

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

**O.A.NO. 609/93**  
**T.A.NO.**

**DATE OF DECISION** 21.3.1997

Shri Maichand Rohila Petitioner

Smt. Jiwan Jyoti w/o Michand Rohila

Shri Y.V.Shah Advocate for the Petitioner [s]

Versus

Union of India & Ors. Respondent

Shri R.M.Vin Advocate for the Respondent [s]

**CORAM**

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

The Hon'ble Mr.

**JUDGMENT**

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

Maichand Rohila  
S/o. Sh. Shivkaran Rohila,  
Resident of New Modi-Ni-Wadi No.1,  
Shehera Bhagol,  
Godhra (389 001) Dist. Panchmahalas.

Jiwan Jyoti,  
Widow of Maichand Rohila,  
Shehera Bhagol,  
Godhra-389 001.

: Applicant

(Advocate: Mr.Y.V.Shah)

Versus

1. The Union of India,  
Through:  
The General Manager,  
Owning and representing  
Western Railway,  
Churchgate, Bombay-400 020.
2. The Divisional Railway Manager,  
(Est.) Western Railway,  
Kota Junction (324 002)

3. The Divisional Railway  
Manager (Estt.)  
Western Railway,  
Bhavnagarpara.

: Respondents

(Advocate: Mr.R.M.Vin)

JUDGMENT

O.A.609/93

Date: 21.3.1997

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

Heard Mr.Y.V.Shah and Mr.R.M.Vin, the learned counsels for the applicant and the respondents respectively.

2. After filing of the application in October, 1993 the applicant expired in January, 1995. The widow of the applicant was substituted in the O.A. in March, 1995.

3. According to the applicant he was senior to one Mr.D.D.Lal scale of Rs.330-560 (R)/425-640 (R) as per seniority list Annexure A-7. The applicant is at Sr.No.40 and Mr.Lal is at Sr.No.54. He also claims that he is senior to Mr.Lal in the panel of Commercial Inspectors (page 72 of the paper book), wherein the applicant appears at Sr.No.26 and Mr.Lal appears at Sr.No.34. In the seniority list of Commercial Inspectors also the applicant is senior at Sr.No.49 and Mr.Lal is junior at Sr.No.56 (page 78 of the paper book). In the list of Senior Commercial Inspectors, the applicant appears at Sr.No.38 and Mr.Lal appears at Sr.No.44 and there is no dispute that the applicant is senior to Mr.Lal. The applicant alleges that the pay of Mr.Lal was fixed at Rs.630/- on 20.6.1978 while his pay was fixed at Rs.580/- on the same date. Again when the pay scales were revised, the pay of the applicant was refixed at Rs.760.00 on 1.1.86 while that of Mr.Lal junior to him was fixed at Rs.830.00. He has also mentioned case where senior's pay was stepped up when there was anomaly of junior drawing pay higher than the senior. He made representations to the respondents several times to fix his pay on par with his junior Mr.Lal. The respondents, however, rejected the case of the applicant for stepping up of his pay on the ground that his junior Mr.Lal was promoted on adhoc basis and the stepping up of pay of a senior is permissible only in the case of promotions on regular basis as per

Railway Board's letter No.E/PC/A/II/90/PP/2 dt.7.8.90

Annexure A-II. Dissatisfied with the respondent's reply the applicant has approached the Tribunal for the following reliefs:

"(8.1) My pay be stepped up equal to the pay of Mr.D.D.Lal, retired D.C.M.I., BVP., BVP Division, who stands who stands junior to me, right from the post of C.T./ACMI, scale Rs.330-560(R)/425-640 (R)/vide seniority list circulated in terms of Railway Board's letter No.E.(IIG)1-II-PMI/205, dated 11.4.1979, vide General Manager (E), Chinchgate, Bombay's No.D.O. No.EC.839/2/3, dated 19.4.1979 to the post of D.C.M.I. scale Rs.2375-3500 (R.P.S.) as neither I was ever asked nor I refused to officiate in higher grade. Legal provisions relief upon Tribunal's judgment Annexure A-3 (31 to 49)

(8.2) I may be paid all the arrears of pay, D.A., T.A., Kilometerage, commutation of pension, leave allowance, house-rent allowance, National Holiday Allowance, pension and any such other allowance.

(8.3) Compound interest of prevailing 20% market rate is prayed to be paid on the amount payable from the date due till the date of final payment.

(8.4) Court expenses are prayed as detailed below:-

(a) Rs.500.00 Advocate's Consulting Fees.

(b) Rs.300-00 Towards typing of letters and plaint etc.

(c) Rs.300-00 Towards xerox copies of relevant records etc.

(d) Rs.50-00 Towards Tribunal fees.

(e) Rs.500-00 Incidental charges of fare to and from Godhra.

(f) Any such other expenses or relief the Hon'ble Tribunal may deem fit just and fair.

4. The respondents have contested the application. They have taken a preliminary objection that the application is time barred. They have stated that Mr. Lal junior to the applicant was given officiating allowance for different periods from 18.3.1980 to 31.3.84, 21.9.84 to 28.1.85 and 26.2.85 to 25.10.85. Hence the cause of action arose between 1980 to 1985 but the applicant has filed this application in 1993 only and hence it is time barred. The respondents have stated that the applicant was working in Baroda Division and Mr. Lal was working in Bhavnagar Division. The higher grade vacancy arose in Bhavnagar division and as there was no regular panel Mr. Lal was promoted on adhoc basis. They have stated as per the Railway Board's letter dated 5.10.76 the benefit of stepping up of pay was required to be given on adhoc promotion provided that the adhoc promotion of both the senior and junior persons were followed by their regular promotions without any break. The instruction was issued by letter dated 7.6.1990 Annexure A-5 (page 57 of the paper book). They have stated that the adhoc promotion of his junior Mr. Lal was never followed by regular promotion except for the period from 26.2.85 to 25.10.85. They have stated that even though the applicant was senior, he is not entitled to

stepping up of pay because in his case conditions specified in letter dated 5.10.1976 at Annexure R-I dated 7.6.90 were not fulfilled. They have denied that the other cases quoted by the applicant as precedents are not applicable to this case as the facts were different.

5. The applicant has filed rejoinder. The applicant states that the respondent's reply to his representation only by letter dated 28.4.1993 after long time and after receipt of the letter the applicant has approached this Tribunal and as such his case is not time barred. He has contested the respondent's claim that as no regular panel was available Shri Lal was promoted on adhoc basis. He states that the respondents have prepared the panel in which the applicant has got the promotion. He also states that his junior Mr.Lal continued on the promotion post from 18.3.1980 to 31.3.1984 while according to orders he should not have continued for more than six months on officiating basis in the higher post.

6. Mr.Y.V.Shah, the learned counsel for the applicant vehemently argued that there is no dispute that the applicant was senior to Mr.Lal at time time of promotion of Mr.Lal. The applicant was not given any opportunity to opt for promotion on ad hoc basis. He argued that special favour have shown to Mr.Lal who was infact given regular

adhoc promotion in the scale of Rs.570-650 and Rs.700-900 which is prohibited under the Railway Board's letter circulated by the respondents at Annexure A-4. The applicant should have been given at least one promotion when he was senior to Mr.Lal. Regarding delay in approaching the Tribunal, he brought to our notice the judgment in the case of E.Sarasian vs. Secretary, Central Board of Direct Taxes, New Delhi & Ors. (1991) 17 ATC 673 wherein it was held by the Madras Bench that as the applicant was deligenly pursuing his case and approached the Tribunal after final rejection, his case cannot be stated to have been time barred. He also cited the judgment in case of Ambica Prasad Sarma vs. Union of India & Ors. (1993) 24 ATC 652, according to which the senior getting less pay than the junior, he is entitled to get his pay refixed on regular promotion. He also referred to the judgment in the case of Devdutt Sharma vs. Union of India & Ors. (1991) 16 ATC 356, according to which stepping up of pay of the revised was held admissible if there is anomaly due to junior's officiating in a higher post while the senior did not get opportunity for such officiation. He also referred to E.Sarasian case cited earlier. He also states that the Railway Board's instruction dated 5.10.76 Annexure-5 (page 59) applies to the case of

the applicant and being similar to the case decided in Ambika Prasad Sarma vs. Union of India & Ors., the applicant should also be given the benefit of stepping up of pay. He also mentioned that in several other similar cases (Annexure A-6 page 62-64) the respondents had given stepping up of benefit to the senior.

7. We have heard the learned advocates for both the parties and gone through the documents. We do not agree to the respondent's stand that the O.A. should be dismissed as time barred. We notice that the applicant was pursuing his case with the respondents diligently and the applicant's case was finally rejected by the Respondents vide their letter dated 28.4.1993 Annexure A-2. The application was filed on 19.10.1993 which is within the time limit prescribed. The issue as to when the stepping up of pay could be given has now been finally settled by the judgment of Full Bench of the Tribunal dated 20.11.1996 (1997 (1) ATJ-1). The Full Bench has referred to various cases decided by the different Benches of the Tribunal regarding the circumstances under which stepping up could be allowed and what is the basis on which stepping up can be claimed. The Full Bench has referred to certain decisions wherein the view had been taken that seniority per se outside the FR 26(C) do not

entitle or justify stepping up of pay of a senior. The Full Bench has also referred to a contrary view taken in a number of cases which proceeded on the basis that considerations of equity and equality require stepping up of pay to bring the seniors on par with juniors. The Full Bench has pointed out that every claim must be based on an enforceable legal right. A right arises by conferment, not by comparison. "Broad notion of equity cannot be equated or assimilated to legal rights. There is also the further question whether the Tribunal can exercise a jurisdiction in equity. We are inclined to think that a jurisdiction in equity does not inhere in the Tribunal".

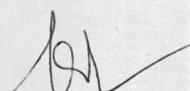
8. Mr. Y. V. Shah, learned advocate for the applicant had taken the argument that the legal right of the applicant under Article 14 has been violated in that discrimination has been shown in his pay fixation vis-a-vis the junior. A similar argument was taken before the Full Bench. The Full Bench has repelled the argument in the following words:-

- " The argument based on Article 14 cannot advance the case of applicants. Article 14 of the Constitution confers no right, otherwise than by guaranteeing equality before the law and equal protection of the laws". Unless there is a relevant law, there is no question of equality "before the law". True, arbitrariness is interdicted by Article 14. Then, arbitrariness also is to be tested against the touchstone of law and not against broad notions of equity. Every dissimilarity is not discrimination in law, and every anomaly is not arbitrariness in constitutional parlance.

If a junior gets a higher pay, that does not mean that the senior also should necessarily get it without a foundation for such a claim in law. Fortuitous events are part of life. Fixation of pay is generally with reference to an individual. Various reasons may account for the grant of a higher pay to a junior. For example undergoing a vasectomy operation or achieving excellence in sports or belonging to a certain community or even a wrong fixation of pay may bring about a situation where a junior gets a higher pay. If a junior is granted a higher pay for any of those reasons, that will not confer a corresponding right in a senior to get the same. If, for example, wrong fixation of pay in the case of a junior is to bring about a corresponding fixation in the case of a senior by applying the principle of equality, that would be an instance of using Article 14 to perpetuate illegality. If a senior is denied what he is entitled to get, he must challenge that denial or that preferment extended to a junior. He cannot acquiesce in a wrong and make a gain from that wrong by a comparison. Without disguise the attempt of the senior, is to get the benefit of a higher pay, by comparison. Without challenging the wrong he cannot claim a remedy from a wrong. Such collateral reliefs are alien to law. The decision of the Supreme Court in Chandigarh Administration v. Jagit Singh (1995) 1 SCC 745 supports this view.

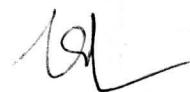
Ultimately the question boils down to this, what is the right of the senior and where does he find that right. Certainly he does not find that right in any law. The law governing the subject is F.R. 22(1) (a) (i). Incidentally this rule is not challenged. It follows that only those anomalies that are directly referable to that rule, are amenable to the curative process thereunder namely stepping up and no other. Equity does not offer a cause of action as we have already pointed out. Discrimination arise only vis-a-vis law. Difference on facts-often non actionable facts, does not give rise to a cause of action in law. The Supreme Court of India in comparable circumstances held (State of A.P. and others vs. G.Sreenivass Rao and others (1989) 10 ATC 61 that difference per se is not discrimination".

9. In view of the clear pronouncement of the law by the



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Full Bench, we see no merit in the application. Hence it is dismissed. However, there is no order as to costs.

  
(V. Radhakrishnan)  
Member (A)