

(8)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 594/87
T.A. NO: ---

199

DATE OF DECISION 12-10-1992

Balachandra Dattatraya Vaidya Petitioner

Mr.D.V.Gangal Advocate for the Petitioners

Versus

Union of India Respondent

Mr.P.R.Pai Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice S.K.Dhaon, Vice-Chairman

The Hon'ble Mr. M.Y.Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

MD
mbm*

4/10/92
~~(S.K.DHAON)~~
(M.Y.PRIOLKAR)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.594/87

Balachandra Dattatraya Vaidya,
 Anandi Bhavan,
 Old Bombay Agra Road,
 Opp: Maharashtra Vidyalaya,
 Thane (West),
 PIN 400 602. .. Applicant

-versus-

1. Union of India
 through
 General Manager,
 Central Railway,
 Bombay V.T.
 PIN 400 001.
2. The Chief Mechanical Engineer
 Central Railway,
 Bombay - 400 001. .. Respondents

Coram: Hon'ble Shri Justice S.K. Dhaon
 Vice Chairman.

Hon'ble Shri M.Y. Priolkar,
 Member(A)

Appearances:

1. Mr.D.V.Gangal
 Advocate for the
 Applicant.
2. Mr.P.R.Pai
 Advocate for the
 Respondents.

ORAL JUDGMENT: Date: 12-10-1992
 (Per M.Y.Priolkar, Member(A))

The applicant, in this case, who was appointed as Junior Clerk in the Central Railway on 10-6-1957, after intervening promotion as Senior Clerk, was promoted further to the post of Head Clerk from 17-12-1979. He was working in Civil Engineering(Construction)Department and therefore his leg was kept in the Mechanical Department in the open line of the Central Railway. His grievance is that one D.N.Purohit who was throughout his junior

as Junior Clerk, Senior Clerk as well as Head Clerk has been drawing more pay than him on promotion as Head Clerk from 2-8-1982. The only prayer now pressed is for stepping up of the applicant's pay to the level of that of his junior namely D.N. Purohit, w.e.f. 2-8-1982 in the post of Head Clerk.

2. The learned counsel for the respondents has produced before us a letter dt. 19-4-1990 of the Chief Personnel Officer of the Central Railway to the FA & CAO stating that there was an anomaly in the senior namely the applicant who, though promoted almost three years earlier as Head Clerk as compared to his junior D.N.Purohit, was getting less pay at Rs.515/- per month from 2-8-1982 whereas his junior who was promoted to the post of Head Clerk on that date had his pay fixed at Rs.530/-. This anomaly was stated to have arisen due to revision of option for revised scale from 1-8-1975. The Chief Personnel Officer had, therefore, proposed to refix the pay of the applicant at par with his junior D.N.Purohit from 2-8-1982 in terms of Railway Board's letter dt. 4-9-1974. The FA & CAO, however, in his reply dt. 4-6-1992 has merely stated that since the applicant was working in Engineering cadre from 10-6-1957 and was subsequently repatriated to his parent Mechanical cadre in 1987, his case is required to be examined under "Next Below Rule" and stepping up of pay cannot be agreed to in such cases.

3. The Next Below Rule is broadly to the effect that when an officer is for any reason prevented from officiating in his turn in a post on higher scale borne on the cadre of the service to which he belongs, he may be

allowed proforma officiating promotion and granted the pay of that higher scale on each occasion on which the officer immediately junior to him in his cadre draws higher pay in that scale.

4. Admittedly, the applicant was promoted as Head Clerk on 17-12-1979 whereas his junior D.N.Purohit was promoted to similar post of Head Clerk on 2-8-1982. The Next Below Rule is not applicable in this case since the junior was not officiating in a higher post earlier than the applicant. Although the FA & CAO's letter dt. 4-6-1992 states that the rules regarding stepping up of pay cannot be applied to this case, it was conceded on behalf of the respondents that all the conditions governing the stepping up of pay, namely, that both the existing and higher posts must be identical and that the anomaly should have arisen directly as a result of application of FR 22(C) on the promotion of the junior, are satisfied in this case. The learned counsel for the respondents could not explain as to why in these circumstances the anomaly cannot be set right by stepping up of the pay of the applicant to the level of that of his junior D.N.Purohit.

5. In view of the above, the applicant deserves to succeed. The respondents are, accordingly, directed to give the benefit of stepping up of pay of the applicant from 2-8-1982 to Rs.530/-per month, which is the pay drawn from that date by his junior D.N.Purohit on his promotion to the post of Head Clerk. The applicant should be entitled to arrears on such fixation of his pay from that date and also other consequential

benefits in accordance with law. This should be done within a period of three months from the date of receipt of a copy of this order. There will be no order as to costs.

Sh. Dhaon

(M.Y.PRIOLKAR)
Member(A)

S. Dhaon
(S.K.DHAON)
Vice-Chairman

MD