

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 24th day of December, 2008

ORIGINAL APPLICATION No.309/2005

CORAM:

HON'BLE MR. M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L.KHATRI, ADMINISTRATIVE MEMBER

Naresh Kumar Mukhija,
S/o Shri Asha Nand Mukhija,
working as Travelling Ticket Examiner,
North Western Railway, Bandikui,
r/o Mukhia Bhawan Mitra Vihar,
Janana Hospital,
Rajgarh, Alwar.

..Applicant

(By Advocate: Shri Nand Kishore)

Versus

1. The Union of India through
General Manager,
North Western Railway,
Hasanpura Road,
Jaipur.
2. Divisional Railway Manager,
North Western Railway,
Power House Road,
Jaipur.

.. Respondents

(By Advocate: Mr. Ganesh Gupta, proxy counsel for Mr.
S.P.Sharma)

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) The respondents may be directed to produce the entire record; concerning to the case and after examination, they may be directed by an appropriate writ or direction revise the fixation of pay of applicant at par with his junior Mukesh Kumar Gupta by stepping up his pay and arrange payment of arrears alongwith interest @ 12% to the applicant.
- (ii) Any other directions and orders, which are, deem proper in the facts and circumstances of the case may kindly be allowed to the applicant.

2. Briefly stated, facts of the case are that the applicant after being selected by the Railway Recruitment Board was allotted Jaipur Division alongwith other persons and was recommended for appointment as Ticket Collector. Since there was no vacancy available at Jaipur Division on the post of Ticket Collector, the applicant and other selected persons, who were earlier allotted Jaipur Division, were given appointment in Ratlam and Baroda Divisions on the post of Ticket Collector in the pay scale of Rs. 950-1500. It is admitted case between the parties that in view of the judgment passed by this Tribunal in OA no.170/1994 on 12.9.1994 and interim order passed in Contempt Petition No.36/1994 on 20.8.97 the candidates including the applicant who were earlier sent to Baroda and Ratlam Division were again called

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for Jaipur Division vide order dated 15.12.1997 in the pay scale of Rs. 950-1500 (revised Rs. 3050-4590). The applicant, pursuant to Ann.A2 after passing the suitability test was promoted in the pay scale of Rs. 4000-6000 and was granted paper promotion in the pay scale of Rs. 4000-6000 w.e.f. 7.6.2000 on which date the junior employee Mangi Lal Gupta later on name changes as Mukesh Kumar Gupta was promoted. However, the applicant was granted actual pay scale w.e.f. the date of his joining on the post of Train Ticket Examiner w.e.f. 3.11.2001. The applicant has pleaded that the respondents had notified seniority list of staff working in the scale of Rs. 4000-6000 vide their letter dated 4/14.9.2004 wherein name of the applicant appears at S.N.104 whereas name of Shri Mukesh Kumar Gupta appears at Sl.No.106. It is further stated that the applicant was at Sl.No.78 of the list issued by the Zonal Training Centre, Udaipur and the merit position shown is 10, whereas name of Shri Mangi Lal Gupta (Mukesh Kumar Gupta) is at Sl.No.75 and the merit position shown against his name is 15. Copy of these documents have been placed on record at Ann.A3 and A4. According to the applicant, pay of Shri Mukesh Kumar Gupta was fixed at Rs. 4200/- on 1.6.2002 + Rs. 100 as P.P. vide letter dated 7.1.2003 (Ann.A5). It is further averred that the respondents have again revised pay of Shri Mukesh Kumar Gupta to Rs. 4100/- on 7.6.2000, Rs. 4200/- on 1.8.2000, Rs. 4300/- on

1.8.2001 and Rs. 4400/- on 1.8.20002 vide letter dated 23.12.2004 (Ann.A6) whereas pay of the applicant was fixed at Rs. 4100/- on 1.6.2001 vide order dated 25.1.2002 with retrospective date from 7.6.2000 and his pay has been fixed at Rs. 4100/- on 1.6.2001.

The applicant made a representation for giving benefit of stepping up of his pay vide letter dated 16.1.2005 (Ann.A9). However, case of the applicant was rejected vide impugned order dated 31.3.2005 (Ann.A1). It is this order which is under challenge in this OA. The applicant further submits that he is entitled to stepping up of his pay at par with his junior in view of the decision rendered by the Rajasthan High Court in the case of Union of India and ors. vs. Shekhar Chand Jain, 2001 (1) SLC Rajasthan page 221 and another decision in the case of Tara Chand Jain vs. State of Rajasthan and ors., reported as 2000 UC page 15 (Ann.A10).

3. Notice of this application was given to the respondents. The facts, as stated above, have not been disputed. It is stated that in view of the advance correction slip No.14 and 15 issued by the Railway Board under provision 1313 (1)/FR-22 (1) wherein it has been mentioned that when an employee is appointed on a post on which he was earlier serving or was given posting as per as per FR-22 (1) i.e. 1313 (1)(1) he cannot be granted lower pay then pay which he was

receiving lastly and in pursuance there of Shri Mukesh Kumar Gupta who had come from Baroda division alongwith employees who were given ad-hoc promotion in the pay scale of Rs. 4000-6000 was given benefit of salary in the pay scale of Rs. 4000-6000 in Jaipur division and made fixation vide order dated 23.12.2004 (Ann.A6). Thus, the applicant is not entitled to any stepping up of his pay at par with Shri Mukesh Kumar Gupta. He was only entitled to proforma pay fixation which has been granted to the applicant. It is further stated that as per Rule 1316 of Indian Railway Establishment Manual Vol.II corresponding to original FR-22 (c) in case a junior on a post is receiving more salary than his senior employee on account of advance pay rectification the senior employee in pursuance of Railway Board letter dated 21.4.64 and 2.12.66 is not entitled to get any relief. Since as per Rule 1316 [FR 220(c)] the junior employee to the applicant was given ad-hoc promotion, the applicant is not entitled to the benefit of stepping up of his salary.

4. The applicant has filed rejoinder thereby reiterating the submissions made in the OA.

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



6. The sole question which requires our consideration is whether the applicant is entitled to the benefit of stepping up of his pay at par with his junior. In this regard, the learned counsel for the applicant has placed reliance on the judgment rendered by this Tribunal in OA No.207/2000 decided on 2.1.2001, Mali Ram Luniwal vs. Union of India and anr. whereby relying upon the judgment of the Hon'ble High Court in the case of Shekhar Chand Jain (supra) has directed the respondents to step up pay of the applicant at par with his junior Shri Poonam Chand with effect from the date the applicant reported on Jaipur Division.

7. We have given due consideration to the submissions made by the learned counsel for the applicant based upon the aforesaid judgment. We are of the view that the decision relied upon by the applicant cannot be said to be a good law in view of the decision rendered by the Apex Court in the case of Union of India vs. R.Swaminathan, AIR 1997 SC 3554. As can be seen from para 6 of the judgment, the Hon'ble Apex Court had taken into consideration Fundamental Rule 22(I)(a)(1) which was formerly Fundamental Rule 22-C and also taken into consideration Memoranda issued by the Government pertaining to removal of anomaly by stepping of pay of senior on promotion drawing less pay than his junior and has categorically

held that stepping up of pay does not depend upon seniority alone nor is seniority alone a criterion for stepping up of pay. It has been categorically held in para 10 and 11 that where junior persons had officiated in the promotional post for different periods on account of local adhoc promotions granted to them and were given higher pay on promotion than their seniors, the difference in the pay of a junior and senior is not a result of the application of F.R. 22(I)(a)(1). The higher pay received by a junior is on account of his earlier officiation in the higher post because of local officiating promotions which he got in the past. Because of 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 of the pay of the seniors. The memorandum makes 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

along nor is seniority is alone a criteria for stepping up of pay. The ratio as laid down by the Apex Court in the case of R.Swaminathan (supra) is squarely applicable in the facts and circumstances of this case. No doubt, the applicant was senior to Shri Mukesh Kumar Gupta as per seniority list and he was also granted proforma promotion from the date his junior was so granted such promotion pursuant to order passed by this Tribunal in the earlier OA but the fact remains that Shri Mangi Lal Gupta alia Mukesh Kumar Gupta was granted ad-hoc promotion on the earlier date and because of this ad-hoc promotion he has earned increments in the higher pay scale of the post to which he was promoted. On account of his past service his previous pay of the promotional post has been taken into account for the purpose of fixation of his pay on promotion. Thus, these two facts cannot constitute anomaly so as to entitle the applicant for stepping up of his pay at par with his junior Shri Mukesh Kumar Gupta. As can be seen from the pleadings of the OA, the applicant has also relied on FR-22(I) (a) (1) of CCS (RP) Rules, 1997/ Rule 1316 of FR-22-C for the purpose of claiming benefit of stepping up of pay which provision has exhaustively taken into considered by the Apex Court in the case of R.Swaminathan and which are also attracted in the present case. It may be stated that in the judgment rendered by this Bench on which reliance has been

placed by the learned counsel for the applicant has not taken into consideration the aforesaid provisions which were relevant but has only noticed the provision of para 216 (a) of IREM which deal with grant of promotion on ad-hoc basis and that suitable junior should not be promoted ignoring senior persons. Based on this rule, this Tribunal has granted relief ignoring the fact that the case of stepping up of pay is covered under different rules and such benefit can be granted only if the conditions stipulated therein are fulfilled. Even on this ground alone, the judgment rendered by this Tribunal is per incuriam besides that it cannot be said to be a good law in view of the law laid down by the Apex Court as noticed above.

8. For the foregoing reasons, the OA is bereft of merit which is accordingly dismissed with no order as to costs.


(B.L.KHATRI)

Admv. Member


(M.L.CHAUHAN)

Judl. Member

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