

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

DATE OF ORDER : 17.04.2002

1. OA No. 217/96

Ram Dass Sharma son of Nanhe Bai age 59 years,  
retired Confidential Assistant (CA), Western Railway,  
396/B. New Railway Colony, Kota (Rajasthan).

2. OA No. 218/96

Ramesh Chand Ojha son of Shri Choora Mani Ji Ojha,  
age 64 years, Retired Confidential Assistant (CA),  
Western Railway, Kota (Rajasthan).

.....Applicants.

VERSUS

1. Union of India through General Manager, Western  
Railway, Churchgate, Bombay.

2. The Divisional Railway Manager, Western Railway, Kota  
Division, Kota (Rajasthan).

.....Respondents.

Mr. S.C. Sethi, Counsel for the applicant.

Mr. Anupam Agarwal, Proxy counsel for

Mr. Manish Bhandari, counsel for the respondents.

CORAM

Hon'ble Mr. Justice O.P. Garg, Vice Chairman

Hon'ble Mr. A.P. Nagrath, Member (Administrative)

ORDER

PER HON'BLE MR. A.P. NAGRATH, MEMBER (ADMINISTRATIVE)




The applicants of these two OAs are retired Confidential Assistants. The relief prayed for by them in their respective OAs is the same i.e. that they are seeking stepping up of their pay with respect to the pay of Smt. D.J. Saldanha, who is also a retired Confidential Assistant. The controversy for adjudication being the same, these OAs are decided by this common order.

2. It is not in dispute that these two applicants were senior to Smt. Saldanha through out their service. They were appointed in the initial grade of Rs. 80-220 earlier than Smt. Saldanha and were later promoted to the higher grades right upto the post of Confidential Assistant, scale Rs. 2000-3200, earlier than Smt. Saldanha or on the same date. Applicant in OA No. 217/96, Shri Ram Dass Sharma, was promoted in the scale of Rs. 2000-3200 on 19.12.86 whereas applicant in OA No. 218/96, Shri Ramesh Chand Ojha, and Smt. Saldanha were promoted to that grade on 8.4.88. On promotion to this grade, pay of Smt. Saldanha has been fixed higher than the pay of the two applicants. They represented to the Department for stepping up their pay for the reason that they were senior to Smt. Saldanha and they were promoted to various grades before her promotion or on the same date and thus under the rules, they were entitled to stepping up of their pay at par with Smt. Saldanha. Their respective representations i.e. dated 20.12.94 from applicant in OA No. 217/96 and dated 9.1.96 from applicant in OA No. 218/96 were rejected by orders dated 30.6.95 and 8.2.96 respectively. These orders have been filed as Annexure A/1 of the respective OAs. Being aggrieved with these orders, these applications have been filed.

3. We have heard the learned counsel for the parties and also have perused the averments in the OA and reply of the respondents.

4. The respondents admit that both the applicants were senior to Smt. Saldanha and have submitted that the



applicants belonged to Kota Division of Western Railway whereas Smt. Saldanha was posted at Railway Headquarter at Bombay. All the three belonged to the same seniority unit. Smt. Saldanha was given ad hoc promotion against the leave vacancy and thus she had an opportunity of officiating in the higher grade. The applicants did not have the opportunity of officiating in the higher grade even on ad hoc basis as they were at Kota. The leave vacancy arose only in Bombay against which Smt. Saldanha was given ad hoc promotion. Pay of Smt. Saldanha, on her regular promotion scale Rs. 2000-3200, has been fixed while taking into account the ad hoc promotion. For this reason, she was fixed at a stage higher than that of the applicants. According to respondents, since the applicants had no occasion to work in higher grades even on ad hoc basis, they have no right for stepping up of their pay. The learned counsel for the respondents stated that stepping up of pay is permissible, if anomaly occurs on account of direct applications of Rule FR 22 I (a) after ~~instant~~ regular promotion and the junior starts drawing more pay <sup>instant case</sup> does not fall in that category.

5. The learned counsel for the applicant has assailed the action of the respondents in giving ad hoc promotion to a junior just because she was locally available in Bombay. He vehemently stressed on the aspect that the ad hoc promotion can be given only for a short duration and that too to the senior most person in the grade in terms of Para 216 of Indian Railway Railway Establishment Manual Vol. I. His plea was that the very action of the respondents promoting Smt. Saldanha on ad hoc basis and continuing her for a long period was violation of the rules of the Department. The applicants were never given any offer for ad hoc promotion even if the vacancy occurred at Bombay. The learned counsel drew our attention to the Railway Board's order dated 5.10.1976, which provides that the benefit of stepping up of pay can also be given on ad hoc promotion provided that promotion of the senior and junior persons are followed by their regular promotion. In such situation, the pay of the senior person will have to be stepped up from the


date of occurrence of the anomaly. A reference was made to the decision of the Ahmedabad Bench of the Tribunal dated 27.3.91 in OA No. 584/97. In that case, the junior was permitted ad hoc promotion which continued over a long period and at no stage any offer was made to the senior who was of course not in Bombay. In that case also the prayer of the applicant was allowed.

6. The learned counsel for the applicant has also brought to our notice the decision of this Bench dated 25.3.94 in OA No. 233/92. The applicant in that OA Shri J.C. Seth has sought exactly the same relief vis-a-vis Smt. Saldanha. The then Hon'ble Vice Chairman, Single Member Bench, allowed that OA and also directed payment of arrears w.e.f. 1.1.1987.

7. We have carefully perused the judgements of the Ahmedabad and Jaipur Bench in the cases as relied upon by the applicant. The grounds on which the relief has been considered admissible and granted are that ad hoc arrangement could be made only for a short periods; say about three months. In case such arrangements were likely to continue over a long period, the respondents were required to make an offer to the seniors even though they were located at other stations. Only if the seniors have declined to accept ad hoc promotion, then the junior could have been promoted. Since this procedure was not adopted by the respondents, it has been held by the Tribunal in these cases that seniors are entitled to stepping up of pay.

8. Para 216 of IREM lays down

"Ad hoc promotions should be avoided as far as possible both in selection and non-selection posts, and where they are found inescapable and have to be made in the exigency of service, they should be resorted to only sparingly and only for a short



duration of 3 to 4 months. The ad hoc promotion should be ordered only from amongst senior most staff. As a rule a junior should not be promoted ignoring his senior."

(emphasis supplied)

9. Though the respondents have taken a plea that Smt. Saldanha was promoted against the leave vacancy, they have carefully avoided bringing on record the period for which she was permitted to work on ad hoc basis. The pay difference between the applicants and that of Smt. Saldanha was because she was permitted to work in the higher grade in the name of ad hoc promotion over a very long period. It is not the case of the respondents that they have offered ad hoc promotion to the seniors before promoting Smt. Saldanha. The rule position itself makes it obligatory to consider only seniors for ad hoc promotion. If the seniors are offered such ad hoc promotion and they give refusal then only the question of considering the junior would arise. No authority has been shown to us by the respondents that a junior could have been promoted on ad hoc basis ignoring the senior for the reasons that such seniors were not available at the place where an occasion for ad hoc promotion has arisen. Apparently, the respondents have committed an irregularity by promoting junior on ad hoc basis and had continued her in the higher grade for a long period. The correct course of action in such a situation would have been that the pay of the junior should have been regulated as per her seniority in the cadre after her regular promotion.

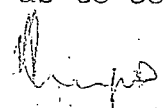
10. A similar controversy came up for consideration in OA No. 432/96 before the co-ordinate Bench of this Tribunal in which one of us was the Member. In that case also, juniors were promoted to officiate in higher grade ignoring the seniors. While going into relevant provisions of FR 22, it was concluded that though the juniors were irregularly given the benefit of ad hoc promotion but that would not create any right in favour of the seniors for stepping up of their pay. In that case, the respondents were directed that on regular promotion of the juniors, the pay of juniors was to be fixed by ignoring the period of ad hoc promotion. The seniors were not considered entitled for any stepping up.

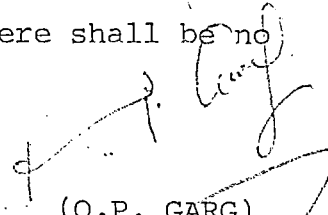
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11. As stated in para No. 9 above, Smt. Saldanha was promoted to work in the higher grade for a long period de hors the rules. She had already enjoyed the benefit of such irregular ad hoc promotion by getting higher pay for the period, she so officiated. For the reasons given by us in OA No. 432/96, we are of the considered view that her ad hoc officiating promotion should not have been taken to consideration while fixing Smt. Saldanha's pay on her regular promotion. By doing exactly that, the respondents have further compounded the irregularity. Unfortunately, in this case, we cannot direct the respondents to now revise the pay of Smt. Saldanha by ignoring the period of her ad hoc promotion as she retired years back and her pension has already been fixed which she has been enjoying over the years. The law and the rules do not permit revising the pension of any employee to her detriment, once the same has been authorised by the competent authority.


12. Notwithstanding these facts and the position as stated in para above, there is no case made out for stepping up of the pay of the applicants. The anomaly has not occurred because of direct applications of FR 22(I)(a)(i) but because of the reasons that the juniors had officiated in higher grades while the applicants had no occasion to do so. By permitting stepping up of pay of the applicants, we would be allowing further illegality and irregularity. We are not persuaded to agree with the decision given in the cases cited by the learned counsel for the applicant. We cannot support the view taken by the coordinate Bench in OA No. 233/92. That was a decision given by the Single Member Bench and we are of the considered view that the said case was not correctly decided.

13. For the reasons stated above and view taken by us in similar case in OA No. 432/96, we do not find any merit in these cases and the two OAs are dismissed. There shall be no order as to costs.

  
(A.P. NAGRATH)  
MEMBER (A)

  
(O.P. GARG)  
VICE-CHAIRMAN

TRUE COPY ATTESTED

  
Section Officer (Judicial)  
Central Administrative Tribunal  
Jaipur Bench, JAIPUR

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