

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA No.219/2013

Reserved On: 24.10.2018

Pronounced On: 31.10.2018

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. A.K. Bishnoi, Member (A)

Shri Rajendra Singh
S/o Shri P.S. Rathi
Loco Inspector under DRM
Northern Railway
State Entry Road, New Delhi.

...Applicant

(By Advocate: Shri Yogesh Sharma)

Versus

Union of India: Through

1. Secretary,
Railway Board,
Ministry of Railway,
Rail Bhawan, New Delhi.
2. General Manager,
Northern Railway,
H.Q., Baroda House,
New Delhi.
3. Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.

-Respondents

(By Advocate: Shri Shailendra Tiwary)

ORDER

Hon'ble Mr. A.K. Bishnoi, Member (A):

The applicant has filed the present OA seeking the following reliefs:-

- “8.1 That this Hon'ble Tribunal may please to allow this application and quash the impugned order.

8.2 That this Hon'ble Tribunal may be graciously pleased to direct the respondents to give the benefit of stepping up of the pay of the applicant at par with the pay of Shri Ajay Kumar and give all consequential benefits.

8.3 That the Hon'ble Tribunal may also be pleased to award any other or further relief which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.

8.4 That the cost of these proceedings may kindly be granted in favour of applicant".

2. Earlier the applicant had filed this OA which was dismissed by the orders of this Tribunal dated 25.07.2014. Subsequently, the Review Application No. 298/2015 was filed, which was allowed vide order dated 07.03.2017 and the OA was restored to its original number. The order in the Review Application mentions as follows;

"This Review Application (RA) has been filed against the order dated 25.07.2014 in OA-219/2013 on the ground that the following observations in the order are not factually correct:

"(i) ".....therefore, Shri Ajay Kumar is getting more pay than the applicant from the year 2003 itself." It is stated that on 1.07.2003, the applicant was getting Rs.6200/- and private respondent was at the stage of Rs.6200/- on 1.08.2003. This fact is borne out from the table in para 3 of the counter affidavit filed by the respondents in the OA;

(ii) It is stated that in para 4 of the order, the following has been mentioned:

"The applicant at that time was holding Stationary Post-Non Running Category Post whereas Shri Ajay Kumar was working in Running Category Post."

It is pointed out that both the applicant as well as the private respondent was on Running Category Post, which is not challenged by the respondents counsel;

(iii) In para 6 of the order, it has been observed that "they belonged to different categories of staff and were not on the same footing".

In this regard it is stated that though the private respondent was recruited directly as Diesel Assistant and the Applicant as Loco Cleaner, later on they both came to the same cadre

namely Loco Pilot Shunter, Loco Pilot Goods, Loco Pilot Passenger and finally Loco Inspector; and

(iv) OA 3857/2010, **Shri Surinder Kumar Dhingra Vs. Union of India and others**, which also dealt with the issue of stepping up of pay, was allowed by the Tribunal.”

3. The facts of the case, briefly, as stated by the applicant, are as follows:-

3.1 The applicant was initially appointed in the lowest post in the category of running staff on 26.12.1977/18.02.1978 and was promoted as Loco Inspector w.e.f. 31.07.2003 after passing the competitive examination. He was further promoted as senior Loco Inspector w.e.f. 03.08.2005. A large number of juniors, including one Shri Ajay Kumar were promoted as Loco Inspector w.e.f. 20.11.2006. A copy of the Seniority List of Loco Inspector has been annexed as Annexure A-2 in which the name of the applicant figures at Serial No.17 whereas the name of Ajay Kumar is shown at Serial No.45. The posts of Loco Inspector and Senior Loco Inspector were merged and re-designated as Chief Loco Inspector w.e.f. 01.01.2006.

3.2 Shri Ajay Kumar was earlier drawing lesser salary than the applicant. However, after the implementation of the 6th Central Pay Commission (CPC), and in accordance with Railway Board letter No. E(P&A) II/08/RS-37 dated 24.07.2009, the pay of some of the Loco Inspectors/Senior Loco Inspectors was fixed at lower stage than that of their juniors. The senior officials made a representation, which was decided by the Respondent No.3 vide order dated 11.02.2010 (Annexure A-3). By this order, the pay of eight senior Loco Inspectors was stepped

up to the level of pay which was being drawn by Shri Ajay Kumar. The applicant was not given the benefit of stepping up *vis-a-vis* Shri Ajay Kumar as also one Shri Rajendra Kumar, who was lower in the seniority list to the applicant. However, vide order dated 12.01.2011, the said Rajendra Kumar who was junior to the applicant was also given the benefit of stepping up of pay at the level of pay of Shri Ajay Kumar.

3.3 The applicant then made a representation dated 24.12.2011, which was rejected vide order dated 17.10.2012, giving the following reasons:-

- “1. Sh. Ajay Kumar S/o Sh. Suresh Kumar, CLI/DLI had submitted an option for his pay fixation in Grade Rs.5500-9000/- under P.S. No. 7937 at the time of promotion as LPP in the year 2002 whereas this exercise was not made by the applicant. As such, Sh. Ajay Kumar is getting more pay from the year 2003. In terms of P.S. no. 8063, stepping up of pay to the senior employee is not allowed at par with juniors if the senior employee is getting less pay due to non-opting fixation of pay on promotion from the date of his next increment in the lower grade i.e. senior didn't availed the opportunity at the time of promotion for fixation of pay under P.S. No.7937.
2. In terms of instructions regarding pay fixation of the recommendation of 6th CPC under issued RBE No. 103/2008, it is stipulated in item 7 Note 10 that stepping up should be done with effect from the date of promotion of the junior Railway Servant subject to the fulfilment of the condition:

“Both the junior and the senior servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre”.

In the said case the above conditions are not fulfilled as both the employees are not at the same footing in the year 2005. Sh. Rajinder Singh Rathi was working as Loco Inspector since 2003 in Grade 6500-10500, whereas Sh. Ajay Kumar was working as Loco Pilot Passenger (LPP) in Grade 5500-9000.

3. It is stated that Accounts have already rejected the case of stepping up of pay in case of employees whose initial appointment are in different category. In said case, Sh. Rajinder Singh Rathi was initially appointed as Loco Cleaner in the year 1978, whereas Sh. Ajay Kumar S/o Sh. Suresh Kumar was initially appointed as DSL, Assistant in the year 1986”.

4. The respondents in their counter-affidavit have basically given the following reasons for non-grant of stepping up of pay to the applicant at the level of Shri Ajay Kumar:

4.1 Shri Ajay Kumar has been getting more pay since 2003 than the applicant, as he had opted for pay fixation in grade Rs.5500-9000 under P.S. no.7937 whereas the applicant did not do so. Hence, as per P.S. No.8063 “stepping up of pay to the senior employee is not allowed at par with juniors if senior employee is getting less due to non-opting fixation of pay on promotion from the date of his next increment in the lower grade i.e. senior didn’t avail the opportunity at the time of promotion for fixation of pay under PS No. 7937”.

4.2 Under item no.7, Note-10, the following condition was there:

“Both the junior and 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.”

The said condition is not satisfied in the case of the applicant.

4.3 In terms of condition (b) of Note-10 of Rule-7 RS (RP) Rules, 2008, the applicant was working as Loco Inspector since 2003 on the Stationary Post – non-running category post, whereas Shri Ajay Kumar was working as Loco Pilot Passenger (Running Category Post), so they are not on the same footing.

5. After the review was allowed and the OA was restored to its original number, the respondents have submitted a reply against the order of this Tribunal dated 07.03.2017 in RA No.298/2015 in the instant OA in

which they have given in a tabular form the career progression of the applicant and Shri Ajay Kumar, which is reproduced below:

Sl. No.	Event	Sh. Rajinder Singh Rath CLI/JHI	Shri Ajay Kumar CLI/SSB
1	DOA	18.02.78-196/- (196-232)	(950-1500) 01.10.86-950-Notional 12.5.88-970-Actual
2	Designation	DSL Cleaner (Group-D)	Apprentice DSL/Asst. (Group-C)
3	Promotion F/Man "C"	29.3.85-222/- (210-270)
4	Promotion F/Man "A"	14.11.87-1050\-(950-1500)
5	Promotion Shunter	24.4.95-1230/- (1200-2040)	08.9.-95.1200/- (1200-2040)
6	Promotion Driver Goods	25.4.97-5000/- (5000-8000) 01.4.98-5150/- 01.4.99-5300/- 01.4.00-5450/- 01.4.01-5600/- 01.4.02-5750/-	23.8.97-5000/- (5000-8000) 01.8.98-5150/- 01.8.99-5300/- 01.8.00-5450/- 01.8.01-5600/- 01.8.02-5750
7	Driver Passenger	26.7.02-6025/- (5500-9000) 01.7.03-6200/-	28.3.03-5850/- (5500-9000) 01.8.03-6200/- under 7937 opted
8	Loco Inspector	31.7.03-8300/- (6500-10500)
9	Promoted Sr. Loco Inspector	30.9.05-9025/- (7450-10500)
10.	Pay revised in VIth PC	9300-34800 GP 4600 01.01.06-21390/- 01.7.06-22040/- 01.7.07-22710/-	9300-34800 GP 4200 01.01.06-18080/- 01.7.06-18630/- Promoted as CLI GP 4600 12.12.06-25350/-
		13.12.06-24840/- Benefit has got under stepping up of pay with Sh. Raman Kumar CLI/SSB. 01.7.07-25590/- 01.7.08-26360/- 01.7.09-27150/- 01.7.10-27970/- 01.7.11-28810/- 01.7.12-29680/- 01.7.13-30570/- 01.7.14-31490/- 01.7.15-32440/- Pay revised in VIIth PC 01.01.16-83600/- 01.07.16-86100/- 01.07.17-88700/-	01.7.07-20110/- 01.7.08-26900/- 01.7.09-27710/- 01.10.10.-28550/- due to WIT three months 01.7.11-29410/- 01.7.12-30300/- 01.7.13-31210/- 01.7.14-32150/- 01.7.15-33120/- Pay revised in VIIth PC 01.01.16-86100/- 01.07.16-88700/- 01.07.17-91400/-

6. In addition to the reasons already stated in the counter-affidavit for not granting the applicant the benefit of stepping up of pay *vis-a-vis* Shri Ajay Kumar, it has also been stated that “stepping up will be allowed only once, the pay so fixed after stepping up will remain unchanged”. It has been submitted that the applicant has already got the benefit of stepping up of pay at par with Shri Raman Kumar, CLI/SSB vide office letter dated 22.4.2015 and so he cannot avail of this benefit again. Shri Raman Kumar is much junior to Shri Ajay Kumar.

7. Heard the learned counsels for the applicant and the respondents.

8. From a perusal of the documents on record, the following points emerge:

i) The averment of the respondents that Shri Ajay Kumar was getting more pay than the applicant from the year 2003 is in contradiction to the facts as contained in the table presented by them in para-3 of the counter-affidavit as also in the table submitted in the reply to the orders of this Tribunal dated 07.03.2017, which has been reproduced in para-5 above. It has been shown that on 01.07.2003 the applicant was drawing Rs.6200/- and Shri Ajay Kumar was drawing Rs.6200/- on 01.08.2003. This point has been made by the applicant in R.A. also with no specific rebuttal from the respondents.

ii) Though the applicant and Shri Ajay Kumar were appointed on different posts, both of them subsequently progressed to the

level of Loco Pilot Shunter, Loco Pilot Goods, Loco Pilot Passengers and in the end Loco Inspector (restructured as Chief Loco Inspector). Thus, the contention of the respondents that they were differently placed and not on the same footing is an erroneous interpretation and presentation of facts.

- iii) As regards the reference to the provision that stepping up will be allowed only once, it is not clear in what circumstances the applicant was given stepping up of pay with respect to Shri Raman Kumar. This point has neither been mentioned while rejecting the representation of the applicant nor in the pleadings of the respondent. It is only at the very end of the proceedings that this issue has been mentioned. It is apparent that it was not a factor while taking the decision and that the applicant had no opportunity to rebut its validity or applicability in his case. That being the case it cannot be brought up at this stage.

9. During the course of arguments, the orders in the OA No.3857/2010 –**Surinder Kumar Dhingra v. Union of India & Ors.**, have been referred to in which the respondents were directed to step up the pay of the applicant to the level of his junior. This order was upheld by the Hon'ble High Court of Delhi in W.P. (C) No.2052/2012 and C.M. No.4471/2012 titled **Union of India & Ors. v. Surinder Kumar Dhingra**. The ingredients of facts in this case are similar to that in the instant OA.

For ample clarity and for the determination of the issues, we extract the relevant part of the order of the Hon'ble High Court of Delhi as below:

“The submission of the respondent thus, is that the post of Loco Inspector is not a stationary post as claimed by the petitioner. Learned counsel for the respondent has further submitted that on implementation of the Sixth Pay Commission Report, the post of Driver ‘A’ to ‘C’ have been merged in a single post and similarly the post of Loco Inspector and Senior Loco Inspector have also been merged and re-designated as Chief Loco Inspector. What emerges from the record is that even though the respondent was promoted as a Loco Inspector almost 20 years before the said Shri Ravinder Sharma, but only on account of fixation of pay under the Sixth Pay Commission report, the pay of the said Shri Ravinder Sharma was fixed at Rs.29,290/- as on 20.12.2006 whereas that of the respondent was fixed at Rs.25,050/-. There is no dispute to the fact that the respondent was senior to the said Shri Ravinder Sharma and the denial of stepping up of pay to him was clearly discriminatory. As noticed herein above, the Tribunals, High Courts at Ernakulam, Madras as well as Calcutta High Court have taken the same view and their decisions have also been affirmed by the Supreme Court with the dismissal of the Special Leave Petition against all those decisions.”

10. In the instant case also, the applicant was promoted as Loco Inspector much before Shri Ajay Kumar and it is only on account of the fixation of pay under the 6th CPC and that his pay was fixed below that of Shri Ajay Kumar. As for the reasons advanced by the respondents in support of their stand, they have been discussed above and have been found to be factually incorrect, inadmissible or inapplicable.

11. Thus we come to the conclusion that the applicant has been wrongly denied the benefit of stepping up of pay *vis-a-vis* Shri Ajay Kumar. The OA is, accordingly, allowed and the impugned order dated 17.10.2012 at Annexure A-1 is quashed and set aside. The respondents are directed to step up the pay of the applicant at par with the pay of Shri Ajay Kumar from the same date with all consequential benefits. This shall

be done within a period of two months from the date of receipt of a certified copy of this order. No order as to costs.

(A.K. BISHNOI)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

CC.