

LIBRARY**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH**

O.A./350/1825/2017
MA 397/2018

Heard on 08.08.2019

Date of Order: 25.9.19

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

Niranjan Kumar Saha,
son of Late Tarapada Saha,
Date of birth- 10.04.1957,
Occupation- Retired on 30.04.2017
from N.F.Railway Service,
residing at Village-South Panialguri,
P.O. Majher Dahri, Dist. Alipurduar
Pin Code-736123.

.....Applicant

Vrs.

1. Union of India
through General Manager,
North-East Frontier Railway,
Head Office-Maligaon,
Assam- 781011.
2. The Chief Personnel Officer,
North-East Frontier Railway,
Head Office-Maligaon,
Assam- 781011.
3. The Divisional Railway Manager Alipurduar,
North-East Frontier Railway,
Dist- Alipurduar,
West Bengal- 736123.
4. The Senior Divisional Mechanical Engineer (Mach)
North-East Frontier Railway,
Lumding Junction, PO- LMG,
Assam.
5. Senior DME/APDJ
North-East Frontier Railway,

Alipurduar Junction, PO- Alipurduar,
Dist- Alipurduar,
West Bengal- 736123.

6. Senior DPO/APDJ
North-East Frontier Railway,
Alipurduar Junction,
PO & Dist- Alipurduar,
West Bengal- 736123.

7. Sankar Chandra Dey,
Loco Inspector, Loco Shed at Badarpur,
North-East Frontier Railway,
Lumding Junction Division,
N.F.Railway Assam.

8. Dy Director/Estd. P&A
II, Railway Board of India,
Railway Bhawan, New Delhi-110001.

.....Respondents

For the Applicant(s): Mr. G.Bhattacharjee, Counsel

For the Respondent(s): Mr. B.P.Manna, Counsel

ORDER

Bidisha Banerjee, Member (U):

Seeking stepping up of pay on par with one Sankar Chandra Dey, the present applicant, Niranjan Kumar Saha, has sought for the following reliefs:

"(a) Issue mandatory direction on the respondent Railway Authorities to pass appropriate suitable order that the pay of the applicant (N.K.Saha) be stepped up at par with that of the Junior Sankar Chandra Dey from 01.01.2006 and the arrears of pay and allowances and other benefits arising out of such stepping up be made available to the applicant.

(b) Direct the respondents Railway Authority to pass suitable orders stepping up the pay of applicant and work out the arrears of pay and allowances due to the applicant and pay the same within a short period from the date of the order.

(c) Costs and incidentals to this petition.

(d) Any such further order or orders....."

2. Applicant's claim primarily is on the basis of the date of entry of Sankar Chandra Dey, which is 20.08.2007, as Jr. Loco Inspector, and that of the applicant, which is 15.10.2004, i.e. three years ahead of Sankar Chandra Dey. The applicant has lamented that when he was drawing a salary of Rs. 16,670/- + Grade Pay Rs. 4600/- totalling to 21,270/-, the said Sankar Chandra Dey, whose date of entry as Jr. Loco Inspector was 3 years after that of the applicant, was drawing the pay of Rs. 27,361/- + Grade Pay Rs. 4600/- totalling to Rs. 31,961/- The applicant has contended that in an identical matter the Tribunal at Madras Bench had allowed stepping up of pay, which has been upheld before the Hon'ble High Court at Madras and attained finality due to dismissal of S.L.P. filed by the respondents.

3. Per contra, the respondents have averred as under:

The applicant was transferred and posted at LMG Division on promotion as Chief Loco Inspector on 06.12.2006. Subsequently, on his own request, he was transferred to APDJ on 01.08.2008.

Applicant, Niranjan Kumar Saha, and the private respondent, Sankar Chandra Dey, belong to different seniority unit and different division. Niranjan Kumar Saha was promoted as Loco Inspector from the post of Sr. Goods Driver but Sankar Chandra Dey was promoted as Loco Inspector from the post of Loco Pilot/Passenger-II, one stage higher than Niranjan Kumar Saha.

The posting parameters of the applicant vis-à-vis Sankar Chandra Dey has been depicted as under:

Category of promotion	Niranjan Krmr Saha			Sankar Chandra Dey		
	Date	Pay	Scale	Date	Pay	Scale
Date of appointment as Engine Cleaner	07.05.79	Rs. 196/-	196-232/-	26.07.74	196/-	196-232/-
Screened	03.02.81	--	--	--	--	--
Upgraded E.Cleaner	17.07.90	Rs.919/-	775-1025/-			
2 nd Fireman	30.08.90	Rs.960/-	825-1200/-	20.12.78	Rs.214/-	
				30.08.90	Rs.1350/-	
Fireman-B	--	--	--	17.11.82	Rs. 260/-	Rs. 260-350/-
1 st Fireman	19.11.92	Rs.1010/-	950-150/-	12.12.83	Rs. 290/-	Rs. 290-350/-
				19.11.92	Rs.1400/-	
Re-designated	09.06.95	--	--	04.06.84		
Shunter	--	--	--	15.03.93	Rs.1470/-	Rs.1200-2040/-
Goods Driver	26.03.99	Rs. 5000/-	5000-8000/-	17.01.96	Rs. 5450/-	Rs.5000-8000/-
				26.03.99	Rs.6050/-	
Sr. Goods Driver	30.03.04	Rs.6025/-	5500-9000/-	01.11.03	Rs. 6900/-	Rs.5500-9000/-
				30.03.04	Rs. 7050/-	
Loco Pilot/Passenger-II	--	--	--	29.12.04	Rs. 7425/-	Rs.5500-9000/-
Loco Inspector	15.11.04	Rs. 7900/-	6500-10500/-	20.08.07	Rs. 24460/-	9300-34800/-
					4600/-	4600/-
St. Loco Inspector	06.12.06	Rs. 8800/- Rs.16670/- +Rs.4600/-	7450-11500/- 9300-34800/- +Rs.4600/-		Loco Inspector and St. Loco Inspector merger in Pay band Rs. 9300-34800/- with grade Pay Rs. 4600/- w.e.f 01.01.06	

On admissibility of stepping up vis-à-vis extant rule, the respondents have contended that as per notification of Sixth Pay Commission 2008, RBE No. 103/2008 dated 04.09.2008, Note 10, following has been clarified:

"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 post 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 his junior in the 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 post 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 post in which they are entitled to draw pay should be identical.
- (c) The senior railway servant 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 (FR 22) of Indian Railway Establishment Code Vol-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 him, provision of this note need not be invoked to stepped up the pay of the senior officer."

The respondents have categorically submitted, while dispelling the applicant's claim, that in the instant case, the above conditions were not fulfilled as

- (i) Both the staff belonged to different Division and different seniority units;
- (ii) In the instant case, they were promoted to Loco Inspector from different lower post, i.e. Sr. Goods Driver and Loco Pilot/Passenger-II;
- (iii) Junior (Sankar Chandra Dey/private respondent) was drawing more pay than Senior (Niranjan Kumar Saha/applicant) in the lower post as Sankar Chandra Dey was senior to Niranjan Kumar Saha from appointment till the post of Sr. Goods Driver.

and so, refuted that claim that in such circumstances, applicant was not entitled for stepping up of pay as the conditions laid down for such stepping up he did not fulfill.

4. Ld. Counsels were heard and the materials on record were perused.
5. From the chart, depicted supra, it appears that the entry of the applicant as Sr. Goods Driver is from 30.03.2004 in the pay of Rs. 6025/- in the pay scale of Rs. 5500-9000/- whereas the said Sankar Chandra Dey by virtue of getting promotion to Sr. Goods Driver w.e.f. 01.11.2003 was placed at a higher pay of Rs. 6900/- in the pay scale of Rs. 5500-9000/- as he was enjoying a higher pay as Goods Driver, the feeder post, where he was drawing Rs. 5450/- on 17.01.1996 and Rs. 6050/- on 26.03.1999 when the applicant was drawing Rs. 5000 in the scale of Rs. 5000-8000/-. Consequently, when the pay of the applicant was fixed as Loco Inspector on 15.11.2004 at Rs. 7900/- in the pay scale of Rs. 6500-10,500/- (pre revised), Sankar Chandra Dey, who earned such promotion as Loco Inspector in the revised scale effected from 01.01.2006, w.e.f. 20.08.2007 got his pay fixed at Rs. 24,460/- + 4600 (GP). However, when we compare the pay of the applicant as Loco Inspector at Rs. 7900/- as on 15.11.2004 while that of Sankar Chandra Dey at Rs. 7425/- on 29.12.2004, we definitely find a mismatch as in December, 2004, Sankar Chandra Dey was a Loco Pilot/Passenger-II and the applicant had already been promoted to Loco Inspector. We also upon perusal of the records failed to decipher any element that would make us conclude that the applicant was in a different seniority unit as compared to Sankar Chandra Dey, and belong to different division, as both belong to Loco Inspector cadre and came to be posted in the same division.

6. In view of the above and having noted that the respondent authorities had called for the particulars of the applicant as evident from Annexure-A/5 dated

07.07.2017, which is yet to be finalized as no final decision has been placed on record, we dispose of the present O.A. with the direction upon the General Manager (P), MLG, or any competent authority to look into the grievance of the applicant as emanates from the present pay fixation of the applicant vis-à-vis Sankar Chandra Dey (as enumerated supra) and take appropriate steps to ameliorate the grievance of the applicant suitably and in accordance with law. Let appropriate orders be issued within three months.

7. The O.A., as well as MA 397/2018, is accordingly disposed of. No costs.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

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