

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 658/98

New Delhi, this the 29th day of September, 2000

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE CHAIRMAN (J)
HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (A)

In the matter of:

1. Om Prakash aged about 55 years
son of Late Sh. Ram Chander
working as Superintendent Law Branch
Baroda House, Headquarters Office
Northern Railway, New Delhi.
resident of C-14/B Rly. Colony,
Lajpat Nagar,
New Delhi.
2. Smt. Reshma Kumari aged about 59 years
widow of late Sh. Vidya Ratan,
resident of D-81, West Patel Nagar,
New Delhi-8, Retd. Superintendent,
Baroda House, New Delhi.
3. Ram Charan Jatav aged about 60 years
son of late Sh. Balvant Singh,
Retd. Superintendent, Public Complaint
Headquarters Office,
Baroda House,
resident of B-154-155, Mangol Puri,
Delhi-83.
4. Hem Chand Sharma aged about 56 years
son of late Sh. Basdev Prasad,
working as Superintendent, Baroda House,
resident of C-7/140, Yamuna Vihar, Delhi-53.
5. Harish Chand Sanwal aged about 56 years
son of late Sh. D.N. Sanwal working as
Superintendent Claim,
Headquarters, IRCA Building,
resident of G-87, Sector-23,
Raj Nagar, Ghaziabad, U.P.
(By Advocate: Sh. H.P. Chakravarty)

VS.

1. The Union of India through
The Chairman, Railway Board,
The Principal Secretary to Government of India,
Ministry of Railway,
Railway Bhawan,
New Delhi-110001.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
(By Advocate: Sh. R. L. Dhawan)

By Mr. Govindan S. Tampi,

Sh. Om Parkash and 5 others have impugned the orders dated 25.8.95, 28.10.96 and 11.12.97 and seek directions for grant of special pay of Rs.35/- to them and its inclusion while fixing the pay in the higher grade of Head Clerk.

2. The applicants, who joined as Junior Clerks in the Northern Railway became Senior Clerks in the pay scale of Rs.330-560 w.e.f. 1.10.80. In terms of the decision taken by the Government of India, 10% of the course from the grade of Clerks Grade-I, U.D.Cs. and Senior Clerks in the pay scale of Rs. 330-560 who could not be promoted to the scale of Rs.425-700 for long, were permitted to have Rs.35/- as a special pay for working on pin-pointed seats handling important work. This decision was implemented on 11.7.79. Following the restructuring the cadre in 1984 the strength of Senior Clerks in the branch where the petitioners were working came down from 108 to 66 and therefore the post with special pay came to be 7 (seven). Identification of pin-pointed seats carrying important nature of work was also resolved by the Head of the Department. Following the 7 Senior Clerks were promoted as Clerks with special pay and it is followed by promotions order on 22.2.85 of 29 Clerks and 7 others on 17.5.85. Thereafter came the turn of the applicants, but they were not so promoted. However, they were promoted on 30.12.85 directly as Head Clerk. With the result some of persons who were promoted as Head Clerks, had become so after drawing the special pay of Rs. 35/- a few like the applicants were made Head Clerks directly without working as senior clerks with the special pay. A number their juniors, came to occupy the post of Senior Clerks with the special pay, which gave them advantage of fixation of the higher level on promotion. Thus

both their seniors and their³ juniors got the benefit of special pay which was denied to them. This had occurred in spite of the fact that there had been a spell between the promotion of their seniors, who were enjoying the special pay and their own promotion, during which they should have been given the special pay as they came within the 10 % of the strength as prescribed. The Department had sought to get out of the situation by claiming that there were no vacancies in the pin pointed post to accommodate them as Senior Clerk with the special pay. This is not borne out by facts. This has hurt them badly as the Railway Board had on 2-11-1987 permitted the inclusion of the special pay for fixation of pay as Head Clerks. With the result, quite a few persons including the applicant did not get the benefit of special pay, while a few others who were the juniors could get that benefit. Thus vis-a-vis their juniors they were prejudicially affected. They also state that though they were promoted directly as Head Clerks there was some time between their seniors who were enjoying the special pay got promotion and their ultimate promotion. Therefore, during the intervening period they should have been promoted as Senior Clerks with special pay, which they could have got included in their pay on their promotion as Head Clerks, reiterate the applicants.

3. The respondents strongly contest the application first on the ground of limitation and secondly on merit. According to them the benefit of special pay could not be correctly claimed by the applicant as the same was granted for identified and pin-pointed seats with higher responsibilities and that the applicants could not have, as of right, claimed the benefit attached to those posts especially as they were promoted directly from the grade of the Senior Clerk to that of the

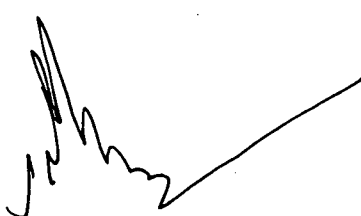
(31)

Head Clerk. It was also indicated that the applicant's claim for grant of special pay could not be considered as on the date which they were seeking the benefits now there were no posts vacant for Senior Clerks with special pay, as pointed out in letters dated 29.8.95, 28.10.96 and 11.12.97. The action taken by the department was correct and the same should be dismissed as being devoid of merit, urges Sh. Dhawan.

4. We have carefully considered the matter. The preliminary objection raised on the ground of limitation cannot be entertained, as the matter relates to fixation of pay and allowances and the same is a continuing cause of action. It is agreed on all hands that the decision of the Government to grant special pay of Rs.35/- was for removing frustration and therefore the seniormost persons who have been stagnating without promotion were correctly entitled to be granted the same. However, in this case, the applicants have been denied the same on the ground that they were promoted directly from the grade of Senior Clerks to that of Head Clerk and that there were no posts with special pay available on the day of their promotion. Applicants have contested this and state that there were distinct periods during which posts were available on account of the promotion of their seniors who were already drawing the special pay, and their own promotion which should have been given to them before they were promoted. This is a matter of fact to be ascertained. If more than seven senior persons who were drawing special pay were promoted and the promotion of the applicants had been after some time, there was no reason, they could have been promoted directly as Head Clerks, without being given a benefit of the special pay. Our attention has been also drawn by the respondents to the decision of Coordinate Bench of this

Tribunal on a similar matter - OA No. 2432/91 decided on 25-3-94 where the applicants pleas were rejected. In this case, however, what is relevant is to determine whether vacancies in the grade of Senior Clerks existed before the applicant were promoted as Head Clerks and if there were such vacancies, they should have been declared entitled for the same. The earlier decision of the Tribunal can therefore be distinguished.

5. In view of the above, we are disposing of this application with directions to the respondents to consider the case of the applicants, if on re-examination of the matter and the applicants' plea that vacancies of Senior Clerks with the special pay did exist at the relevant time, i.e. before they were directly promoted as Head Clerks, and if so to grant them the same and permit the inclusion of the special pay so granted by fixing their pay as Head Clerks on promotion. No order to costs.


(Govindan S. Tampi)
Member (A)


(V. Rajagopala Reddy)
Vice-Chairman (J)

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