

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00195/15

Reserved on: 17.07.2019
Date of Order: 19.07.2019

C O R A M
HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

Shyam Shankar Prasad, Son of Late Mahabir Rai working as Senior Permanent Way Supervisor, under Deputy Chief Engineer/CON/1, East Central Railway, Hazaribagh, Resident of Mohalla- Apna Market, Kutchery Road, Hazipur, Vaishali (Bihar).

.... Applicant.

By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the General Manager, East Central Railway, Hajipur, District- Vaishali (Bihar).
2. The General Manager (Personnel), East Central Railway, Hajipur, District- Vaishali (Bihar).
3. The Divisional Railway Manager, East Central Railway, Samastipur (Bihar).
4. The Senior Divisional Personnel Manager, East Central Railway, Samastipur (Bihar).
5. The Senior Divisional Financial Manager, East Central Railway, Samastipur (Bihar).
6. The Chief Administrative Officer/CON, East Central Railway, Mahendrughat, Patna (Bihar).
7. The Deputy Chief Engineer/CON/1, East Central Railway, Hazaribagh.

.... Respondents.

By Advocate: - Mr. S.P. Singh

ORDER

Per Dinesh Sharma, A.M:- The case of the applicant is that while working as Supervisor (P.Way) in the pay scale of Rs. 4500-7000/- he was given promotion order dated 14.01.2009 whereby the applicant and others were given promotion to the post of Senior Supervisor (P.Way) in the pay scale of 5000-8000 (equivalent to Rs. 9300-34800 Grade Pay of Rs. 4200/-

w.e.f. 22.03.2007). The applicant has alleged that without asking him for any options the respondent no. 4 (Sr. Divisional Personnel Manager, EC Railway, Samastipur) has fixed the pay of the applicant w.e.f. the date of promotion (22.03.2007) instead of from the date of his next increment, i.e. 1st July, 2007. This has caused loss of one increment whereas other similarly placed employees, who were promoted on the same date and who were juniors to the applicant, are getting higher pay than him. The applicant has prayed for directing the respondents to fix the pay of the applicant on account of his promotion to the post of Senior Supervisor while treating his option w.e.f. 01.07.2007, i.e. the date of his next increment. He has also prayed for direction to pay the arrears along with interest on account of the relief prayed above.

2. The respondents have denied the claim of the applicant. They have stated that the claim of the applicant is barred by period of limitation since his promotion was by letter dated 14.01.2009. They have also alleged that the applicant should have exercised the option at the time of his promotion since this was clearly mentioned in the promotion order itself (a copy of the promotion order dated 14.01.2009 - Annexure R/1). According to the respondents, the applicant is not entitled to any relief and the person (Shri Manoj Kumar) with whom he is claiming parity of pay is not an employee of Samastipur Division and therefore comparing with him is not tenable.

3. The applicant has filed a rejoinder in which he has reiterated his claim. He has quoted the judgment of the Hon'ble Apex Court according

to which a senior cannot get lesser pay than his junior. He has also annexed copies of orders by which the applicant and his other colleagues were further promoted (Annexure-P/2) to prove that he is getting lesser salary than his juniors (as evidenced by an earlier order of promotion at a junior level- Annexure P/1).

4. We have gone through the pleadings and heard the arguments of learned counsels of both the parties. It is undisputed that the applicant is getting lesser salary than those who were juniors to them (though they may be posted elsewhere). This has obviously happened because of his not exercising the correct option for pay fixation at the time of his promotion. It is also correct that the time for exercising this option was in the year 2009 and his prayer now, for allowing him to exercise that option is clearly barred by period of limitation. However, the fact remains that the applicant is getting lesser pay than his juniors and in such a situation the stepping up of pay, if permissible under the rules, should have been applied in his case. The learned counsel for the respondents argued that the applicant has not specifically prayed for such stepping up of pay. We do not think that such lack of specific prayer should prevent us from giving direction to the respondents for applying the rule of stepping up to remove any anomaly that may have arisen between the pay of the applicant and his juniors while they are working under the same establishment. This will also be in line with the judgment of the Hon'ble Apex court cited by the applicant in the case of **Gurcharan Singh Grewal and Anr. Vs. Punjab State Electricity Board and Others** [(2009) 1 SCC (L&S) 578] where the Hon'ble Apex court

has observed, though in a slightly different context, that a senior cannot be paid a lesser salary than his junior. Under these circumstances, we direct the respondents to consider stepping up of pay of the applicant to bring it at par with his juniors following the rules regarding such stepping up of pay. Necessary orders in compliance with this direction shall be issued by the respondents within three months of date of receipt of this order. The OA is disposed of accordingly. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member