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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Date of Order : This the 31st day of August, 1999.

Justice Shri D.N.Baruah, Vice-Chairman.

Shri G.L.Sanglyine, Administrative Member.

Original Application No. 3 of 1997, 4 of 1997 and 5 of 1997.

Shri Arun Kr Das (O.A.3/97)

Shri Birchand Singha (O.A. 4/97)

Shri Digendra Chandra Nath (O.A. 5/97) . . . Applicants.

By Advocate Shri R.Dutta for all the applicants.

- Versus -

1. Union of India
represented by General Manager,
N.F.Railway, Maligaon,
Guwahati-11.

2. The Chief Personnel Officer,
N.F.Railway, Maligaon,
Guwahati-11.

3. Divisional Railway Manager,
N.F.Railway, Lumding,
Dist. Nagaon (Assam).

4. Sr. Divisional Personnel Officer,
N.F.Railway, Lumding,
Dist. Nagaon (Assam).

5. The Loco Foreman,
N.F.Railway, Badarpur,
Dist. Karimganj (Assam) . . . Respondents.

By Advocate Shri B.K.Sharma, Railway counsel.

O R D E R

G.L.SANGLYINE, ADMN. MEMBER,

These three applications involve similar facts and law and therefore they are disposed of by this common order for convenience.

2. The facts in short in each application are as below :

The applicant in O.A.No.3/97 was a Diesel Assistant Driver in the scale of pay of Rs.290-360/- since 1983 till his promotion to the post of Shunter in the scale of pay of Rs.290-400/- with effect from 10.6.1984. He was further promoted to

the grade of Goods Driver in the scale of pay of Rs.1350-2200/- with effect from 24.11.1986. The applicant in O.A.No.4/97 was promoted to the post of Diesel Assistant Driver in 1983 and was further promoted to Shunter with effect from 9.3.1985.

On 24.11.1986 he was promoted as Goods Driver. The applicant in O.A.No.5/97 was promoted as Diesel Assistant Driver in 1983 and to the post of Shunter on 1.6.1984. He was further promoted to Goods Driver on 24.11.1986.

3. The grievance of the applicants is that their colleagues who were junior to them in the cadre of Diesel Assistant Driver and who were promoted to the cadre of Shunter subsequent to their promotions were drawing higher pay than them in the promotional post. Their prayer is that their pay should be stepped up at par with the pay of the juniors and refixation of pay should thereafter be done accordingly. Mr R.Dutta, learned counsel for the applicants, submitted that the contention of the applicants is supported by rules particularly Note 7 of the Railway Services (Revised Pay) Rules, 1986 which reads as below :

"Note 7 : In cases, where a Senior Railway servant promoted to a higher post before the 1st day of January, 1986 draws less pay in the revised scale than his junior who is promoted to the higher post on or after the 1st day of January, 1986, the pay of the Senior Railway servant should be stepped up to an amount equal to the pay as fixed for his junior in that higher post. The stepping up should be done with effect from the date of promotion of the junior Railway servant subject to fulfilment of the following conditions, namely,

- (a) both the junior and the senior Railway servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre;
- (b) the pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical ; and
- (c) the

(c) the anomaly should be directly as a result of the application of the provisions of Rule 2018B (FR 22C) of Indian Railway Establishment Code Volume II or any other Rule or order regulating pay fixation on such promotion in the revised scale. If even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provisions of this Note need not be invoked to step up the pay of the senior officer."

Further, he placed reliance on a decision of the Hon'ble Supreme Court in Union of India and others vs. P. Jagadish and others reported in 1997(2) SLJ 136 insofar as it relates to the question No.(2) as formulated therein, that is,

"Whether the respondents who had not been posted against the identified posts carrying a special pay of Rs.35/-per month can even claim fixation of their pay with Rs.35/-per month in the cadre of Senior Clerk even on notional basis. (2) Whether the respondents can claim for stepping up of their pay in the promoted cadre of Head Clerks when their juniors who were later promoted were fixed up at a higher slab in the cadre of Head Clerks taking into account the special pay which they are drawing in the lower category of Senior Clerks."

Moreover, he submitted that the applicants were Diesel Assistant Drivers on the date their restructuring took effect and therefore they are entitled to stepping up of their pay. Mr B.K.Sharma, learned Railway standing counsel, submitted that the submissions of Mr Dutta do not support the case of the applicants. Relying on the judgment of Full Bench of the Tribunal dated 20.11.1996 in B.L.Somaya Julu and series of other cases he submitted that the stepping up of pay can be allowed only if the facts pertaining to the applicants fulfil the conditions of FR 22 C, presently 22(1)(a)(ii), or equivalent rule of the Railway. The applicants, according to the learned Railway counsel, do not fulfil the conditions of the rule.

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He further submitted that similar claims were rejected by this Tribunal in the order dated 12.2.1997 in O.A.No. 161 of 1995 and series of Original Applications.

4. We have heard learned counsel of both sides. The Railway administration restructured certain cadres of Group 'C' and Group 'D' staff on 25.6.1985 with effect from 1.1.1984. The cadre of Diesel Assistant Driver alongwith that of Fireman 'A' and Assistant Electric Loco Driver were not however restructured. Instead a special pay of Rs.15/-per month was attached to 30% of the posts. In respect of the cadre of Diesel Assistant Driver the special pay was sanctioned with effect from 1.7.1985 on seniority basis. The applicants belonged to the cadre of Diesel Assistant Driver. They were however no longer Diesel Assistant Driver as on 1.7.1985 but had occupied the post of Shunter after their promotion to the post. Some of their erstwhile junior Diesel Assistant Drivers who were in position as Diesel Assistant Drivers on 1.7.1985 were allowed to draw the special pay of Rs.15/-per month. The recommendation of the Fourth Central Pay Commission was implemented with effect from 1.1.1986. The special pay of Rs.15/-per month ceased to exist with effect from 1.1.1986. However, those Diesel Assistant Drivers who were drawing the special pay of Rs.15/-per month carried the benefit of this special pay in the re-fixation of their pay in the revised scale of pay and consequently, when after 1.1.1986 they were promoted to higher post of Shunter, they came to draw higher pay than the applicants on fixation of their pay in the promotional post of Shunter. This has consequential effect in higher post. The benefit of stepping up of pay at par with the juniors can be allowed only when the conditions are fulfilled. We are of the view that the applicants in the present Original Applications do

not fulfil the conditions laid down in Note 7 above. The difference in pay arose only because of the special pay granted to the erstwhile juniors. The crucial date concerning the above mentioned special pay was 1.7.1985. Unlike their mentioned juniors, namely, D.K.Deb and A.K.Chakraborty who were promoted to Shunter on 2.1.1986 and 18.12.1986 respectively, the applicants were not holding the post of Diesel Assistant Driver as on 1.7.1985. They were already promoted as Shunter earlier. With effect from the dates of their promotion they ceased to be in the cadre of in the posts of Diesel Assistant Driver in the scale of pay of Rs. 290-360/- . They drew their pay of Shunter in the scale of pay of Rs. 290-400/- . Thus the applicants and their mentioned juniors were not in the same cadre of Diesel Assistant Driver as on 1.7.1985 and were drawing pay in different scales of pay. This position continued even as on 1.1.1986. Further, in our view, the decision in P.Jagadish (supra) is not of any help to the applicants in these O.As because, unlike in the case of the applicants as shown above, it appears that the employees concerned there were all in the same cadre of Senior Clerks and were working as such when some of them were posted to the posts of Senior Clerks carrying the special pay of Rs.35/- per month.

5. In the light of the above, the applications cannot succeed and they are dismissed. However, considering the facts and circumstances, we make no order as to costs.

SD/- VICE-CHAIRMAN
SD/- MEMBER (A)