

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

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O.A. No. 2405/91  
TAX No.

199

DATE OF DECISION 9.3.1992.

<u>Shri Bharat Bhushan</u>	Petitioner
<u>Shri B.S. Mainee</u>	Advocate for the Petitioner(s)
<u>Union of India &amp; Others</u> Versus	Respondent
<u>Shri Romesh Gautam</u>	Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. T.S. Oberoi, Member (J)

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No

  
 (I.K. RASGOTRA)  
 MEMBER (A)

  
 (T.S. OBEROI)  
 Member (J)

9.3.92.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.2405/91

DATE OF DECISION: 9.3.1992

SHRI BHARAT BHUSHAN

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM:-

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT SHRI B.S. MAINEE, COUNSEL

FOR THE RESPONDENTS SHRI ROMESH GAUTAM, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE  
MR. I.K. RASGOTRA, MEMBER (A))

Shri Bharat Bhushan, the applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the sudden reduction of his salary from the level of Rs.2900/- per month to Rs.2750/ per month, without giving him an opportunity of hearing and without giving any reason for the reduction. The said reduction has been given effect from the month of August paid in September.

2. The applicant belongs to the Accounts Department of the Northern Railway which he joined as Clerk Grade II w.e.f. 1.4.1958. He was promoted as Clerk Grade I and later appeared in Appendix III/A examination in which he was declared successful on 14.12.1970. The qualification in the said examination entitled him initially to the enhanced rate of increment from Rs.8 to Rs.15 and later to a special pay of Rs.20 per month w.e.f. 1.1.1973 less the benefits which he had already got through higher rate of increment upto 31.12.1972. This special pay was available till the applicant is promoted to the next higher grade in terms of modified scheme introduced vide

Railway Board's letter No.PC-III/74/PS-3/Accounts/2 dated 29.10.1976. Since the dispute in the present case gravitates around the modified scheme of incentive provided to the accounts staff to improve their qualifications by way of passing appendix III/A examination, the said letter is reproduced below:-

"...Subject:-Incentive to Accounts Staff qualified in Appendix III Examination

....

Reference: Railway Ministry's letter No.PCIII-73/ROP-7 dated 16.4.1975.

....

The question of grant of incentives in the revised pay structure to the Railway Accounts staff who qualify in Departmental Examinations is still under the consideration of the Government in the light of recommendations made by the Third Pay Commission in this regard. In the meantime, the Railway Ministry have decided that, in supersession of the existing system of grant of enhanced increments in terms of their letter No.R(S)-I-60CPC/57 dated 10.5.1961, a special pay of Rs.20/- per month may be granted to the Clerks/Sub-Heads/ Stock Verifiers/Typists/Stenographers of the Accounts Departments on passing Appendix III examination with effect from 1.1.1973.

2. These employees who have passed/pass Appendix III examination after 1.1.1973 may be granted a special pay of Rs.20/- per month from the date following the last date of the Appendix III examination.

3. Such of the persons who had passed Appendix-III examination before 1.1.73 but had not been promoted as Section Officer (A/Cs)/Inspector of Station Accounts/ Inspector of Stores Accounts on that date would, however,

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set on 1.1.73 as special pay only such amount as is equal to Rs.20/- less the benefit that they had got through higher rate of increments (during the whole period they had been waiting for promotion upto 31.12.72). If in any case the said difference is nil or in negation, the persons concerned would not get any special pay.

4. The special pay allowed in terms of Paras 2 and 3 above will be taken into account for fixation of pay on promotion.

5. The above has the sanction of the President."

Thus the special pay of Rs.20/- p.m. was applicable w.e.f. 1.1.1973 to the employees who pass Appendix III examination after 1.1.1973 with effect from the date following the last date of the Appendix III examination. Those employees who pass Appendix III examination before 1.1.1973 but had not been promoted as Section Officer (Accounts) etc. on that date were to be paid special pay from 1.1.1973 an amount equal to Rs.20/- less the benefits they had already got through the higher rate of increments. The special pay as allowed, above was also to be reckoned for fixation of pay on promotion. Since the applicant had passed the examination on 14.12.1970 he was entitled to enhanced rate of increment upto 31.12.1972 and special pay of Rs.20/- less the benefits received through higher rate of increments w.e.f. 1.1.1973. The special pay of Rs.20/- was increased to Rs.35/- vide Railway Board's letter dated 28.4.1980. The said letter provided:-

"....Sub:- Incentive to Accounts Staff qualified in App.III examination.

. . . . .

In partial modification of the orders contained in this Ministry's letter No.PCIII/74/PS-3/Accts/2 dated 29-10-76 it has been decided by the Ministry of Railways

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to sanction special pay at the enhanced rate of Rs.35/- per month from the second year onwards of the date of passing the Appendix 3 examination to the clerks/sub Heads/Stock Verifiers/etc awaiting promotion as Section Officer(A/Cs)/Inspector of Station Acts/Inspector of Stores Acts. During the first year after passing the Appendix 3 examination, the existing rate of special pay of Rs.20/- p.m. will take effect from 22.9.79 and have the sanction of the President."

The enhanced rate of special pay of Rs.35/- was to be granted from the second year onwards of the date of passing Appendix III examination to those of the employees who had qualified in the examination but were awaiting promotion as Section Officers (Accounts) etc. During the first year after passing the Appendix III examination, however, the existing rate of Rs.20/- p.m. was allowed to be continued without any change. The said modification was given effect from 22.9.1979.

The applicant has assailed the modified instructions contained in Railway Board's letter of 28.4.1980, as discriminatory, void ab-initio on the ground that the date of implementation of the said order was arbitrary and without any nexus with the object to be achieved. These instructions are contended to be arbitrary, as those of the staff who had qualified in the appendix III examination and were promoted as Section Officers (Accounts) etc. prior to 22.9.1979 would not get the benefit of Rs.20/- per month while the staff junior to them who would be promoted as Section Officers etc. after that date would get the benefit of higher pay of Rs.35/-. Since the special pay is to be reckoned for fixation of pay on promotion as Section Officer these junior employees would be placed in a more advantageous position. He also contends that cut off date of 22.9.1979 is arbitrary and illegal. The applicant further submit that consequent upon the representation of the staff as well as recognised unions the Railway Board reconsidered the

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whole issue and issued instructions vide their letter dated 13.7.1989 which conveyed the following position:-

"(a) If the person had passed App.III Examination prior to 31.12.1971 and was waiting for the promotion for one year or less than one year, the incentive would be Rs.20/- less whatever increment(s) already granted to him earlier.

(b) If the person had passed App.III Examination prior to 31.12.72 and was waiting for promotion for more than one year, the incentive would be Rs.35/- less whatever increment(s)/incentive granted him earlier."

The applicant further contends that since he had passed the Appendix III examination on 14.12.1970 he would be entitled to higher incentive of Rs.35/- less whatever increment(s)-/incentive granted to him earlier w.e.f. 1.1.1973. He was promoted as Section Officer (Accounts) w.e.f. 1.5.1979 and he got his pay fixed w.e.f. 1.1.1979 taking the higher incentive into consideration from the Senior DAO, Ferozepur Division with arrears of pay w.e.f. 1.1.1973.

3. The pay of the applicant was refixed at the level of Rs.2750/- against Rs.2900/- in terms of Railway Board's letter dated 28.4.1980 and reaffirmed vide clarification dated 19.12.1990 that the enhanced rate of special pay/incentive of Rs.25/- p.m. will be effective only from 22.9.1979. He made various representations against reduction in his pay but these did not help.

By way of relief the applicant has prayed that the impugned action of the respondents in reducing his pay be quashed and that the respondents be directed to refund the amount already recovered from his salary, consequent to reduction of his pay.

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4. The short issue for our decision, emerging from the above is whether the applicant is entitled to draw special pay at Rs.35/- p.m. or at Rs.20/- p.m. w.e.f. 1.1.1973 or till 1.5.1979, when he was promoted as Section Officer (Accounts).

5. Shri B.S. Mainee, learned counsel for the applicant to fortify his case cited the judgement of the Principle Bench in **OA 1343/90 decided on 12.12.1991 Roshan Lal Khatri & 7 Others v. UOI & Ors.** In the said case the applicants who were U.D.C. were granted special pay of Rs.35/- vide Railway Board's letter dated 11.7.1979 w.e.f. 1.1.1985. Shri Roshan Lal Khatri & Ors., however, were promoted to the next higher grade of Rs.425-700 w.e.f. 1.1.1984 retrospectively vide order dated 20.12.1985, consequent to the restructuring of the clerical cadre. The question, therefore, arose whether the special pay of Rs.35/- would be reckoned for fixation of pay on promotion to the next higher grade retrospectively w.e.f. 1.1.1984. The issues of law and of fact in the said case are, therefore, distinguishable from the case before us and accordingly **Roshan Lal Khatri (supra)** will of no help to this case.

6. The facts of the case are not disputed by the respondents. They have, however, clarified that the Railway Board's orders sanctioning special pay at Rs.35/- p.m. were applicable only from 22.9.1979 and not from 1.1.1973. The clarificatory orders of the Railway Board dated 13.7.1989 did not give any specific date for the implementation of the said instructions and, therefore, the date of implementation of the higher incentive ramined unchanged, i.e. 22.9.1979. It is admitted that the Board vide letter dated 19.2.1990 (Annexure R-4, page 20 of the paperbook) had stated that their letter dated 13.7.1979 would have effect from 1.1.1973. However, the Board cancelled the said order vide their letter dated 22.3.1990. The said order of the Railway Board was circulated to all accounting units, including the applicant, who was working in the headquarters office as AO/WC as a gazetted officer. The respondents contend that the applicant was in

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full knowledge that the enhanced rate of special pay is not applicable in his case yet he managed to get his pay fixed on 1.2.1991 from Senior DAO, Ferozepur and got the arrears from 1.1.1973, which were not admissible. They, therefore, affirm that the pay of the applicant has been refixed correctly and he is not entitled to any relief. Further although the applicant was aware of the fact that the Board's orders of enhanced incentive are applicable w.e.f. 22.9.1979, yet the applicant was informed vide letter dated 26.8.1991, which was received by him on 27.8.1991 that the fixation done by the Sr. DAO, Ferozepur w.e.f. 1.1.1973, taking into account special pay of Rs.35/- p.m. in the fixation of his pay was wrong. This position was also confirmed by the Railway Board vide their letter dated 13.8.1991 (Annexure R-8 to the counter). Thus the question of giving him the benefit, to which he is not entitled, does not arise. The respondents further submit that the applicant was asked to intimate the number of monthly instalments in which he would like the over payment made to him to be recovered. He has chosen not to answer the said letter and, therefore, no recovery has yet been effected from him.

7. The applicant has filed a rejoinder.
8. We have heard the learned counsel for both the parties and considered the matter carefully. The main ground of attack is that 22.9.1979, i.e., the date of implementation of the higher incentive is arbitrary. The incentive was provided the accounts staff to encourage them to qualify in the Appendix III examination which not only improves their professional ability but also is a pre-requisite for promotion to the next higher grade. This incentive initially took the shape of inflated rate of increments. This matter came up for review before the Third Pay Commission but the system did not find favour with them. Consequently, the Railway Board dispensed with the system of inflated rate of increment and replaced it by a special pay of Rs.20/- p.m. This special pay was later increased to Rs.35/-

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p.m from 22.9.1979. Thus the incentive to the qualified accounts staff is not only to compensate the qualified Appendix III employees for bringing about greater efficiency with their improved professional ability but also to motivate the employees to acquire higher professional skill for undertaking higher responsibility. Keeping in view the background and the modified system, as now prevalent we are not persuaded to accept that there is an arbitrariness or illegality in improving the rate of special pay from a certain date. Since the special pay is taken into account for fixation of pay irrespective of the rate, those who are promoted prior to 22.9.1979 would never draw lower pay than those who are promoted after 22.9.1979. The question of any discrimination also does not arise, as the admissible rate of special pay is uniformly applicable to all those Appendix III A qualified staff who are awaiting promotion as Section Officer (Accounts), Inspector of Station Accounts/Inspector of Stores Accounts.

In view of the above conspectus of the case, we are of the view that the application is devoid of merit and deserves to be dismissed. Ordered accordingly. No costs.

*akl*  
(I.K. RASGOTRA)  
MEMBER(A) 9/3/92

*oberoi* 9.3.92  
(T.S. OBEROI)  
MEMBER(J)

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