

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOKATA BENCH, KOLKATA**

O.A. - 745/2013

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Orders Reserved on : 15th Nov., 2017
Date of orders : 28 Nov., 2017

CORAM

HON'BLE MRs. BIDISHA BANERJEE, MEMBER (J)
HON'BLE DR. NANDITA CHATTERJEE, MEMBER (A)

1. Sri Dulal Ghosh, son of Late Gour Ghosh, aged about 50 years, working as Chief Typist, CPO's Office, S.E. Railway, Kolkata -43, Residing at : 208, Aurobindapally Main Road, PO : Saradapally, Bhadreshwar, District - Hoogly, PIN - 712 124.
2. Alok Kumar Bera, Son of Sital Chandra Bera, aged about 57 years, working as Chief Typist, COS's Office, S.E. Railway, Kolkata-43, Residing at Viollage - Jaukhali, PO - Sonakhali, P.S. : Daspur, Distt. : Paschim Midnapore - 721146.
3. Sri Sunil Kumar Biswas, Son of Late Naresh Chandra Biswas, aged about 58 years, working as Chief Typist, COS's Office, S.E. Railway, Kolkata 43, Residing at : Halisahar, Shyamasundari Lane, OP : Hazinagar, Dist. - 24 Parganas [North], PIN - 743 135.
4. Sri Subhash Chandra Das, Son of Late Lalit Mohan Das, aged about 56 years, working as Chief Typist, CPO's Office, S.E. Railway, Kolkata -43, Residing at - 11 Becharam Chatterjee Road, behala, Kolkata - 700 034.
5. Sri Sukumar Kundu, Son of Late Basudev Kundu, aged about 56 years, working as Chief Typist, CPO's Office, S.E. Railway, Kolkata - 43, Residing at - 22/H/172, Raja Manindara Road, Kolkata -37.
6. Smt. Ratna Rani Das, Daughter of Late Kumud Chandra Das, aged about 57 years, working as Chief Typist, COM's Office, S.E. Raiplay, Kolkata -43, Residing at : Village - Patuli, PO - Begopara, Dist. - Nadia, PIN - 741226.
7. Sri Subhashish Das, Son of Late Debendra Nath Das, aged about 54 years, working as Chief Typist, PCE's Office, S.E. Railway, Kolkata -43, residing at - P-74, Sashi Bhusan Banerjee Road, PO - Thakurpukur, Kolkata - 700063.
8. Sri Rajkumar Sarkar [R.K.Sarkar] son of Late Bidyut Baran Sarkar, aged about 59 years, working as Supdt. Typist, PCE's Office, S.E. Railway, Kolkata -43, residing at - 732, Sarat Cyhatterjee Road, Shibpur, Howrah - 711102.
9. Smt. Manju Roy, daughter of Late Durga Charan Roy, aged about 63 years, Ex. Chief Typist, PCE's Office, S.E. Railway, Kolkata - 43, retired on 31.08.2010, residing at 189, APC Road, Shyambazar, PO - Shyambazar, Kolkata -4.
10. Shri Asok Kumar Das, son of Sri Haridhan Das, aged about 59 years, working as Chief Typist, CPO's Office, S.E. Raiplay, Kolkata - 43, residing at Village & PO - South Garia, Dist. - 24 Parganas [South], PIN 743613.
11. Sri Ajay Kumar Singha, son of Late Biswanath Singh, aged about 58 years, working as Supdt. Typist, COS's Office, S.E. Railway, Kolkata -43, Residing at - PO - Sukchar, Panchanantala Road, Dist. : 24 - Parganas [North], Kolkata - 700115.

12. Sri Samir Kumar das, Son of Late Gosto Behari Das, aged about 60 years, working as Supdt. Typist, COS's Office, S.E. Railway, Kolkata -43, Residing at - 2,k Purna Chandra Chatterjee Lane, PO - Gelgachia, Kolkata - 700 037.
13. Sri Ranjit Kumar Jana, Son of Late Sundarilal Jana, aged about 58 years, working as Chief Typist, COS's Orffice, S.E. Railway, Kolkata -43, residing at - 26, R.N. Tagore Road, Dakshineswar, Kolkata 700076.
14. Sri Sukriti Kumar Neogi, son of Late Kanti Pada Neogi, aged about 56 years, working as Chief Typist, CPO's Office, S.E. Railway, Kolkata -43, residing at PO - Kampa, Dist. - 24-Parganas [North], PIN - 743193.
15. Sri Ranjit Kumar Das, son of Late Durga Pada Das, aged about 58 years, working as Chief Typist, PCE's Office, S.E. Railway, Kolkata-43, residing at K.C.Ghosh Road Bye Lane, Subhas Nagar, Rambhadrabati, PO -Pansila, Dist. - 24-Parganas [North], Kolkata - 700112.
16. Sri Jagjodh Singh, son of Sri Devendar Singh, aged about 53 years, working as Supdt. Typist, PCE's Office, S.E. Railway, Kolkata -43, Residing at - 35, Sahapur Main Road, Kolkata - 700038.

.....Applicants

By Advocate : Mr. S.K.Datta.

Versus

1. The Union of India service through the General Manager, South Eastern Railway, Garden Reach, Calcutta - 700 043..
2. Chief Personnel Officer, South Eastern Reach, Garden Reach, Calcutta - 700 043.
3. Taralal Das, working as Chief Typist, CPO's Office, South Eastern Railway, Garden Reach, Kolkata -43.

..... Respondents.

By Advocates: Mr. A.K.Banerjee

ORDER

Per Bidisha Banjerjee, Member (J):- In this OA, the applicants have sought for the following reliefs –

“8[a] An order granting leave to the applicants to move the instant application jointly under Rule 4[5][a], of the Central Administrative Tribunal [Procedure] Rules, 1987;

[b] An order quashing and/or setting aside the impugned order dated 20.02.2013 made by the respondent no.2;

[c] An order directing the official respondents to step up pay of the applicants at par [Rs. 6050/-] with their junior [private respondent] with effect from 14.01.2003 and further directing the official respondents to grant all consequential monetary benefits to the applicants within a period as to this Hon'ble Tribunal may seem fit and proper as well as interest on the said monetary benefits at the rate as to this Hon'ble Tribunal may seem fit and proper.

[d] An order directing the official respondents to produce/cause production of all records pertaining to the subject matter of the case;

[e] Any other order or orders or further order or orders as to this Hon'ble Tribunal may seem fit and proper including an order for costs."

2. The Private Respondent, Taralal Das, who has been impleaded in the present OA, was serving as Chief Typist in the CPO's Office, South Eastern Railway, Garden Reach, Kolkata-43. The applicants have essentially prayed for the benefit on a par with said Taralal Das, [hereinafter referred to as T.L.Das] who according to the applicants, was junior to them but by virtue of adhoc appointment to the post of Head Typist marched ahead of them and were enjoying a higher scale of pay. In their representation the following have been highlighted by the applicants [extracted verbatim hereinbelow for clarity] -

"To
 The Chief Personnel Officer,
 SERly/Garden Reach,
 Kolkata -43

Through - Proper Channel.

Sir,

Sub. : Request for stepping up of pay at par with Sri Taralal Das, Hd. Typist, CPO's Office/GRC.

With due respect I the undersigned would like to draw your kind attention to the anomaly stated hereunder in the context of awarding higher rate of pay to a junior than the seniors of the same cadre.

That the typist cadre is a centralized cadre and the seniority is centrally maintained & controlled by Hd. Qrs. Office, i.e. CPO/GRC. That it is revealed from the Classified Seniority List published by CPO/GRC vide No.P/H-78/Ty./Seniority dt. 21.1.04 that my seniority position as Hd. Typist is 26 and the seniority position of Sri Taralal Das has been shown at Sr. No.57. Sri T.L.Das presently working as Hd. Typist in Reservation Cell, CPO's Office/GRC. But surprisingly that Sir, being a junior to me [as Sr. Typist] Sri T.L.Das is drawing higher rate pay than that of mine at present, which should have not been done as per rules. In this regard a comparison statement showing the particulars of Date of Promotion, Rate of pay chronologically/year wise of both the staff [Sri Dulal Ghosh and sri T.L.Das] is furnished below for your kind perusal.

Sl.No.	Name of the Staff	Dt. of Promotion as Sr. Typist	Dt. Of promotion as Hd. Typist	Post and rate of pay on 01.07.02	Post and rate of pay as on 14.01.03	Rate of pay as on Jan.03 in scale Rs.
1.	Sri Dulal	17.02.92	13.10.98	Head Typist	Rs.5300/-	Rs.5300/-

	Ghosh			Rs.5300/-		
2.	Sri Tara lal Das	20.07.94	14.01.03	Sr. Typist Rs. 5100/-	Hd. Typist Rs. 5300/-	Rs.6050/-

Comparative rate of pay of Sri Dulal Ghosh and Sri Taralal Das

Year	Dulal Ghosh, Hd. Typist	Taralal Das, Hd. Typist
Jan. 2003	Rs. 5300/-	Rs. 6050/-
Jan. 2004	Rs. 5450/-	Rs. 6200/-
Jan. 2005	Rs. 5600/-	Rs. 6350/-
Jan., 2006	Rs. 5750/-	Rs. 6500/-

It is seen from the above statement that the rate of pay of Sri Taral Das, is higher than that of mine right from Jan., 2003 and the same irregularly is being continued till date. Sir, it is admitted fact and rule of natural justice that a junior cannot get higher rate of pay than his senior of the same cadre. The ground of making such an irregularity is not known to me.

Under the above circumstances, I would request your good self to kindly call for the records and examine the same to remove the anomaly and save me from deprivation and redress my grievances by stepping up of my pay at par with Sri T.L.Das, Hd. Typist, CPO's Office/GRC on and from Jan., 2003 from where the anomaly has taken place as Sri T.L.Das is junior to me and for the act of your kindness I shall ever remain grateful to me.”

3. The present applicants preferred OA No.490 of 2007 before this Tribunal seeking stepping up of pay on a par with Sri T.L.Das. The OA was disposed of with a direction on 30.11.2007 [Annexure-A/3] upon the respondents to consider the grievances of the applicants with a speaking order. In the speaking order, it was indicated that a writ petition was pending before the Hon'ble High Court and so the claim could not be considered at that juncture. The applicants once again approached this Tribunal in OA 707 of 2008 which was decided on 17.09.2010 with the following observations –

“11. The respondents are admitting that the 3rd respondent is junior to the applicants and his pay was fixed as per direction of Hon'ble High Court in OA No.540/2003. The applicants are also asking for similar relief as directed by this Tribunal in the said OA. When the issue is pending before the Hon'ble High Court at this stage, we cannot decide the present O.A. Ld. Counsel for the respondents has produced the memorandum dated

05.04.2004 on the subject "Release of surplus staff". It is stated in the said letter that in terms of memorandum of Deputy CEE/Constitution/S.E.Rly, Kharagpur dated 16/19.03.2002 that Sri Tara Lal Das officiating as Head Typist in the scale of pay of Rs. 5000-8000 [RP 96] holding lien as Sr. Typist in CPO/GRC's office is hereby released with effect from 05.04.2002 [AN] and directed to report for further posting to Chief Personnel Officer [Staff], South Eastern Railway, Garden Reach. From the said memorandum it is evident that the 3rd respondent was working as officiating Head Typist in the scale of Rs. 5000-8000 as on 05.04.2002.

12. However, it is an admitted fact that the writ petition No.579/2005 is pending before the Hon'ble High Court for consideration. The order which is challenged in the case, the respondents mentioned that they cannot grant the request of the applicant since the WPCT No. 579 of 2005 is pending.

13. In the mentioned facts and circumstances, it appears that the matter is subjudice before the Hon'ble High Cour. But in the reply statement the respondents have admitted that the applicants are senior to the 3rd respondent, such being the fact, the respondents are directed to consider the case of the applicants immediately after disposal of the above writ petition pending before the Hon'ble High Court, Kolkata.

14. For the foregoing reasons we are of the considered view that at this stage, when the matter is sub judice before the Hon'ble High Court, we cannot give direction as prayed for in the OA.

15. Accordingly, the OA is disposed of to the extent as indicated in para 13 above. No order as to costs."

4. The writ petition being WPCT 579 of 2005 that was pending before the Hon'ble High Court came to be disposed of on 29.06.2012 upholding the decision of this Tribunal in T.L.Das's case, wherein his officiating service in higher grade was directed to be reckoned for the purpose of payment of increments . The writ petition filed by Dulal Ghosh and as the present applicants [WPCT No.252/2011] was disposed of on 20.02.2013, with the direction upon the respondents to comply with the directions of the Tribunal as contained in OA 707 of 2008. The respondents, in their order, indicated that in the writ petition filed by T.L.Das, the Hon'ble High Court allowed fixation of counting of his officiating service in the higher grade and that at the same time, at para 12 of the order, the Hon'ble High Court said that the senior employees were not entitled to have their pay stepped up because of the difference in pay drawn by them and the higher pay drawn by their juniors because they officiated in a post earlier. Such a difference in pay did not

result in an anomaly. Shri T.L.Das , thus, got the benefit of Head Typist with effect from 01.01.2002 by virtue of the decision of Hon'ble High Court.

5. The learned counsel for the applicant argued that a senior cannot be expected to earn less than his junior, and therefore, the applicants were entitled stepping up of pay on a par with their junior Shri T.L.Das.

6. Per contra, the respondents refuted the claim on the ground that T.L.Das officiated from an earlier date, the respondents in their reply, indicated as follows

The applicants though they are senior to the private respondents are drawing lesser salary and for the said disputes they have agitated the matter before the Hon'ble Tribunal. They have further pleaded that the private respondents are of the same seniority group and the said seniority list is maintained by the Head Quarters and when the option was floated for posting as Typist in the Construction Organization at that time none came forward and the private respondent gave option and posted as Junior Typist and later he on promoted as Sr. Typist and thereafter promoted as Head Typist in scale of Rs. 1400-3200 w.e.f. 01.10.1994 and his substantive pay was fixed at Rs. 1680/-, thereafter the private respondent was declared surplus and as his lien was maintained by the Head quarter office he was repatriated to the open line and at the time of his reversion his salary in the revised scale was fixed at Rs. 6050/- . He joined there as Sr. Typist in the scale of Rs. 4000-6000 and got promotion as Head Typist scale i.e. Rs. 5000-8000 w.e.f. 14.01.2003. The main grievance of the private respondent was that on reversion to the post of Sr. Typist his salary was fixed on Rs. 5000/- whereas earlier he was getting salary Rs. 6050/- and being aggrieved filed original application which ultimately succeeded and challenging the said order the railway administration filed WPCCT No.579 of 2005 and after hearing at length, the Hon'ble High Court was pleased to affirm the order passed by the Tribunal and passed an order, basing

the judgment of the Hon'ble Supreme Court reported in AIR 1997 page 1554 in the case of Union of India & Anr. Vs. R. Swaminathan & others. The operative portion of the said order is as under –

“Senior employees are not entitled to have stepped up because the difference in pay drawn by them and the higher pay drawn by their juniors because they officiated in a post earlier. Such a difference in pay does not result in an anomaly.”

In our opinion, therefore, the decision of the Tribunal is correct and must be upheld.

The respondents further submitted as under - that “the Hon'ble High Court did not permit to step up the pay of the representationist with respect of their juniors Shri Taralal Das and hence the claim for stepping up of pay cannot be considered and is not tenable considering the circumstances in which the anomaly of pay has occurred. In another case reported in [2009] SCC 94, Guru Charan Suingh Grewal and another vs. Punjab State Electricity Board & Others, where it is held that senior cannot be paid less than his junior if anomaly in seniors pay is due to difference of incremental benefits. In the above circumstances, it is pleaded that as the prayer of stepping up of pay of the applicants in the instant case is not for the difference in incremental benefits and difference of pay is due to officiating to a post earlier such a difference in pay does not result in an anomaly, the instant OA may be dismissed on the basis of Hon'ble Supreme Court's judgement as cited above. Case Laws – AIR 1997 page 3554, Union of India vs. R. Swaminathan & Ors. and [2009] 3 SCC 94 Gurucharan Singh Grewal vs. Punjab State Electricity Board”.

6. Therefore, although the applicants have tried to make out the case of discrimination, urging that the applicants who were all along senior to Sri T.L.Das, could not be expected to earn less than Sri T.L.Das, we find that Sri T.L.Das officiated against the post of Head Typist way ahead of the

applicants and was given the benefit of fixation with effect from the date of officiation, the Hon'ble High Court at the material time, when T.L.Das was being considered for officiating promotion against a higher post over and above the applicants had an opportunity to object, but they did not avail of that opportunity, and thus, they were guilty of laches and acquiescence.

They forfeited their right of objection on conferring the benefit of officiating promotion to a junior against a higher post with higher pay scale of pay. Such being the case, we find no reason to interfere with the order impugned in the present OA. Moreover, the observations of Hon'ble High Court as well as the decision of Hon'ble Apex Court in AIR 1994 [SC] 1554 stare at us.

7. Accordingly, we dismiss the OA with no orders as to costs.

[Dr. Nandita Chatterjee]
Member (Admn.)
mps/-

[Bidisha Banerjee]
Member (Judicial)