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CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench
NEW DELHI

C.A.No.388/1990

New Delhi, this the 3rd day of August, 1994.

HON'BLE SHRI P.T. THIRUVENGADAM, MEMBER (A)

Shri Gulshan Rai
Head Clerk (Claims Branch)
Northern Railway Claim Office,
NDCR Building, Connaught Place,
New Delhi.

..Applicant

(By Shri B.S. Mainee, Advocate)

Versus

Union of India: through

1. General Manager (P)
Northern Railway,
Baroda House, New Delhi.

2. The Chief Claim Officer,
Northern Railway,
NDCR Bldg., New Delhi.

..Respondents

(By Shri P.S. Mohindru, Advocate)

ORDER (ORAL)

HON'BLE SHRI P.T. THIRUVENGADAM, MEMBER (A)

The applicant while working as Senior Clerk in the Northern Railway (Claims Office) was absent for the period from 23-9-85 to 23-4-87. It is claimed by him that this period was covered by medical certificate. During this period he was issued promotion orders as Head Clerk on regular basis vide order dated 31-10-85 (An.A4). On reporting back to duty on 24-4-87 he was initially kept on waiting for orders and was posted in July 1987 when the period of waiting was regularised. This C.A. has been filed praying for the following reliefs:-

- (a) That this Hon'ble Tribunal may be pleased to direct the respondents to give the benefit of special pay of Rs.35/- to the applicant from the date from which the applicant had been working on pin pointed seat and thereafter fix his salary in the grade of Head Clerk giving the benefit of

Rs.35/- also while fixing the salary.

(b) That this Hon'ble Tribunal may be further pleased to direct the respondents to fix the pay of the applicant as Head Clerk in the revised scale w.e.f 1-1-1986 instead of 23-4-87.

(c) That this Hon'ble Tribunal may be further pleased to direct the respondents to treat the period from 15-6-86 to 23-4-87 as extra-ordinary leave entitling the applicant for earning annual increment.

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Considering the relief regarding the fixation of pay of the applicant as Head Clerk with effect from 1-1-1986 instead of 23-4-87 the argument advanced by the learned counsel for the applicant was that the promotion order having been issued on regular basis from 31-10-85, the applicant should be deemed to have taken over the post of Head Clerk on this date itself and accordingly given the benefit of pay fixation of the revised scale with effect from 1-1-1986 by considering his pay as Head Clerk and not as Senior Clerk. This contention was opposed by the respondents who state that the applicant remained on leave from 23-9-85 to 23-4-87 and therefore it will not be in order to grant him pay of the Head Clerk as at that time he was on leave as a Senior Clerk. On this point I agree with the stand taken by the respondents as the pay of the post cannot be claimed unless the charge of the post is taken over and the responsibilities associated with the post are discharged. Hence this relief is liable to be dismissed.

2. The next issue which was considered was with regard to the benefit of special pay of Rs.35/- to the applicant from the date from which he had been

working on pin pointed seat and thereafter fix the salary correspondingly. It is admitted that 10% of the senior-most eligible senior clerks are to be granted special pay of Rs.35/- (later revised to Rs.75/-) per month as and when they get posted to pin pointed posts and such pin pointed posts were available in large numbers. It is the contention of the learned counsel for the applicant that the applicant having been found fit for promotion as Head Clerk in October, 1985 itself would have automatically become eligible for the special pay from this date, since for promotion as Head Clerk he was the senior-most senior clerk at that point of time. If the respondents are denying the benefit of promotion as Head Clerk, they should at least give him the benefit of special pay from 31-10-1985.

3. On the other hand the respondents have averred in the reply that no junior to the applicant had been given the benefit of special pay. On perusal of records it is difficult to accept this stand of the respondents since even as per An.A9 produced by the applicant a number of his juniors have been given the benefit of special pay from 31-1-86. These juniors happen to occupy seniority positions 57 onwards as against the applicant's seniority position at serial No.50 in the seniority list produced at An.A10 to the J.A. It was argued by the ld. counsel for the applicant that the applicant should have been made eligible for special pay from the date his immediate junior at serial No.51 was given the benefit of special pay. It has not been possible for the applicant to produce the orders relating to the senior Clerks at serial No.51 to 56. Reliance was also placed on An.A7 which is a

letter written by the Chief Commercial Officer (C) to the Senior Personnel Officer of the Division and is dated 3-7-89. In this letter the Chief Commercial Officer (C) has conceded that the applicant had been working on a pin pointed seat in the old grade of Rs.330-560 without the benefit of special pay and had recommended considering the benefit of special pay vis-a-vis his juniors.

4. After perusing the records and hearing both the counsels, I am convinced that the applicant should have been considered for the benefit of special pay in the scale of Senior Clerk from the date his junior was given such benefit. Unlike posting as Head Clerk which requires physical taking over of charge and execution of higher responsibilities the special pay conventionally was being given to the senior most senior clerks against pin pointed seats, which seats were available in relatively large number. It was accepted by the Chief Commercial Officer (C) who was controlling the applicant that the post in which the applicant was functioning was one of the pin pointed seats. Accordingly, the applicant should be deemed to have been eligible for the special pay from the date any of his juniors was given the benefit of the special pay. This benefit cannot be from a date later than 31-1-1986 since even those at serial No.57 onwards have been given the benefit on this date. It will be fit and proper to direct the respondents to recheck the date from which any of the juniors to the applicant was granted special pay admissible to seniormost clerks and extend the same benefit to the applicant from this

...contd.

date.

5. As regards the relief that the period from 14-6-86 to 23-4-87 should be treated as extraordinary leave entitling the applicant for earning annual increment, it is not disputed that any sanctioned leave even on without pay basis could count for increment if the competent authority is satisfied that such leave without pay (extraordinary leave) was taken on account of illness. The learned counsel for the applicant relies on An.A.13 to the C.A. which is a notice issued by the Chief Commercial Officer (C) dated 7-11-88 to the effect that the entire period of absence of the applicant is recommended as commuted leave/L.H.A.P on medical grounds by the competent authority. It is argued by the learned counsel for applicant that ^{with} the recommendation of the competent authority the leave on medical grounds/leave without pay should count for annual increment. The respondents have argued that the medical certificate submitted by the applicant was not acceptable to them, and hence the sickness period was decided according to availability of the leave in his leave account. The respondents have expressed certain doubts about the certificate having been issued by a registered doctor. Be it as it may, the ~~various~~ recommendation by the controlling officer, namely, the Chief Commercial Officer (C) at A13 ^{is in favour of the applicant.} quoted supra, ^{Since full facts} of the case are not coming out and since it is already a delayed case, the respondents are directed to check the aspect regarding the LWP for the period from 14-6-86 to 23-4-87 as to whether it could be deemed as having been taken on account of illness and the competent authority was satisfied as required under rule 2022 (F.R.26) of the Establishment Code. The respondents are directed to take follow up action

in this regard for counting the period for the increment. In case it is decided not to treat the period of 313 days as qualifying period, reasons must be stated in a communication to be given to the applicant.

6. In the circumstances, the O.A. is disposed of with the following directions:

1. The respondents to recheck the date from which any of the juniors to the applicant was granted a special pay of Rs.35/- / Rs.70/-³ - admissible to senior-most senior clerks and extend the same benefit to the applicant from this date.
2. The respondents to check the aspect regarding the L.W.F. for the period from 14-6-86 to 23-4-87 (313 days) as to whether it could be deemed as having been taken on account of illness and the competent authority was satisfied as required under rule 2022 (F.R.26) of the Establishment Code and take follow up action for counting the period for increment. In case it is decided not to treat the period of 313 days as qualifying period, reasons must be stated in a communication to be given to the applicant.
3. The above orders must be complied within three months from the date of receipt of the orders.
7. No costs.

P. J. *Thiruvengadam*
3/8/87

(P.T. THIRUVENGADAM)
Member (A)

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