

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH: HYDERABAD**

**Original Application No.996 of 2013**

**Reserved on: 25.10.2018**

**Order pronounced on: 26.10.2018**

Between:

B. Uma Maheswara Rao  
 S/o. Sita Ramaiah, aged 59 years,  
 Occ: Senior Section Engineer (Track Machines),  
 O/o. The Assistant Divisional Engineer (Track Machines),  
 Guntur Division, South Central Railway, Guntur,  
 R/o. H. No. 21-20-68/2, Satyanarayana Street,  
 Ramalingeswarapet, Tenali.

...Applicant

**And**

1. Union of India, Rep. by  
 The Secretary (Estt.),  
 Ministry of Railways,  
 Railway Board, New Delhi.
2. The General Manager,  
 South Central Railway, Rail Nilayam,  
 Secunderabad.
3. The Chief Personnel Officer,  
 South Central Railway, Rail Nilayam,  
 Secunderabad.
4. The Senior Divisional Personnel Officer,  
 Guntur Division, South Central Railway,  
 Guntur.

...Respondents

Counsel for the Applicant ... Mr. KRKV Prasad  
 Counsel for the Respondents ... Mrs. Vijaya Sagi, SC for Railways

***CORAM:***

***Hon'ble Mr. B.V. Sudhakar*** ... ***Member (Admn.)***  
***Hon'ble Mr. Swarup Kumar Mishra*** ... ***Member (Judl.)***

***ORDER***

***{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}***

The OA is filed against the inaction of the respondents in stepping up the pay of the applicant on par with the junior.

2. Brief facts are the applicant while working at Guntakal was promoted from Junior Engineer Grade – I to Section Engineer /TM vide office order dt 1.2.2007 and posted to Guntur. Junior to the applicant working at Guntakal on promotion joined at Guntakal on 1.2.2007. The applicant on representing for relief on 24.12.2007, 5.1.2008 and through the staff union, was relieved on 11.1.2008 and accordingly joined at Guntur on 12.1.2008. The applicant further requested on 20.7.2010, 11.2.2011 and 1.7.2012 to step up his pay of Rs.16,920 on par with that of his junior of Rs.17,760 from Nov 2008. As it was not done the O.A has been filed.

3. The main contention of the applicant is that his relief on promotion was delayed by the respondents. Even the 3<sup>rd</sup> respondent has enquired vide lr dt 29.9.2011 as to why the applicant was not relieved within 15 days of the promotion orders as per prevailing Railway Board Orders. The applicant was put to a recurring monthly loss of Rs.1000/- due to the delayed relief and the reply of the respondent that senior who joined later than junior cannot expect his pay to be stepped up as per Railway Board letter dt 7.12.1994 is illegal.

4. The respondents submit that there was delay in making the claim by the applicant and hence should be rejected on this ground. Respondents quoted judgment of the Honourable Supreme Court in Ramesh Chand Sharma v Udham Singh reported in (1999) 8 SCC 304 to support their contention. The respondents confirm that the applicant was empanelled for promotion on 29.5.2006 and posted to Guntur on 1.2.2007. Applicant was relieved on 11.1.2008 and on joining at Guntur on 12.1.2008, his pay was fixed in the scale of Rs.6,500-10,500. Higher pay was given for shouldering higher responsibilities from 12.1.2008. The junior joined the promotional post on 1.2.2007 and accordingly paid higher salary from the said date. As per DOPT lr dt 4.11.1993 , which was

circulated by Railway Board letter dt 108/1994 a senior who joins the higher post later to a junior then no step up of pay would be allowed whatever may be the reasons. The higher pay drawn by the junior is not because of any anomaly. The respondents admit that the relief of the applicant could have been delayed because of the time required in making alternate arrangements to relieve the applicant since he was working in a safety category post. The applicant is personally responsible to quickly get himself relieved from Guntakal.

5. Heard the counsel. Their arguments were in wavelength with their written submissions.

6. The details of the case reveal that the applicant was not relieved on the same date when his junior was relieved and hence the disparity in pay arose. The reason for the delay as was admitted by the respondents is that they needed time to replace him since he was working in a safety category post. The 3<sup>rd</sup> respondent did inquire vide lr dt 29.9.2011 as to why the applicant was not relieved within 15 days from the date of promotion as per prevailing Railway Board orders. Generally whenever one is promoted, since it entails financial benefit, the officials are relieved promptly. The DOPT letter dt 4.11.1993 specifies that when the senior and junior belong to the same cadre and the post to which they are promoted is the same plus the scale of the scale of pay of the lower and higher post are identical in which the senior and junior are placed, then pay of the senior should be stepped on par with that of the junior. These conditions are fully satisfied by the applicant. Besides, more than satisfying the conditions laid by the DOPT letter, it was the respondents who did not relieve the applicant for administrative reasons albeit it was a promotion. Stating that the applicant should have got relieved on his own is irrational to say the least. Preventing the applicant from joining the promotional post and denying the step

up of pay with junior is double jeopardy. The clause (c) of lr dt 4.11.1993 which the respondents are quoting to deny the benefit is used out of context since it applies to occasions when employees could not join because of reasons arising out of their own doing as elaborated in other clauses of the said memo. The contextual meaning of the clause has relevance but not otherwise. Besides, it is unfair to retain the applicant for administrative reasons and denying a benefit which he would have got had he been relieved along with his junior. Had the applicant delayed his relief for personal reasons then the applicant would be ineligible to claim for the step up. Therefore utmost care in organisations is taken to ensure that officials are relieved in time so that they do not suffer any financial losses. The respondents not acting in time has brought about the issue and hence they need to be fair to the applicant to allow the step up for which he is legally entitled. Moreover, the fundamental aspect not to be forgotten is that the applicant continues to be shown senior in the panel and hence the basic principle that a senior should not draw lesser pay than his junior as observed by the Supreme Court in Gurucharan Singh Grewal and Anr vs Punjab State Electricity Board and ors in 2009 (3) SCC 94 has to be adhered to. The Honourable Supreme Court judgment quoted by the respondents is not relevant as here is a case where respondents are responsible for the delay. Therefore the applicant has to be compensated for the belated action of the respondents in relieving the applicant. Coming to the objection raised for delay in making the claim by the applicant, the cause of action is continuous since the applicant has been suffering the financial loss on a monthly basis. Therefore the Supreme Court Judgment quoted in this context does not come to the rescue of the respondents. Thus the facts stated above are in favour of the applicant and hence the OA succeeds.

7. Therefore the respondents are directed to consider:

- i) stepping up of pay of the applicant from the date the junior cited in the O.A drew higher pay along with consequential benefits that flow consequent to this order
- ii) Time allowed to implement the order is 3 months from the date of receipt of this order.

8. In the result, the OA is allowed with the above directions. No order as to costs.

**(SWARUP KUMAR MISHRA)**  
**MEMBER (JUDL.)**

**(B.V. SUDHAKAR)**  
**MEMBER (ADMN.)**

Dated, the 26<sup>th</sup> day of October, 2018

*evr*