

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5966 of 2017

1. The Union Of India through the General Manager, East Central Railway Hajipur, District Vaishali (Bihar)
2. The Additional General Manager, East Central Railway, Hajipur, District-Vaishali (Bihar).
3. The General Manager (Personnel) East Central Railway, Hajipur, District-Vaishali (Bihar).
4. The Chief Electrical Engineer, East Central Railway, Hajipur, District-Vaishali (Bihar).
5. The F.A and C.A.O. East Central Railway, Hajipur, District- Vaishali (Bihar)

... .. Petitioner/Respondents in O.A

Versus

G. K. Mishra S/o Late Awadh Bihari Mishra, Ex-Chief Loco Inspector, under Chief Electrical Engineer, East Central Railway, Hajipur (Bihar)

... .. Respondent/Petitioner in O.A.

Appearance :

For the Petitioner/s : Mr Amaresh Kumar Sinha, Advocate

For the Respondent/s : Mr M.P Dixit, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

and

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 13-08-2020

Heard learned counsel for the petitioners and learned counsel for the respondent.

2. The applicant (respondent herein) filed OA no. 641 of 2011, in the Patna Bench of the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal') praying that the action of the Railways (petitioners herein) in negating stepping up of his pay at par with his junior namely Sri Sunil Kumar Singh be declared as illegal, unconstitutional, unjust and against settled principles of law, to direct the Railways to step up his pay as Rs. 21,850 Grade pay of Rs. 4,600/- as on 23.10.2007 and Rs. 22,650/- Grade pay of Rs. 4600/- as on 1.7.2008 instead of Rs. 20,320/- and Rs. 21,070 respectively, for a direction to pay the arrears on account of the above stepping up, to revise the entire pensionary benefit on the



corrected pay at par with his junior with all consequential benefits and for any other relief to which he is found entitled.

3. The Patna Bench of the Central Administrative Tribunal by its order dated 1.10.2015 was pleased to hold that the applicant is entitled to stepping up of pay at par with his junior Sri Sunil Kumar Singh and accordingly, allowed the application with a direction to the Railways (petitioners herein) to give benefit of stepping up of pay and consequential benefits within a period of four months. It is against this order dated 1.10.2015 of the Tribunal allowing OA no. 641 of 2011 that the instant application has been preferred.

4. The case of the petitioners is that the respondent was a Loco Pilot (Electric goods) in Dhanbad Division of East Central Railway ('ECR' in short). He was promoted as Senior Loco Inspector by Head Quarter, ECR on 29.9.2004 and joined on 15.10.2004. On the other hand, Sri Sunil Kumar Singh, Loco Pilot (Electric passenger) of Mugalsarai Division of ECR was selected as Loco Inspector in a selection conducted by head quarter ECR and posted on 23.10.2007 at Hajipur. Subsequently, with effect with 20.12.2007 the post of Senior Loco Inspector was decentralized to Division of ECR and lien of the respondent was fixed in Mugalsarai Division while that of Sunil Kumar Singh in headquarter Hajipur.

5. Further case of the petitioners is that the respondent was drawing more pay than Sri Sunil Kumar Singh up to 20.10.2007 and Sri Sunil Kumar Singh has been drawing more pay than the respondent from 23.10.2007 i.e. the date of promotion as Loco Inspector. It was stated that the case of stepping up of pay of the respondent with respect to the pay of Sri Sunil Kumar Singh was sent to the Financial Advisor and Chief Accounts officer, Hajipur



for concurrence but they were not agreeable. The matter was thereafter referred to the Railway Board but the Board also expressed its regret by letter dated 22.6.2011.

6. It was submitted that while the respondent was promoted to the post of Loco Inspector from Loco Pilot (Goods), Dhanbad Division, Sri Sunil Kumar Singh was promoted to the post of Loco Inspector from Loco Pilot (Passenger II), Mugalsarai Division. Thus they were from different posts and seniority units. It was submitted that in paragraph 3(a) of the letter dated 24.7.2009 (Annexure R/3 to the written statement of the Union of India) it was clearly mentioned that for stepping up of pay both the junior and the senior Railway servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre. The respondent and Sunil Kumar Singh belonging to different cadres of different Division, the case of stepping up was not feasible.

7. On the other hand, the case of the respondent was that while working as Chief Loco Inspector at Hajipur as on 1.1.2006, his pay was fixed at Rs. 10,150/- while that of his junior Sri Sunil Kumar Singh was fixed Rs. 6,725/-. The next year as on 23.10.2007 the pay of the respondent was fixed at Rs. 20,320/- Grade pay Rs. 4,600/- whereas the pay of Sri Sunil Kumar Singh was fixed at Rs. 21,650 Grade pay 4,600/-. Again on 1.7.2008 the pay of the respondent was fixed at Rs. 21,070/- Grade pay Rs. 4600/- whereas that of Sri Sunil Kumar Singh was fixed at Rs. 22,650 Grade pay 4600/-. It was submitted that Sri Sunil Kumar Singh being junior to him and the cadre of Loco Inspector being centralized up to 20.12.2007, the petitioners could not fix the pay



scale of the respondent's junior (Sri Sunil Kumar Singh) on 23.10.2007 as higher than that of the respondent.

8. Further case of the respondent was that on coming to know about the anomaly, he submitted a representation before the Chief Manager (Personnel) of the ECR at Hajipur. The matter was taken up by the Chief Electrical Engineer, ECR who wrote a letter 10.8.2009 to the Chief Personnel Officer, ECR, Hajipur. Not getting any response the respondent filed another representation and thereafter on 28.2.2011, he voluntarily retired from service. He was not granted stepping up of pay at par with his said junior and his pensionary benefits was also fixed on the pay which was lesser than that of his junior. It is stated that by letter dated 2.3.2011 the Additional General Manager, ECR, Hajipur had taken note of the fact and observed that if persons who had come from the 'Steam cadre' of Dhanbad and Mughalsarai in the cadre of Loco Inspector had been given the benefit of stepping up, the respondent should also be given the same benefit without any delay. It was further stated that in case the said benefits were not in accordance with the rules, they should be cancelled.

9. The respondent also filed a rejoinder to the written statement of the Railways, in the Tribunal. He stated therein that the post of Loco Inspector was centralized up to 20.12.2007 and both he and his junior Sri Sunil Kumar Singh were working at Hajipur in the same cadre and grade. Sri Sunil Kumar Singh was working under the respondent and their pay had been correctly shown on 1.7.2006 and 1.7.2007 but on 1.7.2008 the same had been wrongly fixed. It was also stated that from letter dated 20.1.2011 (Annexure-A/8 to the respondent's Rejoinder in O.A no.



641/2011) of the General Manager (Personnel) it would be evident that the respondent, Purshottam Prasad and Sunil Kumar Singh belonged to the same cadre of Loco Inspector. It was finally stated that similar benefits had been given to different person which would be evident from Annexures A/9, A/10 and A/11 to the respondent's rejoinder.

10. Heard learned counsel for the petitioners and learned counsel for the respondent. I have also gone through records of the case.

11. It was submitted by learned counsel for the petitioners that the case of the respondent was examined and it was found that the respondent was drawing more pay than Sri Sunil Kumar Singh up to 22.10.2007 and Sri Sunil Kumar Singh was drawing more pay since 23.10.2007 i.e. the date of his promotion as Loco Inspector. It was submitted that since prior to promotion as Loco Inspector they belong to different cadres and divisions. Stepping up of pay was not given to the respondent and the matter was referred to the Railway Board which also expressed its regret. It was submitted that for being given the benefit for stepping up of pay both the senior and junior Railway servant should belong to the same cadre and the post in which they have been promoted should be identical in the same cadre. It was submitted that the respondent and Sri Sunil Kumar Singh belonged to different post and seniority units and also belonged to different cadres of different divisions. Thus, the case of stepping up was not feasible. It was submitted that the judgment and order dated 1.10.2015 passed by the Tribunal be quashed.

12. Learned counsel for the respondent submitted that



while the applicant was promoted as Loco Inspector on 18.10.1996, Sri Sunil Kumar Singh was promoted as Loco Inspector on 23.10.2007. It was submitted that the cadre of Loco Inspector remained centralized up to 20.12.2007. Thus, the authorities committed error by fixing the pay of Sri Sunil Kumar Singh on 23.10.2007 as higher to that of the respondent although Sri Sunil Kumar Singh was admittedly junior. It is submitted that both the respondent and Sri Sunil Kumar Singh belong to the same cadre.

13. Having heard learned counsel for the parties and on going through the records of the case the facts which transpire are that while the respondent was promoted as Loco Inspector on 18.10.1996, Sri Sunil Kumar Singh was promoted on the said post on 23.10.2007. Here itself it would be appropriate to reproduce (from Annexure-P/5 to Supplementary affidavit of the Petitioners herein) some of the dates of promotion of both the respondent and Sri Sunil Kumar Singh as ALP, LP (Goods), Loco Inspector, pay after 1.1.2006 and scale of pay on 23.10.2007 are as follows:

Sl No.	Details	Shri Gokaran Mishra	Shri Sunil Kumar Singh
1	Date of promotion as ALP	22.10.1985 Pay Rs. 290 in Scale Rs. 290-350	08.9.1988 as ALP Pay Rs. 950 in Scale Rs. 950-1500
2	Date of promotion as LP (Goods)	13.05.1990 Pay Rs. 1410 in Scale Rs. 1350-2200	14.06.1996 Pay Rs. 1350 in Scale Rs. 1350-2200
3	Date of promotion as Loco Inspector	18.10.1996 Pay Rs. 2180 in Scale Rs. 2000-3200 (Pay fix including 30% running allowance up to 17.10.1996)	23.10.2007 Pay Rs. 9500 in Scale Rs. 6500-10500 (Pay fixed including 30% running allowance and continued to work as Loco Pilot (Passenger) up to 22.10.2007)
4	Rate of Pay in PS-2 GP 4600 after 01.01.2006 as per VIth PC	As per 6 th PC 6500-10500 & 7450-11500 has been merged with G.P 4600 and pay fixed 01.01.2006 Rs.18880+4600 01.07.2006 Rs.19590+4600 01.07.2007 Rs. 20320+4600	As per 6 th Pay fixed as Sr. Loco Pilot Goods/Loco Pilot (Passenger) 01.01.2006 Rs.14250+4200 01.07.2006



			Rs.14810+4200 01.07.2007 Rs. 15380+4200
5	Rate of Pay as on 23.10.2007	Rs. 20320+4600	Rs.21850+4600 on promotion in GP 4600 as per 6 th PC

14. From the above chart, it would be clear that both the respondent and Sri Sunil Kumar Singh were promoted as LP (Goods) on 13.5.1990 and 14.6.1996 respectively, both in the scale of Rs. 1350 - 2200. It is also not disputed that they were promoted as Loco Inspector on 18.10.1996 and 23.10.2007 respectively. It was the categorical case of the respondent in his rejoinder filed in the Tribunal that the post of Loco Inspector was centralized up to 20.12.2007 and the respondent and his junior Sri Sunil Kumar Singh were both working at Hajipur in the same cadre and grade. This statement of the respondent has not been denied by the Railways.

15. Further the fact not in dispute is that while the respondent was promoted as Loco Inspector on 18.10.1996, Sri Sunil Kumar Singh was promoted on the said post on 23.10.2007. In the letter dated 18.5.2011 (Annexure-A to the written statement of the Railways in the Tribunal) written by the office of the General Manager (P), ECR, Hajipur to the Director, Establishment (NG), Railway Board, New Delhi it is categorically stated that in the East Central Railway the cadre of Loco Inspector and Senior Loco Inspector was Head Quarter controlled which was decentralized to divisions on 20.12.2007. The respondent has also brought on record the letter dated 20.12.2007 (Annexure A/1 to the OA in the Tribunal) of the ECR whereby the cadre of Loco Inspector and Senior Loco Inspector was decentralized to



divisions. Thus for nearly two months after the promotion of Sri Sunil Kumar Singh as Loco Inspector, both the respondent (who was 11 years senior) and Sri Sunil Kumar Singh worked as Loco Inspectors till it was decentralized in December 2007.

16. It would be relevant to refer to the communication dated 20.1.2011 (Annexure-A/8 to the Rejoinder of Applicant in O.A no.641/2011) sent from the office of General Manager (Personnel), Hajipur wherein it was categorically stated that in view of the fact that both the respondent and Sri Sunil Kumar Singh belonged to the same cadre of Loco Inspector, the respondent will be entitled to get stepping up of pay.

17. Further in response to the contention of the petitioners that Sri Sunil Kumar Singh had received running allowance of 30 % till 2007 on account of continuing as Loco Pilot (Passenger) up to 22.10.2007 and he was promoted as Loco Inspector on 23.10.2007, learned counsel for the respondent places reliance on the judgment in the case of Gurcharan Singh Grewal and another vs. Punjab State Electricity Board and others reported in **(2009) 1 SCC (L&S) 578**, specially paragraph 17 thereof which is reproduced herein below for ready reference :

"17. Something may be said with regard to Mr. Chhabra's submissions about the difference in increment in the scales in which Appellant 1 and Shri Shori are placed, but the same is still contrary to the settled principle of law that a senior cannot be paid a lesser salary than his junior. In such circumstances, even if there was a difference in the incremental benefits in the scale given to Appellant 1 and the scale given to Shri Shori, such anomaly should not have been allowed to



continue and ought to have been rectified so that the pay of Appellant 1 was also stepped up to that of Shri Shori, as appears to have been done in the case of Appellant 2.”

18. Thus, in view of the facts and circumstances stated herein above, it transpires that the respondent and Sri Sunil Kumar Singh both belonged to the same cadre and post and admittedly the respondent was senior to him. While the respondent was promoted as Loco Inspector on 18.10.1996, Sri Sunil Kumar Singh was promoted on 23.10.2007. It is also not in dispute that the cadre of Loco Inspector was centralized upto 20 December, 2007 and both the respondent and his 11 years junior, Sri Sunil Kumar Singh were working at Hajipur in the same cadre. Thus, in the facts and circumstances of the case, the respondent should have been given the benefit of stepping up of pay. The learned Tribunal had rightly allowed the original application filed by the respondent and has correctly held him to be entitled to stepping up of pay at par with the junior Sri Sunil Kumar Singh. Thus, I do not find any merit in the instant application.

19. The writ application stands dismissed.

(Partha Sarthy, J)

(Ashwani Kumar Singh, J)

Prakash/-

AFR/NAFR	
CAV DATE	06-12-2019
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