

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 749/92.

Date of Decision : 2.1.98

V. C. Tripathi Petitioner.

Shri K. R. Jadhav Advocate for the
Petitioner.

VERSUS

Union Of India & Others Respondents


Shri R. R. Shetty, Advocate for the
Respondents.

CORAM :

Hon'ble Shri B. S. Hegde, Member (J).

Hon'ble Shri M. R. Kolhatkar, Member (A).

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal.


(B. S. HEGDE)
MEMBER (J).

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 749/92.

Dated this 2nd, the Friday day of January, 1998

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).

HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

V. C. Tripathi,
Ticket Collector,
D/244, Varangaon Road,
15 Blocks, Bhusawal(Jalgaon) ... Applicant

(By Advocate Shri K. R. Jadhav)

VERSUS

1. The Secretary,
Union Of India,
Ministry of Transport,
Deptt. of Railway,
New Delhi.
2. The Divisional Railway Manager
(Commercial), Central Railway,
Bhusawal (Dist. Jalgaon). ... Respondents.
3. The General Manager,
Central Railway,
Bombay V.T.

(By Advocate Shri R. R. Shetty).

: ORDER :

! PER.: SHRI B. S. HEGDE, MEMBER (J) !

When the matter was taken up, none appeared on behalf of the applicant. Shri R. R. Shetty appeared on behalf of the respondents. After the argument was over, the Counsel for the applicant, Shri K. R. Jadhav, appeared and submitted judgements for our perusal.

2. By this application, the applicant is seeking stepping up of his pay on the ground that his juniors are drawing more pay than applicant and similarly situated persons. Therefore, in view of the Railway Board's instructions/letters dated 05.10.1976, 11.06.1990 and 07.08.1990 respectively, they are not getting the benefit of stepping up of pay viz-a-viz with that of his juniors. The contention of the applicant is that, the applicant and others who are similarly situated as per exhibit 'P' were promoted to the post of T.T.E. once in June 1997 and November 1997. They were not relieved, therefore, some of the juniors who were relieved to join the promotional posts in Grade Rs. 330-560 (RS) earlier to their seniors, got the higher fixation of pay. Therefore, the Union i.e. Central Mazdoor Sangh, on behalf of this senior employees, have been long asking the Respondent No. 2 and 3 for removing this type of Anomaly in fixation of pay because the senior employees were not allowed to join the promotional post due to administrative delay, for which the senior employees should not be faulted with, thereby, they are entitled to get the stepping up of pay at par with their juniors.

3. The applicant is challenging the impugned order passed by the respondents vide dated 30.07.1991 stating that in view of the letter dated 25.04.1991 the stepping up of pay in respect of T.C. cadre staff cannot be agreed to in terms of instructions

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issued by the Railway Board vide dated 09.05.1991,
which reads as follows :-

"The matter has been considered carefully by the Board in the light of deliberations held in the P.N.M. Meeting and it has been decided that while the benefit of stepping up of pay is not permissible in such cases, the Administration should take special care to ensure that the employees are relieved without any undue delay so that they may join the new place of posting on promotion in time. Cases of staff not being relieved even within 3 months of the issue of the promotion order, should be put up to DRM or Head of the Office and the Controlling Officer held accountable for not relieving the concerned staff."

Further, in letter dated 11.06.1990 it has been stated that - "it was decided in consultation with the Ministry Of Finance, that benefit of stepping up of pay may also be given on ad hoc promotion provided that the ad hoc promotions of the senior and junior persons are followed by their regular promotions without break. The pay of the senior person, in such cases, was to be stepped up from the date of occurrence of the anomaly i.e. from the date of promotion of the junior and not from the date of regularisation of his promotion."

4. The respondents in their reply submitted that the applicant is senior in-a-post and grade of Ticket Collector in the grade of Rs. 260-400 (RS) and not in the service of the respondents and the



juniors mentioned by the applicant are promoted from Class-IV category and appointed to railway service on 01.01.1967, 01.10.1962 and 07.04.1966 respectively. Their length of service will be counted for fixation of pay, on the basis they are drawing more. The only contention of the applicant is that he is senior and so he should draw more pay, is not based on material facts. The conditions of stepping up of pay are very clear that both junior and senior should belong to the same cadre and post and the scale of pay of lower and higher posts in which they are entitled to draw pay should be identical and the anomaly should be directly as a result of fixation of pay under Rule 2018-B FR(22 C).

5. In the instant case, the junior is promoted from Class-IV to Class-III and the senior is appointed directly to Class-III, hence cadre and post is not identical. Secondly, in the case of senior, he was directly appointed to Class-III cadre whereas junior is appointment in Class-IV Cadre. There is no occasion for senior to draw pay in lower grade whereas the junior had a chance. Their pay is not at all equal in higher grade when junior is promoted. Further, there is no occasion for senior to fix his pay under this rule because he was drawing much less in the initial grade and on promotion he was fixed in higher grade in the minimum. So far as juniors, ~~he~~ ^{they} were drawing maximum of grade fixed at a higher stage applying 2018 B F.R. 22 C in the promotional cadre. All these three conditions are

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are not being fulfilled by the applicant and therefore, the request for stepping up of pay cannot be acceded to. Secondly, the application filed by the applicant is barred by time and on this ground the O.A. is required to be dismissed.

6. The respondents further submit that there is no anomaly in fixation of pay. The pay of both junior and seniors were fixed according to statutory rules and there is no violation of any rule. Therefore, the fixation of pay and the stepping up of pay are two separate issues and the respondents have correctly fixed the pay in respect of both juniors and seniors according to the law laid down in the fundamental rules and even if the seniors would have been fixed in the minimum of the grade because drawing less pay in the grade of Rs. 260-400 (RS) and promoted and fixed at Rs. 330/-. He further submits that the juniors are drawing more pay on promotional cadre because of their length of service and they have been initially appointed in Class IV service whereas the applicant is appointed in Railway Service w.e.f. 18.10.1971. The element of seniority alone will not constitute for stepping up of pay. The applicant will be senior in a grade and not in service.

7. The Counsel for the applicant, in support of his contention relied upon the decision of the Supreme Court in M.L. Mahna V/s. Union Of India & Others [1996 (2) ATJ 402] wherein the Apex Court has held promotion-pay-stepping up of-promotion order issued -

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appellant retained in public interest - junior to him released much earlier and earned increments. The Apex Court held that the applicant entitled to step up his pay to the level of his junior.

8. In the instant case, it is understood that the applicant was placed in suspension w.e.f. 23.12.1975 to 22.11.1976. The respondents vide their order dated 11.05.1977 treated the period from 23.12.1975 to 22.11.1976 as period of suspension and therefore, no increment has been granted to the applicant which was due on 01.02.1977. Therefore, the contention of the applicant that his juniors are drawing more pay is not based on material facts. As stated earlier, his juniors were initially appointed to Class-IV posts whereas the applicant was appointed directly to Class-III post and accordingly, he has been fixed in minimum of the pay scale. Further, he was undergoing suspension during which period he was not granted any increment.

9. Considering the facts and circumstances of the case, the prayer made by the applicant is not sustainable, as he has not made out any prima-facie case for granting stepping up of pay viz-a-viz with that of his juniors. Secondly, the juniors mentioned by the applicant in the O.A., belong to a different cadre, not to be compared with the applicant.

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10. In the result, we do not find
any merit in the O.A. and the same is dismissed.
No order as to costs.

M R Kolhatkar
(M. R. KOLHATKAR)
MEMBER (A).

B S Hegde
(B. S. HEGDE)
MEMBER (J).

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