

NOTES OF THE REGISTRY


ORDERS OF THE TRIBUNAL


OA No.219/2002.

21.11.2006.

Mr. P. N. Jatti proxy counsel for
Mr. C. B. Sharma counsel for the applicant.
Ms. Dilshad Khan proxy counsel for
Mr. S. S. Hassan counsel for the respondents.

Learned Proxy counsel for the applicant
submits that there is bereavement in the family of
the original counsel. Let the matter be listed on
4.1.2007.


J. P. SHUKLA)
ADMINISTRATIVE MEMBER


(M. L. CHAUHAN)
JUDICIAL MEMBER

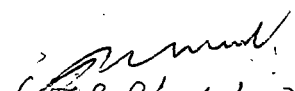
p.c.


4.1.07

Mr. C.B. Sharma, Counsel for Applicant
Mr. S.S. Hassan, Counsel for Respts.

Heard the learned counsel
for the parties.

Order reserved.


(J.P. Shukla)
M(A)


(M. L. Chauhan)
M(J)

9-1-07

The Judgment is pronounced in
the open Court today.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 6th day of January, 2007

CORAM:

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

HON'BLE MR. J.P.SHUKLA, MEMBER (ADMV.)

ORIGINAL APPLICATION No.219/2002

Mahipal Singh,
s/o Shri Ram Swaroop,
aged about 56 years,
r/o Quarter No.402 A,
New Railway Colony,
Kota Junction, and presently working
as Electrical Fitter (RAC),
Grade I office of Senior Section Engineer (RAC),
Kota Junction, Kota.

... Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India through the General Manager,
Western Railway, Churchgate, Mumbai.
2. The Divisional Railway Manager, Western
Railway, Kota.
3. Senior Divisional Electrical Engineer
(Establishment), Western Railway, Kota.

.. Respondents

(By Advocate: Shri S.S.Hasan)

O R D E R

Per Hon'ble Mr. M.L.Chauhan.

The applicant has filed this OA thereby praying for the following reliefs:-

- (i) That entire record relating to the case be called for and after perusing the same respondents may be directed to allow the applicant benefits of step-up of pay with his junior Shri Brij Mohan right since 1983 by quashing letter dated 18.1.2001 (Annexure A/1) with all consequential benefits including arrears of pay and allowances.
- (ii) Any other order/directions of relief may be granted in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case.
- (iii) That the costs of this application may be awarded.

2. Briefly stated, facts of the case, so far as relevant for disposal of this case, are that the applicant was appointed as Khallasi on 26.10.1966 whereas one Shri Brij Mohan Pathak was appointed as Khallasi on 2.8.1971. The grievance of the applicant in this case is regarding stepping up of his pay at par with his junior by removing anomaly in terms of FR 27. It is further stated that the applicant was promoted as Fitter Grade-III in May, 1979 whereas Shri Pathak was promoted as Fitter Grade-III in November, 1983. The applicant has further averred that pay of the applicant in Fitter Grade-III in the year 1983 was Rs. 284/- whereas in the year 1983 pay of Shri Pathak was Rs. 286/-. The applicant has further pleaded that pay of the applicant was subsequently fixed on the recommendation of the 4th Central Pay Commission (CPC) in the year 1986 at Rs. 1070/- while that of Shri

Pathak at Rs. 1150/- as on 1.1.1986 and after recommendation of the 5th Central Pay Commission, pay of the applicant was fixed at Rs. 4200/- while that of Shri Pathak at Rs. 4300/- as on 1.1.96. It ^{is} on these basis that the applicant has claimed that his pay may be stepped up from Rs. 284/- to Rs. 296/- in the year 1983 and from Rs. 1070/- to Rs. 1150/- as on 1.1.986 as a result of recommendations of the 4th CPC and further stepping up of pay from Rs. 1200/- to Rs. 1230/- on promotion to the higher grade of Rs. 1200-1800 as on 22.6.90 and stepping up of his pay from Rs. 4200/- to Rs. 4300/- as on 1.1.96 as a result of recommendations of 5th CPC. It is on the basis of these facts that the applicant has filed this OA thereby praying for the aforesaid reliefs.

3. Notice of this application was given to the respondents. The respondents have not disputed the facts as stated above. The respondents have further stated that Shri Brij Mohan Pathak was working on the post of Tracer on ad-hoc basis since 23.11.78 in the pay scale of Rs. 260-430 whereas the applicant was given promotion to the post of Fitter Grade-III scale Rs. 260-400 subsequently on 10.5.1979. Thus, according to the respondents since Shri Brij Mohan Pathak was working as Tracer in the higher scale since 23.11.78 before posting of the applicant as ELF Gr.III, as such, on 23.11.83 pay of Shri Brij Mohan was fixed at

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Rs. 296/- whereas the applicant was getting salary of Rs. 284/- in the year 1983. Thus, according to respondents, it is not a case of anomaly. The respondents have further stated that vide letter dated 23.9.78 issued by the Chief Engineer of Survey and Construction, applications were invited from Class-IV railway employees for filling the post of Tracer scale Rs. 260-430 and accordingly Shri Brij Mohan Pathak was given promotion on the post of Tracer scale Rs. 260-430. Name of the applicant was not shown in the selection list of Tracer and it appears that the applicant has not applied for the post of Tracer in the year 1990. It is further stated that Shri Brij Mohan Pathak was working on the post of Tracer in the scale Rs. 260-430 until his promotion as ELF Gr.III. Thus, according to the respondents, the applicant is not entitled to stepping up as Shri Pathak was working in the higher grade than the applicant since 1978. The respondents have further stated that Shri Brij Mohan Pathak has been selected on the post of JE Grade-II scale Rs.5000-7000 in electrical department whereas the applicant is still working on the post of ELF Gr.I scale Rs. 4500-7000. Thus, according to the respondents, Shri Pathak has been placed higher to the applicant in supervisory quota.

4. The applicant has not filed any rejoinder.

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

6. There is no dispute that where pay of a Government servant is fixed under FR 22 (1) on promotion to higher post may sometime ^{turn to be} lower than the junior official who is subsequently promoted to an identical post and in certain cases in order to remove the anomaly, the pay of the senior has to be stepped up at par with junior official in terms of the provisions contained in FR-27. The question which requires our consideration is whether the applicant fulfills the requisite conditions as laid down by the Government of India for the purpose of granting the benefit of stepping up. At this stage, it will be useful to quote Government of India instructions dated 4.2.66 which deals with removal of anomaly by stepping up of pay of senior on promotion drawing less pay than his junior ^{according to which}. 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 posts in which they have been promoted or appointed should be identical and in the same cadre;

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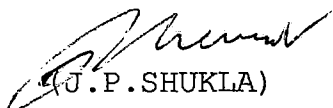
(b) The scale of pay of the lower and higher posts in which they are entitled to draw pay should be identical;

(c) The anomaly should be directly as a result of the application of F.R.22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provision will not be invoked to step up the pay of the senior officer.

7. According to us the applicant does not fulfill the condition as laid down hereinabove. No doubt, the applicant was senior to Shri Brij Mohan Pathak in the grade of Khallasi, However, before promotion of the applicant as Fitter in the grade Rs. 260-400 w.e.f. 10.5.79, Shri Pathak had already been promoted to the post of Tracer in the higher pay scale of Rs. 260-430 w.e.f. 23.11.78. Thus, when Shri Pathak was posted as ELF Gr.III w.e.f. 23.11.83, the applicant and Shri Pathak does not belong to the same cadre and further, pay scale of the applicant as well as Shri Pathak were not identical. As such, the case does not fall within the conditions stipulated for granting benefit of stepping up. Admittedly, when the applicant was

granted promotion as Fitter in May, 1979 he was in lower scale than Shri Pathak, the so called junior and Shri Pathak was drawing higher rate of pay than the applicant. As such, the applicant is not entitled to any protection in terms of instructions as quoted above.

8. For the foregoing reasons, the applicant has not made out a case for any relief. Accordingly, the OA is dismissed with no order as to costs.


(J.P. SHUKLA)

Administrative Member


(M.L. CHAUHAN)

Judicial Member

R/