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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

(THIS THE 4th DAY OF Feb 2011)

Hon'ble Dr.K.B.S.Rajan, Member (J)
Hon'ble Mr. S.N.Shukla, Member (A)

Original Application No. 1466 of 2002
(U/S 19, Administrative Tribunal Act, 1985)

Paras Nath Rai,
Son of Late Hari
Murat Rai, resident of Janki Puram,
Sector-I, House No. M/99, Lucknow.

..... Applicant

Present for Applicant: *Shri R.K. Pandey, Advocate*

Versus

1. The Union of India,
Through the General Manager,
N.E. Railway, Gorakhpur.
2. The Divisional Railway Manager,
North East Railway,
Varanasi.

..... Respondents

Present for Respondents: *Shri K.P. Singh, Advocate*

ORDER

(Delivered by Hon. Dr. K.B.S. Rajan, Member-J)

The facts of the case are that in terms of the
Railway Board's letter dated 11.7.1979, special pay of

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Rs.35/- was granted to the senior most Clerks who were carrying discernible duties and responsibilities of complex nature, higher than those normally expected of senior clerks, and CEE in consultation with financial Advisor, approved the duty list of Senior Clerk carrying on discernible duties and responsibilities of complex nature vide Annexure A-2.

2. One identified post of Senior Clerk carrying on discernible duties and responsibilities had fallen vacant on 6.10.1983. The applicant was the senior most clerk as on that day and as such he was due and entitled for the said special pay of Rs.35/-. Instead of giving applicant the said special pay of Rs.35/- he was temporarily promoted as Head Clerk for a period of 13 months only against a work charge post. This was done to deprive the applicant of the benefit of Rs.35/- and with a view to favouring his junior one Shri Ram Lal Ram. The applicant was further promoted as Office Superintendent in the grade of Rs.1600-2660 on 27.1.1987 and Office Superintendent-I in the grade of Rs.2000-3200 on 1.6.1990. The denial of Rs,35/- has resulted in heavy loss to the applicant as Sri Ram Lal Ram who is junior to the applicant is getting more than applicant. Due to the revised pay of junior in the grade of Rs.1600-2660 which became inflated to Rs.2050 on 27.1.1987, while

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the applicant's pay remained at Rs.1900/- on 17.1.1987. The applicant filed a representation dated 10.12.1993 Annexure A-6. The applicant had to file original application No.486 of 1999 and this Hon'ble Tribunal was pleased to quash the order dated 30.9.1983 and directed the opposite parties to re-examine the matter and pass fresh order. The court had also remarked that immediate senior to the applicant was granted special pay from 10.12.1980 to 1.9.1983, he was also promoted on 6.10.1983. The applicant was the next claimant to get the special pay and before he was promoted on 6.10.1983, at least in one month he would have been paid special pay of Rs.35/- on which post he was entitled for fixation of pay in the next grade.

3. The respondents instead of giving special pay to the applicant gave it to Ram Lal Ram who was junior and thus injustice has been caused to the applicant. Annexure A-9 refers. The Divisional Railway Manager, passed fresh order dated 23.4.2002 by which he rejected the claim of the applicant for being paid the special pay.

4. Respondents have contested the O.A. According to them, Annexure A-2 which has been annexed by the applicant itself shows that the special pay of Rs.35 is given

to the senior most Clerk of Electrical Department, who was doing specialized and complicated nature of serious matters. The vacancy of Head Clerk in the pay scale of Rs.425-700/- was available and as such the applicant was promoted to Head Clerk from the date vacancy was available. The applicant was promoted to a work charged post for 13 months only against specified sanctioned period and after the completion of said period applicant was to be reverted but due to extension of work that post became permanent. The applicant was junior most Head clerk in spite of the fact that applicant was not senior most clerk and accordingly applicant was not eligible for special pay. Junior most to applicant Sri Ram Lal after getting the special pay of Rs.35/- got promotion on the post of Head clerk and Office Superintendent Grade-II, so his pay became more than the applicant. So applicant is not entitled to any claim entitled under the Rules because applicant was not entitled for special pay of Rs.35/- but the two representation of the applicant were rejected.

Applicant has filed his rejoinder reiterating the contentions made in the OA.

5. At the time of hearing, while the counsel for the applicant was not present, the counsel for the respondents

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has been heard. Invoking the provisions of Rule 15 of the CAT (Procedure) Rules, 1987, the case was reserved for orders. Liberty was given for filing written statement, which, however, has not been filed by the applicant/counsel.

6. Pleadings were perused and the argument of the counsel for the respondents considered. The law on the subject is clear. When junior enjoys special pay, there is no question of senior getting any notional special pay. However, when the junior gets higher promotion subsequent to the senior, if his pay is fixed taking into account the special pay consequent to which the junior draws more pay, the senior is entitled to stepping of pay. This law has been crystallized in the case of P. Jagdish vs Union of India (1997) 3 SCC 176 wherein the Apex Court has held as under:-

5. The question for consideration, therefore, would be:


(1) xxxxxx

(2) Whether the respondents can claim for stepping up of their pay in the promoted cadre of Head Clerks when their juniors who were later promoted were fixed up at a higher slab in the cadre of Head Clerks taking into account the special pay which they are drawing in the lower category of Senior Clerks.

7. So far as the second question is concerned it depends upon the applicability of the principle of stepping up. Admittedly, the respondents had been promoted earlier to the category of Head Clerks and some of their juniors who were continuing as Senior Clerks against the identified posts carrying special pay of Rs 35 per month on being promoted to the post of Head Clerks later than the respondents got their pay fixed at a higher level than the respondents. Under the provisions of Fundamental Rules to remove the anomaly of a government servant promoted or appointed to a higher post earlier drawing a lower rate of pay in that post than

another government servant junior to him in the lower grade and promoted or appointed subsequently to the higher post, the principle of stepping up of the pay is applied. In such cases the pay of the senior officer in the higher post is required to be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up is required to be done with effect from the date of promotion or appointment of the junior officer. On refixation of the pay of the senior officer by applying the principle of stepping up, the next increment of the said officer would be drawn on completion of the requisite qualifying service with effect from the date of the refixation of pay. This principle becomes applicable when the junior officer and the senior officer belong to the same category and the post from which they have been promoted and in the promoted cadre the junior officer on being promoted later than the senior officer gets a higher pay. This being the principle of stepping up contained in the Fundamental Rules and admittedly the respondents being senior to several other Senior Clerks and the respondents having been promoted earlier than many of their juniors who were promoted later to the post of Head Clerks, the principle of stepping up should be made applicable to the respondents with effect from the date their juniors in the erstwhile cadre of Senior Clerks get promoted to the cadre of Head Clerks and their pay was fixed at a higher slab than that of the respondents. The stepping up should be done in such a way that the anomaly of juniors getting higher salary than the seniors in the promoted category of Head Clerk would be removed and the pay of the seniors like the respondents would be stepped up to a figure equal to the pay as fixed for their junior officer in the higher post of Head Clerk. In fact the Tribunal by the impugned order has directed to apply the principle of stepping up and we see no infirmity with the same direction subject to the aforesaid clarifications. This principle of stepping up which we have upheld would prevent violation of equal pay for equal work but grant of consequential benefit of the difference of salary would not be correct for the reason that the respondents had not worked in the post to which 35% [sic Rs 35 as] special pay was attached in the lower cadre. But by reason of promotion the promotee-juniors who worked on the said posts, in fact, performed the hard duties and earned special pay. Directions to pay arrears would be deleterious to inculcation of efficiency in service. All persons who were indolent to share higher responsibilities in lower posts, on promotion would get accelerated arrears that would be deleterious to efficiency of service. Therefore, though direction to step up the pay on notional basis is consistent with Article 39(d) of the Constitution, it would be applicable only prospectively from the date of the promotion and the fixation of the scale, stepping up of the scale of pay would be prospective to calculate future increments on the scale of pay in promotional post only prospectively. The appeal is dismissed but in the circumstances there would not be any order as to costs.

The above judgment has been referred to in the following two cases of the Apex Court:-

 (a) *Union of India v. M. Suryanarayana Rao*, (1998) 6 SCC 400

Subsequent to the promotion of the respondents in that case as Head Clerks from the posts of Senior Clerks, some of the posts of Senior Clerks were given a special pay of Rs 35 per month. Though the respondents had not worked on such posts, they claimed refixation of their pay in the cadre of Head Clerks on a notional basis that they were drawing such special pay. That claim was negated by the Bench. But the Bench held that the respondents therein were entitled to have their pay stepped up to be on a par with that of their juniors who had worked in posts carrying such special pay and were promoted later than the respondents as Head Clerks. The Bench took care to say that such stepping up would be only prospective from the date of promotions of the juniors.

(b) *Union of India v. B. Sarkar*, 1999 SCC (L&S) 936

6. Shri Patel, the learned counsel for the respondent has, however, submitted that the respondent is entitled to succeed in view of the decision of this Court in *P. Jagdish*¹ on Question 2. The said question was in the following terms: (SCC p. 179, para 5)

"(2) Whether the respondents can claim for stepping up of their pay in the promoted cadre of Head Clerks when their juniors who were later promoted were fixed up at a higher slab in the cadre of Head Clerks taking into account the special pay which they are drawing in the lower category of Senior Clerks."

7. While dealing with the said question, this Court has held that the principle of stepping up of pay should be made applicable to the respondents with effect from the date their juniors in the erstwhile cadre of Senior Clerks get promoted to the cadre of Head Clerks and their pay was fixed on higher slabs than that of the respondents.

7. In the instant case vide para 4(13) it is seen that the applicant was promoted as Office Superintendent in the grade of Rs 1600 – 2660 on 27-01-1987. This has not been denied by the respondents. Vide para 4(17) junior Shri Ram Lal Ram in the grade of Rs 1660 – 2660 became Rs 2050/- on 27-01-1987 while the applicant's pay remained at Rs 1900/- the said date. Thus junior was drawing more pay as on 27-01-1987 and the same is due to the special pay drawn by the Junior. Though the respondents have denied the above without any supporting documents, vide para 19

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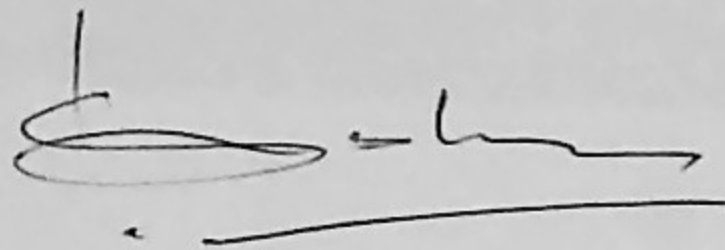
of the counter, the respondents have stated, "Junior most to applicant Sri Ram Lal after getting the special pay of Rs.35/- got promotion on the post of Head clerk and Office Superintendent Grade-II, so his pay became more than the applicant. So applicant is not entitled to any claim entitled under the Rules because applicant was not entitled for special pay of Rs.35/-". Thus, it is the admitted fact that junior was drawing more pay in the promotional post and that was due to the drawal by the junior of the special pay of Rs 35/-. Applying the law laid down by the Apex Court in the case of P. Jagdish (supra), the applicant is entitled to stepping up of pay.

8. In view of the above, the O.A. is allowed to this extent that the applicant is entitled to stepping up of pay at par with Shri Ram Lal Ram at Rs 2050/- (subject to due verification). The applicant would be entitled to his pay fixed from the date the junior was drawing more pay in the post of Superintendent II and the pay would be notional till the date of his first claim to the department i.e. on 10-12-1993 vide Annexure A-6, the receipt of which has been admitted by the respondents vide paragraph 21 of the counter. Actual payment shall therefore, be made from 01-01-1994. The applicant is entitled to consequential benefits

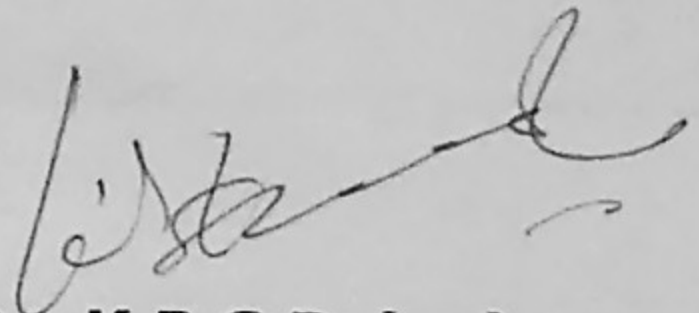
i.e. fixation of pension and terminal benefits on the basis of last pay drawn calculated as above. Impugned order dated 23-04-2002 is hereby quashed and set aside.

9. Necessary orders in this regard be passed and revised PPO be also prepared and sent to the applicant. Arrears arising on account of pay as well as pension should also be paid. This drill shall be completed within a period of six months from the date of receipt of a copy of this order.

10. Under the circumstances, there shall be no orders as to costs.



(S.N.Shukla)
Member (A)



(Dr. K.B.S.Rajan)
Member (J)