

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No. 322 of 1991 (L)

Versus

Union of India & Others Respondent

Hon'ble Mr. S.N. Prasad Member (I)

The applicant has approached this tribunal under section 19 of the Administrative Tribunals Act, 1985 with the prayer for directing the respondents to pay the difference of pay with allowances from 5.5.77 when the applicant's junior Sri S.K. Sood was allowed to officiate as L.I.O.(Diesel) on higher rates of pay to 31.3.1988 the date when the applicant retired from service and to fix the pay of the applicant at Rs. 3050/- per month w.e.f. 1.1.1986 by way of stepping up of pay and proforma fixation as the pay of his junior aforesaid Sri Sood has been so fixed, and consequently to give to the applicant all the retiral benefits on the refixation of his pay as on 31.3.1988 on the basis of his pay stepped up @ Rs. 3050/- per month w.e.f. 1.1.1986

2. Briefly, stated the facts of this case, interalia, are that the applicant was initially appointed as Fireman, Grade-I in the Northern Railway, Lucknow on 27.6.1949 in scale of Rs. 60-90 and in due course of time, he rose to the post of Senior Loco Inspector, Lucknow and retired from service w.e.f. 31.3.1988(A.Y.). While attending an official meeting in the office of the respondent No. 2 on 3.3.1987, the applicant came to know

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that Sri S.K. Sood, Senior Loco Inspector(Diesel) Northern Railway, Ludhiana under the Divisional Railway Manager, Northern Railway Ferozepur who was very much junior to him and was drawing all along his pay less than the applicant prior to his promotion in the scale of Rs. 700-900(R.S.), was allowed to draw Rs. 3050/- in the scale Rs. 2375-3500(R.P.S.) w.e.f. 1.1.86, whereas the applicant's pay was refixed only at Rs. 2900/- w.e.f. 1.1.1986 in the said scale of pay. The applicant submitted his representation dated 10.4.87 to the respondent no. 2 for the stepping-up of his pay at par with his junior Sri S.K. Sood(vide annexure -1 to the application) and also sent reminders, dated 14.12.1987, 26.7.1988 and 10.2.1989 to the respondent no. 2(vide Annexures 2, 3 and 4 respectively to the application), but of no avail; and during the pendency of the above application, the applicant retired from service on 31.3.1988. Thus, this being so, the case of the applicant was affected adversely with the result, the applicant suffered a lot and is still suffering due to wrong fixation of his pay and less payment of his arrears and allowances and retiral benefits.

3. The respondents resisted the claim of the applicant with the contentions, inter alia, that the applicant who was initially appointed as Fireman Gr.I in the running cadre in the year 1949 was gradually promoted to the post of Driver Gr. C in Gr. Rs. 150-240. On 27.6.1965, he was promoted from the post of Driver Gr.C in the running cadre to the stationary job as ALF in Gr. Rs. 150-240(AS) and therefore on his promotion to the stationary post his pay should have been fixed as per

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have been fixed as per rule i.e. Basic pay + 30% running allowance at Rs. 312/- (Rs. 240/- basic pay + 72/- 30% of the basic pay) but since the Gr. of ALF was Rs. 335/- 425, his pay was fixed at Rs. 335 (Three hundred thirty five only) w.e.f. 27.6.1965. From time to time he was put to officiate on the various ~~stationary~~ posts and as per rules he was allowed the benefit of fixation of pay in the respective post and grade, ^{and} thus, the applicant was promoted to officiate in Gr. Rs. 700-900/- as J.F / w.e.f. 19.1.1973 and S.F.I. Gr. Rs. 840-1040/- w.e.f. 1.1.1984 under the re-structuring of the cadre and his pay was fixed at Rs. 960/- w.e.f. 1.1.1984. The scale of Rs. 840-1040 was revised to Rs. 2375-3500(RPS) w.e.f. 1.1.1986 and accordingly his pay was fixed at Rs. 2900/- w.e.f. 1.1.1986 and he was drawing pay Rs. 3050/- at the time of his retirement. It has been further contended that as far as the case of the aforesaid Sri Sood is concerned, he was initially appointed as Boy Fireman in the year 1948 in Ferozpur division and his seniority in the running cadre has also been maintained in the aforesaid division, whereas the applicant was appointed in Lucknow Division and his seniority in Running cadre is maintained in Lucknow Division. Sri Sood was promoted as Driver Gr. C, Driver Gr. B and lastly as Driver Gr. A, in Grs Rs. 550-700(R.S.) w.e.f. 7.4.72 and thereafter he was promoted to the ~~stationary~~ post as JFI w.e.f. 5.5.77 in Gr. Rs. 700-900(RS). In the running cadre he was drawing Rs. 700/- maximum of the Grade i.e. Rs. 650-700/- w.e.f. 1.4.76 and as per rules his pay was fixed on the ~~stationary~~ post at Rs. 900/- (Rs. 700 + 210 = 910) maximum of the grade of Rs.

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700-900/- Since the applicant had been posted on Stationery post from the running post of Driver Gr.C and Sri Sood had been posted on the Stationery post from the running post of Driver Gr. A, this has resulted in Sri Soods' getting higher pay than the applicant. Evidently Sri Sood was working as Driver Gr. 'A' when he was promoted to the stationery post whereas the applicant was working as Driver Gr. ~~'A'~~ in Lucknow Division had been promoted to officiate on the post of ALF(Stationery post) and as such he was not holding the same post in the running cadre at the time of his promotion to the stationery post and therefore he is not entitled for stepping up of pay. Thus, in view of the above circumstances, the applicant is not entitled to the relief sought for and the application of the applicant is liable to be dismissed with cost.

4. The applicant has filed rejoinder-affidavit wherein almost of those very points and grounds have been re-iterated as already ~~been~~ mentioned in the original application.

5. I have heard the learned counsel for the parties and have thoroughly gone through the records of the case.

6. The learned counsel for the applicant while drawing my attention to the contents of the application and papers annexed thereto has argued that the applicant is much senior to the aforesaid Sri S.K. Sood and as such the pay of the applicant should be fixed at Rs. 3050/- per month w.e.f. 1.1.1986 by way of stepping-up of pay and preformed fixation of the pay of the applicant as his junior Sri Sood has been so fixed, and has further argued

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that since the applicant has been retired his pensionary benefits be also calculated and paid to the applicant accordingly; and has further argued that the claim of the applicant is not in any way barred by limitation and as such the relief sought for be granted to the applicant and in support of his arguments he had made reference of the Railway Board's letter No. PC-60/PP-1/25.5.62 and 19.3.1966 and Railway Board's letter No. PC-III/76/FE-1/18 dated 22.8.79, and has also placed reliance on the judgement of this tribunal in O.A. No. 323/91(L) "Sri S.K. Nigam(applicant) Vs. Union of India & others," which was passed on 24.8.92 by Hon'ble Mr. Justice U.C.Srivastava, V.C. of this tribunal, in which the matters involved were quite identical with that of this instant application of the applicant and has placed reliance on the following rulings also :-

(1) 1988(8) A.T.C. page 213, "P.Suseela and others (Applicants) Vs. Union of India and others (Respondents)" wherein it has been enunciated that " Promotion-Fortuitous promotion-Held, if promotion continues for about 4½ years, it cannot be considered as fortuitous-If a senior person is ignored and junior promoted for a long period, senior is entitled to stepping up of pay-pay fixation-FR 30(1)-Next Below Rule-Railway Board's letters Nos. PC-60/PP/1 dated 28.3.1961 and PC-80 PP/1-2 dated 25.5.62."

(2) 1989(9) A.T.C. page 61, "C.N. Locanathan (Applicant) Vs. Union of India & Others (Respondents) wherein it has been enunciated that " Administrative Tribunals Act, 1985-Section 22-Cause of action-Salary or pension, held, give rise to recurring cause of action from month to month."

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7. The learned counsel for the respondents while advertizing to the pleadings of the parties and re-iterating the view points as mentioned in the counter-affidavit has stressed that the applicant was promoted to officiate in grade Rs. 700-900/- as J.P.W.e.f. 19.1.1973 and S.P.I. grade Rs. 840-1040 w.e.f. 1.1.1984 under the restructuring of the ~~cadre~~ and his pay was fixed at Rs. 960/- w.e.f. 1.1.1984, and scale of Rs. 840-1040 was revised to Rs. 2375-3500(R.P.S.) w.e.f. 1.1.1986 and accordingly his pay was fixed at Rs. 2900/- w.e.f. 1.1.1986 and he was drawing pay of Rs. 3050/- at the time of his retirement, and since the applicant had been posted on stationary post from the running post of Driver grade "C" and since the aforesaid Sri S.K. Sood had been posted on stationary post from the running post of Driver grade "A", this has resulted Sri Sood getting higher pay than the applicant, and as such the applicant is not entitled to the relief sought for.

8. I have perused the above rulings.

9. This is noteworthy that a perusal of Annexure-16 which is seniority list of the year 1986 shows the name of the applicant at serial no. 23 and the name of ~~SRI~~ Sood at Serial No. 32 and as such it is abundantly clear that the applicant was ~~not~~ much senior to the aforesaid Sri S.K.Sood.

10. This is also important to point out that Annexure 17 which is photo-stat copy of page 168-169 of Railway Establishment Manual which provides criteria for fixation of pay of the employees on promotion to class-IIInd from group IIIInd in accordance with rule 2018-B and interalia, also provides that if due to such fixation and anomaly may arise whereby junior may be getting higher pay than the senior stepping up of pay of the senior may be done, as given in

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Board's letter P-C-III/76/FE-1/18 dated 22.8.79.

11. This is also significant to point out that a perusal of annexure -28 (which is copy of the letter dated 18/22.8.87 from G.M. (P) N. Railway, Baroda House, New Delhi to D.R M. N. Railway, Lucknow), also shows that a direction was issued to D.R.M., N.Railway Lucknow for stepping up of the pay of the applicant and that of Mulk Raj Gupta and Sushil Kumar Nigam equal to their junior Sri S.K. Sood.

12. Thus, after considering all the facts and circumstances of the case and all aspects of the matter I find that the above arguments of the learned counsel for the applicant get much support from the above ruling relied upon by him; and above arguments of the learned counsel for the respondents are found to be devoid of force and weight and I find that the applicant is entitled to get the benefits of stepping up of his pay at par with the aforesaid Sri S.K. Sood w.e.f. the dates on which aforesaid Sri S.K. Sood was given the benefits of fixation of pay, and as a result of this stepping up of his pay, the applicant is entitled to higher pensionary benefits also accordingly. The application of the applicant is allowed as above and the respondents are directed to re-fix the pay of the applicant accordingly and to give benefits accordingly to the applicant within a period of three months from the date of receipt of the copy of this judgement. No order as to costs

Lucknow Dated: 27.1.1993.
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Member (J)