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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## CALCUTTA BENCH

Application under Section 19 of the Administrative Tribunal  
Act, 1985.

### Cause Title :

O.A. No. 350/68 of 2015.

Usha Kumari & Ors.

....Applicants

- Versus -

Union of India and Others ~~and others~~

....Applicants.

- Versus -

Union of India and Others. (S.E.Rly.)

....Respondents.

1. Usha Kumari, wife of Sri Dinesh

Prasad Singh, aged about 48 years,

working as Chief Metron at Adra

Divisional Railway Hospital, S.E.Rly.

residing at Rly. Quarter No. M/27,

South Settlement, Adra, P.O. Adra,

District : Purulia, Pin. 723125.

2. Rita Kumari, wife of Balkiram Prasad,

aged about 46 years, working as chief

Matron at Adra Divisional Railway

Hospital, S.E.Rly. residing at Rly.

Quarter No. DS/316B, South Settlement,

Adra, P.O. Adra, District - Purulia,

pin.- 723121.

3. Phool Kumari, wife of Sri Arjun

Arjun Kumar, aged about 45 years, working  
as Matron at Adra Divisional

Railway Hospital, S.E.Rly., residing at  
Rly. Quarter No. DS/316B, South  
Settlement, Adra, P.O. Adra, District-  
purulia, pin.- 723121.

....Applicants.

- versus -

1. Union of India, service through

the General Manager, S.E.Rly.,

11, Garden Reach Road, Kolkata - 700043.

2. The Chief Personnel Officer,

S.E.Rly., 11, Garden Reach Road, Kolkata-  
700 043.

3. The Divisional Railway Manager,

S.E.Rly, Adra Division, P.O. Adra,

District : Purulia, Pin code-723121.

4. The Sr. Divisional Personnel Officer,

Adra Division, S.E.Rly, P.O. Adra,

District : Purulia, Pin.- 723121.

5. The Chief Medical Superintendent,

Adra Divisional Railway Hospital,

S.E.Railway, P.O. Adra, District-

Purulia, pin.- 723121.

6. The Chief Medical Director, S.E.Railway

11, Garden Reach Road, Kolkata-700043.

....Official Respondents.

7. Chanda Majhi,

Daughter of Ram Kanai Majhi,

residing at Rly. Quarter No.DS/103F, south

Settlement, Adra, P.O. Adra, District-

Purulia, pin.- 723121.

8. Manisha Kumari,

3. The Divisional Railway Manager,

S.E.Rly. Adra Division, P.O. Adra,

District : Purulia, Pin code-723121.

4. The Sr. Divisional Personal Officer,

Adra Division, S.E.Rly. P.O. Adra,

District : Purulia, Pin.- 723121.

5. The Chief Medical Superintendent,

Adra Divisional Railway Hospital,

S.E.Railway, P.O. Adra, District-

Purulia, pin.- 723121.

6. The Chief Medical Director, S.E.Railway

11, Garden Reach Road, Kolkata-700043.

....Official Respondents.

7. Chanda Majhi,

Daughter of Ram Kanai Majhi,

residing at Rly. Quarter No.DS/103F, south

Settlement, Adra, P.O. Adra, District-

Purulia, pin.- 723121.

8. Manisha Kumari,

Ni~~fe~~ of Rajib Ranjan Datta  
Rly. Quarter No. DS/317D, P.O. Adra,  
District - Purulia, Pin.- 723121.

S. Sushmita Datta,  
daughter of Chuni Gopal Datta,  
residing at Railway quarter no-  
DS/103E, South Settlement, P.O. Adra,  
District : Purulia, Pin.- 723121.

.....Private respondents.

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH  
KOLKATA

No.O A /350/68/2016

Date of order : 31.01.2019

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

1. Usha Kumari
2. Rita Kumari
3. Phool Kumari

Vs.

Union of India & Others  
(S.E. Railway)

For the applicant : Mr. A.B. Ghosh, counsel

For the respondents : Mr. B.L. Gangopadhyay, counsel

Bidisha Banerjee, Judicial Member

Heard Id. counsel for both sides and perused the materials on record.

2. In this O.A. the applicant has sought for the following reliefs:-

- "a) To set aside the speaking order dated 27.10.2015 passed by Sr. D.P.O., Adra, S.E. Rly.;
- b) To direct the respondents particularly the respondent nos.2 and 4 to enhance the basic pay of the applicants at par with their juniors to follow the order dated 9.9.2011 with immediate effect;
- c) To direct the respondents to consider the case of the applicants taking into view that senior pay cannot be lesser than that of their juniors;
- d) To direct the respondents to produce entire service records of the applicants and private respondents for adjudication of this case;
- e) To pass any other order or further orders as your Lordships may deem fit and proper;
- f) Leave may be granted to make this original application jointly as because cause of action of the applicants are same and identical."

3. The speaking order dated 27.10.2015 (Annexure A/8) under challenge is extracted hereunder with supplied emphasis for clarity :-

*"You & Others 3 Ch. Matron have filed court case before the Hon'ble CAT/Calcutta Bench bearing OA No.350/00310 of 2014 seeking following relief(s);*

- j) To direct the respondent particularly respondent Nos. 2 and 4 to enhance the basic pay of the applicants at par with their juniors with immediate effect;*
- j) To direct the respondents to consider the representations of the applicants taking into consideration the view that senior pay can not be lesser than that of their juniors;*
- k) To direct the respondents to produce entire service records of the applicants and private respondent No.s 7 to 9 for proper adjudication of this case;*
- l) To pass any order or further orders, direction or directions as your Hon'ble Lordships may deem fit and proper."*

*The matter was listed for final hearing on 23/07/2015 and on the same day the Hon'ble Tribunal disposed of the OA with direction to the respondent's authority vide their Judgment/Order date 23/07/2015. The operative portion of the Judgement/Order dated 23/07/2015 is appended verbatim below:-*

*"As such, with the consent of both sides, the OA. is disposed of with a direction upon the applicant to make suitable representation citing RBENo.28/2010 within a period of one month from the date of receipt of a copy of this order to Respondent No.4. Upon receipt of said representation, the said authority shall consider the grievance of the applicant in accordance with law and pass a reasoned and speaking order within two months thereafter on the basis of available records. In case, the applicant's case merits consideration appropriate benefits shall be accorded to them within a further period of one month. The OA. is accordingly, disposed of. No costs. It is made clear that we have not gone into the merits of the case. All points are kept for consideration by the concerned respondents."*

*The representation dated nil along with Photostat Judgment/order dated 23/07/2015 has been received by this office on 02.09.2015 through your Advocate vide his letter dated 24.08.2015.*

*In obedience to the aforesaid Judgment/order of the Hon'ble Tribunal dated 23/07/2015, I being the respondents No.4, have gone through the OA. & Judgement/Order dated 23/07/2015 and your representation meticulously with full application of mind.*

*On going through the relevant records and Railway Rules, it is noticed that you were appointed on 09/07/1998 as Staff Nurse in Scale Rs.(5000-8000)(Vth PC). Thereafter, you were promoted as NRSS on 05/06/2002 in Scale Rs.(5500-9000)(Vth P.C.) and pay fixed at Rs.5850/- as on 01.07.2002 as per your option vide Estt. Srl. No.231/81. Thereafter, in VIth PC your pay have been fixed at Rs.16660/- as on 01.01.2006 in scale of Rs.(9300-34800)+GP Rs.4800/- and your pay further progressed at Rs.17160/- on 01.07.2006.*

*Chhanda Maji belongs to ST community had been appointed on 17/10/2006 as Staff Nurse in Scale Rs.(9300-34000)+GP Rs.4600/- in (6<sup>th</sup> P.C) and her pay was fixed at Rs.17140/- in terms of Estt. Srl. No. 126/2008 under Section II of Part-'A' of PB-2, i.e. Pay Band Rs.9300-34800/- +GP Rs.4600/- as Staff Nurse.*

The comparative statement showing pay particulars between you and Chhanda Majhi is as under:-

Srl. No.	Year	Mintoo Kumari Date of Apptt.-9.07.98		Chhanda Majhi Date of Apptt.-17.10.06
1.	1998	9.7.1998 5000-8000	5000	
2.	1999	1.7.1999	5150	
3.	2000	1.7.2000	5300	
4.	2001	1.7.2001	5450	
5.	2002	5.6.2002 Promoted as a NRSS in scale Rs.5500-9000 & pay fixed as per option vide Estt. Srl.231/81 w.e.f. 1.7.2002.	5500 5850	
6.	2003	1.7.2003	6025	
7.	2004	1.7.2004	6200	
8.	2005	1.7.2005	6375	
9.	2006	1.1.2006 pay fixed in scale Rs.9300-34800+GP Rs.4800/- (6 <sup>th</sup> P.C.)— Thereafter as on 01.07.2006	16600 17160	Appointed on 17.10.2006 in scale Rs.9300-34800 +GP Rs.4600/- & pay fixed as per Estt. Srl. No. 17140
10.	2007	1.7.2007	17680	1.7.2007 17660
11.	2008	1.7.2008	18220	1.7.2008 18190
12.	2009	1.7.2009	18770	15.4.2009 Promoted as NRSS in Scale Rs.9300-34800+GP Rs.4800/- against sought fall of reserved roster point of ST Category—and pay fixed as per option vide Estt. Srl.231/81 as on 1.7.2009 18390
13.	2010	1.7.2010	19340	1.7.2010 19510
14.	2011	1.6.2011 Promoted as Ch. Matron in scale Rs.15600-39100+ GP 5400/- and pay fixed as per option vide Estt. Srl.231/81 as on 1.7.2011	19920 21120	1.7.2011 26.7.2011 Promoted as Ch. Matron in scale Rs.15600-39100+GP RS.5400/- against sought fall of reserved roster point of ST Category 20710 21940
15.	2012	1.7.2012	21760	1.7.2012 22600
16.	2013	1.7.2013	22420	1.7.2013 23290
17.	2014	1.7.2014	23100	1.7.2014 23980

As per comparison statement as appended above, it is noticed that you were appointed on 09/07/1998 as Staff Nurse in Scale Rs.(5000-8000)(Vth PC). Thereafter, you were promoted as NRSS on 05/06/2002 in Scale Rs.(5500-9000)(Vth PC) and your pay has been fixed at Rs.5850/- as on 01.07.2002 as per option vide Estt. Srl.No.231/81. Thereafter as per VIth PC your pay have been fixed at Rs.16660/- on 01.01.2006 in scale Rs.(9300-34800)+GP Rs.4800/- and thereafter after giving one increment your pay has been fixed at Rs.17160/- as on 01.07.2006. Again you have been promoted as Ch. Matron on 01.06.2011 in scale Rs.15600-39100+GP 5400/- and pay fixed at Rs.19920/- and thereafter your pay has again been fixed as per your option vide Estt. Srl. No.231/81 at Rs.21120/- as on 1.7.2011 i.e. from the date of your normal increment.

Secondly Chhanda Majhi had been appointed on 17/10/2006 as Staff Nurse in Scale Rs.(9300-34000)+GP Rs.4600/- in (6<sup>th</sup> P.C.) and her pay was fixed at Rs.17140/- as per Estt. Srl. No.126/2008. She belongs to ST community for which she had been promoted as NRRS in Scale Rs.(9300-34800)+ GP Rs.4800/- on 15/04/2009 against the short fall vacancy of ST category and her pay was fixed as per option vide Estt. Srl. No.231/81. Further, Chhanda Majhi has again promoted to the post of Ch. Matron in scale Rs.15600-39100+GP Rs.5400 w.e.f. 26.07.2011 against the short fall vacancy of ST category and her pay was fixed at Rs.21940/-. It may be relevant mention herein that due to short fall in ST category, Chhanda Majhi got promotion against reserve roster point.

In terms of Estt. Srl. No.05/95 it is clearly mentioned that stepping up of pay can only be entitled if both the junior and senior officer should belong to the same cadre and the post in which they have been promoted or appointed should be identical and in the same cadre.

In terms of RBE No.28/2010 and CPO/GRC Estt. Srl. No.29/2010 Para 5 it is clear mentioned that "however stepping up pay of seniors can be permitted with reference to such of their directly recruited juniors borne on the same seniority list who were recruited on or after 01.01.2006 and whose basic pay is more than that of the seniors subject to the following conditions:-

- (a) Stepping up of the basic pay of seniors can be claimed only in the case of those cadres which have an element of direct recruitment and in cases where a directly recruited junior is actually drawing more basic pay than the seniors. In such cases the basic pay of the seniors will be stepped up with reference to the basic pay of the juniors. Stepping up will be applicable from the date junior direct recruit is actually drawing higher basic pay than the senior.
- (b) Further, Railway servants cannot claim stepping up of their revised basic pay with reference to entry pay in the revised pay structure for direct recruits appointed on or after 01.01.2006 as laid down in Section II of Part A of First Schedule to the RS(RP) Rules 2008, if their cadre does not have an element of direct recruitment, or in cases where no junior is drawing basic pay higher than them.
- (c) Stepping up of pay of the seniors shall not be applicable in cases where pay of direct recruits has been fixed at a higher stage on account of grant of advance increments etc. at the time of recruitment."

Thus the appointment/promotion of Chhanda Majhi is quite different from you. Chhanda Majhi had been recruited on 17/10/2006 i.e. during 6<sup>th</sup> P.C. and her pay has been fixed at Rs.17140/- in Scale Rs.9300-34000+GP at Rs.4600/- as per extant rule. At the time of recruitment of Chhanda Majhi you have already promoted to NRSS in scale Rs.(9300-34800)+GP Rs.4800/- and your pay had been fixed at Rs.17160/-. As such you and Chhanda Majhi were neither in identical and in the same cadre nor drawing basic pay higher than you.

Moreover, Chhanda Majhi being a ST candidate, she had been promoted to the post of NRSS against reserved roster point due to short fall in ST category, w.e.f. 15/04/2009 in Scale Rs.9300-3400+GP Rs.4800/- and opted for fixation of her pay from the date of normal increment vide Estt. Srl. No.231/81. Accordingly her pay has been fixed more than you. Thus the stepping up of pay is not coming under the purview of rules at this stage.

It is also stated that you have been promoted as Ch. Matron on 01.06.2011 in scale Rs.15600-39100+GP 5400/- and pay fixed at Rs.19920/- and thereafter your pay has again been fixed as per your option vide Estt. Srl. No.231/81 at Rs.21120/- as on 1.7.2011 i.e. from the date of your normal increment. But Chhanda Majhi has promoted to the post of Ch. Matron in scale Rs.15600-39100+GP Rs.5400/- w.e.f. 26.07.2011 against the short fall vacancy of ST category and her pay was fixed at Rs.21940/-. It may be relevant to mention herein that due to shortfall in ST category, Chhanda Majhi got promotion against reserve roster point. Thus the claim of stepping up of pay is not coming under the per view of rules at this stage.

7) You and Chhanda Majhi were neither in identical and in the same cadre nor drawing basic pay higher than you at the time of direct recruited on 17/10/2006 after (6<sup>th</sup> P.C.)

8) Chhanda Majhi is a ST candidate and she had been promoted to the post of NRSS against shortfall in ST category as per reserved roster point w.e.f. 15/04/2009.

9) Chhanda Majhi has again been promoted to the post of NRSS against shortfall in pay Rs.15600-39100+GP Rs.5400/- w.e.f. 26.07.2011 against the short fall vacancy of ST category prior to you and she become senior to you in the category of Ch. Matron.

In view of the above fact and circumstances I am of the considered opinion that the relief sought for by you in the instant OA is not coming under the per-view of rules. Since, you and Chhanda Majhi were not in identical and in the same cadre. Your status can not be compared at par with Chhanda Majhi. As such question of stepping up of pay at par with Chhanda Majhi(ST) does not arise as per extant Rule. Thus the order/direction of the Hon'ble Tribunal has been complied with.

Please acknowledge the receipt.

Sr. Divisional Personnel Officer  
S.E. Railway/Adra"

4. Ld. counsel for the applicant would strenuously urge that the respondents have failed to consider Annexure A/1 which depicts the following:-

"Office Order

S.E. Railway

No.E/MED/Genl./Stepping up/Nurses/59/2011

Adra Date :09.09.11

In accordance with Estt. Srl. No:29/2010 the pay of the following staff Nurse (Now working in higher grade) who were appointed prior to 01.01.06 and pay fixed on implementation of 6th Pay commission in terms of Rule 7 'A' of Part 'A' of first schedule are now hereby stepped up at par with their junior Smt. Chanda Majhi who was appointed as Staff Nurse on 17.10.06 in scale Rs.9300-34800/-+Grade Pay Rs.4600/- and pay fixed at Rs.17140/- GP 4600/- in terms of Rule 8 under Section II of first schedule which is higher than that of seniors

Srl. No.	Name	Present Design.	Pay "As drawn" in the category of Staff Nurse			Pay "As should be" in the category of Staff Nurse		
			Date	Scale	Pay	Date	Scale	Pay
1.	Smt. Sakti Mallick	Ch. Matron	17.10.06	9300-34800/- GP 4600/-	14610/- GP 4600/-	17.10.06	9300-34800/- GP 4600/-	17140/- GP 4600/-
2.	Smt. J. Topno	NRSS	-do-	-do-	16920/- GP 4600	-do-	-do-	-do-
3.	Sri B. Karketta	-do-	-do-	-do-	15190/- GP 4600/-	-do-	-do-	-do-
4.	Smt. Laxmipriya Sahoo	-do-	-do-	-do-	14610/- GP 4600/-	-do-	-do-	-do-
5.	Smt. Hemlata Sahoo	-do-	-do-	-do-	-do-	-do-	-do-	-do-
6.	Smt. Sushmita Dutta	-do-	-do-	-do-	-do-	-do-	-do-	-do-
7.	Smt. Manisha Kumari	-do-	-do-	-do-	14320/- GP 4600/-	-do-	-do-	-do-

Note:

1. This has the approval of the Competent Authority. The case has been concurred in by Sr. DFM/ADA as conveyed vide his letter No. ADA/FE/80 dated 24.08.2011.
2. Necessary pay fixation of the staff concerned from 17.10.06 and onwards will be done in support of revised pay of Rs. 17140/- + GP 4500/- and accordingly the above said staff are eligible to get difference of pay on the present dates after fixing up the present pay.

For Sr. Divl. Personnel Officer/Adra

No. Even. Date : 09.09.2011

Copy to CMS/ADA, Sr. DFM/ADA, GM(P)/East Coast Rly./BBS, GM(P), S.C. Rly./Secunderabad, Ch. Matron, ANO/ADA, OS/PNM/ADA

For Sr. Divl. Personnel Officer/Adra."

Citing the aforesaid, Id. counsel would argue that when several juniors were granted stepping up, the reason why the applicant could not be considered is incomprehensible.

5. We note, that in fact the impugned speaking order is conspicuously silent about the said order dated 09.09.2011(extracted supra) that if stepping up was allowed to other Chief Matrons of NRSS, why the applicant did not deserve identical benefit.

6. Being thus bereft of reasons, the speaking order is quashed. The O.A. is disposed of with the direction that the Senior Divisional Personnel Officer or any other competent authority shall accord a personal hearing to the applicant consider her grievance in the light of 09.09.11(supra) and issue appropriate reasoned and speaking order within three months from the date of receipt of a copy of this order. No costs.

(Dr. Nandita Chatterjee)  
Administrative Member  
sb

(Bidisha Banerjee)  
Judicial Member