

21

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI  
\*\*\*

O.A. No. 2432/91

Date of decision : 25.03.94

Hon'ble SHRI N.V.KRISHNAN, VICE CHAIRMAN (A)

Hon'ble SHRI B.S. HEGDE, MEMBER (JUDICIAL )

1. All India Railways Ministerial Staff Association, C-16/L, Lajpat Nagar, Railway Colony, N/ Delhi
2. C.M.Singh, R/o 437/11/33, Hill Colony, Dhanbad.
3. Jamal Uddin, R/o C-16/L, Railway Colony, Lajpat Nagar, New Delhi
4. A.K.Chaterji, R/o J-4/18-B, DDA Flats, Kalkaji, New Delhi-19

.... Applicants

(By Advocate Shri B.B.Ravel )

Versus

1. Union of India through The Chairman, Railway Board, Rail Bhawan, New Delhi

2. The Genl Manager, Northern Railway, Govt. of India, Baroda House, New Delhi

.... Respondents

(By Advocate Sh.R.P.Singh with Sh.R.L.Dhawan )

ORDER

(Hon'ble Shri B.S. Hegde, Member (Judicial):

The present application has been filed by All India Railway Ministerial Staff Association affiliated to the All India Railway

Employees Confederation and the office bearers  
of the Association, Ministerial staff functioning  
under the Railway Board are a part of the Central  
Secretariat Services and are governed by various  
rules and regulations applicable to the Ministerial  
Staff of Central Secretariat Service.

2. The applicants are seeking the benefit of  
special pay of Rs 35/-p.m. to the U.D.C. in non-  
secretariate administrative offices ~~for~~ for  
fixation of their pay as Head Clerks. ....  
Though they have made repeated representations  
to the competent authority, the same has not  
been acceded to. Accordingly, they have prayed  
for the following reliefs:-

(i) To direct the Respondents to allow the  
benefit of special pay in the rank of  
Senior Clerks/UDCs be counted in fixing  
up their pay in the higher rank of  
Head Clerk/Welfare Inspectors/other  
Inspectors and other similarly situated  
Ministerial Cadres from 1.1.1984  
instead of 1.9.1985 in terms of  
actual payment and the benefit so  
granted notionally earlier should be  
converted into material payment from  
1.1.1984 to 1.9.1985 with 18% interest  
till realisation.

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(ii) The Senior Clerks promoted to the rank of Head Clerks/Inspectors and other Ministerial cadres of equivalent rank be also directed to be eligible for counting of special pay for the purpose of fixation of their pay in higher rank notwithstanding the fact that they were not getting the special pay as Senior Clerks/UDCs at the time of promotion as Head Clerk or the senior ranks in the Ministerial Cadre on account of increase in the quota in the post of Head Clerk from 13% to 30% as a result of restructuring from 1.1.1984 and arrears to be paid with 18% interest till realisation.

3. The case of the applicants is that they have been denied the benefit of special pay of Rs 35/- when they have been promoted to the post of Head Clerk. As per the restructuring of the cadre with effect from 1.1.1984, the revised percentage of Head Clerks in the pay scale of Rs 425-700 came to 30% as against only 13% existing on pre-structuring date i.e. as on 31st December, 1993. Formerly, promotion as Head Clerks, used to be invariably made from those who were holding the earmarked 10% posts of

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UDC which carried the special pay. Therefore, their pay as Head Clerks used to be fixed after taking into account this special pay. However, subsequent to the restructuring w.e.f. 1.1.1984 there was a sudden increase of the posts of the Head Clerk from 13% to 30% of the total strength. As a result, not only the 10% of the UDCs/Senior Clerks who were in receipt of special pay were promoted to the next higher rank of Head Clerk but, those junior to them, who were thus not holding the earmarked 10% posts of UDC carrying special pay, were also promoted against the vacancies of Head Clerks which had arisen with the increase in the strength of Head Clerks. This gave rise to a situation where the top ~~of~~ <sup>10%</sup> of UDCs/ Senior Clerks in receipt of the special pay plus the next lot of UDCs who were not in receipt of special pay were promoted en bloc, so to say, as Head Clerks in the grade of Rs.425-700. The posts of UDC held by the top 10% of the UDCs in receipt of special pay, on their promotion, were vacated and were filled up by UDCs who were not promoted as Head Clerks, as they were not senior enough and who were junior to those promoted as Head Clerks. This, however, created an anomaly as follows:-

Those Head Clerks who were promoted while working as UDCs and getting special pay, had their pay fixed as Head Clerks by taking into account this special pay. The next lot of UDCs who were promoted as Head Clerks-like the applicants - were not in receipt of special pay

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as UDCs and, therefore, their pay as Head Clerks was fixed without taking into account any special pay. These are the persons who have a grievance and we shall refer to them as "low pay H.Cs" for short. The UDCs junior to those promoted as low pay HCs who were appointed to the 10 percent posts of UDC carrying special pay get the special pay. The anomaly is that the pay as Head Clerk of the low pay HCs is less than the pay of the junior UDCs who get the special pay on the 10% earmarked posts.

4. The basic question whether the special pay of Rs.35/- attached to the selected 10% posts of U.D.C will be taken into account for fixation was referred to arbitration and on the basis of the Award therein, the O.M. dated 27.11.1987 (Annex.A-3) was issued.

That reads as follows:-

A demand was made by the Staff side in the National Council that Rs.35/- p.m. paid to the U.D.C. as special pay should be taken into account in fixation of pay on promotion. The matter was referred to the Board of Arbitration who have decided that Rs.35/- p.m. paid to UDCs as special pay under Board's letter No.PC.III/79/SP-1/UDC dated 11.7.79 shall be taken into account for fixation of pay on promotion subject to the following conditions:-

a) that the incumbent is a substantive holder of the post to which the special pay is attached;

OR

b) that the incumbent on the date of his appointment to higher post, is officiating in the lower post to which the special pay is attached, continuously for a period of not less than three years.

2. These orders amend the previous orders of this Ministry's letter of even number dated 20.1.1980 and becomes effective from 1st September, 1985.

3. As and from 1.1.86 or the later date when the employee opts for the Revised Pay scales (1986), this special pay will cease to count for fixation of pay on promotion.

4. This has the sanction of the President."

5. The question whether the special pay of Rs.35/- granted to Clerks Grade I, designated as Accounts Assistants in the Railway Accounts Department, should be included in the "existing emoluments" for the purpose of fixation of their pay under the Railway Servants Revision of Pay Rules, 1986 was considered by the Railway Board in their letter dated 20.7.1989 (Annexure 'B'). It was mentioned therein that the Central Administrative Tribunal had allowed certain petitions and directed that the special pay of Rs.35 should be treated as part of 'existing emoluments'. Government also decided to implement those judgements. It was also decided to extend the benefit of this judgement to similarly placed persons in the Railway Accounts Department. It was, however, clarified as follows:-

"8. As a result of application of these orders, there may arise cases where juniors performing complex nature of functions in the pre-revised setup and consequently getting special pay of Rs.35/- may get their pay fixed in the revised scale at a higher stage than the seniors who were not performing the complex nature of functions and were, therefore, not getting the special pay. Such cases, if any, cannot be treated anomalous because juniors will be drawing higher pay than seniors by virtue of having performed duties of complex nature and drawn special pay. Thus, there will be no question of stepping up of pay of seniors on this account."

6. Later on, the Railway Board issued a letter dated 2.8.1989 (Annexure 'A') wherein it was clarified that in the light of the judgement rendered by this Tribunal the Ministry had decided as follows:-

".....it has been decided that pay of those UDCs who were drawing special pay of Rs.35/- in terms of this Ministry's letter No.PC III/79/SP/1/UDC dated 11.7.79 and were promoted to higher posts prior to 1.9.85 and who fulfil the conditions mentioned in this Ministry's letter No.PC III/79/SP/1/UDC dt. 27.11.87 may be refixed on notional basis from the date of their promotion by taking the special pay of Rs.35/- into account and the actual benefit may be allowed to them only from 1.9.85 without payment of any arrears."

7. Not satisfied with these decisions, the first applicant, i.e., All India Railway Ministerial Staff Association, sent a representation dated 12.11.1990 (Annexure 'C') and submitted that under no circumstances a senior member of the staff can get less pay than his juniors and it was requested that this anomaly - as outlined in para.3 - be corrected. As no reply was received, this O.A. has been filed, seeking the reliefs mentioned in para.(2).

8. The respondents have filed a reply opposing this application. It is stated that the matter was referred to the Board of Arbitration. A copy of the Award has been produced for our perusal. The reference was "Rs.35 paid to UDCs as special pay in lieu of arduous nature of duties and responsibilities should be taken into account in fixation of pay on promotion". The Award was given that the special pay attached to the post of UDC shall be taken into account for fixation of pay on promotion subject to the conditions:-

" a) that the incumbent is a substantive holder of the post to which the special pay is attached; or

b) that the incumbent, on the date of his appointment to higher post, is officiating in the lower post to which a special pay is attached, continuously for a period not less than three years.

The award shall take effect on and from 1st September, 1985."

Hence, the Annex.A3 order (reproduced in para.4 above) was issued. Thus the benefit of special pay on promotion can be given only if the special pay was actually drawn. The respondents pointed out that, admittedly, the applicants had never worked on the earmarked 10% of the posts of UDCs and were never in receipt of the special pay. The applicants cannot claim any relief without questioning the Award. They cannot now complain that this situation has arisen because there was a sudden increase in the number of promotion posts of Head Clerks and that, therefore, they got promoted to those posts without first having got the benefit of officiating on the earmarked UDC posts carrying 10 per cent special pay. It is pointed out that as a result of restructuring the number of posts of Head Clerks was increased from 13% to 30%. This, as well as the other restructuring benefits by which the number of posts in the grade of Rs.425-700 and above were increased, was possible only by reducing the number of posts of Senior Clerks, i.e., U.D.C. from 57.5% to 35%. If restructuring had not been done the applicants would have had to wait a number of years before they got promoted as Head Clerks. Therefore, they cannot complain that though their promotion to the post of Head Clerk was accelerated, yet, in that process

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they have suffered a loss in the fixation of pay as the benefit of special pay was not given to them.

9. We have heard the learned counsel for both sides. Shri B.B. Raval, the learned counsel for the applicants states that it is no fault of the applicants that such a situation had arisen. Their only complaint is that while promotion has, no doubt, been given to them they find that, even after promotion, they are receiving lesser emoluments than some of their juniors who are now holding the earmarked posts of UDCs carrying special pay. Hence, they claim that, in fixing their pay as Head Clerk, the special pay of Rs.35/- should be taken into account. It is clarified that this is not a case of stepping up of the pay, to make it equal with that of juniors. The applicants have also a case that those UDCs drawing special pay and promoted as Head Clerks are drawing more pay because the special pay of Rs.35/- was taken into account in fixing their pay. The applicants are 'low pay Head Clerks' because in their case no special pay was taken into account. This has resulted in discrimination though both categories are working as Head Clerks. Hence, the claim that the special pay should be taken into account is also made on the principle of 'equal pay for equal work'.

10. On the contrary, the respondents contend that the circumstances in which the special pay of Rs.35/- attached to specified 10% posts of UDCs can be considered for fixation of pay on promotion have been finally decided by the Award of the Arbitration (vide para 4 supra) on the basis of which (Annexure A-3) the instruction dated 27.11.87 was issued. Its benefit was extended to others who too worked in the specified

posts of UDC carrying special pay and were promoted vide the Railway Board's letter dated 2.8.89 (Annexure A) and 20.7.89 (Annexure B) dealt with in para 5 and 6 supra. The applicant had never drawn the special pay. Therefore, they cannot claim that the special pay should be taken into account in fixing their pay on promotion as Head Clerks.

11. We have considered the rival contentions advanced by the parties. It is useful to recollect that restructuring was done by the order dated 16.11.84 (Annexure R-1). The applicants have not indicated the dates on which they were actually promoted. It must, however, have been soon after the Annexure R-1 letter was issued. The promotions were given effect to from 1.1.84. An important point that is relevant is what instructions were applicable to pay fixation at that time. A reference to Swamy's Compilation of F.R. S.R. Part-I, 10th Edition clarifies the position. In the Government of India's orders listed under F.R 22-C, there is one letter of the Ministry of Finance Dated 18.6.1980 addressed to T.V. Anandan, National Council of J.C.M., Madras which clarified how the special pay granted

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to UDCs would be dealt with on promotion. That letter is reproduced below:-

"(12) Treatment of special pay granted to U.D.Cs. in non-Secretariat Administrative Offices on promotion.--(a) The special pay granted to U.D.Cs under the provision contained in Ministry of Finance, O.M. No.F.7(52)-E.III/78 dated 5.5.1979 (G.I. Order (16) below F.R. 9(25) is not in lieu of higher scale of pay, but it is intended for complex and important (arduous) nature of work performed by them. This special pay cannot be treated as part of pay for fixation of pay on promotion to higher post. However, it can be protected by grant of personal pay equal to the difference between pay plus special pay drawn in the lower post and the pay fixed in the higher post on the basis of pay in lower post, subject to the following conditions:-

- (i) It must be certified that but for his appointment to the other post, the Government servant would have continued to draw the special pay.
- (ii) The protection will be for so long as the Government servant would have continued to draw the special pay.
- (iii) The personal pay will be absorbed in subsequent increase of pay."

12: It may also be noted that it is this letter which became the bone of contention between the staff side and the Management, which ultimately led to reference No.4/85 to the Board of Arbitration referred to above.

13. Therefore, when promotions of the applicants were actually made to the posts of Head Clerk after 18.11.84, (i.e., after the issue of orders of restructuring by the Annexure R-1 letter) they should have noticed that, in so far as they were concerned, they were suffering even then, from both the anomalies about which they have voiced their grievances in the present O.A., viz. that their seniors who were getting the special pay as UDCs and who were promoted as Head Clerks were in receipt

of personal pay while no personal pay was being given to them and that further, other juniors not ripe for promotion as Head Clerks, were holding the posts of UDCs with special pay, as a result of which they would have been drawing more pay than the applicants. Thus, as a matter of fact the grievance in this regard had arisen as early as in 1984 itself. The applicants ought to have sought relief from the appropriate forum at that stage itself. The Annexure R-4 decision, based on the Arbitration Board Award only accentuated their grievance. Nevertheless, we have carefully considered the grievance raised by the applicants on merits.

14. Before we proceed further, we have to consider the argument that the applicants cannot claim relief, without first challenging the Arbitration Award. We are unable to agree. The Award only decided the issue whether the special pay, if drawn, will count for fixation of pay on promotion. What the applicants seek is that though they did not draw the special pay in the circumstances set out above, yet they should be given the benefit thereof on promotion as Head Clerks. This was not a matter referred to the Board of Arbitration.

15. We notice that it is only subsequent to the issue of the Annexure A-3=R.4 instructions dated 27.11.87, that special pay was taken into account for fixation of pay on promotion. This was given effect to from 1.9.85 to begin with. However, when persons promoted prior to 1.9.85 and who were in receipt of the special pay as UDCs on the date of their promotion felt aggrieved by this decision, they obtained orders of the various Benches of the Tribunal in their favour. Therefore, the benefit of Annexure A-3 memorandum was given to them also vide Annexure 'A' letter dated

2.8.1989 of the Railway Board from a notional basis from the date of their promotion prior to 1.9.85, with financial benefits limited from 1.9.85.

16. We can now see the grounds in paras 5 of the O.A. on which the same benefit is claimed by the applicants, who, admittedly were never in receipt of the special pay, before they were promoted as Head Clerks. These are as follows:-

- i) It is because of the restructuring that large <sup>10% posts of</sup> number of Head Clerks were created to which the applicants came to be promoted, when they were not holding the posts of UDC carrying special pay.
- ii) Railway Board agreed to count the special pay in the fixation of pay of persons who were promoted prior to 1.9.85, while drawing the special pay (Annexure A).
- iii) The UDCs who were far junior to them, and who would normally have not been appointed to the 10% posts carrying special pay, came to hold these posts directly because of the restructuring and thereby started getting more emoluments than the applicants as Head Clerks.
- iv) It is settled law that when a junior gets more pay than his senior, the pay of the senior has to be stepped up. Requests for stepping up the pay to the level of juniors have been repeatedly made but to no effect.

17. The applicants cannot have any grievance against restructuring. For, but for that decision and the large scale benefits conferred on all grades of employees, the applicants could never have been promoted as Head Clerks, as rightly pointed out by the respondents.

As pointed out in para 13 supra, the grievances of a nature, similar to what they ventilate now, existed even on the date of their promotion, when they did not get the benefit of any personal pay. Probably, they did not bother about it as it was ephemeral in nature as the personal pay, on promotion, granted to only those who were getting special pay as UDCs when they were promoted, was to be absorbed in future increments. That position changed with the Award of Arbitration and the order dated 27.11.87 (Annexure A-3) because the special pay is to be taken into account for fixation of pay on promotion. Therefore, the only question is whether this circumstance or the resultant difference in the pay of seniors who are Head Clerks and juniors who are UDCs getting a special pay gives any right to the applicants to claim that their pay as Head Clerks should also be fixed by taking the special pay into account when they had never received it. All the grounds taken boil down to this only.

18. It has to be remembered, that, the Ministry of Finance had decided as early as in 1980 itself (para 11 supra) that the special pay attached to the 10% posts of UDCs ~~taken note of and~~ will, on promotion of the incumbent, be ~~adjusted~~, to the extent necessary as personal pay only, to be absorbed in future increments. It is the Award of Arbitration that forced the Ministry of Railways to issue the Annexure A-3 letter dated 27.11.87 stating that the special pay will be taken into account on promotion in the two situations mentioned therein. From a perusal of the Award, a copy of which has been filed before us, it is seen that the official

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side brought to the notice of the Arbitration the same problem which the applicants have brought before us today. It was stated by them as follows:-

"Moreover, if special pay is taken into account for the purposes of fixation of pay on promotion, it is likely that this may create administrative difficulties in that the senior UDC who did not happen to get special pay, may get less pay on promotion than his Junior who got the special pay as UDC."

Yet, the Board of Arbitration did not give any award to solve this problem, which was found to arise. Probably they did not feel that they were required or authorised to decide this issue. This is the view we have taken in para 14 supra.

19. It is, therefore, understandable that the respondents do not countenance such a claim. We can concede this claim only if we find that the applicants have a right in this behalf in the circumstances described above.

20. This Tribunal has allowed the claims of persons who were in receipt of special pay, but were promoted before 1.9.85 that, nevertheless, they were also eligible for the benefit of the Annexure A-3 letter (vide para 6 supra). It has also been held that the special pay, if drawn, shall be treated as part of the 'existing emoluments' for fixation of pay under the Railway Servants Revision of Pay Rules, 1986. Thus the benefit claimed - whatever be its nature - was allowed only when the special pay was actually drawn. *Per contra, M.Gajamohan & Others vs. Secretary, Department of Telecommunications (1993 (23) ATC 915)* is a decision of the Madras Bench of the Tribunal where a similar claim by persons promoted before 11.7.79, i.e., when special pay was first attached to the 10% posts of UDCs (vide Annexure R-2) was rejected, because at the time of promotion, they were not in receipt of special pay. The case of the applicants too has to be disposed of in the same manner.

(b)(i)

21. It would have been a different matter if the recruitment rule had a provision in this behalf. Admittedly, it is not the case of the applicants that the recruitment rules provide that promotion to the grade of Head Clerks will be only from the post of UDC or Senior Clerk which carries a special pay of Rs.35. There is no such provision in the recruitment rules. If there had been such provision one could have argued that when mass promotions took place simultaneously to the rank of Head Clerk, it was impossible to promote UDCs first to the posts of UDC carrying special pay and then to the posts of Head Clerk and that, therefore, on promotion as Head Clerks the benefit of the special pay should nevertheless, be given. That claim could have been justified on the ground that the UDCs post with special pay was the feeder category post.

22. The other question is whether the claim can be sustained on the principle of 'equal pay for equal work'. Conceptually, this question should not arise because the applicants are Head Clerks and the persons with whom they compare themselves are only UDCs in the lower grade of pay. The question of their doing <sup>equal</sup> ~~equal~~ <sup>work</sup> cannot arise at all. What seems to be urged is that even though, admittedly, the UDCs are discharging work which, entitle them under the rules to a lower pay scale than the applicants, and are also juniors of the applicants, yet, they draw more pay than the applicants. Hence the claim is made. We find no merit in this ground. <sup>the case that</sup> It is not UDCs get more emoluments as pay in the lower pay scale though they are juniors. The allegation is that they get more emoluments because they also get a special pay in addition to pay. That is because of the fact that, as UDCs, <sup>duties</sup> they are discharging on posts specially identified as having to do with complex nature of work and involving arduous duties for which a special pay is attached to

those posts. If in such a circumstance, a junior UDC gets more emoluments than a senior UDC promoted as Head Clerk, neither hostile discrimination nor violation of the principles of 'equal pay for equal work' can be alleged.

23. In the grounds raised by the applicant in para 5 of the OA, it is not urged that, because persons senior to them as UDCs, while drawing the special pay of Rs.35/-, were promoted as Head Clerks w.e.f. 1.1.84 as a result of restructuring and have got their pay as Head Clerks fixed under the Annexure 'A' circular dated 2.8.89, taking into account the special pay, are drawing higher pay than the applicants, who did not receive such benefit, though both groups are discharging the same duties ~~and that~~ this is discriminatory. They refer to the promotions of seniors in para 5(G) but have not raised any ground that equal pay is denied to them though they do equal work as their seniors. In fact, in para 5 (L), the ground urged is that it is settled law that when the junior official is getting more pay than his senior, the pay of the senior has to be stepped up and brought on par with that drawn by the immediate junior. Hence, nothing need be said on this aspect of the difference in emoluments.

24. That leaves the question of stepping of the pay to the level of the junior UDCs which figures prominently in the grounds for relief but does not figure in the relief sought. In fact, in the rejoinder also it is reiterated in the following words in para 4.3.2 that the applicants do not claim stepping up:-

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 "because the applicants are not seeking stepping up of pay, but are only seeking the benefit of protection of pay and equal pay for equal work and refuse to fall prey to a situation not of their creation, but wherein willy-nilly by an operation of the process called restructuring, they were put on the promotion zone and were in fact promoted, but in the process, pushed out of the special pay which was paid to their juniors."

Nevertheless, we dispose of this ground by shortly stating that stepping up is conceivable only when the claim is rested on the ground that the junior, with whom the comparison is made, is also holding a post on the same pay scale and that in the lower grade there was no such anomaly similar to the <sup>claim</sup>ant. That is not the ground here. The ground is that 'Low pay Head Clerks' got less pay than junior UDCs who get special pay of Rs.35/- (now Rs.70/-) on the 10% identified posts. They are not comparable as they are working on the same posts. Further, in the lower grade they were not drawing same pay. Thus, the principle of stepping up stands ruled out because both the conditions mentioned above are not satisfied.

25. That leaves for consideration the judicial authorities relied upon by the parties.

26. We notice that the earliest judgement which deals with the same issue is the judgement dated 13.2.92 of the Madras Bench of the Tribunal in OA-173/90 and batch of cases - V.T. Venkatarathinam & Others Vs. U.O.I. relied upon by the respondents. In that decision, this matter has been dealt with in great detail and it was found that the applicants had no case.

27. In para 15 of that judgement a reference has been made to the letter dated 31.10.88 of the Railway Board declining the request to step up the pay to the level of juniors. That letter is at Annexure R-5 and is reproduced below:-

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"Sub: Reckoning of Special Pay of Rs.35 to Upper Division Clerks in the non-secretariat Administrative Office for the purpose of fixation of pay on promotion.

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Please refer to this Ministry's letter of even number dt. 27.11.1987 on the above subject. In connection with Board's letter quoted above, references have been received from Zonal Railways

for stepping up of pay where a CG-I drawing a special pay of Rs.35 on promotion as Sub-Head prior to 1.9.1985 to 31.12.1985. The matter has been examined in consultation with Ministry of Finance and it is clarified that stepping up of pay is not allowed in such cases.

The judgement held that that the said letter was not relevant because that dealt with cases of employees who had drawn special pay but promoted before 1.9.85. In addition, prayer for stepping up had not been made. Therefore, it did not go into the question whether that decision was correct or not.

28. We have only to point out that this issue was considered in various applications and the claim was allowed - not for stepping up - but for taking into account the special pay in fixation of pay on promotion made before 1.9.85 when the special pay was being drawn. Therefore, the Railway Board issued revised instructions on 2.8.89 (Annexure A), extracts of which are reproduced in para 6.

29. We notice that the applicants before the Madras Bench raised the ground of discrimination between them and their seniors, who as Head Clerks too their pay fixed by taking into account the special pay which they were drawing as UDCs. We have not dealt with this issue, because, as pointed out in para 23, it is not a ground relied upon for the reliefs sought. The Madras Bench has <sup>mis</sup>discussed this allegation after a detailed consideration in paras 19 and 20 of their judgement, we respectfully agree with that conclusion.

30. In para 23 of their judgement, the Madras Bench refers to the arguments of the respondents that, if the applicants therein were so concerned about the less pay they would get on promotion as Head Clerks, as compared to those junior UDCs who would occupy the posts of UDCs to which the special pay was attached,

it was open to them to decline promotion and opt for being appointed to the posts of UDC carrying special pay. The Bench had found some merit in this contention. We have to observe that when promotion was made in 1984 or 1985, after restructuring, there was no question of special pay being taken into account for fixation of pay on promotion. The question of option was not a serious matter, because, as pointed out in para 17 supra, the only benefit then available was grant of personal pay to protect total pay drawn on the lower post, which was to be absorbed in future increments.

31. In all other respects, we entirely agree with the decision rendered by the Madras Bench.

32. We now consider the judgement of the Allahabad Bench in OA-286/89 - R.P. Katiyar & Ors. Vs. U.O.I. & strongly relied upon by the applicants Ors. A copy of that decision has been produced for our perusal and is kept on record. We have perused the decision. It, undoubtedly, is a matter similar to the O.A. under our consideration. That decision was rendered on 5th May, 1992 by the Hon'ble Vice-Chairman, sitting as a Single Member Bench. The operative part of that decision is as follows:-

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".....Those who were not drawing special pay of Rs.35/70 were not entitled for the benefit of this fixation of pay in Higher grades. This matter has engaged the attention of this Tribunal earlier also after referring various other decisions of this Tribunal. We have taken the view in OA No.87 of 1991 Hari Saran Shankar Srivastava versus Union of India and others decided on 25.3.1992 in which it has been held that this benefit cannot be denied by the applicant also and there is no intelligible differential that qualifying persons are promoted and not after a particular date. Consequently, it was directed in this case that respondents shall give a benefit of special pay of Rs.35/- on notional basis to the applicants and this special pay of Rs.35/- shall be taken into account in the fixation of pay from the date of promotion to the Higher post. This application is allowed in terms of very same directions in the above case

and the respondents are directed to do the same within a period of two months from the date of communication of this order."

33. The earlier decision of the Tribunal in OA-87/91 referred to therein has not been produced for our perusal. The learned counsel for the applicants has also produced the letter of the Railway Board dated 24.7.1992, communicating the decision of the Government not to file an appeal in the Supreme Court against that judgement.

34. With great respect we are unable to endorse the learned Single Member Bench's decision rendered in Katiyar's case for the reason that it is not clear to us on what grounds that decision was rendered. Copy of the judgement in the earlier OA-87/91 referred to therein has not been produced before us. Further, though this judgement was delivered on 5th May, 1992, there is no reference therein to the Division Bench's judgement of the Madras Bench dated 13th February, 1992 in OA-173/90 and batch of cases, referred to above, which has considered the question in great detail. In the circumstances, we see greater force in the conclusions of the Madras Bench with which we respectfully agree.

35. The only judgement left for consideration is that of the Hyderabad Bench dated 4.3.93 in OA-192/90 - Thriambaka Rao & Others vs. U.O.I. & Ors. referred to us by Shri B.B. Raval after the case was closed for orders. In so far as the prayer therein that the applicants should, on their promotion as Head Clerks after restructuring, should be given the benefit of the special pay in the fixation of their pay as Head Clerks is concerned, that OA is similar to the present application. That prayer was rejected by the Bench. In another respect that OA is dis-similar. For, there was a specific prayer of

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stepping up, not with reference to juniors still working as UDCs on specified posts and drawing special pay, but with reference to the pay of those juniors after they were promoted as Head Clerks, which was fixed after taking the special pay into consideration. The prayer for stepping up was allowed in that case. As stated above, there is no such case made out by the applicants in the OA and they have not asked any stepping up on the ground that their erstwhile juniors in the lower cadre of UDCs are now drawing more pay as Head Clerks, though promoted later. Hence, we find that the decision of the Hyderabad Bench has no application. Nevertheless, we have to point out that this decision does not give any consideration to the question whether the applicant and their juniors were drawing the same pay in the lower grade also when they were respectively promoted and what effect this should have on the claim.

36. For the foregoing reasons we find no merit in this O.A. It is, therefore, dismissed. No costs.

*B.S. Hegde*  
(B.S. HEGDE)  
Member(J) 25/3/91

*N.V. Krishnan*  
(N.V. KRISHNAN)  
Vice-Chairman(A)  
26/3/91

'Sanju'