

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 591/2012

Reserved on: 12.04.2019
Pronounced on: 23.04.2019

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

Lala Ram Meena son of Shri Ramu Ji Meena, aged about 48 years, resident of 63, Income Tax Colony-II, Model Town, Jagatpura, Jaipur and presently working as Senior Section Officer, Office of Financial Advisor and Chief Accounts Officer, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur.

...Applicant.

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India through General Manager, Office of North Western Zone, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur.
2. Financial Advisor and Chief Accounts Officer, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur.

...Respondents.

(By Advocate: Shri Anupam Agarwal)

ORDER

Per: A. Mukhopadhaya, Member (A):

The present Original Application, (OA), flows from the compliance made by the respondents to this Tribunal's order of 17.10.2011 in OA No.504/2009, (Annexure A/2), vide which the respondents were directed to decide the applicant's detailed representation for the stepping up of his pay vis-a-vis one Shri

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Laxmi Narayan Meena. Vide the impugned order dated 25.01.2012, (Annexure A/1), the applicant's representation has been considered in detail and rejected; hence this OA challenging the aforementioned impugned order.

2. While the facts of the case as recorded in the impugned order as well as the comparative chart placed on record by the respondents at para 1 of their reply to the OA are not in dispute, the basic issue under contention here is whether the applicant is entitled to a stepping up of his pay vis-à-vis Shri Laxmi Narayan Meena and if so from which date. In this connection, the relief sought by the applicant in this OA is as under:

- i) That the respondent No.2 be directed to allow stepping up of pay with Shri Laxmi Narayan Meena by quashing letter dated 25/01/2012 (Annexure A/1) with all consequential benefits.
- ii) That the respondent No.2 be further directed to consider facts after joining in North Western Railway and to allow stepping up of pay with Shri Laxmi Narayan Meena with all consequential benefits.
- iii) Any other order, direction or relief which is deemed fit under in the facts and circumstances of the case be also passed in favour of the applicant.
- iv) That the costs of this application be awarded.

3. The applicant contends that when Shri Laxmi Narayan Meena was transferred from the post of Senior Section Officer, (SSO), in Western Railway, (WR), to the lower post of Junior Accounts Assistant, (JAA), in North Western Railway, (NWR), on

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his own request, his pay was fixed in NWR at Rs.20470/- per month; (17670 Basic Pay + 2800 Grade Pay). At the time, the applicant was already working with NWR as SSO which is a post immediately senior to that of JAA but he was drawing only Rs.19300/- per month; (14500 Basic Pay + 4800 Grade Pay). Subsequently, on Shri Laxmi Narayan Meena's promotion to the post of SSO, his pay as fixed on 24.10.2008 became Rs.23090, (18290 Basic Pay + 4800 Grade Pay), whereas on that date, the applicant, who was senior in the same cadre and post of SSO, was only drawing Rs.19880; (15080 Basic Pay + 4800 Grade Pay). The applicant argues that being senior to Shri Laxmi Narayan Meena as an SSO, he is entitled to the stepping up of his pay so as to bring this at par with the pay drawn by Shri Laxmi Narayan Meena.

4. In reply, the respondents refer to their detailed consideration of the applicant's representation as evidenced by their impugned order of 25.01.2012, (Annexure A/1), and reiterate that as analysed in detail in that order in accordance with specific rules and instructions applicable in this regard, the pay of both Shri Laxmi Narayan Meena and the applicant have been correctly fixed and needs no rectification. In addition, they reiterate that the undisputed facts of the case demonstrate that Shri Laxmi Narayan Meena was originally appointed as JAA on 17.08.1989 in Rajkot Division of WR whereas the applicant was

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appointed as JAA only later on 06.11.1989 in Central Railways, Jhansi Division. They further point out that Shri Laxmi Narayan Meena came into WR as JAA on his own request on 04.03.1993 prior to the applicant and remained senior to the applicant throughout the latter's tenure in WR. On 01.01.2005, when both were serving as SSO in WR, Shri Laxmi Narayan Meena, who was senior to the applicant, was drawing a pay of Rs.8575/- per month whereas the applicant was drawing a lower pay of Rs. 8350/- per month. Thereafter, when the applicant Shri Lala Ram Meena obtained his transfer to the lower post of JAA in NWR on his own request in 2005, his pay was fixed as per 5th CPC recommendations at Rs.7000 per month, whereas Shri Laxmi Narayan Meena, who continued in WR, continued to draw a higher pay of Rs. 8575 per month. The respondents contend that the pay of the two officers, i.e. Shri Laxmi Narayan Meena and Shri Lala Ram Meena have been fixed at each relevant stage of their services strictly as per fixation rules which have not been challenged by the applicant. Thus, when Shri Laxmi Narayan Meena obtained his transfer to NWR on his own request from the post of SSO in WR to the lower post of JAA in NWR, his pay was rightly fixed at Rs.20470/- in terms of 6th CPC recommendations. Consequently, they argue that since each fixation has been correctly made as per rules and the fixation rules in question have not been challenged, there is no case for stepping up the

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applicant's pay so as to bring it at par with the pay of Shri Laxmi Narayan Meena.

5. Learned counsels for the applicant and respondents were heard and the material available on record was examined. Opposing counsels reiterated the arguments made in the OA and its reply respectively.

6. Further to his pleadings in the OA, learned counsel for the applicant cited the judgment dated 13.11.2018 of this Tribunal in **OA No.235/2012**, which he stated fully covers the facts and circumstances of the present case. Learned counsel for the applicant drew the Tribunal's attention in particular to the reference made in the cited judgment to the order of the Calcutta Bench of this Tribunal in **OA No.847/2005** in which the Tribunal had ruled as follows:

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.

7. Pointing out that the cited order of this Bench of the Tribunal in **OA No.235/2012** had subsequently been upheld by the Rajasthan High Court in its order dated 26.03.2019 in D.B.Civil Writ Petition No.4330/2019, applicant's counsel thus contended

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that the order of this Tribunal in **OA No.235/2012** has now attained finality and therefore the principle enunciated by the Calcutta Bench of this Tribunal in **OA No.847/2005**, (supra), that **"the senior must not get lower pay than the junior, while working on the same post"**, as reiterated by the Calcutta High Court in **WPCT 224 of 2010** and finally upheld by the Apex Court in **SLP No.5901/2013** in its order dated 11.02.2014, is now a settled position in law. Given this position, since it is undisputed that the applicant Shri Lala Ram Meena, who was promoted to the post of SSO in NWR on 11.09.2007, is senior to Shri Laxmi Narayan Meena who was promoted to the same post in NWR much later on 24.10.2008, the applicant is entitled to the stepping up of his pay so as to bring this at par with the pay drawn by Shri Laxmi Narayan Meena as on 24.10.2008 since both have been serving in the same post of SSO in NWR since that date.

8. We have considered both the pleadings and the reply in this case as well as the arguments of learned counsels for the applicant and the respondents. Since the factual matrix of this case is undisputed and is a matter of record and the judgment dated 13.11.2018 of this Tribunal in **OA No.235/2012** has attained finality, the position that clearly emerges in this case is that ever since 24.10.2008, the applicant and Shri Laxmi Narayan Meena have been working on the same post of SSO in NWR with

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the applicant being senior to Shri Laxmi Narayan Meena as he was promoted to the post earlier.

9. Bearing in mind that the enforceable principle in such a case is that the **“the senior must not get lower pay than the junior, while working on the same post”**, (this Tribunal’s order dated 13.11.2018 in **OA No.235/2012**, supra, refers), and that this principle has attained finality and is now established in law in view of the Apex Court’s order in **SLP No.5901/2003**, (supra), the OA is allowed. The impugned order passed by the respondents on 25.01.2012, (Annexure A/1), is quashed and set aside. The respondents are directed to fix the pay of the applicant so as to bring this at par with the pay drawn by Shri Laxmi Narayan Meena, SSO in NWR from 24.10.2008 onwards and grant him all consequential benefits which flow from such fixation.

10. There will be no order on costs.

(A.Mukhopadhaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

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