

**Central Administrative Tribunal
Principal Bench**

OA No.349/2014

**Order reserved on :28.08.2017
Order pronounced on :01.09.2017**

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)**

Pankaj Sharma
S/o Shri O.P. Sharma
Chief Controller,
Northern Railway,
Delhi Division,
DRM Office,
State Entry Road,
New Delhi.Applicant

(By Advocate: Shri M.S. Saini)

Versus

1. Union of India,
Through General Manager,
Northern Railway,
HQs Office,
Baroda House,
New Delhi.
2. Divisional Railway Manager,
Delhi Division,
Northern Railway,
DRM Office,
State Entry Road,
New Delhi.
3. Sr. Divisional Personnel Officer,
Delhi Division,
Northern Railway,
DRM Office,
State Entry Road,
New Delhi.Respondents

(By Advocate :Shri Satpal Singh)

ORDER**Hon'ble Ms. Nita Chowdhury, Member (A)**

This Original Application has been filed by the applicant claiming the following reliefs:-

“(1) To grant to the applicant the stepping up of his pay vis-à-vis his junior Nitin Mahindru with all consequential benefits;

(ii) To re-fix his pay accordingly and consequently to grant him arrears of pay and allowances arising thereof along with interest; and

(iii) To pass any other order(s) that this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

2. Facts, in brief, are that the applicant was initially appointed Goods Stacker in the Commercial Department of the Northern Railway, Delhi Division in 1987. Thereafter, he appeared in the Limited Departmental Competitive Examination (LDCE) as Guard in the year 2001 and was posted in Delhi Division. On his promotion, his pay was fixed @ Rs.4500/- in the grade of Rs.4500-7000. One Shri Nitin Mahindru, who was junior to the applicant, was initially appointed on Northern Railway in 1996. Thereafter, he was promoted through LDCE as Guard in September, 2003 and posted in Delhi Division. His pay was fixed @ Rs.4625 in the same grade in which applicant was working. That the applicant having been appointed in the year 2001 about 2 years earlier, thus being senior to Shri Mahindru was drawing pay @ Rs.4750/- w.e.f. 01.11.2003 while his junior was drawing less pay. From the aforesaid facts, it is clear that the applicant was drawing higher pay than his junior as Guard in the grade of Rs.4500-7000 as on 01.11.2003.

3. Further, applicant was promoted to the next higher post of Section Controller in Delhi Division on 01.11.2004 in the Grade of Rs.5500-9000 and his pay was fixed @ Rs.6550/. The said Shri Nitin Mahindru, junior of the applicant was also promoted as Section Controller in Delhi Division on 6.6.2006 in the same grade of Rs.5500-9000 and his pay was fixed @ Rs.6500. It may also be mentioned that on being promoted as Section Controller, applicant was drawing higher pay than his junior, i.e. Shri Mahindru since he was working in the said grade prior to 1.1.2006 and drawing pay at Rs.6725/- in Section Controller's grade as on 01.11.2005 as against Rs.6500/- drawn by his juniors after January, 2006. Applicant was further promoted to the post of Dy. Chief Controller (Dy.CHC) with effect from 25.01.2007 in the Grade of Rs.9300-34800 + GP Rs.4200/- while his junior in Delhi Division Shri Mahindru was promoted in the same grade as Dy. CHC later than him, i.e., on 30.11.2007. On promotion as Dy. CHC w.e.f. 25.01.2007, applicant's pay was fixed at Rs.7100/- in the pre-revised grade of Rs.6500-10500 (in January, 2007) while that of his junior Mr. Mahindru was fixed at Rs.6725/- (as on 01.06.2007).

4. After the implementation of the recommendations of the VIth CPC, applicant's pay was fixed in the revised grade @ Rs.16710/- as on 01.01.2006, Rs.17220 as on 01.07.2006, Rs.18140 (in GP of Rs.4600/-) and Rs.18690 as on 01.07.2008. From the above facts, it is clear that no doubt Shri Mahindru was promoted to both the

next higher posts later than applicant, but even then his pay has been fixed at a higher level than the applicant even though he was getting higher pay in both the lower grades. Thus, it is submitted that while applicant's pay as Dy.CHC in the revised grade of Rs.9300-34800 + GP Rs.4200 as on 01.07.2008 was fixed @ Rs.18690/-, the pay of his junior Shri Mahindru has been fixed at Rs.21760/-.

5. As per Fundamental Rules, where a Government servant promoted to a higher post before January, 2006 draws less pay in the revised pay structure than his junior, who is promoted to the higher post on or after the 1st day of January, 2006, the pay in the pay band of the senior Government servant should be stepped up to an amount equal to the pay in the pay band as fixed for his junior in that higher scale. The stepping up should be done with effect from the date of promotion of the junior Government servant subject to fulfilment of certain conditions which the applicant herein fully satisfies. Thereafter, applicant filed an application dated 10.10.2011 under Right to Information Act, 2005 and came to know about the said anomaly and he even submitted representations dated 09.01.2012 and 18.05.2012 through the Public Grievance Cell to which a letter dated 3.07.2012 signed by Divisional Personnel Officer, DRM Office was received by said Grievance Cell stating that the pay of one junior viz. Vijender Sharma was fixed wrongly, which is being corrected and since Shri

Mahindru is absorbed in Headquarters (HQrs.) Office, no stepping up was due to the applicant. Dissatisfied by the reply of the respondents, applicant made a further representation on 01.04.2013 to the General Manager/Public Grievances reiterating that he is senior to S/Shri Akash Bhatnagar, Nitin Mahindru and Rejinder Ram who are drawing more pay than him and accordingly his pay may also be stepped up. Thereafter, applicant again filed another RTI dated 17.04.2013 to which respondents replied vide letter dated 14.05.2013 issued for an on behalf of the DRM, Delhi Division, Northern Railway, informing that his claim for stepping up of his pay vis-à-vis his juniors is not tenable.

6. The applicant next submitted that the seniority of the juniors including that of Shri Mahindru is maintained in HQrs. Office as they are working in HQrs. Office and the applicant is working in Delhi Division is not tenable since the lien of the junior as Guard/Section Controller/Dy.CHC is maintained in Delhi Division and Nitin Mahindru had been transferred to the HQrs. Office only on administrative grounds and that too, in the year 2011. The cadre and category in both the lower and the higher promoted posts remains the same. It is submitted that the assignment of Shri Nitin Mahindru in the HQrs. Office on administrative grounds w.e.f. 19.05.2011 thus cannot be a ground for denial of the benefit of stepping up of pay of the applicant. A perusal of the seniority list issued as on 30.04.2011 by Delhi Division clearly reveals that Nitin

Mahindru is junior to the applicant. He has, therefore, prayed that the OA be allowed.

7. The respondents have filed their reply in which they have submitted that applicant was appointed as Goods Stacker in Grade Rs.750-940 dated 28.01.1987 and resumed his duty on 30.01.1987. They have also submitted that he was placed in the panel of Commercial Clerk Grade Rs.975-1540 dated 20.09.1996 and attended TP-7 Training course from 14.10.1996 to 27.12.1996 and declared pass. Thereafter, he was appointed as Commercial Clerk on 26.03.1997 in the grade of Rs.3200-4900 and was placed in the provisional panel of Goods Guard against 15% LDCE Quota dated 08.09.2000 and attended TP-2 training from 30.11.2000 to 23.01.2001 and passed it on 08.03.2001. Immediately on passing the training, he was appointed as Goods Guard in Grade Rs.4500-7000 on 30.04.2001 at TKD and was placed in the panel of Section Controller in the Grade of Rs.5500-9000 and passed TP-7 with supplementary test from ZRTI/CH and posted as SCNL and resumed his duty on 10.02.2005.

8. In reply to para 4.3, the respondents have submitted that Shri Nitin Mahindru was initially appointed in Railway as TNC in Grade Rs.950-1500 w.e.f. 11.04.1997. The name of applicant was placed on provisional panel of Goods Guard against 60% promotee quota and after completion of training and as well as practical line training, he was promoted as Goods Guard on 27.09.2003 and his

pay was fixed @ Rs.4625/- in Grade Rs.4500-7000. Further, applicant was drawing pay of Rs.4750/- w.e.f. 01.11.2003 in the same grade pay.

9. Further, in reply to para 4.6., they have submitted that the name of the applicant was placed on provisional panel of Section Controller in Grade Rs.5500-9000 and he passed TP-7 course with supplementary exam and posted as such in the said grade. He resumed his duty on the said post with effect from 10.02.2005 and his pay was fixed by adding 30% running allowance @ Rs.6550/- in the grade of Rs.5500-9000. Shri Nitin Mahindru was placed on provisional panel of Section Controller in the same grade pay on 30.09.2004 and has passed the said TP-7 course w.e.f. 21.08.2005 to 23.11.2005 and posted as Section Controller in the Grade pay of Rs.5500-9000/Rs.9300-34800 + GP Rs.4200/- w.e.f. 06.06.2006 and his pay was fixed @ Rs.6550/-, which was revised according to 6th CPC in the grade of Rs.9300-34800 + GP Rs.4200 @ Rs.19520/- w.e.f. 01.07.2006 as he has submitted his option to fix his pay under PS 7937. The said rule PS 7937 reads as under:-

“Sub: Option of date for fixation of pay on promotion – regarding.

Please refer to the existing provisions regarding the manner of fixation of pay of a Railway employee on his promotion to the next higher grade/post under Rule 2018 (B) R.II (FR-22-C). A point was raised by the Staff Side in the 25th Ordinary Meeting of the National Council (JCM) that under the above Provisions promotion of a junior person to the higher post, after accrual of his increment in the lower Post,

given rise to an anomaly in pay of a person senior to him who though promoted earlier had not drawn at any time pay less than that of his junior in the lower post.

2. The demand of the Staff Side has been considered in the National Council (JCM). **The President is pleased to decide that in order to remove the aforesaid anomaly the employee may be given an option for fixation of his pay on promotion as under:-**

(a) Either his initial pay may be fixed in the higher post on the basis of Rule 2018 (B)R. II (FR-22-C) straightaway without any further review on accrual of increment in the pay scale of the lower post; or

(b)his pay on promotion may be fixed initially in the manner as provided under Rule 2017 (a) (i) R.II FR 22(a)(i) which may be refixed on the basis of the provisions of Rule 2018 (B)R.II (FR-22-C) on the date of accrual of next increment in the scale of pay of the lower post.

If the pay is fixed under (b) above, the next date of increment will fall due on completion of 12 months qualifying service from the date pay is refixed on the second occasion.

Option may be given within one month of the date of promotion. Option once exercised shall be final.

3. In the event of an officer refusing promotion even after the above concession become available, he would be debarred from the promotion for a period of one year instead of 6 months, as at present”.

They have further submitted that applicant was promoted as Section Controller prior to 2006 and his pay was fixed @ Rs.6550/- w.e.f. 10.02.2005 which was further revised according to 6th Pay Commission @ Rs.17220/- w.e.f. 1.7.2006 in Grade Rs.9300-

34800/- + Rs.4200 GP. Hence, applicant was not due for option to get his pay fixed under PS 7937 but he was given the benefit of PS No.13500/287. The difference in their pay w.e.f. 01.07.2006 is just because of their date of promotion as the applicant's pay was fixed by adding 30% of the running allowance before the 6th CPC as on 10.02.2005 comes to Rs.6550/- whereas in the case of Shri Nitin Mahindruit, it was fixed (by adding 30% running allowance after 6th CPC as on 6.6.2006 on the pay of Rs.13530, i.e., 30% + 1 increment of 3%) at Rs.19520 w.e.f. 01.07.2006 under PS 7937.

10. The respondents next pleaded that applicant was promoted as Dy.CHC in the grade of Rs.9300-34800 + GP 4600 w.e.f. 25.01.2007 in which his pay was fixed @ Rs.18140/- but in the present OA applicant has been shown promoted as Dy.CHC in GP Rs.4200/- instead of Rs.4600/-, whereas his junior Shri Mahindru was promoted as Dy.CHC in the grade of Rs.9300-34800 + GP 4600 w.e.f. 30.11.2007 and his pay was fixed @ Rs.21120/-. In reply to para 4.10., they have submitted that applicant was promoted as Dy.CHC w.e.f. 25.01.2007 in Grade Rs.6500-10500 and his pay was fixed @ Rs.7100/- whereas in the case of Nitin Mahindru, who was promoted as Dy.CHC w.e.f. 30.11.2007, his pay was fixed at Rs.7100/- subsequently as their pay were revised on the basis of recommendations of 6th CPC.

11. Further, consequent upon the recommendations of the 6th CPC, the applicant's and his junior Shri Mahindru 's pay was fixed as under:-

Pay prior to 6 th Pay Commission	Pay after 6 th Pay Commission
5500-9000	9300-34800+4200 GP
10.02.2005-6550/- (By adding 30% running allowance) 01.02.2006-6725/-	01.01.2006-16710/- 01.07.2006-17220/-
6500-10500 25.01.2007-7100/- 01.01.2008-7300/-	9300-34800+46000 GP 25.01.2007-18140/- 01.07.2008-18690/-

The pay of Shri Nitin Mahindru was fixed as under:-

Pay prior to 6 th Pay Commission	Pay after 6 th Pay Commission
4500-7000	5500-20200+2800 GP
01.09.2005-4875/- 5500-9000 06.06.2006-6550/- (By adding 30% running allowance)	01.01.2006-13130 9300-34800+4200 GP 06.06.2006-18470/- (By adding 30% running allowance)
01.06.2007-6725/-	01.07.2006-19520/- by option 7937
6500-10500 30.11.2007-7100/-	9300-34800+4600 GP 30.11.2007-21120/- 01.07.2008-21760/-

12. From the above, it is clear that pay of both the employees has been fixed correctly and difference has occurred due to difference in their date of promotion as the applicant was promoted from Goods Guard to Section Controller prior to 6th CPC and 30% was added to his basic pay of 5th Pay Commission, whereas Shri Nitin Mahindru was promoted from Goods Guard to Section Controller after 6th CPC, hence his pay was fixed by adding 30% running allowance on

his revised basic pay. Thus, they have submitted that applicant is not entitled for any relief because Nitin Mahindru has exercised option under PS 7937 whereas applicant was not given the benefit of PS 7937 and he was given the benefit of PS No.13500/287.

13. Applicant has filed rejoinder, wherein he has reiterated all the pleas taken in the OA but has relied on Circular of Railway Board bearing RBE No.136/2009 dated 24.07.2009. The said Circular reads as under:-

“3. The benefit of stepping up of pay in the pay band will be subject to the following conditions:

[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 and other conditions enumerated in Note 10 below Rule 7 of RS[RP] Rules, 2008 should also be fulfilled.

[b] The stepping up of pay will be allowed to running staff only appointed as Loco Supervisors in whose cases 30% of basic pay is taken as pay element in the running allowance. The stepping up of pay will not be admissible to the non-running staff of Mechanical Deptt. appointed as Loco Running Supervisors as in their cases the question of pay element in the running allowance does not arise;

[c] If even in the lower post, revised or pre-revised, the junior was drawing more pay than the senior by virtue of advance increments granted to him or otherwise, stepping up will not be permissible;

[d] Stepping up will be allowed only once, the pay so fixed after stepping up will remain unchanged;

[e] The next increment will be allowed on the following 1st July, if due, on completion of the requisite qualifying service with effect from the date of refixation

of pay, as per the provisions of Rule 10 of RS[RP] Rules, 2008”.

Applicant has also relied on RBE 103/2008. In the said Circular of the Railway Board under Rule 6 “Exercise of Option” it has been clearly mentioned under sub-rule (3) that **“if the intimation regarding option is not received within the time mentioned in sub-rule (1), the Railway Servant shall be deemed to have elected to be governed by the revised pay structure with effect on and from the date of 1st of January, 2006”.**

14. We have heard the learned counsel for the parties and gone through the pleadings on record.

15. The controversy involved in this case is with regard to stepping up of pay of applicant with his juniors. According to the Circulars bearing No.RBE 136/2009 and RBE 103/2008 of the Railway Board also, no relief can be granted because applicant's pay was fixed in accordance with PS 13500/287 since he has not given any option for fixation of pay as per PS 7937, whereas his junior Shri Nitin Mahindru was given the benefit of PS 7937 as he has exercised his option. Thus seen from any angle, applicant is not entitled for any relief as prayed for. Accordingly, the OA being devoid of merit is dismissed. No costs.

16. During the course of arguments, applicant heavily emphasised that some juniors are getting higher salary than him which may kindly be considered. To this query, respondents conceded that if

applicant gives a representation in this regard, they will consider the same sympathetically. According to this averment of the respondents, the applicant is directed to give a detailed representation to them within a period of one month from the date of receipt of a copy of this order. Thereafter, they shall take a decision on the same within a period of 60 days from the date of receipt of the same.

(Nita Chowdhury)
Member (A)

(V. Ajay Kumar)
Member (J)

Rakesh