

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT CAMP : INDORE

Original Application No.228 of 2002

Indore, this the 11th day of January, 2005

Hon'ble Shri M.P.Singh - Vice Chairman
Hon'ble Shri Madan Mohan - Judicial Member

Khursheed Azam S/o Intizar Hussain,
Aged 44 years, Assistant Engineer(Construction),
Western Railway, Ratlam - APPLICANT

(By Advocate - Shri A.N.Bhatt)

Versus

Union of India and others-
Represented by:

1. The General Manager, Western Railway,
Headquarters Office, Churchgate, Mumbai-20.
2. The Chief Administrative Officer
(Construction) Western Railway,
Churchgate-Mumbai-20.
3. The Deputy Chief Engineer(Construction),
Western Railway, Ratlam - RESPONDENTS

(By Advocate - Shri Y.I.Mehta)

O R D E R

By M.P.Singh, Vice Chairman -

By filing this Original Application, the applicant
has claimed the following main reliefs :-

"8.1...to direct the Respondents to give applicant
proforma fixation/ stepping of pay in scale Rs.2000-
3200 for each occasion when-ever his junior has
drawn higher pay officiating allowances and annual
increments for each year right from his promotion
date.

8.2 To direct the Respondents to fix the pay of
Applicant as Inspector of Works Grade-I scale
2000-3200 as taking into consideration of pay
fixation counting the higher pay on officiating
pay in scale 2000-3200.

8.3 To pay difference of arrears on account of
re-fixation of pay as B&C ibid alongwith interest".

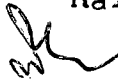
2. The brief facts of the case are that the applicant
is working as Assistant Engineer (Construction) at Ratlam
under the control of respondent no.3. The applicant has
stated that in the seniority list issued on 4.7.1984
(Annexure-A-6) for the post of Inspector of Works (scale Rs.425-
700) the name of the applicant is shown at serial no.108 and
the names of his juniors S/Shri Ramveer Singh and A.K.Uprit
have been placed at serial no.112 and 116 respectively.

He has submitted that though he was senior to Shri A.K.Uprit, Shri Uprit was promoted to the post of Inspector of Works Grade-I (Rs.2000-3200) on 6.10.1984 whereas the applicant was promoted to the said post on 7.1.1988 on adhoc basis, because of which the applicant is getting less pay than said Shri A.K.Uprit. He has further submitted that both of them i.e. the applicant and said Shri Uprit were regularised in the scale of Rs.2000-3200 w.e.f.1.12.1989. He has, therefore, submitted that he is entitled for stepping up of his pay at par with his junior Shri Uprit with all consequential benefits.

3. The respondents in their reply have submitted that the post of IOW Grade II is a headquarter-controlled post and the headquarter did not promote Shri Uprit out of turn. However, in 1983 Shri Uprit was working under Kota Division while the applicant was working under Survey and Construction, Ratlam. Both these employees were under different units. Shri Uprit was rightly given adhoc promotion in his unit as he was senior most and, therefore, the question of giving stepping up of the pay of the applicant on that ground does not arise. The applicant is, therefore, not entitled to get any relief in this OA and the present OA is liable to be dismissed.

4. We have heard the learned counsel of both the parties and perused the records carefully.

5. The admitted facts of the case are that Shri Uprit, who was junior to the applicant as Inspector of Works and was working in Kota Division was promoted on adhoc basis w.e.f.6.10.1984 as Inspector of Works Grade-I (Rs.2000-3200) whereas the applicant, though was senior to Shri Uprit, was working in Ratlam Division and was promoted to the said post of Inspector of Works Grade-I (Rs.2000-3200) w.e.f.7.1.1988. As per his own admission in para 4.9 of the OA Shri Uprit has all along been drawing higher pay than the applicant w.e.f.1.1.1986. As per Railway Board's circular dated 4.9.1974 (Annexure-R-1) the



stepping up should be done with effect from the date of promotion of the junior employee and should be subject to the following conditions:-

- "(a) Both the junior and senior employees should belong to the same cadre and the post in which they have been promoted should be identical in the same cadre.
- (b) The un-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 anomaly should be directly as a result of the application of the provisions of Rule.... (F.R.22c)-RII in the Revised Scale. For example, if even in the lower post the junior employee was drawing more pay in the un-revised scale than the senior by virtue of fixation of pay under normal rules or any advance increments or due to any promotion etc. the provisions contained in this decision need not be invoked to step up the pay of the senior employee".

The Railway Board have further issued instructions vide R.B.E.No.108/94 by which they have circulated the order of the DOPT dated 4.11.1993 (Annexure-A-2), para 2 of which reads as under-

"2. Instances have come to the notice of this Department requesting for stepping up of pay due to the following reasons:-

- (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 promotions leading to his junior being promoted/appointed to the higher post earlier, junior draws higher pay than the senior. The senior may be on deputation while junior avails of the adhoc promotion in the cadre. The increased pay drawn by a junior earlier due to adhoc 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 as 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 senior cannot claim stepping up of pay at par with the junior.

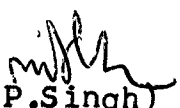


- (d) If a senior is appointed later than the junior in the lower post itself whereby he is in receipt of lesser pay than the junior, in such cases also the senior cannot claim pay parity in the higher post though he may have been promoted earlier to the higher post.
 - (e) Where a person is promoted from lower to a higher post his pay is fixed with reference to the pay drawn by him in the lower post under FR 22-C and he is likely to get more pay than a direct appointee whose pay is fixed under different set of rules. For example, a UDC on promotion to the post of Assistant gets his pay fixed under FR 22-C with reference to the pay drawn in the post of UDC, whereas the pay of Assistant(DR) is fixed normally at the minimum under FR 22-B(2). In such cases the senior direct recruit cannot claim pay parity with the junior promoted from a lower post to higher post as seniority alone is not a criteria for allowing stepping up.
 - (f) Where a junior gets more pay due to additional increments earned on acquiring higher qualifications.
3. In the instances referred to in paragraph 2 above, a junior drawing more pay than the senior will not constitute an anomaly. In such cases, stepping up of pay will not, therefore, be admissible".

We find that the present case is fully covered by the provisions in para 2(b) above as the applicant's junior Shri Uprit got higher pay fixation because of his working on adhoc basis earlier than the applicant. In a similar situation the Hon'ble Supreme Court in the case of Union of India Vs. Suryanarayana Rao, 1999(2) SLJ 79(SC) ~~the~~ ^{one} have held that the conditions for stepping up ^{are} not fulfilled.

6. In view of the aforesaid instructions issued by the Railway Board as well as the decision of the Hon'ble Supreme Court, we do not find any merit in this OA and accordingly the same is dismissed, however, without any order as to costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

rkv.

पृष्ठंकन सं ओ/न्य. जबलपुर, दि.
प्रतिलिपि अर्पण दि.
(1) सचिव, उच्च न्यायालय काउंसिल, जबलपुर
(2) आदेशक सी/डीसी/कु के कार्यालय
(3) प्रत्यक्षी सी/डीसी/कु के कार्यालय
(4) ग्रंथपाल, को.प्र.ज., जबलपुर न्यायाधीश
सूचना एवं आवश्यक कार्यवाही हेतु
उप रजिस्ट्रार

M. Bhatnagar Ratlu
M. J. Mehta

Issued on 19-07-05
BS