

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.O.A.642/1996

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

Hon'ble Mr. G.S. Maingi, Administrative Member

SUBODH KUMAR NAG,
HD. DRAFTSMAN, EASTERN RAILWAYApplicant

-Vs-

1. UNION OF INDIA - THROUGH THE
GENERAL MANAGER, EASTERN RAILWAY,
CALCUTTA - 700 001.
2. GENERAL MANAGER, METRO RAILWAY,
CALCUTTA.
3. SRI BHUPESH CHANDRA ACHARJEE,
HEAD DRAFTSMAN, EASTERN RAILWAY,
CALCUTTA .

For the applicant : Mr. B.P. Saha, counsel

For the respondents : Mr. P.K. Arora, counsel for E. Rly.
Mrs. U. Bhattacharya, counsel for Metro Rly.

Heard on : 10.4.2000

ORDER

Order on : 20/4/2000

D. Purkayastha, J.M.

The case of the applicant in short is that he is Head
now holding the post of/Draftsman w.e.f. 1.3.93 in the pay
scale of Rs.1600-2660/-(RP.) in the open line cadre in the
Eastern Railway, Calcutta. At present he is working in Metro
Railway, Calcutta in the same capacity, on deputation with
lien in the Eastern Railway. He filed one O.A. bearing No.515/91
before this Tribunal claiming promotion in the Eastern Railway
Senior
in the post of/Draftsman from 22.8.89 and to the post of Head
Draftsman from 1.3.93 respectively on the dates on which his
immediate junior, Sri Bhupesh Chandra Acharjee in the cadre

was promoted to the post of senior Draftsman and Head Draftsman, and that O.A. has been disposed of on 27.1.95 (Annexure 'B' to the app.). On the basis of that judgment of this Tribunal, the applicant was promoted to the post of Sr. Draftsman and to the post of Head Draftsman w.e.f. the date on which his immediate junior Sri. Bhupesh Chandra Acharjee was promoted to the said posts. The applicant was allowed pay of Rs.1850/- in October, 1995 on fixation of pay as per the aforesaid order dated 27.1.95 passed by this Tribunal whereas his junior Sri Acharjee was allowed pay of Rs.2000/-. Being aggrieved by and dissatisfied with such fixation of pay, the applicant made representation to the authorities for stepping up of his pay at par with his immediate junior but the respondents did not consider his case. Therefore, he has come to this Tribunal seeking relief in respect of stepping up of his pay at par with his junior to which he is entitled as per the extant rules.

2. Respondent No.1 and 2 have filed written reply to the O.A. separately. Respondent No.2, the Metro Railway filed reply stating inter alia that the instruction given by this Tribunal in O.A.No.515/1991 has been fully implemented so far as the respondent No.2 is concerned which would be evident from the judgment and order passed by this Tribunal in contempt petition No.144/1995 filed by the applicant in this matter. It is stated that fixation of the applicant in higher grade has been done according to FR 22(C) and stepping up of pay is not admissible in case of deputation in view of the instruction contained in the letter bearing No.4/7/92-Estt.(Part.I) dated 4.11.93(Annexure R-1). It is further stated that since the applicant was on deputation in the Metro Railway, the question of stepping up as claimed by the applicant would not be applicable to them. Respondent No.3, Sri Bhupesh Chandra Acharjee is the Metro Railway not working under respondents and therefore, particulars

furnished by the applicant is neither denied nor accepted by them. It is also stated by the respondent No.2 that as the pay of applicant has been correctly fixed by the order of the Tribunal, the application is devoid of any merit and is liable to be dismissed.

3. The Eastern Railway respondents have filed reply stating inter alia that according to the judgment dated 27.1.95 passed by this Tribunal in O.A.No.515/91, Sri Nag was given the regular status in respect of his immediate junior Sri B.C. Acharjee who is working in Chief Engineer's open line cadre where Sri Nag's lien is being maintained. It is also evident from the judgment dated 1.3.96 in CPC.No.144/1995 that the applicant has no grievance against the Eastern Railway respondents. ^{As} per open line status, Sri Nag got consequential monetary benefits in the Metro Railway, as was admissible vide their office Order No.284/95 dated 6.11.95 ^{The} ~~in~~ position of the pay particulars in respect of Sri Nag and Sri B.C. Acharjee as drawn by their present unit where they are working is as under :-

Sri S.K. Nag working in Metro Rly. w.e.f.

Sri B.C. Acharjee working in CE's Bridge Drawing Cadre in Eastern Rly. W.e.f.

A S AEM Pay Rs.1560/-Sc.1200-2040 /RP1.10.1988

AS AEM Pay Rs.1560/-Sc.1200-2040/-1.11.1988.

Promoted as Sr.EM w.e.f.22.8.1989. Promoted as Sr.D.M.w.e.f. 22.8.1989.

AS Sr. EM pay Rs.1600/-Sc.1400-2300/RP22.8.1989

AS Sr. D.M. Pay Rs.1600/-Sc.1400-2300/-RP.....22.8.1989.

AS Sr. EM Pay Rs.1640/- Sc.1400-2300/-RP1.8.1990

AS Sr. EM Pay Rs. 1680/-Sc.1400-2300/- RP1.11.1989

AS Sr. EM Pay Rs.1680/-Sc.1400-2300/- RP.....1.8.1991.

As Sr.EM Pay Rs.1720/-Sc.1400-2300/- RP.....1.11.1990

Sri S.K. Nag working in Metro Railway.

B.C. Acharjee working C.E's Bridge Drawing cadre in E.Rly.

As Sr. EM pay Rs.1720/-Sc.1400-2300/-
RP1.8.1992

Promoted as Hd. EM w.e.f.1.3.1993.

As HEM Pay Rs.1800/-Sc.1600-2600/-
RP1.3.1993.

As HEM pay Rs.1850/-Sc.1600-2600/-
RP1.3.1994.

As HEM Pay Rs.1900/-Sc.1600-2600/-
RP1.3.1995

As Sr. D.M. Pay Rs.1760/-Sc.1400-2300/-RP.....1.11.1991

As Sr. D.M Pay & Rs.1800/-Sc.1400-2300/-
Promoted as Hd. EM w.e.f.1.3.1993.

As HEM Pay Rs.1850/-Sc.1600-2600/-RP1.3.1993.

As HEM Pay Rs.1950/-Sc.1600-2600/- RP1.11.1993

As HEM Pay Rs.2000/-Sc.1600-2660/- RP1.11.1994.

As HEM Pay Rs.2050/- Sc.1600-2660/-RP.....1.11.1995

Eastern railway

It is stated by the respondents that in view of the above pay particulars, it may be indicated that Sri Acharjee opted for fixation of pay in both the grades i.e. Senior Draftsman and Head Draftsman on promotion in higher grades in terms of CPO's Serial Circular No.178/81. But Sri Nag did not. So, the pay of Sri Acharjee is higher than that of Sri Nag. In view of the aforesaid reasons the applicant is not entitled to get the benefit of stepping^{up} of his pay as claimed in this application. So, the application is liable to be dismissed.

4. We have heard the ld. counsel for both sides and have gone through the records. Ld. counsel, Mr. ^{Saha} Sarkar appearing on behalf of the applicant, submits that in pursuance of the judgment of this Tribunal in O.A. 515/91 dated 27.1.1995 the benefit of promotion to the post of Sr. Draftsman from 22.8.89 and to the post of Head Draftsman w.e.f.1.3.93 respectively was given to the applicant, but on the matter of fixation, it is found that the applicant though^{have been} granted the same benefits is getting less pay being senior to B.C. Acharjee(private respats.). Therefore, there has been anomaly and that should be removed by stepping up of pay of the applicant at par with his junior, Sri B.C. Acharjee because senior should not get less pay than the

junior on promotion to the higher grades since they belong to the same cadre. Thereby, the application may be allowed.

5. Ld. counsel appearing for the Metro Railway respondents, submits that the applicant is not entitled to get any relief as he was on deputation in the Metro Railway and no service particulars of Sri B.C. Acharjee is available with the department of Metro Railway and as per judgment of the Tribunal the applicant has been granted all benefits of promotion by way of fixation on promotion to the higher grade. But ~~we find~~ that the Eastern Railway respondents disclosed the reasons for which the applicant was not entitled to get the benefit of stepping up of pay at par with his junior, Sri B.C. Acharjee on the basis of that promotion. The reasons shown by the Eastern Railway in their counter that on promotion to the Senior post of Draftsman and to the post of Head Draftsman, Sri B.C. Acharjee exercised the option for fixation of pay in the higher grade in view of the ^{CPD's Serial} Circular No.178/81 but the applicant did not exercise option in this matter. Therefore, he is getting less pay than his junior, Sri Acharjee.

6. In view of the aforesaid circumstances, we are of the view that it is settled position of law that on promotion from lower post to higher post, pay fixation ^{under} FR 22(c) has been done since the question of higher responsibility is involved. But admitted fact in this case is that the applicant Sri Nag did not exercise the option for fixation of pay on promotion in the posts of Sr. Draftsman and Head Draftsman under the rules. Due to non-exercise of option, the applicant's pay could not be stepped up at par with ^{the pay of} his junior, Sri Acharjee who exercised option under the rules. From the records we find that the applicant did not file any rejoinder to the reply filed by the respondents. On a perusal of the records available with us, we find that the applicant ^{did not} ~~was responsible for~~ not exercising the option under the rules and as a result ~~of that~~ the pay of

his junior has become higher than that of the applicant. Therefore, the applicant cannot claim that he should get pay at par with his junior, Sri Acharjee who ^{fully} exercised his option at the time of fixation of pay in the higher grades as required under the rules.

7. Considering the above, we dismiss this application since it is devoid of any merits. No order is passed as to costs.

E. S. Mani
20.4.2000

MEMBER(A)

H. S. Mani
20/4/2000

MEMBER(J)