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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.683 of 2011

Cuttack this the 13th day of December, 2017


J.P.Patra ...Applicant

-VERSUS-

Union of India & Ors.....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? ✓
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ? ✓


(DR.MRUTYUNJAY SARANGI)
MEMBER(A)


(S.K.PATTNAIK)
MEMBER(J)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A.No.683 of 2011

Cuttack this the 13th day of December, 2017

CORAM:

**HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)
HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)**

Sri Jagadish Prasad Patra, aged about 45 years, S/o. Sri Akura Patra, at present working as Chief Controller, East Coast Railway, At/PO-Chandrasekharpur, Bhubaneswar, District-Khurda

...Applicant

By the Advocate(s)-M/s.A.Ku.Mohapatra
S.Ch.Rath

-VERSUS-

Union of India represented through:

1. The General Manager, East Coast Railway, At/PO-Chandrasekharpur, Bhubaneswar, District-Khurda
2. Chief Personnel Officer, East Coast Railway, At/PO-Chandrasekharpur, Bhubaneswar, District-Khurda

...Respondents

By the Advocate(s)-Mr.M.K.Das

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant was working as Chief Controller, East Coast Railway at the time of filing this Original Applicant. He had joined as a Probationary Guard in Adra Division of S.E.Railway on 13.2.1990 in the pay scale of Rs.1200-2040/-. On 6.9.1995, he was promoted to the post of Section Controller in the scale of Rs.1600-2600/- and again to the post of Deputy

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Chief Controller on 6.9.1997 in the scale of Rs.6500-10500/-.

He is aggrieved by the fact that his junior Shri B.K.Das draws higher pay than him. Shri Das was appointed on 13.2.1990 as a Probationary Guard in the scale of Rs.1200-2040. He was promoted to the post of Section Controller on 22.8.1999 and to the post of Deputy Chief Controller on 12.11.2002 much after the applicant got his promotion. However, on promotion to the post of Deputy Chief Controller, the pay of Shri B.K.Das was fixed at Rs.8100/- in the scale of Rs.6500-10500/- whereas the applicant was getting the pay of Rs.7500/- in the same scale of pay although he was transferred to the post of Deputy Chief Controller five years before the promotion of Shri Das. Aggrieved by this, the applicant had filed O.A.No.138 of 2005 and this Tribunal in its order dated 28.9.2007 allowed the O.A. directing the Railway Administration to step up the pay of the applicant on par with his junior Shri B.K.Das. The Respondents accordingly stepped up the applicant's pay vide their order dated 28.9.2007(A/1). On 4.9.2008, the Government of India issued the Railway Services (Revised Pay) Rules, 2008 with effect from 1.1.2006. Under such rules, the pay scale of Deputy Chief Controller was revised to Rs.9300-34800/- with GP Rs.4600/- and the applicant's pay was revised to Rs.23430/- in PB-2 with GP Rs.4600/-. Another employee Shri J.N.Sethi had entered into service on 8.5.1990 as a Probationary Guard in Khurda Division of S.E. Railway in the scale of Rs.1200-2040/-.

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He was promoted to the post of Section Controller on 22.6.2007 and Deputy Chief Controller on 01.01.2010 in the scale of Rs.9300-34800/- (PB-2) with Grade Pay of Rs.4600/-. Consequent upon his promotion, his pay was fixed at Rs.26,000/- in the scale of Rs.9300-34800 with GP Rs.4600/-, much higher than the applicant. Applicant submitted a representation to Respondent No.2 to remove this anomaly since Shri Sethi was junior to him. However, the representation of the applicant was rejected vide order dated 11.4.2011(A/3) on the ground that it was not permissible in terms of Para-9(a) of RBE No.133/97 and Para-9(a) of IREC-Vol-1.

2. Applicant has filed this O.A. challenging the order dated 11.4.2011(A/3) and has prayed for the following reliefs.

- i) To quash the order contained in Annexure-3.
- ii) To direct the respondents to step up the pay of the applicant to a figure equal to the pay of Sri J.N.Sethi, Deputy Chief Controller, East Coast Railway.
- iii) To direct the respondents to grant all consequential financial benefits accruing therefrom to the applicant.
- iv) To grant any other appropriate relief as this Hon'ble Tribunal deems fit and proper in the facts of the case.

3. Applicant has based his prayer on the following grounds:

- i) This Tribunal by an order dated 28.9.2007 in O.A.No.138 of 2005 has already decided that on revision of pay the applicant ought to get a pay equal to that of his juniors. Shri J.N.Sethi being his junior, applicant's pay ought to be fixed on par with Shri J.N.Sethi.

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- ii) The Respondents' reliance on Para-9(a) of RBE No.133/97 and Para-9(a) of IREC-Vol.1 is misconceived and is therefore bad and illegal.
 - i) The applicant's getting lesser pay than his junior is unreasonable and is an act of hostile discrimination and is also violative of Articles 14 and 16 of the Constitution of India. Therefore, the impugned order dated 11.4.2011 deserves to be quashed and set aside and the applicant's pay should be fixed on par with his junior Shri J.N.Sethi.

3. The Respondents filed counter-reply on 24.09.2012 and contested the claim of the applicant. They have submitted a comparative statement of the pay drawn by the applicant and Shri J.N.Sethi. According to them, the applicant and Shri Sethi belong to two different lien units. The applicant's lien is maintained at Headquarters Unit of East Coast Railway, Bhubaneswar whereas the lien of Shri J.N.Sethi is maintained at Khurda Division of East Coast Railway. Therefore, stepping up of pay of the applicant with that of Shri J.N.Sethi is not permissible in terms of Para-9(a) of RBE No.133/97 and Para-9(a) of IREC-Vol. 1. The earlier stepping up of pay of the applicant was done in compliance with the orders of this Tribunal in O.A.No.138/2005. However, his representation for stepping up his pay on par with Shri J.N.Sethi was rejected on valid grounds. It is the contention of the respondents that the applicant was granted 3rd financial upgradation under the MACP Scheme in PB-2 (Rs.9300-34800 with GP Rs.4800/-) with

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effect from 1.9.2008 and his pay was fixed at Rs.23,630/-. Shri Sethi on the other hand, got his regular promotion as Deputy Chief Controller in PB-2 (Rs.9300-34800 with GP Rs.4600/-) on 1.1.2010 and his pay was fixed at Rs.25,440/- with effect from 1.1.2010. As on 01.07.2010 applicant's pay was Rs.25070 and the pay of Shri Sethi as on 01.07.2010 was Rs.26,980/-. They have submitted that there is no merit in the case of the applicant and therefore, the O.A. deserves to be dismissed.

4. We have heard the learned counsels for both the sides and perused the documents submitted by them. Rule-9 of RBE No.133/1997 dated 8.10.1997 reads as follows:

"Note-9. In cases, where a senior Railway servant promoted to a higher post before the 1st day of January, 1996, 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, 1996, 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 the fulfillment 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,
- c) the senior Railway servants at the time of promotion have been drawing equal or more pay than the junior,

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- d) the anomaly should be directly as a result of the application of the provisions of Rule 1313(FR 22) 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, provision of this Note need not be invoked to step up the pay of the senior officer".

5. The Respondents have also cited the President's decision [IREC Vol.II(2005 Edition) (Sixth Edition-1987)] which reads as under:

"(9) (i) By a strict application of the above rule, it may happen that a railway servant promoted or appointed to higher post on or after 1st April, 1961 may draw a lower rate of pay in that post than another railway servant, junior to him in the lower grade and promoted or appointed subsequently to another identical post.

(ii) In order to remove this anomaly it has been decided that in such cases the pay of the senior employee in the higher post should be stepped up to a figure equal to the pay as fixed for the junior employee in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior employee and will be subject to the following conditions namely:-

- (a) Both the junior and senior employees should belong to the same cadre and the posts in which they have been promoted

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or appointment should be identical and in the same cadre;

(b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical; and

© The anomaly should be directed as a result of the application of Rule 1316 (FR-22C). For example, if even in the lower post the junior employee draws from time to time a higher rate of pay than the senior by virtue of fixation of pay under the normal rules, say due to grant of advance increments or due to accelerated promotion, etc., the provisions contained in this letter will not be invoked to step up the pay of the senior employee.

6. The applicant had joined as Probationary Goods Guard on 13.9.1990 whereas Shri J.N.Sethi who also works as Deputy Chief Controller in Khurda Division similar to the applicant had joined as Probationary Commercial Clerk on 15.9.1987. He was promoted to the post of Goods Guard against 85% Departmental Promotion Quota on 12.2.1990. The applicant had got his independent charge as Goods Guard on 24.5.1990 whereas Shri Sethi had got his independent charge from 8.5.1990. It is obvious that at the entry level of Goods Guard Shri Sethi had joined earlier than the applicant. Because they belong to two different Divisions of S.E. Railways, the applicant being in Adra Division and Shri Sethi being in Khurda Division, their promotions were not granted at the same time. The


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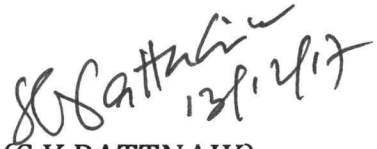
applicant had got first promotion in Adra Division. The applicant's lien was maintained in Adra Division of S.E.Railway whereas Shri Sethi's lien was in Khurda Division of S.E. Railway. After formation of the East Coast railways with effect from 1.4.2003, applicant came on transfer at his own option from S.E. Railway on 14.6.2003 and continued to hold the post of Deputy Chief Controller with lien in Headquarters at Bhubaneswar. In view of the first promotion obtained by the applicant in his earlier Division, he continued to hold the post of Deputy Chief Controller in PB-2 with GP Rs.4600 fixed consequent upon the 6th CPC. Shri Sethi was promoted as Senior Goods Guard on 17.05.2006 and as Section Controller on 26.6.2007 and as Deputy Chief Controller on 01.01.2010. The applicant's pay was stepped up due to grant of 3rd financial upgradation under the MACP with effect from 1.9.2008 and his pay was fixed at Rs.23630/- in PB-2 with GP Rs.4800/- while he continued to hold the post of Deputy Chief Controller in PB-2. A perusal of rules cited by the respondents shows that the provisions of RBE No.133/97 have been correctly applied in the case of the applicant. Applicant had already been promoted to a higher post of Section Controller on 6.9.1995 prior to 1.1.1996 and was already drawing a higher pay compared to Shri J.N.Sethi, who was still working as Goods Guard as on 1.1.1996, which is a lower post than the Section Controller. The two individuals maintained their lien in two different Divisions and continued

to have lien in Different Divisions where their prospects of promotions are different. The applicant has been granted the benefit of MACP by which his pay has already been stepped up with effect from 1.9.2008. Shri Sethi on the other hand has climbed the ladder in the regular promotional avenue and his pay in the post of Deputy Chief Controller on the date of promotion on 1.1.2010 has been fixed taking into account the pay drawn by him in the lower post of Section Controller. He was already drawing the pay of Rs.23,600/- with effect from 26.6.2007. So it is obvious that his pay fixed as on 1.1.2010 was on the basis of his pay at Rs.23,600/- as on 26.6.2007. The two individuals have travelled two different paths under two different lien Divisions and in the face of the records, it does not appear that Shri Sethi's pay has been wrongly fixed with effect from 1.1.2010 and subsequently on 1.7.2010.

7. On a careful consideration of the facts and position of rules presented by both the applicant and respondents, we are of the view that the action of the respondents in fixing the pay scale of the applicant is correct and brooks no interference.

The O.A. is therefore, dismissed as devoid of merit. No costs.


(DR.MRUTYUNJAY SARANGI)
MEMBER(A)


(S.K.PATTNAIK)
MEMBER(J)

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