

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

OA/367/92

Date of Decision : 10/01/2000

Shri. R. S. Saharan : Petitioner (s)

Mr. K. K. Shah : Advocate for the petitioner(s)

Versus

Union of India & Ors. : Respondent(s)

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

CORAM

The Hon'ble Mr. V. Ramakrishnan : Vice Chairman

The Hon'ble Mr. P.C. Kannan : 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? _____

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R. S. Saharan
Adult, employed as IOW, Gr. I at
Ahmedabad, C/o. Executive Engineer
(Central) (Const.)
Western Railway
Ahmedabad.

-: Applicant :-

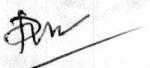
(Advocate : Mr. K. K. Shah)

Versus

1. Union of India,
Through the General Manager,
W.Rly., Headquarter Office,
Church gate,
Mumbai.
2. The Chief Engineer
W.Rly., Headquarter Office,
Church gate,
Mumbai.
3. The Chief Engineer (Survey & Const.)
W.Rly., Church gate,
Mumbai.
4. The Chief Engineer (Survey & Const.)
W.Rly., Ahmedabad.

-: Respondent :-

(Advocate : Mr. N. S. Shevde)



JUDGMENT

O.A 367 OF 1992

Date : 10/01/2000

Per Hon'ble Shri. P.C. Kannan : Member (J).

This matter was adjourned from time to time and at the request of the counsel for the applicant, the matter was adjourned to 25.11.99 finally. On 25.11.99, the matter was again adjourned to 07.12.99 and again at the request for the counsel for the applicant, the matter was further adjourned to 10.12.99. On 10.12.99, the counsel for the applicant had filed a leave note. As it is a 1992 matter and adjourned from time to time, it is proposed to dispose of the O.A on the basis of available material.

2. The applicant has filed the above O.A under Section 19 of the Administrative Tribunals Act and prayed for the following reliefs :-

" (i) To direct the respondents to implement the orders of stepping up and fixation of pay of the applicant as approved by the competent authority in the impugned order dated 09.10.1990 which is uncomplied with till this day and direct the respondents to grant the benefit of stepping up of pay from the day Shri. Uprit has been given benefit of high pay.

(ii) To declare that the stepping up of pay as in the impugned order is arbitrarily and discriminatorily held up to which the applicant is entitled."

3. The case of the applicant is as follows :- (i) The applicant is presently working as I.O.W. Grade - I in the scale of 2000-3200 under the Chief Engineer (Survey and Construction), W.Riy., Ahmedabad. Earlier, he was working in Kota Division, under the Executive Engineer Survey and Construction. His grievance is regarding the anomaly in respect of his pay that arose as one of his juniors Shri. A.K. Uprit, I.O.W. (Kota Division) was promoted overlooking the applicant to the Grade II in the grade of 550-750 and subsequently in the next grade 700-990 (revised pay 2000-3200). By order dated 25.08.86 (Annexure A-1), the applicant was promoted to the post of I.O.W Grade-I on ad-hoc basis. By the same order, Shri. A.K. Uprit was reverted as I.O.W. Grade II in the scale of 550-750. In the facts and circumstances, the applicant states that as the respondents having realised the mistake of promoting the junior earlier, and subsequently, issued an order to promote the applicant, ~~they~~ they ought to have granted stepping up and fixation of pay to that of the junior Shri. A.K. Uprit. For this purpose, the applicant has given following details :-

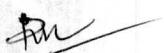
<u>Incidence</u>	<u>Shri R. S. Saharan</u> <u>(Applicant)</u>	<u>Shri. A. K. Uprit</u>
<i>Date of Appointment</i>	01.09.79	04.09.79
<i>Promotion as IOW Gr. II, Scale Rs.550-750</i>	01.08.84 (S & C)	26.10.81 (Division)
<i>Pay fixed at</i>	Rs.550/-	Rs.550/-
<i>Promotion as Offg. IOW, Gr. I, Scale Rs. 700-900 / (R) / 2000 – 3200 (RP)</i>	23.09.86	06.10.84

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<i>Pay Fixed</i>	<i>Rs.2000/-</i>	<i>Rs.700/- (Old) (Rs.2240/- w.e.f. 01.01.86 fixation in R/P. Rs. 2300/- from 01.10.86)</i>
<i>Regular promotion as IOW, Grade - I</i>	<i>30.11.89</i>	<i>30.11.89</i>
<i>Gr. I, Scale Rs.2000-3200 (RP)</i>	<i>Rs.2180/-</i>	<i>Rs.2,525/-</i>

In the light of the Board's circular dated 19.03.66 read with circular dated 07.08.90, the applicant submits that he should be granted stepping up of pay with that of Shri. Uprit who was his junior.

4. The respondents in their reply stated that the applicant is not eligible for stepping up of his pay to that of Shri. Uprit as the conditions for stepping up are not satisfied in the case of the applicant. They also stated that the claim is barred by limitation on the ground that the claim of the applicant was rejected on 09.10.90 and the applicant filed the O.A on or about Sept ' 92 beyond the period of limitation. The respondents further stated that the applicant is working in Survey and Construction department which is a temporary department for execution of projects. There were also separate supervisory staff like that of the supervisory staff in the Survey and Construction in the open line division. The seniority of the open line and Survey and Construction line are separately maintained. Promotion to I.O.W. Grade-I seniority is given on the basis of seniority maintained at the zonal level. It is stated that while Shri. Uprit had his lien / seniority in Kota Division as per the orders of the Head Quarter Office, General Manager, Church gate, the applicant was working in the Survey and Construction division under the Executive Engineer (Survey and



Construction) – I – Kota / Deputy C.E. (KCP) Chittaurgarh / C.E. (S & C), Church gate. As Mr. Uprit was working as I.O.W. up to the scale of 500-750 in the Kota Division and the applicant was not working in the same division, the respondents submit that the applicant cannot make any reference to the case of Mr. Uprit for the purpose of claiming stepping up of his pay fixation. They also further stated that Shri. Uprit and the applicant were working in the different divisions. They also pointed out that the applicant has not produced seniority list of the Kota Division to show that he belongs to Kota division and that Shri. Uprit was junior to him. It is also stated that the applicant cannot compare his case with that of Shri. Uprit as Shri. Uprit was promoted to the post of I.O.W Grade II in Kota division on 26.10.81 as per the availability of vacancy in the said division whereas the applicant was promoted as I.O.W. Grade II in the Survey and Construction department from 01.08.84 on the availability of the vacancy. The respondents submitted that the first condition for stepping up of pay is that a senior employee with reference to junior employee and both belong to the same cadre. This condition has not been satisfied in the present case as the applicant and Mr. Uprit belong to different divisions. In the facts and circumstances, the respondents submit that the claim of the applicant is devoid of any merit as the requirement of the Railway Board's circular has not been satisfied.

5. With regard to the order dated 25.08.86 (Annexure A-I) promoting the applicant to the post of Grade – I, the respondents stated that the seniority for the purpose of promotion to I.O.W. Grade – I is at the zonal level and the competent authority reviewed the promotion of Shri. Uprit as Grade – I and found that he being junior, was reverted and the applicant was promoted to I.O.W. Grade – I purely on



ad-hoc basis pending regular selection. It was also stated that while Shri. A.K. Uprit was promoted as I.O.W. Grade - I on 06.10.84, the applicant was promoted only w.e.f. 20th March ' 1986 on ad-hoc basis.

7. We have carefully examined the pleadings and the relevant records. The stepping up of pay is granted only when the following conditions are fulfilled which are as follows :-

- (i) *Whether the juniors and seniors belonged to same cadre when the promotions of the juniors were ordered.*
- (ii) *Whether the promotions of the juniors were on regular basis.*
- (iii) *Whether there was any administrative error in over-looking the seniors for promotion to higher grades on account of wrong assignment of relative seniority etc ;*

8. The correspondence exchanged between the different officers of the respondents (Annexure R 1 to R 11) shows that the Chief Engineer Survey and Construction recommended the case of the applicant for stepping up of pay of the applicant. However, the same was rejected on the ground that the applicant has not fulfilled the conditions laid down by the circular of the Railway Board. The ^{letter} _(R-2) ^{dated 20.11.80} _{addressed to the Chief Executive} ^{Engineer} reads as follows :-

"Consequent upon notification of the provisional panel of IOW Gr. I, Scale Rs.700 – 900 (RP) vide this office letter No. E / E / 1025 / 5 / 9, Vol.ii, dtd., 11.03.80 and 04.07.80, a no. of representations from the empanelled employees being received by this office for grant of proforma fixation of pay with reference to the pay of their juniors on



the panel who may be drawing more pay in Gr. Rs.700-900 @ on account of their officiating in the grade much before their employment.

2. *The contention of these employees, that because their juniors are drawing more pay, they are eligible to draw the same higher rate of pay is not correct as there are other factors also for considering grant of proforma fixation of pay, which are as under :-*

- (i) *Whether the juniors and seniors belonged to same cadre when the promotions of the juniors were ordered.*
- (ii) *Whether the promotions of the juniors were on regular basis.*
- (iii) *Whether there was any administrative error in over-looking the seniors for promotion to higher grades on account of wrong assignment of relative seniority etc ;*

3. *It is seen that these employees do not fulfil these conditions and as such, their cases for grant of higher fixation of pay cannot be considered.*

4. *This also dispose off the letter No. E / E/ 1025 / 2 / 3. Vol. II, dated 24.10.80 from DRM 9E) RTM."*

The further correspondence produced by the respondents at Annexure R-9 shows that the pay fixation in the case of Mr. Uprit was also found to be incorrect, accordingly, the competent authority was advised to reduce the pay of Shri. Uprit as on 01.01.86 from 2240 to 2120 (Annexure R-9).

9. The applicant has filed Annexure A-5 dated 10.12.90 which gives the comparative statement of the applicant as well as Mr. Uprit. The same reads as follows :-

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Comparative statement of both employees are as under :-

<u>Sr. No.</u>	<u>Particulars</u>	<u>Shri. R.S. Saharan</u>	<u>Shri. A.K. Uprit</u>
01.	<i>Date of Appointment</i>	01.09.1979	04.09.1979
02.	<i>Division</i>	Jaipur	Kota
03.	<i>Promotion as IOW (C) GR. II in Scale Rs.550-750 (PRS) Pay fixed at</i>	01.08.1984 (By S R) Rs.550/-	26.10.1981 (By Division) Rs.550/-
04.	<i>Promoted as Offg. IOW (C) Grade I in Scale Rs.700-900 / 2000-3200 (RP) Pay fixed</i>	23.09.1986 Rs.2000/-	06.10.1984 700/- (Old) (Rs.2240/- w.e.f. 01.01.1986) (Rs.2300/- from 01.10.1986)
05.	<i>Regular promotion in Scale Rs.2000-3200 (RP)</i>	30.11.1989 Rs.2180/-	30.11.1989 Rs.2525/-

The facts shows that while the applicant belong to Jaipur division and subsequently posted in the Survey and Construction, Shri. Uprit belong to Kota Division and he was promoted as IOW Grade II by the Kota Division on the basis of available vacancy on 26.10.81 and further promoted on officiating basis as IOW Grade I on 06.10.84. As the promotion to IOW Grade I was made at zonal level on common seniority, he was reverted to Grade II on 25.08.86 (Annexure A-I). It is also seen that promotions upto Grade II level is done at divisional level and Mr.Uprit was promoted on ad-hoc basis by the Kota division on 26.10.81and the applicant was

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promoted by the Survey and Construction division on 01.08.1984. In the circumstances, Shri. Uprit was receiving higher pay in his grade at the time of his promotion to Gr. I level on 30.11.89. As the applicant does not belong to Kota division, he cannot compare his case with that of Shri. Uprit. One of the conditions prescribed for stepping up of pay is that both the juniors and seniors belong to the same cadre when the promotion of the juniors were ordered. The applicant has not fulfilled this condition.

10. In the facts and circumstances of the case, the O.A fails and accordingly dismissed. No costs.

P.C. Kannan

(P.C. Kannan)
Member (J)

V. Ramakrishnan
16/12/2000
(V. Ramakrishnan)
Vice Chairman

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