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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH,
CHANDIGARH.**

O.A.No.060/00150/2014 &
M.A.No.060/01571/2014

Date of Decision : 9.1.2015
Reserved on: 07.01.2015

**CORAM: HON'BLE MRS. RAJWANT SANDHU, ADMINISTRATIVE MEMBER
HON'BLE DR. BRAHM A. AGRAWAL, JUDICIAL MEMBER**

1. Padam Kant Tripathi s/o Sh. Swatantra, aged 37 years, r/o B-73, Rail Vihar, Ambala Cantt.
2. Vineet Kumar Srivastava s/o of Sh. Vinod Kumar Srivastav, aged 31 years, r/o T-3-B, Tatadevi Railway Station, Shimla (HP).
3. Prem Vallabh s/o Sh. Rewabhar Sharma, aged 34 years, r/o 241/B, Old Railway Colony, Ambala Cantt.
4. Vijender Kumar son of Sh. Magaliya, aged 32 years, r/o 360/8, Old Railway Colony, Ambala Cantt.
5. Rakesh Kumar s/o Sh. Ram Ishwar Prasad, aged 37 years, r/o T-184/B, Railway Colony, Bathinda, District Bathinda.
6. Ajay Kumar Sharma, s/o Sh. Bhaia Ram Sharma, aged 35 years, r/o 411/A, Railway Colony, Bathinda.
7. Paramjit Singh s/o Sh. Dalbara Singh, aged 34 years, r/o H.No.240, Ward No.7, Near Telephone Exchange, Dhuri, District Sangrur.
8. Satyender Kushwah s/o Shinghasan Kushwah, aged 28 years, r/o T-54/H, Railway Colony, Dhuri, District Sangrur (Punjab).

All working as Goods Guard / ASM under respondent no.2.

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Versus

Applicants

1. Union of India through General Manager, Northern Railway, New Delhi.
2. Divisional Railway Manager, Northern Railway, Ambala Cantt.
3. Sr. Divisional Personnel Officer, Northern Railway, Ambala Cantt.

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Respondents

Present: Mr. Karnail Singh, counsel for the applicants
Mr. Lakhinder Bir Singh, counsel for the respondents

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

"8.2 That this Tribunal is graciously pleased to issue the directions to respondent no.2 for fixing pay at initial rate of pay Rs.11360/- from the date of promotion in the Pay Band of Rs.5200-20200 with Grade Pay of Rs.2800 where juniors are drawing higher pay than the applicants in accordance with the impugned order dated 17.02.2010 and to grant of arrear of pay with interest of 12% in accordance with the rules / law / by laws as applicable within a period of one month from the issue of order of this Tribunal.

If the respondents are still inclined to decline the legitimate claim of the applicants, respondent no.1 i.e. General Manager on behalf of Union of India please be ordered to pass the speaking order personally under his own seal and signature why such benefits cannot be granted to the applicants as have already been granted to the similarly situated persons in the Ferozepur Division, Lucknow Division and Ambala Division of the same Zonal Railway and by the Kota Division of North Western Railway vide impugned order dated 17.02.2010 (Annexure A-1)."

2. It has been stated in the OA that prior to 01.01.2006 the applicants were working as Train Clerks / Parcel Clerk in the Pay Band of Rs.5200-20200 plus Grade Pay of Rs.1900 under respondent no.3. In the year 2009 to 2011 the applicants were promoted as Goods Guard / Assistant Station Master (hereinafter referred to ASM) in the scale of Rs.5200-20200 plus Grade Pay of Rs.2800 on successfully qualifying the selection for their respective post. The fixation of pay of the applicants promoted as Guard in the Pay Band of Rs.5200-20200 plus Grade Pay of



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Rs.2800 was fixed at the rate of minimum of Pay Band plus Grade Pay plus other allowances from the respective dates of their promotion. The applicant had learnt that juniors to the applicants who were direct recruits were drawing more pay than the applicants who were promotees. The applicants approached respondent no.3 and the Staff Union submitted representations dated 14.05.2013, 12.09.2013 and 27.11.2013 to respondent no.3 but to no avail.

3. In the grounds for relief, it has been claimed in the OA that the applicants were entitled to stepping up of pay as per para 5(a) of the circular dated 17.02.2010 (Annexure A-1) that reads as follows:-

"However, stepping up of pay of seniors can be permitted with reference to such of their directly recruited junior borne on the same seniority list who are recruited on or after 01.01.2006 and whose basic pay is more than that of the seniors subject to the following conditions:-

"(a) Stepping up of basic pay of seniors can be claimed only in the case of those cadres which have an element of direct recruitment and in cases where a directly recruited junior is actually drawing more basic pay than the seniors in such cases, the basic pay of the seniors will be stepped up with reference to the basic pay of the juniors. Stepping up will be applicable from the date junior direct recruit is actually drawing higher basic pay than the senior.

(b)

(c)"

It has also been stated that the Ferozepur (FZR) and Lucknow (LKO) Divisions of the same Zonal Railway (i.e. Northern Railway) have allowed the stepping up of pay to the similarly situated persons i.e. Goods Guard

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and ASM respectively in their respective Divisions to abolish the anomaly that occurred in fixation of pay in the revised scale of 6th Pay Commission applicable w.e.f. 01.01.2006 (as per PS No.13500/270 dated 12.09.2011). Copy of the office order / notice issued by the respective Divisions is annexed as Annexure A-4 to A-6. Further, on the same analogy the Kota Division of North Western Railway of the same Indian Railway vide its office order dated 22.10.2010 has also allowed the stepping up of pay of the similarly placed persons i.e. Goods Guard in accordance with the impugned order dated 17.02.2010. Hence this OA.

4. In the written statement filed on behalf of the respondents, it has been stated that the applicants were appointed as Train Clerk from 2009 to 2011, applicant no.5 was promoted as ASM while the rest were promoted as Goods Guard against promotion quota vacancies. On promotion, their pay was fixed in terms of para 13 of Railway Board letter No.PC-VI/2008/II/RSRP/1, dated 11.09.2008 RBE 108/2008 (Annexure R-1) by adding one increment equal to 3% of the pay in the Pay Band and the existing Grade Pay will be computed and rounded off to the next multiple of 10. This will be added to the existing pay in the Pay Band. While relying on Railway Board order RBE No.28/2010 dated 17.02.2010 (Annexure R-2), the applicants claim the fixation of their pay at the initial rate of pay of Rs.11360/- at par with those direct recruits who were recruited as Goods Guard appointed against direct recruitment quota subsequent to the promotion of the applicants. No minimum pay in the

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Pay Band can be prescribed in the case of Railway servants promoted from one grade to another (except in the case of change in Pay Band). The pay of those Railway Servants who were already in service on 01.01.2006 cannot be fixed with reference to the minimum entry pay prescribed for those who joined the Railway as direct recruits on or after 01.01.2006 as per Section II, Part A of the 1st Schedule to the Railway Servants (Revised Pay) Rules, 2008. No stepping up of pay is permissible to the applicants with reference to those who were directly recruited as Goods Guards / ASM as the two categories were not borne / drawn from the same seniority list as the applicants are not direct recruits, but promoted against the promotion quota vacancies to the present post from lower category of Trains Clerk. There is no violation of policy by fixing the pay of Sh. Satish Kumar, Mukesh Kumar (Goods Guard) and Sh. Kuldeep Singh (ASM) as they were fixed under Section II of Railway Board letter no.PC-VI/2008/1/RSRP (Annexure R-1).

5. In the rejoinder, it has been asserted that Annexure R-1 of 2008 is not applicable in the instant case. Para 5(a) of Annexure R-2 of the year 2010 relied on by the respondents is relevant to the applicants. It has also been stated that the names of the direct recruits and the promotees mentioned in the OA are borne on the same seniority list.

6. Arguments advanced by the learned counsel for the parties were heard. Learned counsel for the applicants reiterated the content of

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the OA and referred to judgment in "Union of India Vs. T. M. Somarajan & Ors.", decided on 21.10.2009 reported 2010 (2) AISLJ 65, wherein it had been held that juniors getting more pay than senior is an anomaly.

7. Learned counsel for the respondents stated that the juniors who were getting higher pay than the applicants were direct recruits of a date prior to 01.01.2006 and hence the applicants were not entitled to the benefit of the circular dated 17.02.2010. He stated that the pay of the applicants had been fixed as per Annexure 'A' of RBE No.108/2008, No.PC-VI/2008/I/RSRP/I, dated 11.09.2008 (Annexure R-1) and the applicants were not entitled to the relief claimed by them.

8. We have given our careful consideration to the matter. It is an undisputed fact that the applicants and the juniors whose names have been mentioned in para 4.4 of the OA belong to the same cadre. T.M. Somarajan & Ors. (supra) is pertinent to this matter and the seniors in the same cadre should not be getting lesser pay than their juniors. Moreover, it is seen that Ferozepur, Lucknow and Kota Divisions have allowed the stepping of the pay to the similarly situated persons and this point has not been rebutted in the written statement filed on behalf of the respondents. Hence, this OA is allowed and the respondents are directed to decide the representations of applicants in this regard, in the light of the orders issued by the Ferozepur and Lucknow Divisions, within a period of two months from the date of receipt of a certified copy of this order being served upon

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the respondents. The arrears due to the applicants on this account may also be released to them within this period. MA No.060/01571/2014 is also disposed of. No costs.

(RAJWANT SANDHU)
ADMINISTRATIVE MEMBER.

(DR. BRAHM A. AGRAWAL)
JUDICIAL MEMBER

Place: Chandigarh
Dated: 9.1.2015

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