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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

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Date of Order : 22.10.2001.

O.A.NO. 159/1997

1. Om Prakash Araya S/o Shri Laxman Dass, aged about 62 years, retired Asstt. Supdt. under Dy. Chief Mechanical Engineer, Northern Railway Workshop, Lalgarh (Bikaner), Resident of 131/B, New Railway Colony, Lalgarh (Bikaner).
2. Purshottam Dass R/o Shri Gawal Dass, aged about 66 years, Retired Head Clerk under Dy. Chief Mechanical Engineer (Workshop), Northern Railway, Lalgarh (Bikaner), R/o Bisso Ka Chowk, Bikaner.
3. Rajendra Singh S/o Shri Sukhbir Singh, aged about 66 years, Retired Head Clerk under Dy. Chief Mechanical Engineer (Workshop), Northern Railway, Lalgarh (Bikaner), Resident of II/E-38, J.N.Vyas Colony, Bikaner.
4. Raghu Nandan Singh S/o Shri Parbat Singh, aged about 66 years, Retired Head Clerk under Dy. Chief Mechanical Engineer (W), Northern Railway, Lalgarh (Bikaner) C/o II/E-38, J.N.Vyas Colony, Bikaner.
5. Karni Dan S/o Shri Murle Dhar, aged about 66 years, Retired Head Clerk under Dy. Chief Mechanical Engineer (Work-shop), Northern Railway, Lalgarh (Bikaner), Resident of Bagri Mohalla, Bikaner.



..... Applicants.

VERSUS

1. Union of India through the General Manager, Northern Railway, H.Q. Office, Baroda House, New Delhi.
2. Dy. Chief Mechanical Engineer (W), Northern Railway, Lalgarh (Bikaner).

..... Respondents.

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CORAM :

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

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Gopal Singh

Mr. Y.K.Sharma, Counsel for the applicants.

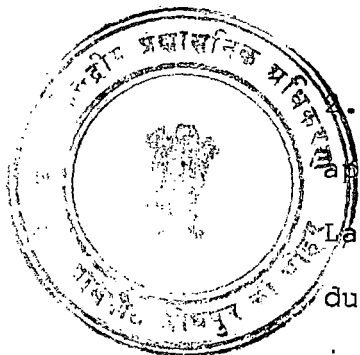
Mr. Kamal Dave, Counsel for the respondents.

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ORDER

Per Hon'ble Mr.Gopal Singh :

In this application under section 19 of the Administrative Tribunals Act, 1985, applicants, Om Prakash Araya, Purshottam Dass, Rajendra Singh, Raghu Nandan Singh and Karni Dan, have prayed for a direction to the respondents for stepping-up their pay to the level of their junior Shri B.K.Pandey and arranging arrears thereof alongwith retiral benefits alongwith interest at the rate of 12% p.a. on the arrears and also to revise the pensionary benefits on stepping-up of pay and Pay all the consequential benefits.



The undisputed facts of the case are that, all the applicants were appointed in the Northern Railway Workshop at Lalgarh (Bikaner) and they have retired on superannuation during the year 1990-1995. One Shri B.K.Pandey, who was junior to the applicants, was promoted to the post of Head Clerk scale Rs. 1400-2300 vide respondents order dated 22.2.1991 (Annex.A/2) and his pay was fixed at Rs. 1800/- in the grade of Rs. 1400-2300. The contention of the applicants' is that they all are seniors to Shri B.K.Pandey but they were drawing pay lesser than Rs. 1800/- sanctioned to Shri B.K.Pandey. On representations by the applicants in this regard, the pay of Shri B.K.Pandey, was reduced from Rs. 1800/- to Rs. 1720/- and accordingly, the retiral benefits of Shri B.K.Pandey was calculated on the basis of Rs. 1720/-.

Gopal Singh

The Revised pay fixation of Shri B.K.Pandey, was challenged in this Tribunal in O.A.No. 49/199, which was allowed on 17.8.1994. The Review Petition No. 56/1994 in O.A. No. 49/1993, filed by the respondent Government, was dismissed on 26.6.1995. In compliance of the orders of the Central Administrative Tribunal, the pay of Shri B.K.Pandey, was restored to Rs. 1800/- as on 22.2.1991 vide respondents' order dated 17.8.1995 (Annex.A/7). The applicants again represented the matter for stepping-up of their pay at par with Shri B.K.Pandey, vide their representation dated 21.11.1995 (Annex.A/1) but, to no avail. Hence, this application.

2. In the counter, it has been stated by the respondents that the case of Shri B.K.Pandey is not similar to that of the applicants. Shri B.K.Pandey was drawing officiating allowance at the time of his promotion to the post of Head Clerk and this officiating allowance was directed to be counted for the purpose of pay fixation on promotion to the post of Head Clerk. This is not the case of the applicants that they were also drawing officiating allowance before they were promoted as Head Clerk. It has, therefore, been submitted by the respondents that the case of the applicants is different than that of Shri B.K.Pandey. It has also been pointed-out by the respondents that one of the applicants (Shri Purshottam Dass), was also drawing officiating allowance but the same was not counted for the purpose of pay fixation as the same was very categorically allowed with a condition that the same will not be counted for future fixation of salary. It is also pointed-out that Shri

C. P. Singh

Purshottam Dass never challenged this stipulation. The respondents have also contested the application on limitation and it is pointed out by them that this application has been filed by the applicants after the limitation period was over and, therefore, not maintainable.

3. We have heard the learned counsel for the parties and perused the record of the case carefully.

4. The learned counsel for the applicants has also filed a comparative statement of pay drawn by the applicants and Shri B.K.Pandey from 1.1.1979 till retirement. This statement has been taken on record as Annexure A/14. The learned counsel for the respondents have also filed written brief.

5. We have heard the learned counsel for the parties and perused the record of the case carefully.

6. The Conditions precedent to grant of stepping-up benefit are as under :-

- (i) Both senior and junior should have been promoted from the same feeder post to the same promotional post;
- (ii) The senior should have all along drawn higher pay in the lower post than the juniors before promotion to the higher post; and
- (iii) The anomaly should have arisen directly as a result of pay fixation under FR 22 (1) (a) (i).

7. As per the written statements filed by the learned counsel for the applicants, it is seen that all the applicants were drawing lesser pay than Shri B.K.Pandey,

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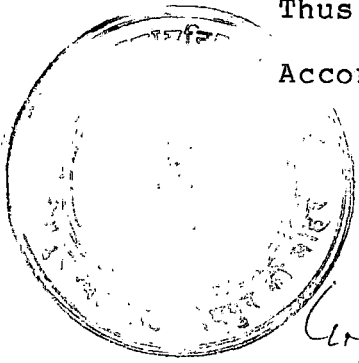


right from 1.1.1979 as Senior Clerk. Shri B.K.Pandey, was promoted as Head Clerk on 21.2.1991 when his pay was fixed at Rs. 1800/- and this was also up-held by this Tribunal. It is thus very clear that all the applicants were drawing lesser pay than Shri B.K.Pandey in the feeder post, therefore, applicants cannot claim parity in pay with that of Shri Pandey. It is also seen from the statements furnished by the learned counsel for the applicants that before he was promoted as Head Clerk, Shri B.K.Pandey, was drawing personal pay of Rs. 70/- and this was taken into account for the purpose of pay fixation on the promotional post of Head Clerk. None of the applicants' except Purshottam Dass, was drawing personal pay of Rs. 70/- per month before his promotion as Head Clerk on 3.7.1990, but this personal pay was not taken into account for the purpose of pay fixation as per the stipulation made by the department while sanctioning this personal pay. This has also not been agitated by Shri Purshottam Dass as pointed out by the respondents in their reply. It is thus, very clear that applicants do not fulfil the conditions precedent for stepping-up of their pay and, therefore, stepping-up benefit cannot be granted to them.

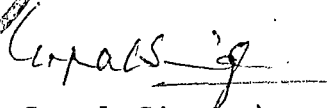
8. The respondents have contested the O.A. on the point of limitation also. But, in our view, drawal of lesser pay than due, gives continuous cause of action. Further, the pay fixation of Shri B.K.Pandey, was revised vide respondents letter dated 17.8.1995 in compliance to the orders of this Tribunal passed in O.A. No. 49/1993. The applicants represented on 21.11.1995 for stepping-up of their pay with

Compulsory


reference to Shri B.K.Pandey. This application has been filed on 24.4.1997 i.e. within 18 months of their representation. Thus, we find that the O.A. is not hit by limitation. Accordingly, we pass the order as under :-



" The Original Application is dismissed with no order as to costs."


(Gopal Singh)

Adm.Member


(Justice B.S.Raikote)

Vice Chairman

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Recd
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Part II and III destroyed
in my presence on 22.5.27
under the supervision of
section officer () as per
order dated 1.3.13/27

Narran
Section officer (Record)