

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 858 of 1993

Allahabad this the 9th day of July 1996

Hon'ble Dr. R.K. Saxena, Member (Jud.)

Vinod Kumar Gupta, Retired Office Superintendent (Electrical) Under Chief Electrical Engineer, Central Organisation, Railway Electrification, Allahabad.

APPLICANT

By Advocate Sri R.P. Srivastava
Sri P.K. Kashyap.

Versus

1. The Union of India, through the General Manager, Railway Electrification, Allahabad.
2. The General Manager (P) Railway Electrification, Allahabad.
3. The Divisional Railway Manager (P), N.E. Railway, Varanasi.

RESPONDENTS.

By Advocate Sri Himanshu Tiwari proxy to
Sri Amit Sthalekar.

O R D E R

By Hon'ble Dr. R.K. Saxena, Member (J)

This is an application moved under Section 19 of the Administrative Tribunals Act, 1985 seeking a direction to the respondents to pay him the same benefits which ~~was~~ ^{is} allowed to his juniors by way of giving special pay of Rs.35/- and to re-fix his subsequent pay after adding the said special pay.

2. The facts in brief are that the applicant

was appointed as Lower Divisional Clerk (herein after referred as L.D.C.) on 22.6.55 under the respondents. He was promoted as Senior Clerk on 01.10.1962 and was confirmed on the said post of Senior Clerk on 01.10.1963. Subsequently, he was sent on deputation to Railway Electrification on his present pay and grade. He resumed ^{the charge of} deputation post on 01.5.1980. Noudoubt, the applicant was sent on deputation but his lien continued in the office of Divisional Railway Manager, Varanasi. He was promoted as Head Clerk and, thereafter, as Office Superintendent Grade II by the orders of the Divisional Railway Manager. Again he was promoted as Office Superintendent Grade I by the Divisional Railway Manager with effect from 28.12.1988.

3. While the applicant was on deputation at Allahabad, his seniors as well as the juniors in the parent department and cadre, were allowed special pay of Rs.35/- and subsequently that special pay was taken into account for fixation of pay of Head Clerk in the grade of Rs.425-700 and the benefits continued thereafter on other promotional posts. The applicant could come to know of this advantage which was given to even his juniors and denied to him, only on 25.11.1991. He, therefore, gave representation but was rejected on the ground that at the relevant period of time, he was not posted in the parent department. Hence, this O.A. with the reliefs disclosed above.

4. The respondents contested the case on several grounds. It was admitted that the applicant was transferred to Railway Electrification, Allahabad in the capacity of Senior Clerk. It is also admitted that the applicant was promoted as Head Clerk in the Varanasi division but, he (applicant) had refused to go back as Head Clerk in Varanasi division. He was, however, promoted as Office Superintendent Grade II in the office of Senior Divisional Electrical Engineer but the applicant was not spared and thus, he did not join the post. It is also admitted that the applicant was given further promotion of Office Superintendent Grade I and the actual benefit was given only on ~~bf~~ his assuming the charge of higher responsibilities.

5. As regards the payment of special pay of Rs.35/-, list of seniors and juniors has been given. According to this list, the applicant was at sl.no.4 and S/ Shri Ram Deo Prasad, Jagdish Ram and Parmanand Prasad were seniors to him at sl.no. 1, 2 and 3 while Dinesh Pandey was junior and at sl.no.5. It is admitted that S/ Shri Jagdish Ram and Parmanand Prasad were facing charge of major penalty and therefore, they were de-barred from giving the benefit. It was, however, given to Sri Dinesh Pandey at sl.no.5 as a Stop Gap arrangement to meet the needs at ^{like} local level. Thus, the benefit was temporarily given to Sri Dinesh Pandey and was withdrawn with effect from 08.9.1983 as soon as Jagdish Ram regained eligibility. It is further averred that the applicant could not be allowed the benefits of special pay in the Railway Electrification

because of the posts were ex-cadre posts. It is also said that principles of Next Below Rule was applicable only in the cases of regular promotion but, not otherwise. It is, therefore, urged that there is no force in the O.A.

6. The applicant filed rejoinder reiterating the facts as were mentioned in the O.A.

7. I have heard the learned counsel for the applicant and the respondents. The record is also perused.

8. The main question in this case is whether the applicant was entitled for special pay of Rs.35/-, while he was on deputation. In this connection, my attention has been drawn towards the relevant letter annexure A-10 which deals with grant of special pay of Rs.35/- to the Upper Division Clerk in the Non-Secretariat Administrative offices. A reading of this letter makes it clear that the Committee of National Council (JCM) which was set-up to consider the request of the staff side about the certain ~~period~~ ^{percentage} of Upper Division Clerks in the scale of Rs.330-560 in the Non-Secretariat ^{which} Administrative Offices, to be benefited; and had recommended that the Upper Division Clerks were handling cases of complex nature involving deep study and competence, a certain percentage which resulted in 10 percent of the posts of Upper Division Clerks to be upgraded to the grade of Assistants

in the scale of Rs. 425-800. Thereupon, this letter was issued in which the President was pleased to decide that Upper Division Clerks, Senior Clerks in the Grade I in the scale of Rs.330-560 in the Non-Secretariat Administrative Offices, may be granted a special pay of Rs.35/- per month. The restriction imposed was that the total number of such post should be limited to 10% of the posts of Senior Clerks in the scale of Rs.330-560 and these posts should be identified. The procedure for filling up of the 10% of the post was given on Seniority-cum-Suitability basis. It was specifically mentioned that before posting the persons against 10% posts, it should be ensured that senior persons are not ignored and incase somebody senior enough is not willing to be considered, he should be clearly told that he would have no claim for higher fixation of pay subsequent subsequently when he is selected for a higher grade. It is, therefore, clear that the allowance of Rs.35/- was given to 10% of the posts of Senior Clerks on the basis of Seniority-cum-Suitability. The counter-reply which has been filed by the respondents nowhere suggests that the applicant was not a suitable candidate. The mere fact that he was on deputation, will not debar him from being considered for the special pay, particularly when he was promoted everytime by the parent department although he continued to be on deputation. The annexure A-10 further makes it obligatory that senior persons should not be ignored unless they were unwilling for the

post. Even unwillingness having been shown by such Senior Clerks, it was required to have been disclosed to them that they would have no claim for higher fixation of pay. Subsequently ~~when~~ they were selected for higher grade. The idea was that this special pay of Rs.35/- was to be merged in the pay for determination of the salary in the higher grade. This is the material benefit and a person cannot be deprived unless he is made to understand all the consequences thereof. In this case, there is no such averment that the applicant was ever considered for this special pay and was ever made aware of the benefit not being given in fixation of pay. On the other hand, it transpires that the applicant had moved representation as soon as he learnt that the special pay was allowed to his juniors. It is admitted by the respondents that Shri Dinesh Pandey was given this special pay but it was subsequently withdrawn. The contention of the applicant on the other hand, is that not only Shri Dinesh Pandey but, others were also given the said benefit.

9. On the consideration of these facts, I hold the view that non-consideration of the applicant for this special pay of Rs.35/- was violative of the principles of natural justice. He should have been considered and informed about the consequences either to continue on deputation and forgo

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the benefit of the special pay or to take decision about his coming back to the parent department.

In case any junior to the applicant was given special pay which was subsequently merged in the salary of higher grade, the case of the applicant should be considered therefor. The applicant cannot be deprived atleast the notional benefit so that whenever he gets the higher scale, he may not be denied the benefit of this special pay. The O.A. is decided accordingly. No order as to costs.


D. B. Dabney
Member (J)

/M.M./