

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.785/ 2012

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr.(Ms) Nandita Chatterjee, Administrative Member

1. Shri Pradip Kumar Mondal
 2. Shri Phani Bhusan Nayek
 3. Shri Nawal Kishore Singh
 4. Shri Pradip Kumar Chowdhury
 5. Shri Sadananda Ghatak
 6. Shri Bijan Kumar Bhowmick
-Applicants

-versus-

1. Union of India,
Service through the General
Manager, Eastern Railway,
having his office at 4, Fairlie
Place, Kolkata-700 001
2. The Chief Personnel Officer,
Eastern Railway, having his office
at 4, Fairlie Place, Kolkata-700 001;
3. The Senior Divisional Personnel Officer,
Eastern Railway, Sealdah Division,
having his office at Sealdah, Kolkata;
4. The Senior Divisional Finance Manager,
Eastern Railway, Sealdah Division, having
his office at Sealdah, Kolkata;
5. The Assistant Personnel Officer(M&E),
Eastern Railway, Sealdah Division,
having his office at Sealdah, Kolkata

.....Respondents

6. Shri Uttam Kr. Chakraborty,
Residing at F/3, 64A, K.G. Bose Sarani,
Kolkata-700 085, working for gain as
Running Supervisor (LI)/TRS,
Eastern Railway, Sealdah, Kolkata

.....Proforma Respondent

For the applicant : Sardar A. Ali, counsel

For the respondents : Mr. L.K. Chatterjee, counsel
Mr. A.K. Banerjee, counsel

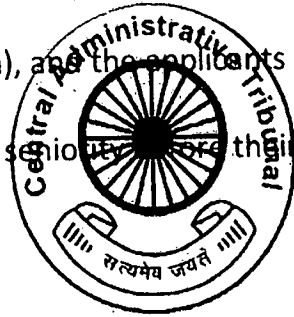
Heard on : 23.08.2018

Order On : 6.9.18

ORDER

Bidisha Banerjee, Judicial Member

Shorn of unnecessary details, grievance of the applicants, Chief Loco Inspectors, is in relation to rejection of their claim for stepping up of pay on par with their juniors that they agitated vide their application dated 20.09.2010. The rejection order dated 20.05.201, as contained in Annexure A/9 to the O.A. is under challenge in this O.A. The rejection is on the ground that such juniors (proforma respondents herein), and the applicants the senior incumbents did not belong to the same cadre and seniority for their promotion to the post of Loco Inspector.



Being identically circumstanced, the applicants have sought for liberty to prosecute their remedies jointly to seek stepping up of pay on par with proforma respondent (their juniors) in terms of Annexure A/3 and A/4 of the O.A.

2. Annexure A/3 to the O.A. is an order of Railway Board dated 24.07.2009 circulated under RBE No.236/2009 that reads as under:-

"Sub : Anomaly in fixation of pay of Loco Supervisory staff appointed prior to 01.01.2006 with reference to their juniors appointed after 01.01.2006 and drawing more pay than the seniors.

It has come to the notice of the Board that staff appointed prior to 1.1.2006 as Loco Running Supervisors in the pre-revised pay scales, whose pay has been fixed in the replacement pay structure for Loco Running Supervisors under the RS(RP) Rules, 2008, are drawing less pay than their juniors appointed as Loco Running Supervisor after 1.1.2006. The anomaly has arisen due to the fact that the benefit of element of Running allowance granted at the time of promotion of running staff to a stationary post has been granted to the junior in the revised pay structure, whereas, the same

benefit granted to the senior is of lesser value as the same has been calculated on pre-revised pay scale.

2. It has been decided that the anomaly may be resolved by granting stepping up of pay in pay band to the seniors at par with the juniors in terms of Note 10 below Rule 7 of RS(RP) Rules, 2008.

3. The benefit of stepping up of pay in 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 nonrunning 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. 4. This issues with the concurrence of the Finance Directorate of the Ministry of Railways.

3. Citing the provisions in the circular supra Id. senior counsel for the applicants would contend that such stepping up of pay was admissible to the seniors, the present applicants since the proforma respondents, their juniors were drawing less pay prior to their promotion as Chief Loco Inspectors.

4. Annexure A/4 to the O.A. is an order dated 17.08.2009 in regard to "Anomaly in fixation of pay of Loco Supervisory Staff appointed prior to 01.01.2006 with reference to their juniors appointed after 01.01.2006 and drawing more pay than the seniors." Such anomaly was sought to be resolved in the following manner:-

"It has come to the notice of the Board that staff appointed prior to 1.1.2006 as Loco Running Supervisors in the pre-revised pay scales, whose pay has been fixed in the replacement pay structure for Loco Running Supervisors under the RS(RP) Rules, 2008, are drawing less pay than their juniors appointed as Loco Running Supervisor after 1.1.2006. The anomaly

has arisen due to the fact that the benefit of element of Running allowance granted at the time of promotion of running staff to a stationary post has been granted to the junior in the revised pay structure, whereas, the same benefit granted to the senior is of lesser value as the same has been calculated on pre-revised pay scale.

2. It has been decided that the anomaly may be resolved by granting stepping up of pay in pay band to the seniors at par with the juniors in terms of Note 10 below Rule 7 of RS(RP) Rules, 2008."

The order was issued by CPO, Eastern Railway in view of RBE No.236/2009 circulated vide order dated 24.07.2009 as extracted earlier.

5. The Note 10 below Rule 7 of RS(RP) Rules, 2008 as contained in RBE 103/2008 and referred to in RBE 236/2009 stipulating the following(emphasis added for clarity) :-

"Note 10 – In cases where a senior Railway servant promoted to a higher post before the 1st day of January, 2006 draws less pay in the revised pay structure than his junior who is promoted to the higher position on or after the 1st day of January, 2006, the pay in the pay band of the senior Railway servant should be stepped up to an amount equal to the pay in the pay band as fixed for junior or that higher post. The stepping up should be done with effect from the date of promotion of the junior Railway servant subject to the fulfilment of the following conditions, namely:-

- (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;
- (b) the pre-revised scale of pay and the revised grade pay of the lower and higher posts in which they have been promoted should be identical in the same cadre;
- (c) the senior Railway servants at the time of promotion should have been drawing equal or more pay than the junior;
- (d) the anomaly should be directly as a result of the application of the provisions of Rule 1313(1;K 22) of Indian Railway Establishment Code, Volume II or any other rule or order regulating pay fixation on such promotion in the revised pay structure. If even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provision of this Note need not be invoked to step up the pay of the senior officer.

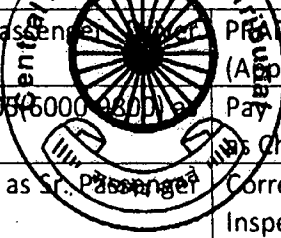
(2) Subject to the provisions of Rule 5, if the pay as fixed in the officiating post under sub rule (1) is lower than his pay fixed in the substantive post, the former shall be fixed at the same stage as the substantive pay."

Citing the provisions Id. senior counsel for the applicants would urge that the applicants as senior Chief Loco Inspectors would be entitled to stepping up on par with their junior proforma respondents drawing more pay than such juniors on the date such juniors were promoted as Chief Loco Inspectors.

6. At that juncture, Id. counsel for the respondents would vociferously oppose the contention and contend that the applicants were not entitled to stepping up of pay on par with proforma respondents as on promotion of the proforma respondent as Chief Loco Inspector the applicants came to a lower pay and, therefore, in terms of RBE 103/2008 *they were not entitled as such.*

In support of their contention Id. counsel for the respondents would however place a chart depicting the service parameters of the applicant, Pradip Kumar Mondal vis-à-vis U.K. Chakraborty as on 27.06.2006, the date of promotion of U.K. Chakraborty(Proforma respondent) as set out hereunder for ready reference:-

"Details Pay, G. Pay and Pay Band of proforma Respondent as well as applicants prior to 01.01.06 after



U.K. CHAKRABORTY Sr. Passenger Driver (proforma Respondent)	PRADIP Kr. Mondal Chief Loco Inspector (Applicants)
Pay Rs. 7900/- w.e.f. 01.11.05 (6000-9800/-)	Pay Rs. 900/- w.e.f. 01.03.05 (6500-10,500)
Sr. Passenger Driver	Chief Loco Inspector
Corresponding Pay of 6 th PC as Sr. Passenger Driver Rs.20940/- w.e.f. 01.01.06 (9300-34800/-) GPRs. 4200/-	Corresponding Pay of 6 th PC as Chief Loco Inspector Rs. 23390/- w.e.f. 01.01.06 (9300-34800/-) GPRs. 4600/-
Subsequently promoted as Chief Loco Inspector on 27.06.06 on pay Rs. 27630/- (9300-34800/-) GPRs. 4600/-	
Rs.28910/- w.e.f. 01.07.06 (9300-34800/-) GPRs. 4600/-	Rs. 24100/- w.e.f. 01.07.06 (9300-34800/-) GPRs. 4600/-
Rs.29780/- w.e.f. 01.07.07 (9300-34800/-) GPRs. 4600/-	Rs. 24830/- w.e.f. 01.07.07 (9300-34800/-) GPRs. 4600/-
Rs.30680/- w.e.f. 01.07.08 (9300-34800/-) GPRs. 4600/-	Rs.25580/- w.e.f. 01.07.08 (9300-34800/-) GPRs. 4600/-
Subsequently pay enhance by 3% Annual Increment.	Subsequently pay enhance by 3% Annual increment and similarly others applicants also getting same pay

7. Therefore, both the sides would bank upon the provisions of RBE 103 of 2008 to defend their stand.

8. We heard the Id. counsels and perused the materials on record.

9. At hearing, Id. counsel for the respondents particularly harped on Para 10(c) of the note extracted supra, which says that the senior railway servant at the time of promotion should have been drawing equal or more pay than the junior and submit that the applicant was not eligible to stepping up on par with his junior since on promotion juniors came to a higher pay than the seniors.

Since the issue that cropped up for determination was whether the applicants, Pradip Kumar Mondal and others were entitled to stepping up in terms of RBE 236/2009, we confined ourselves to determine the same.

10. We discerned as under:-

(i) The applicant, Pradip Kumar Mondal was appointed as Chief Loco Inspector in the scale of Rs.6500-10500/- w.e.f. 01.03.2005 way ahead of U.K. Chakraborty, proforma respondent while the latter was holding the lower post of Senior Passenger Driver in the scale of pay of Rs.6000-9800/-.

(ii) As on 01.01.2006, by virtue of 6th Pay Commission's recommendations the applicant's pay was fixed at Rs.23,390/- in the scale of Rs.9300-34800/-, Grade Pay of Rs.4600/- while the proforma respondent was at Grade Pay of Rs. 4200/- and drawing pay of Rs.20,940/- w.e.f. 01.01.2006 in the scale of Rs.9300-34800. Therefore, evidently and eminently the applicant was at higher grade pay and was drawing higher pay than proforma respondent on 01.01.2006.

(iii) The proforma respondent on his promotion as Chief Loco Inspector on 27.06.2006 was granted pay of Rs.27,630/- in scale of pay of Rs.9300-34800/- with Grade Pay of Rs.4600/-. Therefore, inarguably and indubitably the applicant a senior employee who was drawing higher pay

than that of the proforma respondent until promotion of the latter, came to a lower pay than the latter on his promotion as Chief Loco Inspector.

(iv) If the higher pay to the proforma respondent was as a result of taking into account the pay element in running allowance (proforma respondent was in a running post), the disparity in the pay of the applicant and the proforma respondent ought to be resolved in terms of RBE 236/2009 because on promotion both the senior and junior came to hold the identical posts of Chief Loco Inspector and a senior under no circumstances could draw lower pay than his junior.

11. In view of the revelations supra, we hold that the respondents have been arbitrarily deprived the applicants of stepping up on a par with their juniors.

12. We, therefore, direct the responsible authorities to pass appropriate orders within three months granting appropriate benefits to the applicants on par with the proforma respondents in accordance with RBE 236/2009. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member