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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

OA NO. 2161/2003

This the 9th day of March, 2005

**HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)
HON'BLE MR. S.A.SINGH, MEMBER (A)**

Parvez Khan,
S/o Sh. Ghayub Khan,
Ex-SLI, Northern Railway,
Saharanpur.

Residential Address:-

Parvez Khan,
House No. 3/871,
Pipalwali Gali,
Khan Alampura,
Distt. Saharanpur.

(By Advocate: Sh. G.D.Bhandari)

Versus

Union of India through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divl. Railway Manager,
Northern Railway,
Ambala.

(By Advocate: Sh. R.L.Dhawan)

ORDER (ORAL)

By Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

The only question raised in this OA is whether the applicant is entitled to the payment of interest on the amount of arrears of terminal benefit paid to the applicant as a consequence of stepping up of his pay at par with his junior in service.

2. Applicant was promoted to the post of Loco Supervisor grade Rs.2000-3200 from the cadre of drivers when he was working as Goods Driver in the

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year 1989-90. After the implementation of the recommendation of the 5th Pay Commission, his pay was revised. The cadre of Drivers Goods/Passenger/Mail is the feeder cadre for promotion to the post of Loco Supervisor. In 1989 applicant was deployed to work as Fireman Instructor. A selection for the post of Driver Grade 'A' was held in which the applicant also appeared but since he had already been working in the grade of Rs.2000-3200 he was deemed selected as Passenger Driver in the grade of Rs.1600-2660 and was not empanelled for promotion to the post of Driver Grade 'A' formally. Thereafter he was promoted to the post of Loco Inspector and then to the post of Senior Loco Inspector in the grade of Rs.7450-11500. He sought voluntary retirement and retired from service w.e.f. 17.7.99. He was paid his terminal benefits. However, he noticed that his junior who were promoted as Loco Supervisor after 1.1.96 had their pay fixed at a sum higher than the applicant who was promoted prior to 1.1.96. His pay was required to be stepped up in accordance with Note 9 of para 7 of Railway Board's letter No. PC/V/97/RSRP/1 dated 8.10.1997 by stepping up to bring it at par with his junior. Applicant's representation in this regard was not accepted.

3. Applicant sought quashing of order dated 1.8.2003 (Annexure A-1) and letter dated 2.8.2003 (Annexure A-7) whereby the applicant's claim was rejected. He also prayed for direction to the respondents to step up the pay of the applicant in tune with the pay of S/Sh. Ghanshyam Das and Sohan Lal whose pay has also been stepped up to bring it at par with the pay of Sh. R.R.Mishra with all consequential benefits and the arrears and refixation of his pension etc. Hence the OA.

4. Respondents contested the OA submitted that the applicant was working as Driver Goods, which is classified as running category grade Rs.1350-2200. He was promoted as Assistant Loco Foreman in the grade of Rs.2000-3200 and his pay was fixed at Rs.2120/- after counting of 30%age of weightage of the running allowance in accordance with para 913 (ii)(b) of Indian Railway

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Establishment Manual Vol.1. Junior to the applicant continued to work in the category of Drivers. While working as Driver (Passenger) in the grade of Rs.5500-9000 (RSRP), they were promoted as Loco Inspector in the grade of Rs.6500-10500 after 1.1.96 and when their pay as Loco Inspector was fixed, they were given weightage of 30%age of the Running Allowance in the revised scale of Rs.5500-9000 in accordance with rules. Applicant submitted representation for refixing his pay at par with his junior Driver who were promoted after 1.1.96 as they got weightage of 30% running allowance in the revised scale of Rs.5500-9000 whereas the applicant was promoted as Running Supervisor prior to 1.1.96 and got weightage of 30%age of Running Allowance in scale Rs.1350-2200.

5. His case was referred to the Headquarter for clarification and the instructions received from the Headquarters office were that in terms of Note 9 Para 7 of Railway Board's letter dated 8.10.97, the pay of such staff as Loco Inspector prior to 1.1.96 can only be fixed at par with Loco Inspector promoted after 1.1.96 subject to the fulfilment of the condition that

- (i) both the junior and the senior Railway servants should belong to the same cadre and posts,
- (ii) the pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical,
- (iii) the senior employee at the time of his promotion was drawing equal or more pay than his junior,
- (iv) the anomaly was directly as a result of the application of the provisions of Rule 1313 (FR 22) of Indian Railway Establishment Code Vol.II.

6. Applicant was promoted as Assistant Loco Foreman from the post of Driver (Goods) whereas his juniors were promoted as Loco Inspector in the grade of Rs.6500-10500 while working as Driver (Passenger) in the scale of

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Rs.5500-9000 and since the applicant and his junior did not belong to the same cadre before promotion and the post to which they were promoted, the applicant was not eligible for stepping up of his pay. Other contentions of the applicant were also refuted.

7. We have heard the learned counsel for the parties and gone through the record.

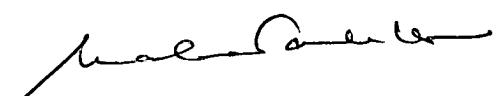
8. Counsel for respondents has submitted that the relief which has been prayed for in the OA has already been granted and the pay and the pension and other terminal benefits have been revised by stepping up of the pay of the applicant. Counsel for applicant has admitted that the applicant has already received the arrears of pay, allowances and pension and other terminal benefits. His submission, however, is that there was delay in making the payment of the dues for which the respondent should be made to pay interest on the delayed payment. Counsel for respondents has contested this claim. He has cited Rule 87 (4) of Railway Service Pension Rules 1993 where it has been provided that if a Government decision is taken subsequent to retirement of railway servant and as a result of which the amount of gratuity already paid on his retirement is enhanced, *inter alia*, on account of grant of emolument higher than the emolument on which the gratuity was determined, no interest on the arrears of gratuity shall be paid. He further submitted that as per instructions of the Headquarter office in terms of Note 9 of Para 7 of the Railway Board's letter dated 8.10.97 (Annexure R-1), the stepping up of pay of railway employee is to be made at par with his juniors on fulfilling the conditions which have been enumerated on page 3 of the counter. It is submitted that the applicant did not fulfil these conditions since the applicant was promoted as Running Supervisor prior to 1.1.96 and got weightage of 30%age of Running Allowance in the pre-revised scale of Rs.1350-2200 whereas his junior Driver were promoted as Loco Inspector after 1.1.96 and they got weightage of 30%age Running Allowance in revised scale of Rs.5500-9000 (RSRP) due to the implementation of 5th Pay

reconcile

Commission's recommendation. The conditions which are to be satisfied for eligibility for stepping up of the pay to bring it at par with the junior are analogous to the conditions prescribed in FR 22. According to him, the applicant was promoted as Assistant Loco Foreman from the post of Driver (Goods) whereas his junior were promoted as Loco Inspector in the grade of Rs.6500-10500 while working as Driver (Passenger) in the pay scale of Rs.5500-9000. As per the prescribed conditions both junior and senior railway employees should belong to the same cadre and the post and the pre-revised and revised scale of pay of lower and higher post in which they were entitled to draw pay should be identical. Moreover, the senior employee at the time of his promotion ^{should be} was drawing equal or more pay than his junior. It is not the position in this case. Applicant, therefore, could not be granted stepping up of his salary by virtue of the Railway Board's letter dated 8.10.97 (Annexure R-1).

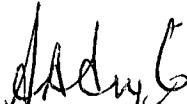
9. However, it was submitted that the Railway Board's clarification No. PC/V/2002/1/6/2 dated 20.7.2004 was received by which the benefit of stepping up of pay of the applicant at par with his junior in terms of Note 9 below Rule 7 RSRP Rules, 1997 was granted and the applicant had been paid the leave encashment of Rs.9777/-, gratuity Rs.29,186/- amount of commuted pension Rs.25000/- and his pension has also been revised. It is, therefore, submitted that there was no delay by any administrative lapse on the part of the respondents but in the absence of rules for stepping up, the applicant could not be granted the relief which he had prayed for. After the Railway Board's instructions received for stepping up benefit was extended to the applicant. It is, therefore, argued that the applicant is not entitled to the interest on the amount.

10. On the other hand, counsel for applicant reiterated that there was delay in payment of the terminal benefits and the revision of pay and pension of the applicant for which respondents were responsible and should be made to pay the interest.



11. A perusal of the prayer clause of the OA showed that the applicant has not prayed for grant of any interest on the amount which is claimed. On careful consideration of the Railway Board's instructions (Annexure R-1), and the Railway Board's instructions dated 20.7.2004, which have been produced at the time of hearing, we find that the stepping up of pay and pension of the applicant and grant of arrears of the terminal benefit had become possible for the respondent by virtue of the Railway Board's letter dated 20.7.2004. Respondents, therefore, cannot be held at fault in delaying the payment. The respondents cannot be saddled with interest for any delay in revision of his salary/pension and payment of arrears of dues consequent upon the revision of pay.

12. For the reasons stated above, we do not find any merit in the contention of the applicant that he should be awarded interest on the delayed payment. OA has otherwise become infructuous as the pay/pension has already been revised as per the case pleaded in the OA and consequential dues has also been paid by the respondents to the applicant. OA stands disposed of but without costs.


(S.A. SINGH)
Member (A)


(M.A. KHAN)
Vice Chairman (J)

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