

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
O.A. 1173/1996**

Present : Hon'ble Mr. Justice B. Panigrahi, Vice-Chairman
Hon'ble Mr. N.D.Dayal, Administrative Member

S.K.Roychowdhury & ors.

Vs.

1. Union of India, service through the General Manager, Eastern Railway, 17, N.S.Road, Fairlie Place, Calcutta - 1.
2. Chief Personnel Officer, Eastern Railway, 17, N.S.Road, Fairlie Place, Calcutta - 1.
3. Sri Nirmalya Dasgupta, Working as Head Typist in the office of the Chief Electrical Engineer, Eastern Railway, 17, N.S.Road, Fairlie Place, Calcutta - 1.

For the Applicant : Mr. P.C.Das, Counsel

For the Respondents : Mr. P.K.Arora, Counsel

Heard on : 10.2.2005 Order dated : 25-02-05

ORDER

This matter was earlier disposed of by this Tribunal vide order dated 3.6.97. Against the said decision the respondents filed writ petition before the Hon'ble High Court being WPCT. 352/97. The Hon'ble High Court vide judgement dated 12.5.2000 set

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aside the order of the Tribunal and remitted back the case for re-hearing on certain points as referred in the order of the Hon'ble Court.

2. The applicants were working as Head Typists at the relevant point of time under the Eastern Railway. They were promoted to the said post from the grade of Sr. Typist on diverse dates in between 18.2.87 and 22.4.97. Their grievance was that respondent No. 3 i.e. Shri Nirmalya Dasgupta, who was junior to the applicants was given ad hoc promotion as Sr. Typist in 1982 in violation of the relevant rules. Accordingly, the pay of the said respondent No. 3 became higher than that of the applicants being promoted to the post of Head Typist in 1993 under restructuring benefit. The applicants prayer is for stepping up of their pay with reference to the pay of their junior i.e. respondent No. 3 from the date when anomaly occurred. The respondents in their reply have stated that respondent No. 3 was given ad hoc promotion as Sr. Typist on local basis w.e.f. 1.2.82 and was regularized in that post w.e.f. 15.11.87 whereas the applicants were regularly promoted to that post earlier than respondent No. 3. Because of his ad hoc promotions Respondent No. 3 got increments during the intervening period which has resulted in fixation of his pay at any stage higher than the applicants. The respondents have submitted that since the applicants did not work in the higher post, therefore, they could not get stepping up of pay benefit with reference to the pay of their junior.

3. During the course of hearing the Ld. Counsel for the applicants placed reliance on the Railway Board order dated 7.8.90 for stepping up of pay which the respondents have disputed. However, it is pointed out that in an identical case i.e. in O.A. 1046/95 (Sushil Kr. Pal & Anr.) the Tribunal granted benefit to the senior employees for stepping up of their pay with reference to the pay of their junior. Following the said decision it was



earlier held by this Tribunal that the applicants were also entitled to get the stepping up w.e.f. 15.11.87 i.e. date of regular promotion of respondent No. 3 as Sr. Typist.

4. While deciding the writ petition against the order of the Tribunal the Hon'ble High court, however, observed as follows:-

“ It now transpires that the case of the Sushil Kumar Pal and another, who were the applicants in the aforementioned O.A. 1046 of 1995, was the subject matter of a Special Leave application before the Apex Court and the Apex Court granted such leave by an order dated 11.8.97 keeping in view the decision of its earlier decision rendered in Union of India & ors. -Vs- O.P.Saxena reported in (1997)6 S.C.C. 360 = 1997(6) Supreme Today 501. It now further transpires that the Apex Court has allowed the Civil Appeal arising out of the said Special Leave applications which were marked as Civil Appeal No. 2458-86 of 1998 by a judgement and order dated 24th April, 1998 following the decision in O.P.Saxena (supra).

Mr. Neogi. Learned counsel appearing on behalf of the respondents, however, submits that in the instant case promotion granted to the respondent No. 24 (Respondent No. 3 in OA) was absolutely illegal being contrary to the statutory rules. One of the questions therefore, which arises for consideration is as to whether in the facts and circumstances of this case even if the original applicants-respondent are not entitled to get a relief of stepping up of scale of pay (which we have not decided finally as the contentions made herein are left open) as to whether any order can be passed by the learned Tribunal directing the respondent-petitioner herein to lower down the scale of pay of the aforementioned Nirmalya Dasgupta. As the learned Tribunal did not go into the merit and mainly relied upon its earlier decision in Sushil Kumar Pal and Anr.'s case (supra) which decision having now been set aside by the Apex Court, we are of the opinion that this application should be allowed and the matter should be remitted to the learned Tribunal for decision of the case afresh on merit.

This application is, therefore, allowed. The impugned order is set aside and the matter is remitted to the learned Tribunal for fresh decision in accordance with law. However, in the fact and circumstances of this case, there will be no order as to costs.

Although interim order dated 13.1.98 is vacated, however, if any amount has been paid to the applicants-respondents pursuant to the said order, the same shall abide by the decision of the order of the learned Tribunal.”

6. The question of stepping up of pay of seniors with reference to the junior,

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who has enjoyed ad hoc promotion before regularisation in the higher post, has been considered by the Hon'ble Supreme Court in various decisions. In the case of Union of India & anr. Vs. R. Swaminathan 1997(2)ATJ 329, the Hon'ble Apex Court has held that the increased pay drawn by a junior because of ad hoc officiation or regular service rendered by him for periods earlier than the senior is not an anomaly because pay does not depend on seniority alone nor is seniority alone is a criterion for stepping up of pay. Short term local promotions are due to administrative policy and this does not affect seniority. Similarly in the case of Union of India Vs. O.P.Saxena 1997(6) SCC 360 the Hon'ble apex court has again held that seniors were not entitled to removal of anomaly even if their juniors were getting more pay than them. In the case of Union of India vs. Sushil Pal & ors. 1998 SCC(L&S) on the basis of which the Tribunal had earlier allowed the O.A., was subsequently set aside by the Hon'ble Apex court holding that the juniors pay became more because he had got the benefit of ad hoc officiation on lower post as well as promotion post before regular promotion and in such cases the condition of stepping up of pay did not fulfil and hence the seniors cannot claim pay parity with respect to their juniors.

7. Since applicants mainly based their claim on the decision of Sushil Pal's case, before it was set aside by the Hon'ble Apex Court, the Tribunal had allowed the claim of the applicants herein. After the reversal of the decision of the Tribunal by the Apex Court, the applicants cannot claim the benefit and there is no further point for adjudication by this Tribunal.

8. The Ld. Counsel for the applicants has, however, relied on the decision of the

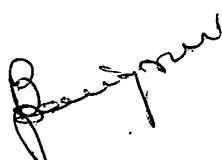


Hon'ble Supreme Court in the case of Union of India Vs. P. Jagadish and ors. 1997 SCC (L&S) 701. The facts of this case are distinguishable. There the respondent employees were promoted to the post of Head Clerk from the post of Sr. Clerk without getting the benefit of special pay for working in identified posts of Sr. clerk involving arduous nature of work. Their juniors, who got such special pay on their promotion to Head Clerk had their pay fixed at a higher stage. In that context the Hon'ble apex court directed that the pay of the seniors should be stepped up with reference to their juniors.

9. In the instant case, the private respondent No. 3 was given ad hoc promotion on local basis whereas the applicants did not get such opportunity. It is true that even while giving ad hoc promotion the claim of the seniors should be considered but in the instant case the respondents have taken the plea that due to administrative exigency no option could be floated and the respondent No. 3 was given such ad hoc promotion in higher post due to exigency of service. Be that as it may, while the applicants did not work in higher post they could not claim pay parity with respect of their juniors as already decided by the Hon'ble Supreme Court.

10. Accordingly, we have no other alternative than to hold that the claim of the applicant is devoid of merit. However, the amount already drawn by the applicants, if any, on the basis of earlier order of the Tribunal or on the basis of interim order of the Hon'ble High Court, shall not be recovered from them.

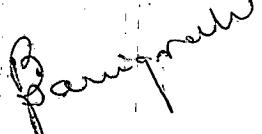
11. So far as the question of refixation of pay of respondent No. 3 is concerned as observed by the Hon'ble High Court, since he has already worked in a higher post and has got his salary in our opinion his pay could not be reduced which he has



earned due to working in higher post shouldering higher responsibility. In this context the observation of Apex Court in R. Swaminathan's case is relevant and we reproduce the same hereunder:-

"9. The fixation of this pay in the higher post is, however, subject to the proviso. If the person so promoted has earlier officiated in that higher post or substantively held that higher post for short or long duration, then, (1) his initial pay which is fixed under Rule 22(I)(a)(1) shall not be less than the last pay which he drew when he last held the higher post. (2) the period during which he drew that pay on such last and any previous occasions shall count for increments in the time-scale of the pay for the higher post. For example, if the promoted had previously, on various occasions, officiated in that higher post for different periods, and if the sum total of periods for which he so officiated is more than 12 months, he would be entitled to an increment in that higher pay-scale. His initial pay, therefore, on his regular promotion will be fixed taking into account not merely his entitlement on the basis of his notional pay in the pay-scale of the lower post, but also taking into account the last pay drawn by him while he was officiating in the higher post and also counting the previous periods during which he so officiated for his increment in the higher pay scale."

12. For the reasons stated above we do not find any merit in this case and, accordingly, the application is dismissed subject to the observation made above regarding recovery of overpayment, if any. No costs.


MEMBER(A)
VICE-CHAIRMAN