

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
OA 140 OF 1997

Present : Hon'ble Mr. S.Biswas, Member (A)

Hon'ble Mr. A. Sathath Khan, Member(J)

P. Padmavati,
D/o Late P.J.Rao,
Head Clerk, O/o Sr. DGM,
S.E.Rly. Kharagpur.
R/o Block L/54,BI, Unit No. 12,
New Settlement, P.O. Kharagpur.
Midnapore,

VS

1. Union of India through the General Manager, S.E.Rly. Garden Reach, Calcutta-43
2. General Manager, S.E.Rly. Garden Reach, Calcutta-43
3. Divl. Rly. Manager, S.E.Rly. Kharagpur.
4. Sr. Divl. Commercial Manager, S.E.Rly. Kharagpur.
5. Divl. Personnel Officer, S.E.Rly. Kharagpur.
6. Smt. Rekha Mazumdar, Sr. Clerk, O/o Sr. DGM, SE Rly. Kharagpur.

.... respondents

For the applicant : Mr. B.C.Sinha, counsel

For the respondents : Mr. D.K.Singh, counsel

Heard on : 21.4.03 : Order on : 26.4.03

O R D E R

S.Biswas, A.M.:

Through this OA, the applicant, who is now working as Head Clerk under the respondents, has prayed for a direction to the respondent authorities to step her pay at par with her junior, Smt. Rekha Mazumdar, respondent No. 6, w.e.f. 2.11.82 i.e. the date on which the said private respondents had been promoted as Sr. Clerk on ad hoc basis with consequential benefits.

2. The admitted facts of the case are that the applicant was initially appointed as Jr. Clerk on 10.4.80 whereas private respondent No. 6, Smt. Rekha Mazumdar was so appointed on 6.12.80.

Thus, in the grade of Jr. Clerk, the applicant was senior to respondent No. 6. The applicant was promoted as Sr. Clerk on regular basis w.e.f. 1.1.84 while respondent No. 6 was given ad hoc promotion as Sr. Clerk on local basis w.e.f. 2.11.82 and was regularised in that post w.e.f. 26.11.86. Since private respondent was given ad hoc promotion on 2.11.82, on her regular promotion without any break as Sr. Clerk w.e.f. 26.11.86, she continued to draw higher pay than the applicant in the grade of Sr. Clerk. This is the grievance of the applicant and she prays that her pay should be stepped up to the level of the pay of her junior, Smt. Rekha Mazumdar by giving her proforma promotion to the post of Sr. Clerk w.e.f. 2.11.82 i.e. date when her junior was given such promotion. It is further stated that the applicant got further promotion as Head Clerk 17.1.94, but the respondent No. 6 was not so promoted.

3. According to the applicant, both in the feeder and promoted grades of Jr. Clerk and Sr. Clerk, she was senior to private respondent No. 6, as will appear from the seniority lists, and as such she is entitled to stepping up of pay as per Railway Board's circular dt. 4.9.74. She made verbal prayers for such stepping up of pay to the respondent authorities but to no effect. She, thereafter, made a written representation on 20.8.96 which was not disposed of. Hence, she has been compelled to file the instant application with the prayer stated above.

4. We have heard the ld. counsel for the parties and have gone through the relevant documents produced.

5. Ld. counsel for the applicant has reiterated the facts and has relied on a decision of this Tribunal in O.A. 370 of 1994 (Pijush Kanti Dutta -vs- UOI & Ors) decided on 19.7.96, a copy of which is annexed at Annexure-A5. In that case, the applicant claimed stepping up of pay at par with Smt. Rekha Mazumdar, i.e. the private respondent No. 6 of the present OA, on the ground that she was given accelerated promotion on ad hoc basis as Sr. Clerk ignoring the claim of the applicant, who was senior both in the grades of Jr. Clerk and

Sr. Clerk. The Tribunal allowed the said OA and directed stepping up of pay of the applicant therein at par with Smt. Rekha Mazumdar relying on Rly Board's circular dt. 4.9.74.

The 1d. counsel for the applicant has submitted that the present applicant is also similarly circumstanced and she is covered by the said order of the Tribunal. Therefore, she is entitled to the benefit of stepping up of pay at par with Smt. Rekha Mazumdar on the basis of that said decision.

The 1d. counsel has also relied on the decision of this Tribunal in Sushil Kr. Pal & Anr -vs- UOI & Ors (OA 1046 of 95) etc. etc. decided on 8.3.96

6. The 1d. counsel for the respondents has mainly argued that the application is barred by limitation as the applicant submitted her representation against her alleged supersession only in 1996 whereas the private respondent No. 6 was promoted as Sr. Clerk on ad hoc basis as long back as in 1982. He has relied on a subsequent Rly. Board's circular dt. 7.8.90 (RBE No. 127/90) wherein it is laid down that stepping up of pay is not applicable in case of ad hoc promotion and stepping up of senior is admissible only where the promotions are on regular basis. Thus, the application is liable to be dismissed.

7. We have given our anxious consideration to the rival contentions.

8. The undisputed facts of this case are that even though the applicant was senior both as Jr. Clerk and Sr. Clerk to private respondent No. 6, she was drawing less pay than her junior because of ad hoc promotion given to respondent No. 6 from 2.11.82. The private respondents earned regular increments for her ad hoc promotion as Sr. Clerk as a result of which when she was regularly promoted as Sr. Clerk w.e.f. 26.11.86 without any break, she was getting higher pay than her seniors like the applicant.

9. The Hon'ble Supreme Court in the case of UOI & Ors -vs- R. Swaminathan etc. etc. reported in 1997(2) ATJ 529 has considered this issue and it was held that the increased pay drawn by a junior

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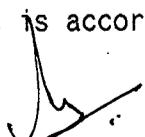
because of ad hoc officiating service rendered by him in the higher post for periods earlier than the senior is not an anomaly because pay does not depend on seniority alone nor is seniority alone a criterion for stepping up pay. It was also held that short term local promotions are due to administrative policy and this does not affect seniority.

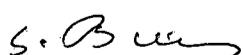
In that case also, the respondents employees, who were senior, claimed pay parity with reference to the pay of their junior who was given ad hoc promotion on local basis to higher post and thus on regular promotion subsequent to the respondents, his pay became higher. In that context the Hon'ble Supreme Court, relying on the DOPT's Memo dt. 4.11.93, held that this situation does not constitute anomaly attracting the principle of stepping up of pay.

Similar view was taken by the Hon'ble Apex Court in the case of UOI & Ors -vs- Sushil Kumar Paul & Ors reported in AIR 1998 SC 1925. That was a case relating to railway employee and arose from the decision of the Calcutta Bench dt. 8.7.96 in OA No 1046/95 and OA No. 1495/95. The decision of the Tribunal was relied on by the applicant herein, without possibly knowing that the decision of the Tribunal was set aside by the Hon'ble Apex Court on appeal. It was held that if the junior gets higher pay due to his earlier ad hoc promotion, the senior is not entitled to stepping up of his pay.

10. We have gone through the decision of the Tribunal in Pijush Kanti Dutta's case (supra) which was rendered on 19.7.96. It is true that the facts of that case are similar to the facts of the present OA. However, subsequent to that decision, the Hon'ble Apex Court has laid down the law as stated above. In that view of the matter, we are unable to follow the decision of this Tribunal in OA 370 of 1994 (Pijush Kanti Dutta).

11. For the reasons stated above, the OA is liable to be dismissed and it is accordingly dismissed. No costs.


(A. Sathath Khan)
Member (J)


(S. Biswas)
Member (A)