

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 235/2012

Reserved on: 22.10.2018

Pronounced on: 13.11.2018

**Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhaya, Member (A)**

1. Jagdish Kumar Bulchandani son of Shri Tirath Das Bulchandani aged about 45 years, resident of A-402, Vaishali Nagar, Jaipur and presently working as Chief Loco Inspector, Head Quartered Office, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur.
2. Dilip Kumar Sharma son of Shri Tara Chand Sharma aged about 44 years, resident of 150, Ganga Sagar-B, Lane NO.7, Vaishali Nagar, Jaipur and presently working as Chief Loco Inspector, Head Quartered Office, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur.

...Applicants.

(By Advocate: Shri C.B.Sharma)

Versus

1. The Union of India through General Manager, North Western Zone, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur.
2. Railway Board, through its Secretary, Government of India, Railway Bhawan, New Delhi.

...Respondents.

(By Advocate: Shri Y.K.Sharma)

ORDER

Per: A.Mukhopadhaya, Member (A):

Briefly, the facts of this Original Application, (OA), are that the applicants were promoted to the post of Chief Loco Inspector

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in the respondent North Western Railway, (NWR), on 27.11.2006, (Annexure A/10), whereas one Shri R.C.Verma was promoted to the same post on 20.05.2011, (Annexure A/16). A provisional seniority list issued by the respondent Railways on 27.06.2011, (Annexure A/17), also shows the applicants as being senior to Shri R.C.Verma in the cadre of Chief Loco Inspector. Since Shri R.C.Verma was drawing more pay than the applicants, they being senior as aforementioned requested the respondents through a representation dated 21.07.2011, (Annexure A/2), to step up their pay so as to make this at par with that of Shri R.C.Verma at Rs.26570/- + Grade Pay of Rs.4600/- per month with effect from 23.05.2011. The applicants state that the respondents have not stepped up their pay stating that the applicants did not belong to the same cadre or hold the same post as Shri R.C.Verma prior to their promotion and therefore are not eligible for stepping up of their pay; (Annexure A/1). Aggrieved by this, the applicants have sought the following relief:

- (i) That the respondents be directed to allow stepping up of pay with Shri R.C.Verma w.e.f. 23.05.2011 by quashing minutes dated 21.12.2011 (Annexure A/1) with all consequential benefits including arrears of pay & allowances.
- (ii) That the respondents may be further directed to reconsider the matter as per service record of Shri R.C.Verma as well as the applicants with the orders issued by Railway Board dated 24.07.2009 (Annexure A/12) with all consequential benefits.

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- (iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iv) That the costs of this application may be awarded.

2. In their reply, while annexing the service records of the two applicants as well as that of Shri R.C.Verma, (Annexure R/1, R/2 and R/3 respectively), the respondents have argued that both the applicants and the employee Shri R.C.Verma were not working on the same cadre and the same post when they were given the promotion in question. Citing Railway Board letter No. E(P&A)II-2008/RS-37 dated 28.11.2011, (Annexure R/6), with regard to giving the benefit of stepping up of pay, the respondents cite the condition of Rule 3(a) mentioned in the letter for such stepping up of pay. This reads as under:

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 RS(RP) Rules, 2008 should be fulfilled.

3. They contend that since the applicants were not working on the same cadre and the same post when they were given their promotion, their claim for the benefit of stepping up of pay is not sustainable. They state that both the applicants worked on the post of Loco Inspector from April 1997 and figured in the seniority list dated 11.05.2005 whereas the name of Shri R.C.Verma does

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not figure in the list because at the time he was working on the post of Senior Driver. Thus, they contend that this clearly demonstrates that Shri R.C.Verma was not working in the same cadre and on the same post as the applicants prior to his promotion as Loco Inspector on 23.05.2011 and as such therefore, in terms of the condition imposed by Rule 3(a) referred to in the Railway Board letter of 28.11.2011, (Annexure R/6), the applicants do not qualify for stepping up their pay so as to make this at par with the pay of Shri R.C.Verma.

4. In their rejoinder, the applicants have placed on record the judgment dated 23.03.2010 passed by the Calcutta Bench of this Tribunal in OA No.847 of 2005, (Annexure A/19), the judgment of the Calcutta High Court dated 07.12.2011 in WPCT No.224 of 2010, (Annexure A/19 continued), and finally the judgment of the Hon'ble Supreme Court in SLP No.5901/2013, (Annexure A/19 continued), both of which relate to the judgment of the Calcutta Bench of this Tribunal in OA No.847/2005; (supra). They point out that in these series of orders while the judgment of the Calcutta Bench of this Tribunal went by ratio *decidendi* that "**the stepping up of pay could not be claimed where the relevant seniors and juniors were not in the identical feeder grade prior to promotion**", this ratio had been subsequently set aside with the Calcutta High Court in WPCT 224/2010 observing as follows:-

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Once the incumbent joined the promotional post, the concept of stepping up is available, where the persons working in the same post get lesser pay than their junior in the same post. The eventuality and/or reason for such disparity might be different; however, such eventuality and/or reason, is not relevant. The concept is that the senior must not get lower pay than the junior, while working in the same post.

5. This was upheld by the Apex Court in SLP No.5901/2013 in its order dated 11.02.2014, (Annexure A/19 refers), and again while dismissing a review petition against its order dated 03.12.2014; (Annexure A/19 refers). This order, the applicants contend, is now final and therefore the principle which holds in the case is that the stream/cadre/post from which promotion is made to a particular cadre or post is not relevant to the concept of stepping up of pay, which basically is that "**the senior must not get lower pay than the junior, while working on the same post**"; (order of the Calcutta High Court in WPCT 224 of 2010 refers). Thus, the applicants contend that since the seniority to Shri R.C.Verma in the cadre of Chief Loco Inspector, as referred to Annexure A/17, has not been denied, the ratio *decidendi* enunciated by the Calcutta High Court and the Supreme Court will hold in this case.

6. During arguments, counsel for the applicants as well as the respondents reiterated their earlier stated position. However, it was not specifically denied by the respondents that the orders of

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the Calcutta High Court and the Supreme Court with reference to OA No.847 of 2005 of the Calcutta Bench of this Tribunal do cover the facts and circumstances of the present case.

7. In view of the aforementioned position, after having considered the material on record and the arguments of opposing counsel, we are of the view that the present case is squarely covered by the ratio enunciated in the aforementioned judgments of the Calcutta High Court and the Apex Court as detailed above. Consequently, this OA is allowed and the respondents are directed to allow the applicants the benefit of stepping up of their pay so as to make this at par with the pay of Shri R.C.Verma with effect from 23.05.2011 with all consequential benefits including arrears of pay and allowances.

8. There will be no order on costs.

(A.Mukhopadhaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

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