

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
J O D H P U R .

Date of Order : 31-7-2000

O.A. No. 330/1995

B.C. Mathur, S/O Shri Manohar Chand Mathur aged 45 years,
Shop Superintendent (MSP) Northern Railway Workshop, Jodhpur
R/O 11/849, Chopasni Housing Board, Jodhpur.

... Applicant

Vs

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Deputy Chief Mechanical Engineer, Workshop Northern Railway, Bikaner.
3. The Deputy Chief Mechanical Engineer, Workshop Northern Railway, Jodhpur.

... Respondents

Mr. Vijay Mehta, Counsel for the Applicant.
Mr. Salil Trivedi, Counsel for the Respondents.

CORAM :

Hon'ble Mr. A.K. Misra, Judicial Member

Hon'ble Mr. Gopal Singh, Administrative Member

O R D E R

(PER HON'BLE MR. GOPAL SINGH)

Applicant, B.C. Mathur, has filed the application under Section 19 of the Administrative Tribunals Act, 1985, praying for setting aside the impugned order dated 31.7.1995 (Annexure A/1) and order dated 31.12.1994 (Annexure A/2) and for direction to the respondents not to recover any amount in terms of orders ~~at~~ Annexure A/1 and A/2, and not to reduce his salary.

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2. The recovery of alleged excess amount paid on stepping up to the applicant was stayed by our interim order dated 23.8.1995. Further, revision of pay of the applicant to a lower stage was stayed by our interim order dated 04.9.95.

3. Applicant's case is that he was promoted from the post Chargeman 'B' scale 425-700 to the post of Chargeman 'A' scale 550-750 with effect from 01.1.1979 vide respondents order dated 28.11.1979. That one Moola Ram Purohit was promoted as Chargeman 'a' w.e.f. 01.2.1979. The applicant is senior to Moola Ram as per the seniority list published on 25.10.1980. Since Moola Ram was getting higher pay than the applicant, the respondents of their own stepped up the pay of the applicant w.e.f. 01.7.1980 at par with his junior Moola Ram, vide order dated 12.9.1987 (Annexure A/6). Subsequently, this stepping up given to the applicant was held inadmissible and accordingly over payment was ordered to be recovered vide letter dated 31.12.1994 (Annexure A/2). Feeling aggrieved, the applicant has filed this application.



4. Notices were issued to the respondents, and they have filed their reply.

5. We have heard the learned Counsel for the parties, and perused the records of the case carefully.

6. In their first reply to the O.A., the respondents have stated that the said Moola Ram though junior to the applicant had officiated on the higher post and, therefore, he was drawing higher pay than the applicant. Thus, the applicant was not entitled to stepping up of his pay with reference to Moola Ram. In their additional Affidavit, it has been stated by the respondents that the applicant was not senior to Moola Ram. Thus, the respondents had given contradictory statement. With a view to examine controversy

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in its correct perspective, we had directed the learned Counsel for the respondents to produce the service records of both the officials. Service Books of both officials have been produced before us on 21.7.2000.

7. A close scrutiny of the Service Books of both the officials reveal that the applicant and Moola Ram were appointed/promoted to various grades as under :

| <u>Moola Ram</u> | | <u>Applicant</u> | |
|---|---------------|------------------|--|
| Chargement 'B' 425-700 | ... 12.2.1975 | ... 12.8.1977 | |
| Chargement 'A' 550-750 | ... 01.2.1979 | ... 01.1.1979 | |
| Asstt./Deputy Shop Supdt. 700-900 | ... 01.7.1980 | ... 01.1.1984 | |
| Shop Supdt., 2375-3500 | ... 10.2.1989 | ... 23.8.1988 | |
| <u>Voluntary retired</u> | ... 11.1.1999 | | |

8. It would be seen from the above table that Moola Ram was promoted as Assistant/Deputy Shop Superintendent scale 700-900 on 01.7.1980, while the applicant was promoted as such on 01.1.1984. Considering the applicant as senior to Moola Ram the respondents had given the benefit of stepping up of pay to the applicant with effect from 01.7.1980 with reference to Moola Ram as mentioned above. It would also be seen from the above table that Moola Ram was appointed as Chargeman 'B' much earlier to the applicant and, therefore, he was drawing higher pay in the scale of 425-700. On promotion to the post of Chargeman 'A' scale 550-750 though Moola Ram joined the promotion post one month later than the applicant, he continued to draw higher pay than the applicant as has been

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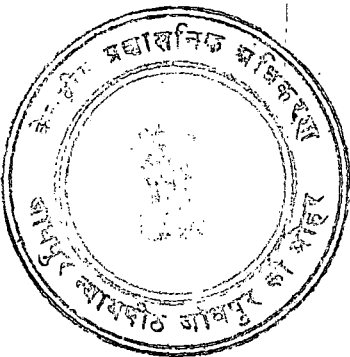
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mentioned above, Moola Ram was appointed as Deputy/Shop Supdt. on 01.7.1980 and started drawing salary in that scale from 01.7.1980, while the applicant was promoted to the scale on 01.1.1984. It would thus be seen that Moola Ram was drawing higher pay than the applicant right from the date of appointment as Chargeman 'B'. For giving the benefit of stepping up pay, it is necessary that the junior person with respect to whom stepping up ^{ed} his claim should have drawn lower pay in the lower scale. In the case in hand, Moola Ram has ^{all} along been drawing higher pay than the applicant. Thus, the applicant cannot claim the benefit of stepping up with reference to Moola Ram. It is admitted by the respondents that stepping up benefit was given to the applicant without any representation from his side. Since the stepping up benefits have been given to the applicant by the respondents of their own, we are of the view that the respondents are estopped from ordering any recovery from the applicant. There is a catena of judgement of Hon'ble the Supreme Court in this regard. In regard to pay fixation at the lower stage it has already been pointed out above that the applicant was not entitled to stepping up pay with reference to pay of Moola Ram and, therefore, we hold that the stepping up benefit to the applicant was wrong and as such a wrong benefit cannot be allowed to be perpetuated. In the circumstances, we consider it just and proper to direct the respondents not to effect the recovery of the amount paid to the applicant on account of stepping up benefit extended to him. The re-fixation of pay of the applicant done by the respondents vide their order at Annexure A/1 and A/2 would, however, stand. Accordingly, we pass the order as under :

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Urpal Singh



9. The respondents are restrained to ~~recover~~ over payment made to the applicant on account of stepping up benefit to him. They would, however, be free to fix the pay of the applicant as per rules. Ad interim stay granted by our order dated 23.8.1995 and 04.9.1995, stand vacated. The O.A. stands disposed of accordingly.

10. Parties are left to bear their own costs.



Gopal Singh

(GOPAL SINGH)
Adm. Member

A.K. Misra
31/7/2000

(A.K. MISRA)
Judl. Member

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R. C. Hall
W. H. Hall
J. H.

Part II and III destroyed
In my presence 4-2-07
under the supervision of
section officer as per
order dated 10/11/06
H. H. Hall
Section officer (record)