

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.896/97

Dated The 30 Day of August, 2001.

S. Balasubramanian,
Telecom Inspector Gr.I (MW),
residing at 11, Jyoti Building,
Rambag Lane, 4, Kalyan.

.. Applicant.

By Advocate Shri T.D. Ghaisas.

Vs.

1. Union of India, through the
General Manager,
Central Railway,
Mumbai CST - 400 001.
2. Chief Personal Officer,
Central Railway,
Mumbai CST - 400 001.
3. Financial Adviser &
Chief Accounts Officer (FA & CAO),
Central Railway,
Mumbai CST - 400 001.

.. Respondents.

By Advocate Shri S.C. Dhawan.

O R D E R

[Per Shri G.C. Srivastava, Member (A)]

The applicant who is working as Telecom Inspector in the scale of Rs.2395-3500 (RPS) under the respondents is aggrieved on account of their action of rejecting his claim for stepping up of his pay with effect from the date of promotion of his junior Shri D.B. Bhavsar vide their order dated 17.3.1997 and has prayed for the following reliefs:-

- 290/
- a. That this Hon'ble Tribunal will be pleased to call for the records underlying the impugned letter of 17.3.97 and after going through the legality or otherwise thereof to quash and set aside the same by holding and declaring that the impugned letter dated 17.3.97 issued by the Respondent authorities rejecting the claims for stepping up of pay of the applicant with that of his junior Shri Bhavsar is illegal, illogical, discriminatory and unconstitutional.

- b. That this Hon'ble Tribunal will be pleased to direct the Respondents to step up pay of the applicant with that of Shri Bhavsar, the applicant's junior with effect from 23.7.87 i.e. when Mr. Bhavsar's pay has been fixed in Grade Rs.2000-3200 (RPS) and also re-fix the applicant's pay in the Grade Rs.2375-3500 (RPS) in relation to his fixation in earlier grade and to pay him all the arrears with interest and all consequential benefits.
- c. That the respondents be directed to pay to the applicant the cost of this application.
- d. The applicant be allowed such other appropriate reliefs as are expedient in facts, records and circumstances of the case.

2. According to the applicant he is drawing less pay than his junior Shri Bhavsar who entered Railway Service later than him. He contends that he qualified for the selection post of Telecom Inspector Grade-I (Rs.2000-3200) and was appointed to the post on or about 28.3.88. The said Shri Bhavsar qualified in the next selection and was promoted as such on or about 24.4.89. However, despite this, the said Shri Bhavsar was promoted on adhoc basis on or about 23.7.87 over looking his claim and continued for over 1 1/2 year until his regular promotion. He has submitted a representation on 16.11.90 showing a comparative statement of anomaly in his pay vis a vis his junior and requested for raising his pay. The applicant finally got a reply on 17.3.97 (Exhibit-I) against which he has filed this O.A.

3. In reply, the respondents have stated that the said Shri D.B. Bhavsar was given local officiating arrangement in the year 1985 in the Grade of Rs.700-900 (RPS) in exigency of service. According to them the applicant is neither entitled to any benefit of stepping up of pay nor can he claim any such benefit at this stage based on local arrangement made in 1985. Since there was no selection prior to 1987 this arrangement was made purely as a stop gap measure in exigencies of service but the

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applicant never objected to this at that time. When Shri Bhavsar was given regular promotion, his pay was fixed in terms of FR 22 taking into account the pay he was drawing and his pay was fixed at a higher rate of pay than the applicant. This has however not affected the seniority of the applicant. Accordingly, the applicant is not entitled to any stepping up of pay and their action of rejecting the claim is as per rules. In this connection, they refer to Railway Board's letter dated 3.5.82 (Annexure R-1).

4. In his rejoinder, the applicant has stated that the above adhoc arrangement was made against clear vacancy which is against Railway Board's instructions. As per existing instructions, adhoc promotions should not normally be allowed to continue for unduly long period without the approval of the competent authority. He contends that the Railway Board letter dated 3.5.82 deals with cases of regular promotion and is not applicable to cases of adhoc promotions.

5. We have heard Shri T.D. Ghaisas and Shri S.C. Dhawan the learned counsels for the applicant and the respondents respectively and have carefully examined the pleadings and documents produced on record.

6. Shri Ghaisas for the applicant has mainly advanced the following contentions:-

- i) The adhoc official arrangement in favour of his junior Shri Bhavsar is discriminatory, illegal and violates

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article 14 and 16 of the Constitution of India as he was never asked to give his willingness for such promotion though he was available.

- ii) Shri Bhavsar had failed in the first selection held on 19.12.87 ^{and} but he ought to have been discontinued after declaration of the panel when selected candidates were readily available.
- iii) The post of Telecom Inspector (R.2000-3200) offered to Shri Bhavsar was not a short term vacancy or leave vacancy as is evident from the fact that the same arrangement was allowed to continue till his regular posting after qualifying in the selection.
- iv) Adhoc arrangement should be for a period of three months/six months but in this case this was continued for beyond this period only to favour Shri Bhavsar.

7. Shri Dhawan for the respondents has mainly raised the following contentions:-

- i) The O.A. is time barred.
- ii) The applicant never raised any objection when Shri Bhavsar was given adhoc officiating promotion although he claimed himself to be senior to him and hence he cannot claim any benefit of stepping up of pay now.
- iii) The case of the applicant is not covered by the relevant rules and is infact governed by Railway Board's letter dated 3.5.82.
- iv) Shri Bhavsar was working in Mumbai Division and was given local officiating arrangement while the applicant was working in CST office in CSTM at that time.

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- v) Pay of Shri Bhavsar was fixed as per rules on the basis of pay he was drawing at that time.
- vi) There is no anomaly in the pay of the applicant with reference to Shri Bhavsar which can be rectified by stepping up under any rules.

8. Shri Ghaisas for the applicant has drawn our attention to the judgements in the following cases:-

- i) OA No.658/1993 in the case of S.R. Shrivastava v/s. Union of India and Ors and OA No.801/1993 in the case of V.C. Saxena V/s. Union of India and Ors. decided by CAT, Jabalpur.
- ii) OA No.661/96 in the case of S.V. Adige V/s. Union of India decided by CAT, Mumbai on 10.10.1996.

9. On the other hand, Mr.Dhawan for the respondents has relied on the following judgements:-

- i) Union of India Vs. R. Swaminathan etc.etc. {1997 (2) SCC LJ (383)}.
- ii) P.C. Gupta Vs. Union of India in O.A. No.2261/1996 decided by CAT (PB), New Delhi on 4.4.2000.
- iii) Full Bench Judgment of CAT, Hyderabad Bench (1997 (1) ATJ.

10. Before we go into the merits of the O.A. we would like to deal with the preliminary objection raised by the respondents about the same being barred by limitation. According to the respondents the cause of action pertains to the stepping of pay

of the applicant with reference to the pay of his junior, Shri Bhavsar who was drawing higher pay in the relevant scale on the basis of pay he was drawing since 1985 when he was given adhoc promotion and hence the O.A. is time barred. The applicant has, however, contended that the O.A. has challenged the impugned order of the respondents dated 17.3.1997 and accordingly the same is within the prescribed period of limitation. He has also relied on the judgment of Supreme Court in the case of M.R. Gupta vs. Union of India, according to which the right to be paid correct salary on the basis of proper pay fixation is a right which subsists during the ^{entire} tenure of service. We have examined the rival claims in this regard and relying on the judgment of the Apex Court in the aforesaid case the O.A. does not seem to be barred by limitation. Hence the preliminary objection raised by the respondents about limitation fails.

11. Now, coming to the merits of the case, we find that the main question to be decided here is whether the case of the applicant for stepping up of his pay with reference to his junior is covered by Rules. In this regard, we would like to refer to the case of Union of India Vs. R.Swaminathan etc. The head note on the aforesaid case reads as under:-

"(A) Fundamental Rules - Rule 22(i) (a)(1)-
Ad hoc promotion - Pay - Stepping up - Local
officiating/ad hoc promotion made - junior
promoted earlier than his seniors-Regular
promotion of the junior to higher post-pay fixed
by taking into consideration the earned
increments in the higher pay scale of the post to
which he was promoted on account of his past
service and also his previous pay in the
promotional post-Regular promotion of
seniors-Junior getting higher pay-Whether seniors
entitled to step up of their pay to the level of
junior - Held no.

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(B) Fundamental Rules-Rule 22(1)(a)(1)-Ad hoc promotion-Pay-Stepping up-The increased pay drawn by a junior because of ad hoc officiating or regular 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 of Pay-Further short term local promotions are due to administrative policy and this does not affect seniority."

12. Before the Full Bench of the CAT, Hyderabad, a similar question arose whether a senior can claim stepping up of pay with reference to The pay of a junior when they work in different seniority units. Dealing with the question and also discussing the various case-laws on the subject, the Full Bench decided the question and salient observations made in the aforesaid case are as under:-

"(A) Pay-stepping up of-stepping up can be granted only where there is a provision in law in that behalf, and only in accordance with that.

(B) Pay-stepping up of - A claim for stepping up can be made only on the basis of a legal right and not on pervasive notions of equity or equality, un-related to the context of statutory law.

(C) Pay-stepping up of - Every claim must be based on an enforceable legal right - A right arises by conferment and not by comparison.

(D) Pay-stepping up of - Held a jurisdiction in equity does not inhere in the Tribunal.

(E) Constitution of India, Article 14 - stepping up of -- If wrong fixation of pay in the case of a Junior is to be bring about a corresponding fixation in the case of a senior by applying the principle of equality - Held that would be an instance using Article 14 to perpetuate illegality.

(F) Pay-stepping up of -- If a senior is denied what he is entitled to get, he must challenge that denial or that preferment extended to a Junior - Without challenging the wrong, he cannot claim a remedy from a wrong - He cannot acquiesced in a wrong, and make a gain from that wrong by a comparison.

(G) Special Leave Petition - Pay - Stepping up of Orders of Tribunal granting stepping up of pay on considerations of equity - Rejection of S.L.P.s against the orders of the Tribunal -- Held such rejection does not mean affirmation of the legal principle in the order sought to be appealed against."

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13. In the case of P.C. Gupta Vs. Union of India, the CAT,

Principal Bench, New Delhi observed as follows:-

"5. The applicant has tried to derive benefit from the order in the case of S.R. Srivastava (Supra) but much development has taken place in the administrative law on the point since then. The said order has been superseded by horde of Judgments. The ratio of Full Bench of the Tribunal in the case of B.L. Somayajulu & Ors. Vs. The Telecom Commission & Anr., O.A. 1412/93 decided on 20.11.1996 is very clear in the matter. In a similar case in Union of India Vs. Sushil Kumar Paul, (1998) 5 SCC 268: 1998 SCC (L&S) 1336 : AI R 1998 SC 1925 where stepping up of pay was claimed with reference to the pay of a junior, whose pay had risen since he had the benefit of ad hoc officiation on lower posts as well as promotion post before regular promotion, the Tribunal's directions for stepping up the senior's pay overlooking the Govt. of India, Department of Personnel & Training's OM dt.4.11.93 on the subject were held to be not sustainable by the Hon'ble Supreme Court. Their Lordships in that case applied their earlier decision in Union of India Vs. O.P. Saxena; (1997) 6 SCC 360 : 1997 SCC (L&S) 1667.


6. It is not uncommon that in a vast organisation like the railways in order to meet administrative exigencies local arrangements have to be made by according ad hoc promotions to certain officials, which may be followed by regular promotion. The senior officials posted in other areas cannot be allowed the benefit of stepping up of pay to the level of the pay of the junior officials who received the said advantage of ad hoc promotion as there are no provisions of law/rules entitling them to the same advantage.

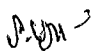
7. In the light of the above discussion and reasons, we do not find any merit in the OA which is dismissed without any order as to costs."

14. Relying on the aforesaid Judgments and considering the rival contentions of both the parties as detailed in para 6 and 7 (Supra) we are of the considered view that the claim of the applicant is not covered under Rules as the same does not satisfy the conditions prescribed for allowing stepping up of pay.

15. Hence, the OA is devoid of any merit and deserves to be rejected.

16. Accordingly, the OA is rejected with no order as to costs.


(G.C. SRIVASTAVA)
MEMBER (A)


(S.L. JAIN)
MEMBER (J).

ABP/B/H.