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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **W.P.(C) 6321/2013**

UNION OF INDIA

..... Petitioner

Through: Mr. V. S. R. Krishna, Advocate.

versus

VINOD KUMAR UPADHYAY

..... Respondent

Through: Mr. Prakash Chandra, Advocate.

**CORAM:**

**JUSTICE S.MURALIDHAR**

**JUSTICE TALWANT SINGH**

**ORDER**

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**06.02.2020**

1. The Northern Railways has filed the present petition challenging an order dated 12<sup>th</sup> April, 2013 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('CAT') allowing O.A. No. 3169/2011 filed by the Respondent, holding that the pay fixation of the Respondent in the cadre of Head Clerk should be on the basis of the higher pay drawn by him in the ex-cadre post of Stenographer which he held immediately before his promotion to the post of Head Clerk, on the basis of Fundamental Rule ('FR') 22-C, corresponding to Rule 1316 (B) of the Indian Railways Establishment Code, Volume-II ('IREC-II'). Accordingly, the Petitioner herein was asked to re-fix the pay of the Respondent in the aforesaid terms.

2. The Respondents was initially appointed as Temporary Clerk in the Western Railways on 25<sup>th</sup> May, 1974 in the pay scale of Rs. 260 – 400 /-. On his request he was transferred to the Northern Railways on 25<sup>th</sup> October,

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1975 and posted in the Store Branch. He was thereafter posted as Stenographer, an ex-cadre post, on ad hoc basis with effect from 14<sup>th</sup> February, 1979 in the scale of Rs. 330 – 560/- in the Security Branch of the Railway Protection Force ('RPF').

3. While he was working as Stenographer in the RPF, the Respondent was promoted as Upper Division Clerk ('UDC') in his parent Store Branch in the grade of Rs. 330 – 560/- with effect from 7<sup>th</sup> February, 1984 in its parent Store Branch. However, he was not repatriated to his parent branch as UDC.

4. On 13<sup>th</sup> January, 1992, the Respondent was further promoted in his parent cadre to the post of Head Clerk in the Grade of Rs. 1,400 – 2,300/- (RPS).

5. On 6<sup>th</sup> February, 1992, the Respondent joined as Head Clerk in his parent branch in the same scale. The Railways fixed his pay on the post of Head Clerk as Rs. 1,560/- in the grade of Rs. 1,400 – 2,300/-, on the basis of the pay he was drawing as Stenographer in the grade of Rs. 1,200 – 2,040/-, by way of a notice dated 13<sup>th</sup> January, 1992.

6. Subsequently, by a notice dated 21<sup>st</sup> November, 1997, the Respondent's pay was reduced and the recovery of the alleged over-payment was ordered.

7. The Respondent then filed O.A. No. 393/1998, which was allowed by the CAT, while giving the Railways liberty to proceed in the matter strictly in accordance with the rules.

8. Thereafter, the Railways revised the pay of the Respondent after issuing a

Show Cause Notice ('SCN'), withdrawing the benefit of Rule 1316 of IREC-II, which, as noted hereinabove, corresponds to Rule 22 of the FRs.

9. Then, in the second round of litigation, the Respondent filed O.A. No. 1792/2008, which was disposed of by the CAT by an order dated 28<sup>th</sup> August, 2008, granting the Respondent liberty to make a fresh representation against such revision, which was ordered to be disposed of by the Railways by a speaking order.

10. Pursuant to the order dated 28<sup>th</sup> August, 2008 of the CAT, the Respondent made a fresh representation on 19<sup>th</sup> December, 2008. The Railways, in disposing of the Respondent's representation, reiterated their earlier orders, leading the Respondent to file, for the third time, an O.A. No. 2095/2009. This O.A. No. 2095/2009 was disposed of on 28<sup>th</sup> April, 2010 remitting the matter to the Railways to consider the Respondent's case in accordance with the rules, and keeping in view the aspects mentioned in the Respondent's representation dated 29<sup>th</sup> June, 2009. In particular, they were to consider the Respondent's contention that the Railway Board's letter dated 16<sup>th</sup> August, 1999, relied upon by the Railways while re-fixing the Respondent's pay, was not applicable to him in view of the judgment of the CAT in ***Bahadur Chand Bhatia v. Union of India AISLJ 1987 (2) CAT 29.***

11. Pursuant to the above order of the CAT, the Railways passed a speaking order dated 13<sup>th</sup> January, 2011 rejecting the Respondent's representation dated 29<sup>th</sup> June, 2009 and maintaining that his pay had been correctly fixed.

12. For the fourth time, therefore, the Respondent filed O.A. No. 3169/2011  
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in the CAT.

13. By the impugned order, the CAT held that the Railways had erred in failing to appreciate the true and correct import of the decision in ***Bahadur Chand Bhatia v. Union of India*** (*supra*). There, it was held that the provision that would govern the fixation of pay of a Government servant on his promotion in a substantive/temporary/officiating capacity to a higher post from a lower post he may be holding in a substantive/temporary/officiating capacity would be FR 22-C. The case of the Respondent, it was held, clearly fell within the scope of that provision and the corresponding Rule 1316 of the IREC-II. The CAT, therefore, proceeded to issue directions as noticed hereinbefore.

14. This Court has heard the submissions of Mr. V. S. R. Krishna, learned counsel appearing for the Petitioner and Mr. Prakash Chandra, learned counsel appearing for the Respondent.

15. The Court's attention has been drawn to the fact that FR22-C stood deleted with effect from 30<sup>th</sup> August, 1989 by way of the DoPT Notification No. 1/10/89-Estt. (Pay-I). Therefore, by the time the Respondent went back to his parent cadre on 6<sup>th</sup> February, 1992, FR 22-C already stood deleted.

16. Even Rule 1316 of the IREC-II stood deleted by a Railway Board letter dated 12<sup>th</sup> December, 1991. Consequently, the position that emerges is that by the time the Respondent was repatriated to his parent cadre on 6<sup>th</sup> February, 1992, both FR 22-C as well as Rule 1316 of the IREC-II stood

deleted. The question of fixing the pay of the Respondent by applying those rules, therefore, did not arise.

17. Learned counsel for the Respondent sought to rely on the decision in ***K. Ajit Babu v. Union of India (1997) 6 SCC 473*** to urge that the Tribunal was bound to follow the earlier order in ***Bahadur Chand Bhatia v. Union of India (supra)*** which applied to the circumstances of the case on all fours.

18. The facts in ***Bahadur Chand Bhatia (supra)*** revealed that the date of the repatriation of Bahadur Chand Bhatia to the parent cadre was much prior to the dates of the deletion of FR 22-C or Rule 1316 of the IREC-II. Therefore, that case stands on a different footing. The Court is of the considered view that the CAT erred in placing reliance on its ruling in ***Bahadur Chand Bhatia (supra)***.

19. For all of the aforementioned reasons, the Court finds that the impugned order of the CAT is unsustainable in law, and is accordingly set aside. The petition is allowed in the above terms, but in the circumstances there is no order as to costs.

**S. MURALIDHAR, J.**

**TALWANT SINGH, J.**

**FEBRUARY 6, 2020**

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