

Reserved
(On 23.04.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the **25th** day of **May** 2018.

Hon'ble Dr. Murtaza Ali, Member (J)
Hon'ble Mr. Gokul Chandra Pati, Member (A).

Original Application Number. 330/00846 of 2005

1. Kamala Devi, W/o Late Brij Mohan Lal Srivastava.
 2. Santosh Kumar, S/o Late Brij Mohan Lal Srivastava.
 3. Anil Kumar Srivastava, S/o Late Brij Mohan Lal Srivastava.
 4. Sunil Kumar, S/o Late Brij Mohan Lal Srivastava.
 5. Sandeep Srivastava, S/o Late Brij Mohan Lal Srivastava.
- All R/o Village Fatuha, Post Office – Hanumanganj, District Allahabad.

.....Applicants.

By Adv: Shri Rakesh Prasad

VER S U S

1. Union of India, through General Manager, Northern Railway Baroda House, New Delhi.
2. The Member, Establishment Railway Board, Rail Bhawan, New Delhi.
3. Divisional Rail Manager, North Central Railway, Allahabad.
4. Senior D.F.M., North Central Railway, Allahabad – (02).

.....Respondents

By Adv : Shri A.K. Pandey

ORDER

By Hon'ble Gokul Chandra Pati, Member (A)

This OA was originally filed by Shri Brij Mohan Lal Srivastava, who was an employee under the respondents. During the pendency of this OA, he died and his legal heirs were substituted as applicants. This OA was filed with the following reliefs:-

- “i. to refix his pay in the promotional grade at par with his junior Sangram Ram and S.C. Srivastava with effect from 1.1.1986 and also to amend the pensionary benefits and grant him all consequential benefits.*
- iA. The impugned final order dated 14.12.2004 passed by the Respondent No. 3 not considering the claim of the applicant for refixation of his pay scale on the pretext of non availability of representation be set aside on the grounds and provision set out in para 5 of the application.*

- ii. to provide monetary loss suffered by applicant due to administrative reasons from the date on which junior Shri Sangram Ram Began to draw higher Scale that is since 27.02.1973.*
- iii. to hold and declare that he is entitled to stepping up of his pay at par with his junior Shri Sangram Ram with all consequential benefits.*
- iv. to issue any other suitable order or direction to the respondents for which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances existing in the present case."*

2. Brief facts of the case are that the deceased applicant who was the original applicant of this OA, (hereinafter referred as applicant) retired from the post of Office Superintendent – II on 31.05.1993. The applicant was appointed as store issuer promoted as junior clerk and resumed his duties on 15.04.1971 in the pay scale of Rs. 110 – 180. One Sangram Ram was also appointed as junior clerk on 10.05.1971 in the same pay scale. From the office of Divisional Superintendent, Allahabad a seniority list of clerks was issued on 23.07.1975, in which the applicant was at Sl. No. 54 and Sangram Ram was at Sl. No. 56 (Annexure No. 1). It is stated in the OA that Sangram Ram was illegally given the charge of senior clerk by the respondents under local arrangement under TRD Organization, Kanpur – Tundla Section since 27.02.1973 ignoring the claim of the applicant. Although the applicant was senior to Sangram Ram, he was allowed the pay scale of senior clerk of Rs. 330 – 560 w.e.f. 27.02.1973 and the applicant was denied the same.

3. The applicant submitted a representation dated 17.04.1982 (Annexure No. 2) praying therein to fixation of his pay at par with Sangram Ram who is junior to him and sought pay and allowances as senior clerk in the pay scale of Rs. 330 – 560 w.e.f. 27.02.1973. In reply to the representation of the applicant the respondents issued a letter dated 21.05.1982 informing him that they will reply in respect of stepping up of pay equal to his junior Sangram Ram. The applicant submitted a joint application dated 24.11.1982 alongwith L.P. Singh and S.C. Srivastava and the respondents vide letter dated 04.12.1982 (Annexure No. 4 to the OA) intimated that parity with Sangram Ram cannot be given to the applicant.

4. In the seniority list dated 20.09.1980 the applicant had been placed at Sl. No. 63 and Sangram Ram at Sl. No. 65. The applicant again moved a joint application dated 05.08.1982 for implementation of next below rule, as the applicants are drawing less pay than their junior Sangram Ram. In pursuance to the application dated 05.08.1982 (Annexure No. 6 to the OA), the Senior Divisional Electrical Engineer TRD/Allahabad vide letter dated 07.08.1982 (Annexure No. 7 to the OA) addressed to Divisional Personnel Officer, Allahabad requested him to decide the issue, but it is yet to be disposed of. The applicant again moved application dated 15.09.1985 (Annexure No.8 to the OA) for fixation of his pay since 01.01.1986 and consequential benefits but nothing has been done. It was further submitted that in a similar situation junior to the applicant S.C. Srivastava and some other employees had been provided benefit of promotional grade since 01.01.1986 at par with Sangram Ram, but the applicant had been denied the same benefit. The Respondent No. 3 by means of the order dated 14.12.2004 (Annexure CA-1 to the Counter) has not considered the grievance of the applicant regarding re-fixation of pay in an arbitrary manner.

5. In the counter reply filed on behalf of respondents No. 3 and 4, it has been submitted that the OA is highly time barred and on this ground the case is liable to be dismissed. It was also submitted that the applicant alongwith other situated clerks was working as a clerk in grade of Rs. 260 – 400, being senior to Sangram Ram of Electric Seniority Unit. After passing the written test for suitability for the post of Senior Clerk in the Grade of Rs. 330 – 560, all of them were posted under DEE/TRD/TDL on promotion as senior clerk grade, but the applicant did not move on transfer and submitted their refusal before the competent authority. Sangram Ram who was junior to the applicant was allowed ad-hoc promotion as senior clerk and subsequently was posted under SS/WS/TDL vide office order dated 22.03.1978. Since Sangram Ram had already officiated locally in the Grade of Rs. 330 – 560 w.e.f. 27.02.1973, he got the protection of pay in higher grade at the time of his regular promotion w.e.f. 01.01.1979 as per the extant rules. On the other hand, the applicant alongwith others, who were senior to Sangram Ram, were allowed regular promotion as senior clerk in the Grade of Rs. 330 – 560 w.e.f. 01.01.1979 against upgraded post and allowed seniority in the grade according to their substantive position of clerk in the grade of Rs. 260 – 400 as per extant rules. Seniority of the applicant was above Sangram Ram. So far as the equity of pay protection given to Sangram Ram is concerned, the same

benefit cannot be given to the applicant. No representation of the applicant dated 15.09.1995 was ever received pertaining to the fixation of his pay w.e.f. 01.01.1986. S.C. Srivastava and others were not provided the benefit of promotional grade w.e.f. 01.01.1986 at par with Sangram Ram, S.C. Srivastava and others who had submitted their option regarding fixation of their pay w.e.f. 01.01.1986 in terms of instructions contained in PA. No. 11001 were allowed such benefits. However, the applicant was not entitled to the same. It is further submitted that pay of the applicant cannot be equated with Sangram Ram, who was given pay protection as per rules because of ad-hoc promotion.

6. The applicant has filed rejoinder affidavit in which he has reiterated almost same stand as stated in the OA. He has further submitted that the applicant moved an application for stepping up of his pay scale, but no reply has been given by the respondents inspite of letter dated 21.05.1982. The applicant never refused promotion and the ad-hoc promotion of Sangram Ram was kept in dark. The applicant was not given promotion at the relevant time, hence, the question of transfer and refusal of transfer does not arise. It also stated that vide the order dated 14.12.2004 (Annexure CA-1 to the Counter), the respondents have admitted that the applicant had submitted his representation dated 15.9.1995 which is undecided by the respondents.

7. Heard the learned counsels for the applicant as well as the respondents. Learned counsel for the applicant submitted that the original applicant has expired and in his place his legal heirs have been substituted in the OA filed for pay parity of the applicant with a junior staff, who was getting higher pay than the applicant and his grievances in this regard has not been considered by the respondents. In the seniority list furnished in the OA vide Annexure No. 9, the applicant is shown above Shri Sangram Ram in the seniority, who was allowed officiating promotion to the post of Senior Clerk w.e.f, 27.09.1973, whereas the applicant was promoted subsequently, for which he was getting less pay than Shri Sangram Ram.

8. Learned counsel for the respondents submitted that as explained in Para-14 of the counter, the applicant did not opt to go to different place on transfer for officiating promotion for which Shri Sangram Ram was allowed adhoc promotion and when both of them were selected regularly for promotion to the post of Senior Clerk w.e.f., 01.01.1979, Shri Sangram

Ram who worked as Senior Clerk w.e.f. 27.9.1973 was allowed pay protection as per the existing rules. Accordingly, the request of the applicant was rejected by the respondents vide order dated 14.12.2004 (Annexure CA-1), which has not been challenged in the OA. Learned counsel also objected to maintainability of the OA on the ground of delay.

9. We have considered submissions as well as perused the pleadings and the materials available on record. The main dispute relates to the claim of the applicant that he was getting less pay compared to his junior Sangram Ram, because the latter was allowed officiating promotion w.e.f. 27.09.1973 i.e., about more than five years before his regular promotion as senior clerk w.e.f. 1.1.1979 alongwith the applicant. The question is whether in such circumstances, where the junior employee is allowed officiating promotion by virtue of which he gets higher pay, can a senior claim parity in pay with such junior employee.

10. On the question of delay, raised by the respondents, it is seen that the claim of the applicant is for parity in pay with one of his junior employee and as it affects his pension, it is treated as a recurring cause of action for which, it cannot be said that the OA is barred by limitation. Hence, the objection of the respondents is not acceptable.

11. It is noticed that with similar set of facts, this Bench of the Tribunal vide order dated 20.05.2011 had decided an OA No. 718 of 2004, with the Railways as the respondents. In that case there was a difference in pay arising due to ad-hoc promotion allowed to a junior employee, for which the senior employee claimed parity as discussed in the said order. After examining judgments of the Hon'ble Apex Court in the case of **Union of India v. M. Suryanarayana Rao, (1998) 6 SCC 400** and in the case of **Union of India v. R. Swaminathan, (1997) 7 SCC 690**, the Tribunal held in the order dated 20.05.2011 as under:-

"7. In 1981, the applicant was borne on Allahabad Division, while the junior Shri Kain was borne in Lucknow Division. Admittedly ad hoc promotion was termed as local ad hoc promotion. Had the applicant been serving in Lucknow Division at the material point of time he would have been preferred to his junior. When the ad hoc promotion was based on Division basis, there was no question of the applicant being denied his local ad hoc promotion or erroneous promotion granted to his junior in preference to the applicant. As such, the decision of Swaminathan read with M. Suryanarayana Rao (supra) squarely applies to the case.

8. The application, therefore, fails and hence is dismissed. No cost."

12. In the case of R. Swaminathan (supra), Hon'ble Apex Court held as under:-

"10. According to the aggrieved employees, this has resulted in an anomaly. Government Order bearing No. F.2 (78)E. III (A)/66 dated 4th of February, 1996, has been issued for removal of anomaly by stepping up of pay of senior on promotion drawing less pay than his junior. It provides as follows:

"10. Removal of anomaly by stepping up of pay of Senior on Promotion drawing less pay than his junior.--(a) As a result of application of F.R. 22-C. -- In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after in that post than another Government servant junior to him in the lower grade and promoted or appointed in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. 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 the posts in which they have been promoted or appointed should be identical and in the same cadre:

(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 provisions will not be invoked to step up the pay of the senior officer.

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under F.R.27. the next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay.

As the order itself states, the stepping up is subject to three conditions: (1) Both the junior and the senior officers should belong to the same cadre and the posts in which they have been promoted should be identical and in the same cadre; (2) the scales of pay of the lower and higher posts should be identical and ; (3) anomaly should be directly as a result of the application of Fundamental Rule 22-c which is now Fundamental Rule 22(I) (a) (1). We are concerned with the last condition. The difference in the pay of a junior and a senior in the cases before us is not a result of the application of Fundamental Rule 22(1) (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 post. Because of the 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 up of the pay of the seniors.

11. The Office Memorandum dated 4.11.1993, Government of India, Department of Personnel & Training, has set out the various instances where stepping up pay cannot be done. It gives, inter alia, the following instances which have come to the notice of the department with a request for stepping up of pay. There are:

"(a) Where a senior proceeds on Extra Ordinary 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 promotion 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 ad hoc promotion in the cadre. The increased pay drawn by a junior either due to ad hoc officiation/regular service rendered in the higher posts for periods earlier than the senior, cannot, therefore, be an 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) ”

There are also other instances cited in the Memorandum. The Memorandum makes it clear that in such instance 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 anomaly because pay does not depend on seniority alone is seniority alone a criterion for stepping up of pay.

12. The aggrieved employees have contended with some justification that local officiating promotions within a Circle have resulted in their being deprived of a chance to officiate in the higher post. If such chance of officiation arises in a different Circle. They have submitted that since there is an All India seniority for regular promotion. this All Indian seniority must prevail even while making local officiating appointments within any Circle. The question is basically of administrative exigency and the difficulty that the administration may face if even short-term vacancies have to be filled on the basis of All India seniority by calling a person who may be stationed in a different Circle in a region remote from the region where the vacancy arises, and that too for a short duration. This is essentially a matter of administrative policy. But the only justification for local promotions is their short duration. If such vacancy is of a long duration there is no administrative reason for not following the all India seniority. Most of the grievances of the employees will be met if proper norms are laid down for making local officiating promotions. One thing, however, is clear. Neither the seniority nor the regular promotion of these employees is affected by such officiating local arrangement. The employees who have not officiated in the higher post earlier, however, will not get the benefit of the Proviso to Fundamental Rule 22.”

Hence, as per the ratio of the judgment of the Hon'ble Apex Court as quoted above, the stepping up of the pay of the senior to the level of salary, which the junior is getting on account of the officiating promotion earlier, is not permissible.

13. In the case of M. Suryanarayana Rao (supra), the decision of Union of India v. R. Swaminathan, (1997) 7 SCC 690 was applied and it was held as under:-

“4. The judgment of the Tribunal is assailed by the appellant on the ground that principle of stepping up will not apply in the case where junior had been promoted earlier to a higher post on adhoc basis and on account of such adhoc promotion the junior got his pay fixed at a higher scale. In support of this contention reliance is placed by the appellant on a judgment of this Court in Union of India vs. R.Swaminathan & Ors. A Bench of three Judges considered F.R. 22(1) and also the Government office memorandum dated 4.11.93 which sets out various instances where stepping up of pay cannot be done. The Bench pointed out that in that case the higher pay was fixed for the juniors not because of any promotion under FR 22 but because of an earlier ad-hoc promotions given to the juniors for certain periods. The following observation of the Bench will be relevant:

"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 alone nor is seniority alone a criterion for stepping up of pay.

The aggrieved employees have contended with some justification that local officiating promotions within a Circle have resulted in their being deprived of a chance to officiate in the higher post, if such chance of officiation arises in a different circle. They have submitted that since there is all-India seniority for regular promotions, this all-India seniority must prevail even while making local officiating appointments within any Circle. The question is basically of administrative exigency and the difficulty that the administration may face if even short-term vacancies have to be filled on the basis of all-India seniority by calling a person who may be stationed in a different circle in a region remote from the region where the vacancy arises, and that too for a short duration. This is essentially a matter of administrative policy. But the only justification for local promotions is their short duration. If such vacancy is of a long duration there is no administrative reason for not following the all-India seniority. Most of the grievances of the employees will be met if proper norms are laid down for making local if proper norms are laid down for making local officiating promotions. One thing, however, is clear. Neither the seniority nor the regular promotion of these employees is affected by such officiating local arrangements. The employees who have not officiated in the higher post earlier, however, will not get the benefit of the proviso to Fundamental Rule 22.

.....
11. We respectfully agree with the ratio in Union of India v. R. Swaminathan and allow this appeal. The order of the Tribunal in OA No. 913 of 1996 filed by the respondent is set aside and the said application is dismissed.”

14. The ratio of the judgment of Hon'ble Apex Court in the case of R. Swaminathan (supra) was also applied by Hon'ble Delhi High Court in W.P. (C) No. 6048/2008 in the case of **R.P. Arora vs. Union of India & Ors** in which the facts involving the Railway servants were similar to the present OA. In this case, it was held by Hon'ble High Court as under:-

“The petitioner claims step up of his pay at par with his juniors on the ground that Western Railway communication dated 14th July, 1954 had contemplated that instructors deputed to Ajmer and Udaipur

Training Schools retain a lien in their parent categories and as such he could not be promoted on account of being on deputation whereas his juniors were given ad-hoc promotion.

.....
The petitioner also cannot claim ad-hoc promotion after a considerable gap of time. In fact the petitioner had not made a grievance for not granting the adhoc promotion nor had claimed notional ad-hoc promotion, which could not be granted to him, but had only sought step up of pay in consonance with the pay of his juniors, which was higher than that of the petitioner on account of adhoc promotion given to some of the juniors. The adhoc promotions in any case could not be given to the petitioner because he was working in a different department on deputation and could not have been considered for such ad-hoc promotion.

In the circumstances, there are no grounds to step up the pay of the petitioner considering the pay of his juniors who had been given ad-hoc promotions. There are no grounds to interfere with the decision of the Central Administrative Tribunal, Principal Bench in the facts and circumstances and the writ petition is, therefore, dismissed.”

15. In the case of **Jasvinder Pal Singh vs. The Divisional Railway Manager**, decided by Hyderabad Bench of this Tribunal, similar dispute as in the present OA was adjudicated. In Jasvinder Singh (supra), the issue was stepping up of the pay of the senior employee to the level of higher pay the junior employee was getting due to ad-hoc promotion availed by the junior prior to regular promotion. It was held as under:-

“2. The applicants were promoted as Goods Drivers in the pay scale of Rs. 5000-8000 at the places mentioned against their name and their basic pay was fixed at Rs.5000/-. It is the grievance of the applicants that the private respondents herein were granted adhoc promotion to the post of Goods Driver in the year 2004 and their pay was fixed at Rs.5000/- Subsequently Goods Drivers selection was completed and a panel was prepared vide proceedings dated 17-6-2005 and the applicants were placed above the private respondents in the panel in unreserved category. It appears that the private respondents are getting higher pay i.e. Rs. 5150 with effect from 1.7.2005. Referring to Railway Board letter No. E(NG)1-2002/PM-1/16 dated 2.7.03 RBE No. 14/2003 the applicants submitted that in terms of the said letter the basic pay of the applicants is required to be fixed equal to the juniors and arrears also be granted from the date they have shouldered higher responsibility as Goods Driver.

.....
Instances which do not constitute anomaly for stepping up of pay -

The following instances do not constitute an anomaly of junior drawing more pay than the senior and stepping up of pay will not be admissible in such cases :-

(i) Extraordinary Leave resulting in postponement of the date of next increment with consequent drawal of less pay than the junior in the lower grade itself; pay parity cannot be claimed even if promoted earlier to the higher grade.

(ii) A senior forgoing/refusing promotion leading to the promotion of junior earlier and drawal of higher pay than the senior; increased pay drawn by a junior due to ad hoc

officiating/regular service rendered in the higher posts for for periods earlier than the senior.

(iii) A senior joining higher post later than the junior and drawing less pay.

(iv) A senior appointed later than the junior in the lower post itself and drawing less pay than the junior, when promoted to the higher post earlier than the junior.

(v) A senior direct recruit drawing less pay than a junior promotee whose pay has been fixed with reference to the pay drawn in the lower post.

(vi) When a junior gets more pay due to additional increments earned on acquiring higher qualifications.

-FR 22, GIO(27), Para.2.

.....

9. It is not in dispute that the applicants who were senior joined the higher post later than the private respondents who had already working in the said post on adhoc basis and thereby the applicants who were senior was drawing lesser pay. That being the position in terms of 'Instances which do not constitute anomaly for stepping up of pay' at para (ii) above, since the juniors were working in the higher scale on adhoc promotion, the applicants are not entitled to step up their pay with their juniors who were admittedly drawing more pay than the applicants who were senior to them, from time to time in the lower post. More over as per instruction (ii) (supra) the private respondents were junior and were drawing higher pay due to adhoc promotion. Therefore, the seniors pay cannot be stepped up. It is not in dispute that private respondents were working in the higher post on adhoc basis before they were given regular promotion and are drawing more pay than the applicants on regular promotion. The applicants are, therefore, not entitled for stepping up of their pay with their juniors. It is also seen that the juniors of the applicants were drawing more pay than the applicants by virtue of their adhoc promotion.

10. That being so, we find nothing wrong in the action of the respondents in rejecting the representation of the applicants requesting for stepping up of pay with their juniors. OA is dismissed accordingly with no order as to costs."

16. In the judgments cited above, it was held that in the cases where difference in pay occurs due to junior employee getting ad-hoc or officiating promotion before the senior employee, no claim for stepping up is available for the senior employee in terms of the OM dated 4.11.1993 of the Department of Personnel and Training. The paragraph 2 and 3 of the said OM dated 4.11.1993 as taken from Swami's Compilation of FRSR, Part-I (24th edition in 2017) states as under:-

"2. Instances have come to the notice of this Department requesting for stepping 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 forgoes/refuses promotion 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 ad hoc promotion in the cadre. The increased pay drawn by a junior either due to ad hoc officiating/regular service rendered in the higher posts for periods earlier than the senior, cannot, therefore, be an 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 post 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, an 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 Para. 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.

[G.I. Dept. of Per. & Trg., O.M. No. 4/7/92-Estt. (Pay-I), dated the 4th November, 1993.]”

As per the provisions of the OM dated 4.11.1993, the claim for stepping up of the pay on the ground of higher pay of the junior on account of ad-hoc promotion is not permissible. This has been upheld in the judgments of Hon’ble Apex Court as discussed above. In view of these provisions of the OM dated 4.11.1993 and in the light of the case laws discussed above, the claim of the applicant cannot be allowed and the question mentioned at Para 9 of this order is answered accordingly.

17. We also note that in this OA, the respondents have stated that the applicant refused to take up this senior clerk designation on transfer, due to which Shri Sangram Ram was given ad-hoc promotion. This contention has been contested by the applicant, by stating that he was never given any option to be promoted, so no question of refusal arises. It is also seen that the applicant had contested the ad-hoc promotion of Shri Sangram Ram vide his representation dated 17.04.1982 (Annexure 2 to the OA). He was informed vide letter dated 14.12.1982 (Annexure-4 to the OA)

regarding rejection of his representation by the respondents on the ground that Shri Sangram Ram was given officiating/ad-hoc promotion earlier. From the pleadings, it appears that no claim was made by the applicant for ad-hoc promotion/notional promotion from the date his junior was allowed ad-hoc promotion by the respondents overlooking his case, although he was repeatedly representing for stepping up of his pay.

18. We are, therefore, of the considered view that the applicant has failed to claim ad-hoc promotion/notional promotion at par with his junior on the ground that his case was overlooked while giving ad-hoc promotion to Shri Sangram Ram and that in the light of the discussions in above Para of this order, we do not find any justification for allowing stepping up of pay to the applicant equal to the pay of Shri Sangram Ram, who was allowed higher pay as per the rules on account of ad-hoc or officiating promotion allowed by the respondents. Accordingly, the OA is dismissed. No order as to costs.

(Gokul Chandra Pati)
Member (A)

(Dr. Murtaza Ali)
Member (J)

/pc/