

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

Date of Decision: 26.05.1992
OA 2104/90

N.K. SHARMA ... APPLICANT.

VS.

UNION OF INDIA ... RESPONDENT.

CORAM:

THE HON'BLE SHRI J.P. SHARMA, MEMBER (J).

For the Applicant ... SHRI S.K. SAWHNEY

For the Respondent ... SHRI H.K. GANGWANI

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

JUDGEMENT (ORAL)
(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J).)

In this application there is a challenge to the order dated 23.7.1990 passed by the Dy. Chief Personnel Officer (Annexure A-1) whereby the representation filed by the applicant that while working on an ex-cadre post in the Vigilence Branch, he should also be given the benefit of Special Pay of Rs.70/- which has been allowed to his juniors working in the regular line by virtue of the Circular of the Railway Board dated 11.7.1979 (Annexure A-5).

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The applicant has prayed in this application that a direction be issued to the respondents to grant the applicant Rs.70/- p.m. w.e.f. 16.7.1987 under NBR equivalent to PS 5480 and further a direction to fix his pay in the post of Welfare Inspector after taking into account the Special Pay of Rs.70/- p.m.

I have heard the learned counsel for both the parties at length. The simple issue involved in this case is on an interpretation of the Railway Board's Circular dated 11.7.1979 (Annexure A-5). The relevant paragraphs of the said Circular are reproduced below:-

"A committee of the National Council (JCM) was set up to consider the request of the Staff side that in the non-Secretariat Administrative Offices since a certain percentage of UDCs in the scale Rs.330-560(RS) is handling cases of complex nature involving deep study and competence to deal with these cases, a certain number of posts of UDCs should be upgraded to the grade of Assistants in the scale of Rs.425-800 in the Secretariat. The Committee's report which was finalised on 27.1.1979 was adopted by the National Council at its meeting held on 2nd and 3rd Feb. 1979, Pursuant to the agreed conclusions arrived at the accepted by the National Council the President is pleades to decide that the UDCs e.g. Senior Clerks, Clerks Gr.I in scale Rs.330-56- in the non-Secretariat Admininistrative attending to work of a more complex and important nature may be granted a special pay of Rs.35/- p.m. The total number of such posts should be limited to 10% of the posts in the seniority groups of the respective clerical cadres; i.e. 10% of the posts of Senior Clerks/ Clerks Gr.I in scale Rs.330-560 and those posts should be identified by you in consultation with your Financial Advisor as carrying discernible duties and responsibilities of a complex nature higher than those normally expected of Senior Clerks, Clerk Grade-I etc.

...3.

2. The filling up of the 10% of the posts should be on seniority cum suitability basis. However, before posting the persons against 10% posts, it should be ensured that senior persons are not ignored and in case some body senior enough is not willing to be considered for these posts or he is not considered suitable for the same, he should clearly be told that he will have no claim for higher fixation of pay subsequently when he is selected for higher grade."

It appears from a careful scrutiny of the Circular that the employees desired certain specific posts by way of upgradation among certain percentage of UDCs/Senior Clerks of non-Secretariat staff who were deputed to work handling complex nature of cases and in the meeting of JCM instead of upgrading those posts it was unanimously decided that a special pay of Rs.35/- in addition to the other emoluments of such UDCs/Sr. Clerks handling such complex nature of cases be given as special pay. However, para-2 makes a proviso to this proposition that while awarding this benefit to such Sr.Clerks/UDCs the seniority and suitability should be maintained and in case of passing over any senior person, he should be specifically informed and also if one does not want to opt for this, he should be asked to express clearly about this option of not accepting this benefit.

This benefit of Rs.35/- was increased by another Circular of the Railway Board dated 5.1.89. This benefit of Rs.35/- was enhanced to Rs.70/- p.m. w.e.f. 1.1.86.

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The facts of the present case are that the applicant was a clerk enrolled in Railways on 14.7.65. However, he was taken over to the Vigilance Branch which is an ex-cadre post. In the Vigilance Branch he was posted as Sr. Clerk w.e.f. 1.9.67 and subsequently he was promoted as Head Clerk w.e.f. 23.2.87. However, the applicant was given the benefit of the Sr. Clerk promotion in the parent cadre on the Next Below Rules w.e.f. 8.1.82 and of Head Clerk w.e.f. 29.4.88. The applicant has since been working as Vigilance Inspector in the scale of Rs.1600-2660 in the Vigilance Branch.

The learned counsel for the applicant argued that the applicant came to parent department on these benefits which he has been drawing on the ex-cadre post of higher pay scale will vanish and he will be fixed in the parent cadre in the scale of Head Clerk/Welfare Inspector in the scale of Rs.1400-2300 and the respondents have notionally fixed the pay of the applicant at the level of Rs.1520/- without taking into account the special pay which has been allowed to the juniors of the applicant w.e.f. 16.10.1987 vide Annexure A-8 (Page 15 of the paper book). The applicant is also, as argued by the learned counsel, prepared to

come to the parent department and it is because of the administrative reasons i.e. working on ex-cadre post. So he should not be deprived of the special pay. The learned counsel also argued that request to this effect was also made in the year 1987 (Annexure A-9).

The learned counsel for the respondents, however, argued that the logical meaning on the basis of language used in the Circular of 11.7.79, the special pay of Rs.35/- subsequently enhanced to Rs.70/- is to be given to incumbants posted to a pin pointed post of Sr. Clerk who were handling complex matters requiring the special attention and labour. He, however, argued that the applicant being on ex-cadre post is already getting much more than he could have drawn in the parent cadre and as such there is no arbitrary or discriminatory treatment of the applicant.

I find that there is much substance in the contention of the learned counsel for the respondents. The language of this Circular of the Railway Board dated 11.7.79 clearly shows that the benefit of the pay is given to those Senior Clerks/ UDCs who were handling complex matters. By no strategy or imagination the applicant working in Vigilance Branch can be equated with these Sr.

Clerks handling such matters. Secondly, the salary paid included many segments of pay; the basic pay, special pay, personal pay, additional TA & DA and these may in particular may defer in the same code except the basic pay. If the applicant joins the parent department he may assail that discretion if he has not been fixed in the scale of pay of the post to which he ultimately joins after getting Next Below Rule promotion during his tenure in the ex-cadre post. He will also get promotion of pay at every stage of increment while his pay will be fixed in the parent cadre. Here the applicant wants that inspite of dealing those cases of complex nature he should also be given the special pay & may be right to some extent, because the circular of 11.7.79 also lays down that the grant of special pay should be strictly in accordance with the seniority cum fitness and further this special pay will form part of the emoluments drawn by the person while he gets promotion to the next higher scale and in the next higher scale the pay will be fixed after adding this special pay to the lower scale of the pay he was getting. But when a benefit has been given by a particular circular then no words can be inferred or presumed to add or subtract from that. The learned counsel, however, emphasised that in case any senior is ignored then he has to be

specifically told regarding that fact. In the present case when the applicant is working on ex-cadre post, it is sufficient indication to him that he has not worked on such a post of Senior Clerk of handling cases of complex nature.

Giving a careful consideration to all these aspects of the matter I find that the present application is devoid of merit and is dismissed leaving the parties to bear their own costs.

Sharma
(J.P. SHARMA) 26.5.92
MEMBER (J)