
(2019) 12 CAT CK 0017

In the Central Administrative Tribunal

Case No : Original Application No. 1348 Of 2014

Paramjit Singh

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 13-12-2019

Acts Referred:

Citation : (2019) 12 CAT CK 0017

Hon'ble Judges : Vijay Lakshmi, J; Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : Yogesh Sharma, K.K. Sharma

Final Decision : Dismissed

Judgement

Pradeep Kumar, Member (A)

1. The applicant was initially appointed in the Railway Department as Diesel Assistant Driver (now known as Assistant Loco Pilot (ALP)) on 30.12.1986. In due course, he was promoted as Goods Driver on 27.07.1999. He was medically de-categorized in October, 2003 and was re-deployed as Enquiry and Reservation Supervisor on 05.10.2005.

2. The applicant pleads that another person by the name Shri Anil Kumar was appointed as Electrical Assistant (now known as ALP) on 25.05.1989. He was promoted as Goods Driver w.e.f. 20.10.1999. He was medically de-categorized in 2005 and was also re-deployed as Enquiry and Reservation Supervisor on 28.03.2007.

3. Applicant pleads that said Shri Anil Kumar was junior to him as ALP and is junior to him as Enquiry and Reservation Supervisor also. Applicant was drawing higher pay as compared to Shri Anil Kumar during 5th Central Pay Commission (CPC). However, with implementation of 6th CPC, w.e.f. 01.01.2006, Shri Anil Kumar is now getting more pay as compared to that of applicant and hence he had submitted a representation on 23.03.2010 seeking stepping up of his pay

with respect to Shri Anil Kumar. He sent a reminder also on 26.07.2010. He did not receive a reply. He preferred a query under Right to Information (RTI) Act. He was replied on 18.11.2010 as under:

"In reference to your application dated 26-10-2010 received through PIO Cum Sr. DDM/Delhi vide their letter quoted above, it is intimated that you does not fulfill the condition of NOTE-10B of P.S. No.13500/1, hence the pay parity of your junior Sh. Anil Kumar cannot be acceded to."

4. Thereafter, he represented to Divisional Railway Manager (DRM) on 29.7.2011. There was no reply. He preferred OA No.729/2012, which was decided on 28.05.2013. Following order was passed:

"8. In view of the rival contentions of the parties and in the absence of any comment in the counter reply filed by the respondents on paragraphs 1 and 2 of the Railway Boards letter dated 24.7.2009, we are of the view that the respondents need to examine the representations dated 23.3.2010, 29.7.2011 made by the applicant to DRM, New Delhi and to pass a speaking order dealing with the provisions enumerated in the Boards letter dated 24.7.2009 relied upon by the learned counsels for both the parties. They may do so within two months from the date of receipt of a copy of this order. Ordered accordingly."

5. A detailed speaking order has now been passed on 08.01.2014 and communicated to the applicant on 08.01.2013 (sic). The operative para reads as under:

"As provided in the above instructions, the stepping up is admissible only when the both employees are working in the same cadre when the anomalies has arisen. In this case the applicant was working as Goods Driver in Running cadre as such his case for stepping up is not covered under the rules quoted above. It has clearly been mentioned in para 3(a) of Board's above instructions that benefits of stepping up of pay will be admissible only when both the junior and the senior Railway Servant belongs to the same cadre and post at that time of implementation of 6th Pay Commission.

Shri Paramjit Singh was medically de-categorized before implementation of 6th Pay Commission and was absorbed in higher grade (i.e. working in Gr. 5000-8000 and absorbed in Gr.5500-9000) and Sh. Anil Kumar was medically de-categorized after implementation of 6th pay commission and got the benefit of running allowance and absorbed in same grade. As such, Sh. Paramjit Singh does not fulfil the condition of Note 10B notification dated 04.09.2008 and subsequent instruction contained in Railway Board's letter No. E(P&S)II/2008/RS-37 dated 24/07/09, as claimed by the applicant in both his representations."

6. Feeling aggrieved at rejection of his request, applicant has preferred the instant OA. He sought relief to quash this order dated 08.01.2014 and for stepping up of his pay at par with said Shri Anil Kumar w.e.f. 28.03.2007.

7. Applicant relies upon:

i) Railway Board's circular dated 24.07.2009 which is in respect of anomalies in pay of Loco Supervisor. However, applicant pleads that this ratio is applicable in his case also.

ii) Difference in pay has come up only due to implementation of 6th CPC. Further, applicant and said Shri Anil Kumr are from same cadre and as such stepping up needs to be agreed to.

iii) Order dated 24.10.2011 of Principal Bench of this Tribunal in OA No.3857/2010 (Sh. Surinder Kumar Dhingra v. Union of India & Ors.), wherein the Tribunal has held as follows:

"10. The Co-ordinate Bench has considered the circulars of the Railway Board as well as the judgments which provide for the salutary principle that the seniors should not be paid less than their juniors except for valid reasons. We are in agreement with the views of the Co-ordinate Bench. We further hold that there is no need for modification of the Circular dated 24.07.2009 as prayed for in this O.A. The applicant is entitled to the benefit even without any such modification as his case is covered by the aforesaid Note-10 below Rule-7 and is not specifically prohibited in the Circular dated 24.07.2009."

This decision of the Tribunal has been affirmed by the Hon'ble High Court of Delhi in W.P.(C) No.2052/2012 vide order dated 05.09.2012. The Hon'ble High Court held as under:

"What emerges from the record is that even though the respondent was promoted as a Loco Inspector almost 20 years before the said Shri Ravinder Sharma, but only on account of fixation of pay under the Sixth Pay Commission report, the pay of the said Shri Ravinder Sharma was fixed at Rs.29,290/- as on 20.12.2006 whereas that of the respondent was fixed at Rs.25,050/-. There is no dispute to the fact that the respondent was senior to the said Shri Ravinder Sharma and the denial of stepping up of pay to him was clearly discriminatory. As noticed herein above, the Tribunals, High Courts at Ernakulam, Madras as well as Calcutta High Court have taken the same view and their decisions have also been affirmed by the Supreme Court with the dismissal of the Special Leave Petition against all those decisions. In these circumstances, we find no reason to interfere with the impugned order. The petition is accordingly dismissed."

iv) Order dated 31.01.2013 of this Tribunal in OA No.2675/2011(Shri Nathu Singh & Ors. V. Union of India & Anr.). The relevant part of the order reads as follows:

"4. We have heard learned counsel for both the parties and, prima facie, we note that this OA also involves similar issue, as was dealt with by this Tribunal in the other two OAs, mentioned herein above, by the Ernakulam Bench as well as this Bench. In the circumstances, we are inclined to allow this OA with a direction to the respondents to grant the benefit of stepping up of the pay to the applicants in the same manner in which it has been given to Shri Pramod Kumar Negi.

Ordered accordingly.

5. At this stage, Shri P.K. Yadav, learned counsel for respondents submits that the respondents have challenged the said two orders of this Tribunal by way of Writ Petition No.2052/2012 before the Honble High Court of Delhi.

6. In this background, judicial propriety demands that we should make the present order subject to the final outcome of the WP No.2052/2012 (UOI & Ors. Vs. Surinder Kumar Dhingra) pending before the Hon'ble High Court of Delhi. The relief granted to the applicants and its implementation by the respondents regarding grant of consequential benefits, arrears etc. shall remain subject to the final outcome of the said Writ Petition.

7. With the above said directions, the OA stands disposed of. Respondents may, accordingly, work out the arrears etc. to be paid to the applicants pursuant to the present order of this Tribunal regarding stepping up of the pay but the same amount shall be released to the applicants only if eventually an order is passed by the Hon'ble High Court to this effect or the said Writ Petition is dismissed."

v) Order dated 07.12.2011 of Hon'ble High Court of Calcutta in WPCT No.224/2010 (Shyamapada Roy & Ors. V. Union of India & Ors.). The relevant part of the order reads:

"In our view, the past service in the feeder post became irrelevant 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."

8. Per contra, the respondents opposed the OA. It was brought out that the applicant claimed stepping up in reference to Note 10-B of para 7 of Notification dated 04.09.2008 and subsequent instructions dated 27.07.2009. This rule reads as under:

"Note-10 - In cases where a senior Government 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 Government servant should be stepped up to an amount equal to the pay in the pay band as fixed for his junior in that higher post. The stepping up should be done with effect from the date of promotion of the junior Government servant subject to the fulfillment of the following conditions, namely:-

(a) both the junior and senior Government servants should belong to the same cadre and the posts 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 posts in which they are entitled to draw pay should be identical.

(c) the senior Government servants 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 Fundamental Rule 22 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 to him, provision of this Note need not be invoked to step up the pay of the senior officer."

8.1 It was pleaded that the rule is in context of fixation of pay as on 01.01.2006 when 6th CPC came into being.

8.2 On 01.01.2006 the applicant was already working as EC&RC w.e.f. 05.10.2005 while Shri Anil Kumar was working as Goods Driver. They belonged to two different cadres. This rule is, therefore, not attracted.

8.3 Even otherwise, applicant and Shri Anil do not belong to same cadre. Applicant was recruited as Diesel Assistant (Assistant Loco Pilot of Diesel Engine) in the year May, 1988 while Shri Anil was recruited as Electrical Assistant (Assistant Loco Pilot of Electrical Engine) in May, 1990. The two cadres are very different. Diesel Locos were under Mechanical Engineering Department of Railway while Electrical Assistants were under Electrical Engineering Department of Railways and the two cadres are separate having separate seniority list.

8.4 Applicant was medically de-categorized on 13.08.2003 when 5th CPC was in force. Shri Anil was medically de-categorized on 28.03.2007 when 6th CPC was in force at respective time. The two employees were granted pay fixation as per rule in force at respective time and it was correctly done.

8.5 No stepping up is warranted. OA is without merit.

9. Matter has been heard at length. Shri Yogesh Sharma, learned counsel represented the applicant and Shri K.K. Sharma, learned counsel represented the respondents.

10. The applicant who was working under Mechanical Engineering Department of Railway has been de-categorized on 13.08.2003 and was granted redeployment to an alternate post which happened to be Enquiry and Reservation Supervisor. He was granted his pay fixation when 6th CPC was implemented w.e.f. 01.01.2006. He did not have any grievance with this fixation at that time.

10.1 Another employee Shri Anil Kumar who was working under another department namely Electrical Engineering, was de-categorized on 28.03.2007 and was granted re-deployment to an alternate post which also happened to be Enquiry and Reservation Supervisor. He was already granted his pay fixation when 6th CPC was implemented w.e.f. 01.01.2006 and while he was working as

Goods Driver (Electric) in his earlier posting.

10.2 The pay fixation granted to the applicant namely Shri Paramjit Singh and Shri Anil Kumar was in different context and does not have any nexus between the two. Moreover, the source of entry of applicant and Shri Anil Kumar is very different and therefore the clause referred in para-8 supra is not attracted.

10.3 The re-deployment of medically de-categorized staff is governed by paras 1309, 1310 and 1313 of Indian Railway Establishment Manual (IREM). These paras are reproduced below:

"1309 Alternative employment to be suitable-

(i) The alternative post to be offered to a railway servant should be the best available for which he is suited, to ensure that the loss in emoluments is minimum. The low level of emoluments should not, however, deter officers concerned from issuing an offer if nothing better is available. The railway servant must be given an opportunity to choose for himself whether he should accept the offer or reject it.

(ii) It would not, however, be appropriate to offer a Group 'D' post to a railway servant in the Group 'C' service even if the emoluments are almost similar, except in special circumstances. For instance, a cleaner who has risen to be a Shunter could be offered the post of a Cleaning Jamadar if no better post were available.

(iii) For the purposes of this paragraph, an alternative appointment will be considered 'suitable' if the emoluments of the same are at level not more than about 25 percent below his previous emoluments in his substantive appointment, or officiating appointment from which he was unlikely to revert. In the case of running staff, the former emoluments for the purpose of comparison will be basic pay plus a percentage of such pay in lieu of running allowance as may be in force. The figure of 25 per cent is in the nature of a guide and not a rigid rule. Each case should be judged on its merits. The underlying object is to ensure that the appointment offered will be considered 'suitable' if it will not force the railway servant to adopt a standard of living (as far as the necessities of life are concerned) of a drastically lower standard of comfort. A railway servant with a large family and considerable commitments would merit greater consideration, than one without or with few dependents.

(iv) While finding an alternative post for medically incapacitated running staff, 30% or such other percentage as may be fixed in lieu of running allowance should be added to the minimum and maximum of the scale of pay of the running staff for the purpose of identifying 'equivalent post' (Board's letter No.E(NG) II-77-RE 3-2 dt. 2-9-77). All cases decided on or after 1-1-1973 may be reviewed and benefits as above given only if (a) there had been an acute hardship, and (b) there should be no effect on others. (Board's letter No.E (NG) II-79 RE 3/5 dt. 22-5-79). Even in such cases the matter of payment in the

equated scales shall have a prospective effect and no arrears prior to the issue of orders and proforma fixation of pay shall arise.

(E(NG)ISO SR6/83 dt. 5-3-81).

NOTE:- Care should be taken by Railway Administration to see that the interests of the staff in service are not affected adversely as far as possible and alternative appointment should be offered only in posts which the staff can adequately fill. Their suitability for the alternative posts be judged by holding suitability test/interview as prescribed under the extent instructions.

xxx xxx xxx

1310. Offer of alternative employment to be in writing.

- The alternative employment must be offered in writing, stating the scale of pay and the rate of pay at which it is proposed to reabsorb him in service. On no account should the Railway servant be posted to an alternative appointment until he has accepted the post. A railway servant is at liberty to refuse an offer of alternative appointment and the leave granted to him will not be terminated prematurely merely because of his refusal. The Leave must run its course. He will continue to remain eligible for other alternative offers of appointment till his leave expires and efforts to find such appointments should, therefore, continue throughout the currency of his leave.

xxx xxx xxx

1313. Fixation of pay

(a) On absorption in an alternative post, the pay of the railway servant decategorised on account of circumstances which did not arise out of and in the course of his employment will be fixed at a stage corresponding to the pay previously drawn in the post held by him before decategorisation. If there is no such stage in the post in which he is absorbed, he may be given the stage just below the pay previously drawn by him.

(2) In other cases viz. (i) and (ii) of para (1) above, on absorption in an alternative post, the pay of the railway servant will be fixed at a stage corresponding to the pay previously drawn in the post held in a substantive capacity or the officiating pay if he was not likely to revert therefrom whichever is higher. If there is no such stage in the post in which he is absorbed, he may be given the stage just below the pay previously drawn by him. Medically unfitted railway servants absorbed in another category on a lower pay may, on subsequent promotion to higher posts, be allowed, by the grant of advance increments, the same or near about the same pay as may have been drawn by them, before being declared medically unfit, in their original appointment, including officiating appointment, if it is certified that but for being medically incapacitated the railway servants would have continued in the officiating appointment and would have normally been confirmed against the post, if the

post was permanent, or, if the post was a temporary one sanctioned for a period of one year or more, would have held the post for the duration of the currency of the same.

(b) In cases of decategorisation under circumstances arising out of and in the course of employment the pay of a decategorised employee (in the case of running staff, pay plus the percentage of pay treated as emoluments in lieu of running allowance) drawn before decategorisation should be protected in the absorbing grade and if it exceeds the maximum of the absorbing grade the difference may be allowed as personal pay to be absorbed in future increments/increases in pay. Other allowances such as Dearness Allowance, City Compensatory Allowance, House Rent Allowance drawn by a medically decategorised employee should be allowed on pay plus personal pay as admissible in the absorbing grades.

(No. 78/RLT/4 dt. 22-6-79, 18-7-80 and E(NG)I-86-RE3/3 dt. 9-4-86 RBE 76/86)."

The applicant has not brought out anything to indicate that these rules were not followed.

10.4 Further, this re-deployment could have been to any other post also in both their cases. Therefore, this re-deployment does not have any nexus with their earlier posting or seniority. In any case, their earlier cadre seniority was also separate and does not have any linkage. The rules quoted are, therefore, not attracted. Applicant has not quoted any other rule that applies to him and supports his cause.

10.5 The applicant relies upon Railway Board circular dated 24.07.2009 for Loco Supervisor. However, there are separate Loco Supervisor for Diesel Loco to which applicant belonged and Electrical Loco to which Shri Anil Kumar belonged. The rules may be applicable to the post of Loco Supervisor but they will operate only to the two separate cadres of Loco Supervisor (Diesel) and Loco Supervisor (Electrical) individually and not act in an inter-connected way. And in any case these rules are not for the post of Enquiry and Reservation Supervisor. Hence, reliance is misplaced.

10.6 The relied upon case of Surinder Kumar Dhingra (supra) was in respect of Diesel Loco Driver where Shri Surinder Kumar Dhingra as well as his junior Shri Ravinder Sharma were both working as Diesel Driver and got to be posted as Loco Inspector on two different dates with Shri S.K. Dhingra being posted earlier while Shri Ravinder got posted later. As Loco Inspector Shri Ravinder Sharma came to draw a higher pay.

This anomaly was agitated and was allowed. These two employees belonged to the same cadre (Diesel Engine) and even after posting as Loco Inspector, their cadre remained same, i.e. for Diesel Engines. This is very different in the instant case as already noted above. Hence, this judgment is of no help.

10.7 Similar is the situation in Nathu Singh (supra).

That involved stepping up in same cadre.

10.8 The circumstances of these three cases are very different vis-à-vis the background of instant case. The initial cadre of applicant and Shri Anil Kumar was different even though both were driving a locomotive but the cadre and seniority for Diesel loco (to which applicant belonged) and Electric Locomotive (to which Shri Anil Kumar belonged) is different. The conditions for stepping up are not fulfilled.

11. The OA is without merit. Accordingly it is dismissed. No costs.