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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.1076/86 & O.A.1077/86

DATE OF DECISION: 18.9.1992

R.N.Pathak .. Applicant in O.A.No.1076/86
Jagjit Kumar .. Applicant in O.A.No.1077/86

vs.

The General Manager,
Northern Railway, Baroda House,
New Delhi and Others .. Respondents in both the O.As

For the Applicants. .. Shri B.L.Chawla, Advocate

For the Respondents .. Shri O.P.Kshatriya, Advocate

C O R A M

THE HON'BLE MR.S.P.MUKERJI, VICE CHAIRMAN

THE HON'BLE MR.T.S.OBEROI, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? *Ys*
2. To be referred to the Reporters or not? *N*

JUDGMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

Since common questions of law, facts and reliefs are involved in these two applications, they have been heard together and being disposed of by a common order as follows.

2. The applicants in both the cases have been working as Air Conditioned Coaches Mistry in the Northern Railway. In these applications dated 28.11.86 they have claimed the special pay of Rs.35/- per month in accordance with the Railway Board's order dated 1st June 1984 and have prayed that the same should not be recovered for the past period. The brief facts of the case are as follows.

As a result of proposals made in the Departmental Council, the Ministry of Railways granted a special pay of Rs.35/- per month to such of the Train Lighting and Transformer Mistries as are either in ⁱⁿ dependent charge of gangs or are supervising highly skilled workers with effect from 1st May 1984. The order was issued on 1.6.84. Accordingly, the Divisional Personnel Officer of the Northern Railway granted a special pay of Rs.35/- per month with effect from 1.5.84 to Electricians and ACC Mistries who are supervising the work of Highly Skilled workers by the order dated 23.10.1984. The applicant thus received the special pay from 1st May 1984 till January, 1986. It appears that in accordance with a D.O. letter issued from the Headquarters Office, Northern Railway dated 11.2.1985 the special pay was withdrawn with effect from February, 1986 without any intimation and orders were issued on 4th November, 1986 to recover the special pay paid to the applicants between 1st May, 1984 and 31st January, 1986. The applicants have argued that like the Electricians (Train Lighting) who have been granted the special pay, the applicants as AC Coaches Mistries not only handle all items of work handled by the Electricians but also the Air Conditioning equipments in AC Coaches. Both the Electricians and AC Coaches Mistries are in-charge of maintenance gang in their sections and supervise Highly Skilled workers and both these categories belong to train lighting cadre. The seniority of AC Coaches Mistries is combined with train lighting Electricians for promotion as ELC.

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4. In the counter affidavit the respondents have stated that the special pay of Rs.35/- was granted in consideration of the fact that the train lighting Mistries were performing some degree of supervision. There is no specific designation of train lighting Mistries but the staff of Electrical Department are designated as Air condition Stationary Plant Mistries, Power Mistries and Train Lighting Mistries. The Electrical staff working on trains on duties which in other Railways are entrusted to Train Lighting Mistries, are designated as Electricians. The staff working in the same grade of Rs.380-560 in Headlight Branch of Train Lighting side are designated as Headlight Mistries. The staff working in the same grade in Air Conditioned Coaches are designated as ACC Mistries.

It appears that the Railway Board took objection to some Divisions of the Northern Railway extending the special pay to Power and Airconditioning Mistries. and asked those Divisions to withdraw the special pay erroneously granted to ACC Mistries. On the representations of the ACC Mistries, the matter was examined by the Railway Board which clarified that the special pay is admissible only to Train Lighting Mistries and not to ACC Mistries. Even though these two applications were listed for peremptory hearing, none appeared for the applicants on 9.9.92. For them even on the last hearing on 27.7.1992, none appeared. Accordingly, these two applications are being disposed of on the basis of available documents and hearing the oral arguments of the learned counsel for the respondents.

5. Grant of special pay is an administrative matter and cannot be governed by judicial pronouncements. Judicial intervention is called for only when there is

discrimination or malafides. Since the Railway Board have decided that the special pay of Rs.35/- is not admissible to ACC Mistries, taking into account their duties, responsibilities and the supervisory content of their work, we are not inclined to question their administrative wisdom. However, the fact remains that rightly or wrongly the competent authority had granted the special pay of Rs.35/- on the basis of the order of the Ministry of Railways. The payment continued from 1.5.84 to January, 1986. It is established law that Conditions of Service cannot be changed adversely with retrospective effect and in no case by administrative instructions. It is established law that even for withdrawing benefits which have vested with the employees, a notice has to be given in conformity with the principles of natural justice. In that light, the respondents have no legal authority to withdraw the special pay with retrospective effect and recover the same.

6. In the facts and circumstances we allow the applications to the extent of directing the respondents that no recovery of special pay for the period prior January 1986 be made and if any recovery has been made, the same shall be refunded to the applicants within a period of three months from the date of communication of this order. There will be no order as to costs.

(T.S.OBEROI)
JUDICIAL MEMBER

(S. P. MUKERJI)
VICE CHAIRMAN

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