

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CALCUTTA BENCH, KOLKATA**

Date of order: 01.03.2005

CORAM:

HON'BLE MR. J. K. KAUSHIK, JUDICIAL MEMBER.

HON'BLE MR. M. K. MISRA, ADMINISTRATIVE MEMBER.

ORIGINAL APPLICATION No.: 925/96

Sri Adhir Chandra Das son of Late Ramani Mohan Das retired
Office Superintendent Grade-I, Eastern Railway, Construction,
Deptt. Residing at Vill Barkhose Khana, P.O. Demanihat, Dist
Midnapore.

...Applicants.

For the applicant : Mr.S.K. Dutta, counsel
Mr. T.K. Biswas, counsel

V E R S U S

1. Union of India through the General Manager, Eastern Railway, 17, Netaji Subhas Road, Calcutta – 1.
2. The Chief Personnel Officer, E. Railway, 17, Netaji Subhas Road, Calcutta – 1.
3. The Chief Engineer (S&C), Eastern Railway, New Kailaghat Building Strand Road, Calcutta – 1.

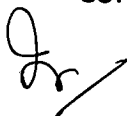
...Respondents.

For the respondents : Mr. R.K. De, counsel

O R D E R

Per Mr. J.K. Kaushik, Judicial Member

Shri Adhir Chandra Das has filed this Original Application
for seeking a mandate to the respondents to step up the pay of
the applicant in all grades at par with his erstwhile junior Shri R
S Singh and fix his pay at Rs. 3200/- w.e.f. 1.1.95 and all
consequential benefits.

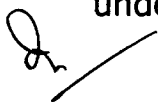


2. We have heard the learned counsel for the parties and have carefully perused the pleadings as well as records of this case.

3. The indubitable facts necessitating filing of this case as borne out from the pleadings of the parties as well as from the submissions of learned counsel for the parties, are that the applicant was senior to one Shri R S Singh but was given lower fixation of pay than the later on almost all the grades and the difference in basic pay was quite significant in as much as the applicant was fixed at Rs. 2675/- and said Shri R S Singh at Rs. 3200/- as on 1.1.95 and 31.12.95, respectively. The reason for such difference has been due to local officiation of the said junior who was employed in Construction Origination, where he earned increments on promotional post, which were reckoned for pay fixation on regular promotion as per the rules in vogue. Thus the pay anomaly resulted due to grant of increments on promotional post on which the said junior was put to officiate i.e. on local ad hoc basis. On facts, there is absolutely no quarrel.

4. We take judicial notice of the relevant rules as well as the law laid down by the Apex Court. The issue is by now fairly well settled by the Apex Court in case of **Union of India and another Vs. R. Swaminathan AIR 1997 Supreme Court 3554**, and the same does not remain res integra. Their lordships of Supreme Court have held in an unequivocal term as

under:-



" 10. xxx The difference in the pay of a junior and a senior in the cases before us is not a result of the application of Fundamental Rule 22(I)(a)(1). The higher pay received by a junior is on account of his earlier officiation in the higher post because of local officiating promotions which he got in the past. Because of the proviso to Rule 22 he may have earned increments in the higher pay scale of the post to which he is promoted on account of his past service and also his previous pay in the promotional post has been taken into account in fixing his pay on promotion. It is these two factors, which have increased the pay of the juniors. This cannot be considered as an anomaly requiring the stepping of the pay of the seniors.

11. The Office Memorandum dated 4-11-1993, Government of India, Department of Personnel and Training, has set out the various instances where stepping of pay cannot be done. It gives, inter alia, the following instances, which have come to the notice of the department with a request for stepping up of pay. These are :

- "(a) Where a senior proceeds on Extra Ordinary Leave which results in postponement of Date of Next Increment in the lower post, consequently he starts drawing less pay than his junior in the lower grade itself. He, therefore, cannot claim pay parity on promotion even though he may be promoted earlier to the higher grade;
- (b) if a senior foregoes/refuses promotion leading to his junior being promoted/appointed to the higher post earlier, junior draws higher pay than the senior. The senior may be on deputation while junior avails of the ad hoc promotion in the cadre. The increased pay drawn by a junior either due to ad hoc officiating/regular service rendered in the higher posts for period earlier than the senior, cannot, therefore, be an anomaly in strict sense of the term.
- (c) If a senior joins the higher post later than the junior for whatsoever reasons, whereby he draws less pay than the junior, in such cases senior cannot claim stepping up of pay at par with the junior."
- (d)

There are also other instances cited in the Memorandum. The Memorandum makes it clear that in such instances a junior drawing more pay than his senior will not constitute an anomaly and, therefore, stepping up of pay will not be admissible. The increased pay drawn by a junior because of ad hoc officiating or regular service rendered by him in the higher post for periods earlier than the senior is not an anomaly because pay does not depend on seniority alone nor is seniority alone a criterion for stepping up of pay."

5. Keeping in view of the aforesaid proposition of law, we are not impressed with the contentions of the learned counsel for the applicant and do not find any force in this Original Application. The same, therefore, must fail and is hereby dismissed, however, without any order as to costs.


[M. K. MISRA]

ADMINISTRATIVE MEMBER


[J. K. KAUSHIK]
JUDICIAL MEMBER

Kumawat