

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Date of Decision: 2/5/2001

OA 207/2000

Mali Ram Luniwal, TTE, Western Railway, Sikar.

... Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Jaipur Division, Jaipur.

... Respondents

CORAM:

HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

For the Applicant ... Mr.Nand Kishore

For the Respondents ... Mr.R.G.Gupta

O R D E R

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

In this application filed u/s 19 of the Administrative Tribunals Act, 1985, the applicant has sought a direction to the respondents to fix his pay as on September, 1999 at Rs.4400/- and to give him all consequential benefits after such pay fixation and further, not to disturb the seniority of the applicant by giving undue benefits to his juniors.

2. The admitted facts of the case are that the applicant, after being selected by the Railway Recruitment Board, was recommended for appointment as Ticket Collector on Jaipur Division. Since there was no vacancy on Jaipur Division at the relevant point of time, the applicant came to be appointed on Vadodara Division and he joined his duty on 11.1.95. While working in Vadodara Division, he was promoted as TTE on ad hoc basis in the scale of Rs.4000-6000. In the meantime, consequent to the orders passed by this Tribunal, the applicant was posted to Jaipur Division with full seniority. His transfer orders to Jaipur Division dated 7.4.98 and Last pay Certificate (LPC) issued on 14.4.98 are annexed as Anns.A/6 and A/7 respectively. The applicant alongwith his junior Shri Poonam Chand was regularly promoted as TTE scale Rs.4000-6000 vide order dated 25.1.2000. Pay of the applicant, as fixed in Jaipur



Division, is less than what is being received by Shri Poonam Chand. The applicant is aggrieved by this and claims that he made representations to the department for redressal, but to no avail. He has filed this OA for seeking direction to the respondents for necessary relief, as indicated supra.

3. Respondents have stated in reply that when the applicant came to be posted on Jaipur Division, Shri Poonam Chand had already been officiating as TTE in grade Rs.4000-6000 in terms of order dated 22.12.95. Since his (Shri Poonam Chand's) regular promotion w.e.f. 25.1.2000 was in continuation of his ad hoc promotion since 1995, his pay got fixed higher than that of the applicant because of the increments earned by Shri Poonam Chand for the period of ad hoc working. It is stated by the respondents that while working on Vadodara Division, the applicant was promoted on ad hoc basis as TTE and was paid for the period he officiated there. On his posting to Jaipur, he was posted only as TC and cannot claim benefit of Next Below Rule with respect to his junior who had already been working on ad hoc basis from an earlier date.

4. Arguments of the learned counsel on either side proceeded along the written submissions made by the parties. Learned counsel for the applicant placed reliance on the orders passed by the Hon'ble High Court of Judicature for Rajasthan in the case of Union of India and Others v. Shekhar Chand Jain, 2001 (1) WLC (Raj) 331. By this order, the Hon'ble High Court had upheld the decision of the Tribunal in view of the clear provisions contained in Para 216 (i) of Indian Railway Establishment Manual (IREM), Vol.1. In that case the Tribunal had allowed the benefit of stepping up of pay of the senior even though the junior had been promoted on ad hoc basis. The stand taken by the learned counsel for the respondents was that benefit of pay protection with respect to the junior is admissible only where the junior has been promoted on regular basis and that promotion on ad hoc basis of a junior does not entitle a senior for pay protection.

5. It will be important to recall the provisions of Para 216(i) of the IREM, which read as under :-

"216(A). Ad hoc promotion against selection and non-selection posts :-



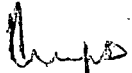
(i) Ad hoc promotions should be avoided as far as possible both in selection and non-selection posts, and where they are found inescapable and have to be made in the exigency of service, they should be resorted to only sparingly and only for a short duration of 3 to 4 months. The ad hoc promotion should be ordered only from amongst seniormost suitable staff. As a rule a junior should not be promoted ignoring his senior." (Emphasis supplied).

6. In the instant case, so long as the applicant was working on Vadodara Division, the respondents were within their rights to grant ad hoc promotion to Shri Poonam Chand, if the need arose. After it was established that the applicant had a lien on Jaipur Division and he came to be appointed on Jaipur Division, from the date he came to Jaipur Division it was incumbent on the respondents to review the ad hoc appointments to ensure that provisions of Para 216(i) are continued to be observed. It is categorically stated in the rule; "as a rule a junior should not be promoted ignoring his senior". It is not the case of the respondents that the applicant was not senior. It is only because of the respondents failed to act properly under the rules that the junior was allowed to continue to work on ad hoc basis. The applicant himself had been working as TTE on Vadodara Division and it is apparent from the LPC received by Jaipur Division from Vadodara Division that his rate of pay at that time was Rs.4100/- with next date of increment as on 1.6.98 when he was to draw Rs.4200/-. On his getting posted on Jaipur Division it was only fit and proper that he should have been continued to work as TTE by reverting the junior person. This was not done by the respondents and they permitted the junior to continue. The department is well advised to examine as to under what compulsions, a junior was allowed to continue, and to take appropriate remedial action to stop recurrence of this nature. Be that as it may, a wrong action on the part of the department cannot affect the right of an employee adversely and so this application deserves to be allowed.

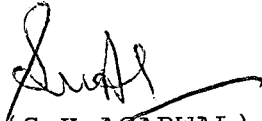
7. We, therefore, allow this OA and direct the respondents to step up the pay of the applicant to that of his junior Shri Poonam Chand with effect from the date the applicant reported on Jaipur Division. The applicant is also entitled to all the arrears. The respondents are



directed to comply with these directions within a period of three months from the date of this order. No order as to costs.


(A.P. NAGRATH)

MEMBER (A)


(S.K. AGARWAL)

MEMBER (J)