

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

O.A.No.38 of 1992

Date of Decision: 30-04-93

P.N.Sharma & anotherApplicants.

Versus

Union of India & othersRespondents.

CORAM:

The Hon'ble Mr. J.P.Sharma, Member(J),

The Hon'ble Mr. S.R.Adige, Member(A)

For the applicant: Shri B.S.Mainee, Counsel.

For the respondents: Shri Ramesh Gautam, Counsel

JUDGMENT

(Hon'ble Mr.S.R.Adige, Member(A)

This is an application dated 26.12.91 under Section 19 of the Administrative Tribunals Act filed by P.N.Sharma-Assistant Divisional Accounts Officer, Northern Railway, Ferozepur and one other impuging Order No.37/Admn/A/6/3 dated 27.11.91 (Annexure-A1), passed by F.A. & CAO, Northern Railway, New Delhi refixing the applicants' salary as per Railway Board's instructions and rejecting their request for exempting them from any recovery, but observing that the applicants are free to make a fresh representation to the Railway Board.

2. The applicants were appointed by the Northern Railway on 13.11.58 as C.G.Grade-II and were promoted as C.G.Grade-I in September, 1962. In accordance with the Railway Board's instructions, the UDCs, who passed the Appendix III/A Examination, were entitled to enhanced rate of increment from Rs.8/- to Rs.15/- per month which subsequently vide Railway Board's Circular dated 29.10.76 (Annexure-A2) was converted into a special allowance of Rs.20/- per month minus the amount of enhanced increment

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already drawn w.e.f. 1.1.73. This incentive was allowed to the staff who had passed Appendix-III/A Examination but were waiting for promotion to the post of Section Officers. The applicants passed their Appendix-III/A Examination in December, 1970 and were granted the enhanced rate of increment as per the aforesaid instructions. Subsequently, vide Railway Board's letter dated 26.4.80, (Annexure-A-3), it was laid down that in modifications of the order contained in the Railway Board's letter dated 29.10.76, it had ^{AM} been decided to sanction special pay of Rs.35/- per month from the second year onwards of the date of passing the Appendix-III/A Examination. During the first year after passing the said examination, the existing rate of special pay of Rs.20/- per month ^{would AM} ~~would~~ continue without any change and the said order ^{would AM} ~~would~~ take effect from 22.9.79. The concerned staff contested this order on the ground that the staff, who had been promoted prior to 22.9.79, would not get the benefit of special pay of Rs.35/- p.m while the junior staff, who were promoted as Section Officers after 22.9.79, would get the benefit of higher pay. Thereupon the Railway Board reconsidered the matter and by their order dated 13.7.89 (Annexure-A4) clarified that if a person had passed Appendix -III Examination prior to 31.12.72 and was waiting for promotion for one year or less than one year, the incentive would be Rs.20/- per month, less whatever increment already granted to him earlier, while a person, who had passed Appendix-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/incentive granted him earlier. Accordingly, the

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applicants were given the benefit of Rs.35/- per month from 22.9.79 and their pay was fixed accordingly. Subsequently, vide respondents' letter dated 26.8.91 (Annexure-A5), it was clarified that the enhanced rate of special pay/incentative of Rs.35/- p.m. will be effective only from 22.9.79 and the question of notional fixation of pay from a date prior to 22.9.79 does not arise. The applicants represented against this order in October, 1991 (Annexure-A7) to which they received an impugned order dated 27.11.91 rejecting their representation, and it is against that impugned order that the applicants have now come before this Tribunal.

3. The respondents have contested the application and have pointed out that besides the application is being ^{pre M} ~~immatured~~, inasmuch as the applicant has not exhausted the departmental remedy ^M ~~for~~ ^{M/A} making representation, the case is fully covered by the decision of the Principal Bench of Central Administrative Tribunal dated 9.3.92 in O.A.No.2405 of 1991 titled 'Bharat Bhushan Vs. Union of India & others' (Annexure-R1). A perusal of the said judgment dated 9.3.92 ^M ~~clearly~~ ^M ~~rejecting the O.A.~~ shows that the issues, raised in the present case and in the case of Bharat Bhushan Vs. Union of India, are identical. In paragraph 8 of the judgment, it was observed as follows:-

"We have heard the learned counsel for both the parties and considered the matter carefully. The main ground of attack is that 22.9.79, i.e. the date of implementation of the higher incentive is arbitrary. The incentive was providing the accounts staff to encourage them to qualify in the Appendix III Examination on 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

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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/- p.m. from 22.9.79. 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."

4. In the facts and circumstances of this particular case, we see no ground to take a different view. Incidentally, the appln. No.2081/91 for review of the said judgement was also rejected on 5.8.92.

5. Before concluding, we may refer to an argument, advanced by the learned counsel for the applicant, that as a result of the admissibility of special pay/ incentive of Rs.35/- p.m. only from 22.9.79, juniors are drawing lesser pay than those senior to them. In the judgment dated 9.3.92(Supra), it has been observed that 'since the special pay was taken into account for fixation of pay irrespective of the rate, those who were promoted prior to 22.9.79 would never draw lower pay than those who were promoted after 22.9.79. No convincing case has been made out by the learned counsel for the applicant to establish that those juniors to the applicants would be drawing higher pay than them. Under the circumstances, this ground must also fail.

6. In the result, the impugned order warrants no interference and this application is accordingly dismissed. No costs.

S.R. Adige
(S.R. ADIGE)
MEMBER(A)
(ug)

J.P. Sharma
(J.P. SHARMA) 3.4.92
MEMBER(J)