No.87. The applicant was promoted as Sr. A.C.C. on 26-3-81 and posted at Jambusar. Shri S.P. Gupta was officiating as Sr. A.C.C. at Viramgam from 29-8-79 on ad-hoc and local basis.

6. The respondents have not disputed that the applicant is senior to Shri S.P. Gupta. They have also admitted that the pay of the applicant was fixed at Rs.464/- on 1-2-86 while that of Shri Gupta was fixed at Rs.500/- per month but they have not agreed that the pay of the applicant should be stepped up on the ground that Shri S.P. Gupta drew higher pay since he had officiated as Sr. A.C.C. at Viramgam on ad-hoc and local arrangement. As he had drawn higher salary on account of ad-hoc promotion, the applicant cannot get the benefit of stepping up. They have also denied that the note No.7 of the revised pay scale rules are applicable to the applicant. They have produced Railway Board Circular dated 9-9-74 (Annexure R/1) wherein it is stated that stepping up should be resorted only if the anomaly is directly result of the applicant of rule No.2018/B (FR 22C) in the revised scales. Even if in lower post, his junior employee was drawing more

pay in the pre-revised scale than the senior by virtue of fixation of pay under the normal rules or any advance increments or due to accelerated promotions, etc., the provisions contained in this decision need not be invoked to step-up the pay of the senior employees. Since Shri Gupta was officiating as Sr. A.C.C. at Viramgam purely on local and ad-hoc basis he would continue to draw higher pay and the applicant is not entitled for stepping up his pay. The applicant has been replied to by respondents on the above lines. They have also refuted the applicant's contention that ad-hoc arrangement should not exceed four months. They have stated that ad-hoc promotions are made by way of local arrangement depending on circumstances of exigency and there is no rule that ad-hoc arrangement shall lapse after four months. They have stated that the applicant was serving at Jambusar while Shri Gupta was serving at Viramgam. According to them it was not desirable to promote a seniormost person in Division and transfer him to Viramgam as it involved change of Stations. Hence it was decided to promote Shri Gupta in the vacancy at Viramgam on local and ad-hoc basis. Shri Gupta had earned increments in the higher post due to his officiating on ad-hoc basis. Therefore, even though he was promoted at a latest stage compared to the applicant, his pay was fixed at higher scale taking into account the increments earned by him during ad-hoc officiating period. They have stated that a senior person drawing less pay than his junior can claim stepping up of his pay only if all the conditions required for the purpose are fully satisfied. Stepping up of pay is

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not admissible on ad-hoc and officiating promotions and as such the applicant is not entitled to stepping up of his pay with reference to the pay of his junior Shri S.P. Gupta. Hence they have prayed for rejection of the application.


7. The applicant has filed rejoinder. He states that his representation is rejected without giving any reason. He has repeated the fact that the applicant is senior to Shri S.P. Gupta. The applicant is at Sr. No. 106 and Shri S.P. Gupta is at Sr. No.126. Pay of the applicant is fixed at Rs.464/- per month while that of Shri S.P. Gupta is fixed at Rs.500/- per month from 1-2-1986. He has stated that the respondents should not have overlooked his case of promotion when the period of ad-hoc promotion continued for longer duration. If he had been promoted in that ad-hoc vacancy, he would have drawn increments in the higher scale and his junior would not have been drawing more pay than him. He has represented that ad-hoc promotion could not be made for longer period and if the vacancy continued for longer period, the senior person should have been considered. As the applicant was senior to Shri S.P. Gupta and as Shri S.P. Gupta's pay exceeded the applicant's pay, his <sup>such,</sup> pay required to be stepped up to that extent. As/he prayed for application to be allowed.

8. The contention taken by the respondents that the application should be dismissed due to delay in filing ~~is~~ the same cannot be accepted as salary and allowances are payable to public servant on recurring

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basis every month. The right to receive salary is a recurring right. This being so, cause of action to claim these amounts arise from month to month. The applicant's right to receive the amounts which are within limitation is entertainable. The applicant is, therefore, entitled to receive only the amounts that fall within one year prior to the filing of this application before the Tribunal.

9. There is no dispute about the fact that the applicant was senior to Shri S.P. Gupta in the grade of Assistant Commercial Clerk. There is also no dispute that Shri S.P. Gupta was promoted in the higher grade of Sr. A.C.C. The pay of Shri S.P. Gupta was fixed at higher level on his promotion after taking into account the increments he earned due to his ad-hoc promotion for a number of years. The contention of the respondents is that as Shri Gupta was promoted on ad-hoc basis the applicant's pay cannot be stepped up to that of Shri Gupta. The respondents had promoted Shri Gupta first on ad-hoc basis which continued for years together. The arguments given by the respondents for not promoting the applicant is that for a short period they need not want to transfer him from Jambusar to Virangam. However, the ad-hoc promotion of Shri Gupta really did not prove to be ad-hoc and it continued for several years. If the respondents expected the vacancy to continue for longer time, they should have, in all fairness, promoted the applicant. Had they done so, the applicant would have got the benefit of increments and on his regular promotion, he would have drawn higher pay than his junior Shri S.P. Gupta. The continuation of his junior official Shri S.P. Gupta in the higher post can by no



stretch of imagination be conceived as ad-hoc. Further even after the applicant was transferred to Viramgam, he was not given a chance to officiate in the higher post. But Shri S.P. Gupta, was continued in the higher post leading to further anomaly.

10. There is, therefore, no doubt that the applicant is entitled to stepping up of pay so that his pay <sup>on</sup> and promotion becomes equal to that of the pay drawn by his junior Shri S.P. Gupta. The applicant and his junior were in the same cadre before promotion and were promoted to identical cadre after promotion and the pay scales in the lower and higher posts were identical.

11. It is also quite clear that as per Railway Board's orders No.PC-65/PP/1, dated 18th September, 1965 and PC-60/PP/1, dated 19th March, 1966, under Rule 2018-B (F.R. 22-C) of Indian Railway Establishment Code, Volume-II, Fifth Reprint, the applicant's case is covered for stepping up of his pay. So far as the case law is concerned, it is now well settled a senior will be entitled to have his pay stepped up to the level of the pay received by his junior due to fortuitous circumstances. This is the view taken in Smt. N. Lalitha and Others V. Union of India and Others (1992) (19 ATC 559) and Anil Chandra Das V. Union of India (1988) (7 ATC 224). The view in Anil Chandra Das V. Union of India was affirmed on merits by the Supreme Court in SLP No.13994 in 1991. Ernakulam Bench of the Tribunal also has taken a similar view in P. Gangadhara Kurup and others V. Union of India and others (1993 (1) ATJ 165). The authority of Govt. of India notification as per Note 7 of the Pay Commission recommendation quoted by Shri Handa

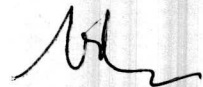
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however, does not apply to this case.

12. In the result, the application is allowed. The applicant is entitled to proforma fixation of pay w.e.f. 1-1-84 i.e. the date of upgradation of the post, and his pay will be stepped upto the stage of Rs.500/- per month i.e. the pay of his junior, Mr. S.P. Gupta was getting from that date in the scale of Rs.425-640 (R). The applicant is also be entitled for all consequential benefits including retirement benefits, as a result of the stepped up pay. However, he will be entitled to payment of arrears only from 26-3-91 i.e. one year prior to the date of filing the application. The respondents are directed to comply with both the directions within a period of three months from the date of receipt of this order. No order as to costs.



(Dr. R.K. Saxena)  
Member (J)



(V. Radhakrishnan)  
Member (A)

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