

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

DATE OF ORDER : 03 APR 2002

OA No. 91/97

Ganga Ram Khanna aged about 65 years son of Shri Desh Raj Khanna resident of near Gurdwara, Kota Junction, Kota.

....Applicant.

VERSUS

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Divisional Railway Manager, Western Railway, Kota Junction, Kota.

....Respondents.

Mr. P.V. Calla, Counsel for the applicant.

Mr. U.D. Sharma, Counsel for the respondents.

CORAM

Hon'ble Mr. H.O. Gupta, Member (Administrative)

Hon'ble Mr. J.K. Kaushik, Member (Judicial)

ORDER

PER HON'BLE MR. J.K. KAUSHIK, MEMBER (JUDICIAL)



The brief matrix of the case is that the applicant was appointed as Jr. Draftsman in the Western Railway on 11.6.1956. at Regional Office in Ajmer. He was transferred to Kota Division from dated 14.12.1956. In due course, he enjoyed his promotion as Draftsman and finally as Chief Draftsman from which he was retired on getting the age of superannuation from December, 1989. The applicant has further stated that one Shri S.D. Rehani, Junior to the applicant, came on transfer to Kota Division on 20.5.1960 on the post of Railway Draftsman. Shri S.D. Rehani opted as Junior Estimator on account of option and in pursuance thereof he was promoted to the post of Estimator, Head Estimator and so on. Thereafter, a decision was taken to prepare a joint seniority of Draftsman and Estimator in the year 1965. In the seniority list, applicant stood at sl no. 19 and that of Shri S.D. Rehani at sl. no. 20. In spite of specific instructions, the respondent no. 2 ignored the case of the applicant and gave ad-hoc promotion to Shri S.D. Rehani to the post of Estimator, Head Estimator and so on. Meanwhile, Shri Jag Mohan Singh, who ranked senior to the applicant, finding place at sl. no. 18 of the seniority list (Annexure A/3) filed an OA No. 473/93 for stepping up of his pay vis-avis Shri S.D. Rehani, who is junior to Shri Jag Mohan Singh as well to the applicant. The same was allowed by the Mumbai Bench vide judgement dated 25.11.1994. However, despite representation of the applicant, the claim of the applicant of stepping up of pay vis-avis his junior, Shri S.D. Rehani was rejected vide order dated 26.2.1996 (Annexure A/1). Therefore, this original Application was filed for fixation of the pay of the applicant at par with Shri S.D. Rehani from the date his pay happened to be higher vis-a-vis to that of the applicant on promotion in the pay scale of Rs. 425-700 with all consequential benefits



thereto and also has prayed for consequential stepping of pay benefits and retiral benefits as mentioned in the Para 9 and its sub paras of the OA.

2. Show cause notice of admission were issued to the respondents for filing their reply on 21.10.1997. The reply was filed. The rejoinder was also filed and the OA was admitted on 20.9.2000. In the reply, the facts & grounds taken in the OA has been controverted. Specific plea has been taken by the respondents in the reply regarding limitation and has averred that the OA is not maintainable as it byeond limitation. It has been averred that the applicant belonged to Draftsman cadre and Shri S.D. Rehani belonged to the cadre of Estimator. Both earned their promotion in different cadres. Shri S.D. Rehani got his promotion earlier than the applicant and no stepping up could be allowed on this account as per the Hon'ble Supreme Court's judgement in Union of India Vs. R. Swaminathan reported in 1997 SCC (L&S) 1852 and Union of India Vs. Sushil Kumar Paul reported in 1998 SCC (L&S) 1336. Further the decision delivered in Jag Mohan's case said to judgement in personam and the same benefits could not be extended to the applicant in view of the latest law laid down by the Apex Court.

3. The applicant has filed a detailed rejoinder and has placed on record certain documents indicating that the judgement of Jag Mohan Singh was implemented and the staff belonging to Draftsman and Estimator belonged to the same cadre and that stepping up of the pay ought to have been in view of the judgement in identical case of Jag Mohan Case. It has also been pleaded that against the Jag Mohan Singh's case, an SLP



was filed before the Hon'ble Supreme court and the same has been dismissed as indicated in letter dated 27.11.1995. The modified has attained finality and even the said judgement has been implemented by the respondents.

4. We have heard the learned counsel for the parties and have carefully examined the records of this case. The respondents have firstly stressed on the point of limitation and could not controvert the general facts of the case as brought out by the applicant regarding his position vis-a-vis Shri S.D. Rehani and that of Shri Jag Mohan Singh regarding the seniority and factor relating to the cadre. The question of limitation cannot be pleaded against the applicant. It was brought out in the facts that against the order of the Tribunal stepping up of Shri Jag Mohan Singh at par with Shri Rehani, an SLP was pending and the same was dismissed in 1994 and only thereafter, the pay of Shri Jag Mohan Singh has been stepped up at par with Shri S.D. Rehani i.e. on 28.11.1995. Immediately thereafter the applicant filed a representation dated 28.12.1995, which was dismissed by the impugned order dated 26.2.1996. Thereafter, the OA has been filed within the period of one year from the date of impugned order. Hence it could not be said that the OA is barred by limitation. Further otherwise also the matter relates to stepping up of the pay, which gives continuous cause of action and law of limitation does not apply. Hence the objection of the limitation raised by the respondent is of no consequence and is hereby overruled.

5. The applicant has heavily relied on the judgement (Annexure A/8) in Jagmohan Singh case (supra). He has also



taken support of another dated 18.8.2000 in OA No. 1066/97, Shri Mohan Hall Popli vs. Union of India & Another. The applicant in that OA i.e. Shri Mohan Hall Popli, who was at sl. No. 5 of the combined seniority list (Annexure A/6), above said Shri Jag Mohan Singh sl. No. 6 as well as the applicant at sl. no. 7 and Shri S.D. Rehani at sl. no. 9. The copy of the judgement has been taken on record. In this case, relating in the case of Jag Mohan Singh case, pay of the Shri Mohan Hall Popli has been ordered to be stepped up at par with Shri Jag Mohan Singh. The applicant claimed that he is a similarly situated person and the respondents cannot discriminate in the matter of employment and he should be given the same treatment as has been given in case of two others senior persons to Shri S.D. Rehani. The learned counsel for the applicant has also stressed that he cannot be discriminated on the classification based on one litigating and another non litigating and he is fully entitled for grant of benefits as has been given to his next juniors.

6. On the other hand, the learned counsel for the respondents has stressed on the verdict of the Hon'ble Supreme Court, Union of India & Another Vs. R. Swaminathan (supra) (latest and three Judges Bench Judgement) and has taken the plea that in the judgement of Jagmohan Singh, it has been stated that Shri Rehani was given ad hoc appointment and this fact was not in dispute. It has been further argued that junior was given promotion to meet the exigency of service, it cannot be said to be anomaly requiring stepping up of the pay of the senior. The relevant para 10 of the said judgement reproduced as under :-

"According to the aggrieved employees, this has resulted



in an anomaly, Government order bearing No. F.2(78)-E.III(A)/66 dated 4.2.1966 has been issued for removal of anomaly by stepping up of pay of a senior on promotion drawing less pay than his junior. It provides as follows:

10. Removal of anomaly by stepping up of pay of senior promotion drawing less pay than his junior.

(a) As a result of application of FR 22-C - In order to remove the anomaly of a government servant promoted or appointed to a higher post on or after 1.4.1961 drawing a lower rate of pay in that post than another government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely :

- (a) Both the junior and senior officers should belong to the same cadre and the post in which they have been promoted or appointed should be identical and in the same cadre;
- (b) the scale of pay of the lower and higher posts in which they are entitled to draw pay should be identical.
- (c) the anomaly, should be directly as a result of the application of FR 22-C. For example, if even in the lower post the junior officers draws from time to time a higher rate of pay than the senior by virtue of grant



of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under FR 27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay.

As the orders itself states, the stepping up is subject to three conditions : (1) Both the Junior and the senior officers should belong to the same cadre and the post in which they have been promoted should be identical and in the same cadre; (2) the scales of pay of the lower and higher posts should be identical; and (3) anomaly should be directly as a result of the application of Fundamental Rule 22 C which is now Fundamental Rule 22(I)(a)(1). We are concerned with the last condition. The difference in the pay of a junior and a senior before us is not a result of the application of Fundamental Rule 22(I)(a)(1). The higher pay received by a junior is on account of his earlier officiation in the higher post because of local officiating promotion which he got in the past. Because of the proviso to Rule 22 he may have earned increments in the higher pay scale of the post to which he is promoted on account of his past service and also his previous pay in the promotional post has been taken into account in fixing his pay on promotion. It is these two factors which have increased the pay of the juniors. This cannot be considered as an anomaly requiring the stepping up of the pay of the senior.



7. The matter was further clarified in Para 11 of the judgement wherein certain circumstances contempt to pay anomaly. The same is extracted as under :-

The Office Memorandum dated 4.11.1993, Government of India, Department of Personnel & Training, has set out various instances where stepping of pay cannot be done. It gives, inter-alia, the following instances which have come to the notice of the Department with request for stepping up of pay. These are :

- (a) Where a senior proceeds on Extraordinary Leave which results in postponement of date of next increment in the lower post, consequently he starts drawing less pay than his junior in the lower grade itself. He, therefore, cannot claim pay parity on promotion even though he may be promoted earlier to the higher grade:
- (b) If a senior foregoes/refuses promotion leading to his junior being promoted/appointed to the higher post earlier, the junior draws higher pay than the senior. The senior may be on deputation while the junior avails of the ad hoc promotion in the cadre. The increased pay drawn by a junior either due to adhoc officiating/regular service, rendered in the higher posts for periods earlier than the senior, cannot, therefore, be an anomaly in strict sense of the term.
- (c) If a senior joins the higher post later than the junior for whatsoever reasons, whereby he draws less pay than the junior in such cases the senior cannot claim stepping up of pay on a part with the junior.



(d) * * * *

There are also other instances cited in the Memorandum. The Memorandum makes it clear that in such instances a junior drawing more pay than his senior will not constitute an anomaly and, therefore, stepping up of pay will not be admissible. 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."

8. In the present case, the matter relates to the Railways and correspondence No. 1316. Similar condition has been laid down for removal of the pay anomaly. Further laid has been laid down by the Hon'ble Apex court. The same has to be followed.

9. The learned counsel for the applicant has argued that one the similarly situated persons have been given the benefits by the Hon'ble Tribunal at Bombay Bench of the Tribunal, the judgement ought to have been applied in the case of the applicant. The learned counsel for the respondents has stated that the position of the law has been settled by the Apex Court in 1997 and the same could not have been brought in the knowledge of the Mumbai Bench while deciding the matter in 1994. Further unfortunately, the legal position and the verdict~~of~~ of the Hon'ble supreme court was not brought to the notice of the Principal Bench while adjudicating the matter in Mohan Hall Popli (supra). The said judgements would be per incuriam. Not only this, any wrong order passed in favour of the employee cannot become cause of action for other similarly situated persons. We find to submit the deciding case laws



(2000) 9 SCC 94 State of Bihar vs. Kameshwar Pd. Singh, AIR 1995 SC 705 Chandigarh Administration vs. Jagdeep Singh & Another. Applicant cannot claim benefit which have been granted to other similarly situated persons. The legal position is thus clear that no benefit of said judgement can be extended to any other persons.

10. In ordinary course, we would have referred the matter to the Larger Bench, since we are taking the contrary view of the judgement delivered by co-ordinating Benches of the Tribunal, but in the present case, there is no such necessity as the matter had been adjudicated and settled by the Apex Court and the law laid down by the Hon'ble Supreme Court, is binding on us. Thus, in view of the above, we are of the considered opinion that the applicant is not entitled to the stepping up of the pay and no such relief as prayed for in the OA . We therefore, pass the order as under :-

OA fails and the same is hereby rejected. No Order as to costs."


(J.K. KAUSHIK)

MEMBER (J)


(H.O. GUPTA)

MEMBER (A)