

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 15.10.2003

OA No.367/2001

H.C.Khurana s/o Shri Nathu Ram, retired Chief Draftsman,
presently residing at 3/415, Hata Kasandiya, Old Post
Office Road, Kota Jn.

.. Applicant

Versus

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

.. Respondents

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

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

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

HON'BLE MR. A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

O R D E R

PER HON'BLE MR. M.L.CHAUHAN.

The applicant has filed the present application
thereby praying for the following reliefs :-

"(i) That by appropriate order or suitable direction
the Hon'ble Tribunal be pleased to direct the
respondents to step up the pay of the applicant
at par with Mohan Lal Popli, whose pay has been
stepped up at par with S.D.Rehani by order dated
21.5.2001 (Ann.A/2) from the date Shri Jagmohan
Singh was given the benefit of stepping up with
all consequential benefits, in pursuance of the
judgement of the principal bench, dated 18.8.2000
(Ann.A/1) i.e. revision of pension etc.

82

(ii) Any other relief as deemed fit in the facts and circumstances of the case.

(iii) The Hon'ble Tribunal be pleased to award cost to the applicant."

2. Facts of the case are that the applicant was appointed as Junior Draftsman scale Rs. 100-185 (P) on 26.10.56 in RTM-Godra Construction Project and subsequently joined on transfer in the Divisional Office, Kota on 1.4.58. The applicant finally retired from the post of Chief Draftsman scale Rs. 700-900 on 30.11.95. Further case of the applicant is that one Shri S.D.Rehani was appointed as Junior Draftsman scale Rs. 100-185 under A.En. (Survey and Construction) Udaipur on 2.11.57 and subsequently joined on transfer in the Divisional Office, Kota by order dated 2.7.60. It is further stated that the mode of recruitment in the category of Draftsman/Estimator was two fold i.e. those who were holding Technical Qualification were appointed to the post of Jr. Draftsman directly while others who were not holding technical qualification were imparted training in Railway Training School, Mhow before their appointment. (referred to as Mhow Trainee). Shri S.D. Rehani belonged to the aforesaid category of Mhow Trainee. Further case of the applicant is that seniority of Draftsman and Estimator was combined seniority list in the Western Railway and the incumbents were transferrable to either post. It is further stated that in 1959 the seniority of Draftsman and Estimator were bifurcated with an oblique motive to give undue favour to certain persons. Draftsmen who were Mhow Trainee were illegally asked to exercise options to which they were not entitled to. Shri S.D.Rehani who was a Mhow

: 3 :

trainee was as such transferred to the post of Junior Estimator where he was promoted as Sr. Estimator scale Rs. 150-240 on 1.1.61 and thus started drawing pay higher than the applicant. It is also stated that the bifurcation of seniority of Draftsmen and Estimators as aforesaid was revoked in the year 1975 and thereafter by the order dated 6.9.76 instructions were issued that the seniority of Draftsmen and Estimators be fixed ignoring the promotion or confirmation of the Mhow trainee candidates in wrong category for which they were not entitled. It was further mentioned that if any Jr. Draftsman/Jr. Estimator is senior to Mhow trainee candidates who had been wrongly posted as Sr. Estimator and confirmed, the Mhow trainee candidate will not be reverted but the Jr. Draftsman/Jr. Estimator will get preference for further promotion. Copy of such instructions has been placed on record as Ann.A4. In pursuance to the aforesaid order dated 6.9.76 the applicant and other who were ignored for promotion were given the seniority over Shri S.D.Rehani. According to the seniority list dated 3.2.86, the applicant was at Sl.No.16, Shri M.L.Popli at Sl.No.17, Shri Jagmohan Singh at Sl.No.18, Shri G.R.Khanna at Sl.No.19 and Shri S.D.Rehani at Sl.No.20. It is further pleaded that Shri Jagmohan Singh whose name appears at Sl.No.18 of the seniority list was given the benefit of stepping up of his pay at par with Shri S.D.Rehani vide order dated 28.11.95 pursuant to the decision rendered by the CAT, Mumbai Bench. It is further stated that the applicant being similarly situated also made representation to the authorities for giving the benefit of stepping up of his pay at par with Shri S.D.Rehani on the basis of the decision rendered by the Mumbai Bench. It is further

4

pleaded that the Principal Bench of the CAT, New Delhi vide judgment dated 18.3.2000, Mohan Lal Popli vs. Union of India and ors. held that the applicant Shri M.L.Popli is entitled to stepping up of pay at par with Shri S.D.Rehani who was drawing higher pay, with all consequential benefits. Further case of the applicant is that he being seniormost amongst Draftsmen, as would be seen from seniority list dated 3.2.86 (Ann.A5) made representation dated 3.11.2000 (Ann.A7) for extending the benefit of stepping up of pay but no such benefit has been extended to him till date. Hence aggrieved by the inaction on the part of the respondents, the applicant has filed this OA thereby praying for the aforesaid reliefs.

2.1 The grounds taken by the applicant for claiming the aforesaid relief is that he being senior to S/Shri M.L.Popli and Jagmohan Singh in whose case the benefit of stepping up qua Shri S.D.Rehani has been given by the Mumbai and Principal Benches, he is also entitled to the similar benefits. The second ground taken by the applicant in this OA is that Shri S.D.Rehani who joined as Jr. Draftsman later than the applicant was shifted to the cadre of Estimator on account of exercising option and he was promoted as Sr. Estimator in the scale of Rs. 150-240 on 1.1.61 and thus started drawing pay higher than the applicant. This promotion was given by the respondents wrongly. Thus in terms of Rule 208 of the Indian Railway Establishment Manual (IREM) where the junior person has been given erroneous promotion on account of administrative error, the senior person is entitled not only to the seniority but also entitled to fixation of his pay at par with his junior. It is only on ^{these} ~~two~~ grounds that the applicant has prayed that he is entitled to the relief

of fixation of his pay at par with his junior.

3. The respondents have filed reply. In the reply it is stated that the judgment rendered by the Hon'ble Principal Bench dated 18.8.2000 in the case of Mohan Lal Popli is contrary to the law laid down by the Apex Court in various decisions, as such the judgment relied upon by the applicant is per incuriam. The applicant is not entitled to similar treatment of stepping up of his pay at par with Shri S.D.Rehani. A perusal of the position indicated in the statement at Ann.R/1 will show the various posts held by the applicant and Shri S.D.Rehani. Shri S.D.Rehani got promotion as Senior Estimator on 1.1.1961. He was drawing pay at Rs. 205/- on which date the applicant was drawing pay at Rs. 170/- and when the applicant got promotion as Head Draftsman on 27.4.1980, he was drawing the pay at Rs. 600/- whereas on this date, Shri Rehani was drawing pay at Rs. 660/- and when Shri Rehani got promotion as Head Estimator on 5.6.1980, he was drawing pay at Rs. 700/-. Similarly, when the applicant got promotion as Chief Draftsman on 28.4.1983, he started drawing pay at Rs. 700/- from the said date whereas on the said date, Shri S.D.Rehani was drawing Rs. 750/- and when Shri Rehani got promotion as Chief Estimator on 25.7.1983, he started drawing pay at Rs. 795/- from the said date whereas on the said date, the applicant was drawing Rs. 700/-. Similarly, when the cadres of Draftsman and Estimator had merged w.e.f. 29.10.1985, the applicant was drawing Rs. 795/- whereas Shri S.D.Rehani was drawing Rs. 865/- and when Shri Rehani retired on 31.12.1989, he was drawing pay of Rs. 2825/- whereas on the said date the applicant was drawing only Rs. 2675/-. Thus, Shri

: 6 :

S.D.Rehani was drawing more pay than the applicant at every stage. In this connection, it is relevant to state that stepping up of pay is permissible when both the junior and senior officials belong to the same cadre and the same post in which they had been promoted and that the anomaly should be directly as a result of pay fixation under FR 22-C. It is stated that since Shri S.D.Rehani got promotions and higher pay while he was in the Estimator Cadre, it cannot be said that the applicant also belonged to the same cadre to which Shri Rehani had belonged and this anomaly of Shri Rehani getting higher pay on the basis of his promotions in his own cadre of Estimator cannot be termed as an anomaly directly as a result of F.R.22-C. It is, therefore, submitted that the receipt of higher pay by Shri Rehani cannot be termed as a case of discrimination violative of Articles 14,16 and 21 of the Constitution of India, as alleged by the applicant.

3.1 Besides it, the respondents have also stated that the present application is time barred as the cause of action arose in 1961. It is further stated that as held by the Hon'ble Supreme Court in the case of State of Karnataka Vs. S.M.Kotrayya reported in 1996 SCC (L&S) 1488, the applicant is also not entitled to seek benefit granted by a Court in another case and he has to make out his own independent case subject to limitation. The applicant is, therefore, not entitled to the benefit of stepping up of pay with respect to Shri M.L.Popli.

4. The applicant has filed rejoinder thereby reiterating that non-fixation of pay of the applicant at par with his junior S.D.Rehani and Jagmohan Singh gives a recurring cause of action in view of the law laid down

46

by the Apex Court in the case of M.P.Gupta vs. Union of India and ors, (1995) 31 ATC 187 and K.C.Sharma and ors. vs. Union of India and ors, (1998) SCC (L&S) 226. Therefore, the present case is within limitation.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

5.1 At the outset, it may be submitted that the matter is no longer res-integra and the issue is squarely covered by the judgment dated 3.4.2002 rendered by this Tribunal in OA No.91/97, Ganga Ram Khurana vs. Union of India and ors. In that case the applicant therein had sought similar relief on the basis of the judgment rendered by the Mumbai Bench in the case of Jagmohan Singh where Shri Jagmohan Singh was granted stepping up of pay at par with Shri S.D.Rehani. From perusal of the seniority list dated 3.2.1986 it can be seen that the name of the present applicant Shri H.C.Khurana is at Sl. No.16 and name of Shri Ganga Ram Khanna, applicant in that case, was at Sl.No. 19 whereas the name of Shri S.D.Rehani is at Sl.No.20. Admittedly, the applicant therein was senior to Shri S.D.Rehani as is in the present case where Shri H.C.Khurana (applicant) is also senior to Shri S.D.Rehani. This Tribunal while rejecting the contention of the learned counsel for the respondents that the present application is time barred, has rejected the claim of the applicant for stepping up of his pay at par with his junior Shri S.D.Rehani on the basis of the law laid down by the Apex Court in Union of India and anr. vs. R.Swaminathan, 1997 SCC (L&S) 1852 and Union of India vs. Shushil Kumar Paul, 1998 SCC (L&S) 1336. At this stage it will be useful to reproduce paras 5 to 10 of the aforesaid

judgment which will clinch the matter in issue:-

"5. The applicant has heavily relied on the judgment (Ann.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 Lal Popli vs. Union of India and another. The applicant in that OA i.e. Shri Mohan Lal Popli, who was at Sl. No.5 of the combined seniority list (Ann.A6), above said Shri Jagmohan 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 judgment has been taken on record. In this case, relating in the case of Jagmohan Singh case, pay of Shri Mohan Lal Popli has been ordered to be stepped up at par with Shri Jagmohan 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 and another vs. P.Swaminathan (supra) (latest and three Judges Bench Judgment) and has taken the plea that in the judgment of Jagmohan Singh, it

26

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 The relevant para 10 of the said judgment reproduced as under:-

"According to the aggrieved employees, this has resulted in an anomaly, Government order bearing F.2(73)-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 on 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

: 10 :

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 refixing 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 application of Fundamental Rule 22(I)(a)(1). The higher pay received by the junior is on account

: 11 :

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 judgment 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 and 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

46

: 12 :

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 make 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 Railway and correspondence No.1316. Similar condition has been laid down for removal of the pay anomaly. Further ^{law} ~~law~~ 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 once the similarly situated persons have been given the benefits by the Hon'ble Tribunal at Bombay Bench of the Tribunal, the judgment 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 the Hon'ble Supreme Court was not brought to the notice of the Principal Bench while adjudicating the matter in Mohan Lal Popli (supra). the said judgements would be per incurium. 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 Fd. 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 judgment 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 judgment delivered by Co-ordinating Benches of the *W*

: 14 :

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 to us. Thus, in view of 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."

5.2 In view of the findings given above by the coordinate Bench in the case of Ganga Ram Phanna vs. Union of India and ors. as reproduced above, to which we are agreeable, the applicant is not entitled to any relief on merit. In view of the reasoning adopted by us on merit, it is not necessary to give finding on the point whether the application is time barred in view of the provisions contained under Section 21 of the Administrative Tribunals Act, 1985.

5.3 We may also note the second contention of the learned counsel for the applicant that Shri S.D. Behani was wrongly promoted as Sr. Estimator in the scale Rs. 150-240 on 1.1.61 whereas the applicant was Jr. Draftsman in the scale of Rs. 100-185 and thus being a case of erroneous promotion, the applicant is also entitled to relief of seniority and fixation of pay in terms of Rule 228 of the IREM. We see no force in the submission made by the learned counsel for the applicant. The applicant has taken this plea for the first time as one of the ground in the OA and he has not pleaded his case before the authorities

46

: 15 :

in any of his representation that he is also entitled to seniority and pay fixation at par with his junior S.D.Fehani in terms of Rule 228 of the IREM. Thus, the applicant cannot be permitted to raise this plea ^{for the first time} _{at this} belated stage thereby claiming benefit w.e.f. 1961. That apart, the provision of Rule 228 of the IREM is not attracted in the instant case. Relevant portion of this para has been reproduced by the applicant in para 5(e) of the OA which reads in following terms:-

"228. Erroneous promotions.- (1) Sometimes due to administrative errors, staff are over-looked for promotion to higher grades could either be on account of wrong assignment of relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotion or some other reasons. Broadly, loss of seniority due to administrative errors can be of two types:-

- (i) where a person has not been promoted at all because of administrative error, and
- (ii) where a person has been promoted but not on the date from which he would have been promoted but for the administrative error.

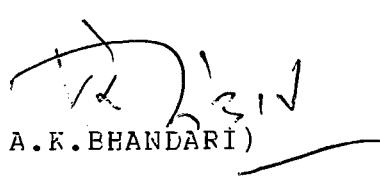
.....The staff who have lost promotion due to administrative error should on promotion assigned correct seniority vis-a-vis their juniors already promoted irrespective of the date of promotion..... The enhanced pay may be allowed from the date of actual promotion...."

Thus from the portion as quoted above, it is quite evident that the staff who have lost promotion due ^{to}

: 16 :

to administrative error, on promotion, such person has to be assigned correct seniority vis-a-vis their junior already promoted irrespective of date of promotion. The enhanced pay may be allowed from the date of actual promotion. Thus this rule is attracted when the person who has been wrongly ignored is promoted to higher post and on promotion he has to be assigned seniority vis-a-vis the junior already promoted and also enhanced pay from the date of actual promotion. In the instant case the applicant has not been promoted to the higher post. Both the applicant and Shri S.D.Rehani belongs to the common cadre of Sr. Draftsman/Sr. Estimator in the scale of Rs. 330-560 as per seniority list Ann.A5. It is not also the case of the applicant that he was promoted to the higher post before his retirement on 30.11.95. In fact, the applicant in para 4.1 had admitted that he retired from the post of Dratsman in the scale of Rs. 700-900/2000-3200 on 30.11.95. Thus he was not promoted to the higher post and he was a member of common cadre of Draftsman/Estimator till his retirement on superannuation, as such the provision of para 223 of IREM is not attracted in the instant case.

6. For the foregoing reasons, we are of the view that the present application deserves to be dismissed. Hence, it is dismissed with no order as to costs.



(A.K.BHANDARI)

Member (A)



(M.L.CHAUHAN)

Member (J)