

NO
Appears

B

(5)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 242 OF 1989.
~~XXXXXX~~

DATE OF DECISION 6-11-1992.

Shri C.M. Godbole & Ors., Petitioner s

Mr. P.S. Handa, Advocate for the Petitioner(s)

Versus

Union of India & Ors., Respondent s

Mr. N.S. Shevde, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.V. Krishnan, Vice Chairman.

The Hon'ble Mr. R.C. Bhatt, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal? ✓

1. C.M. Godbole,
2. V.S. Pradhan,
3. V.N. Thakar,
4. D.J. Patel,
5. M.Y. Christy,
6. G.C. Trivedi,
7. K.M. Sutaria,
8. B.S. Pandya,
9. I.P. Pandya,
10. U.V. Thakar,
11. B.L. Joshi,
12. M.A. Dharmadhikari,
13. J.C. Shah,
14. G.C. Joshi,
15. N.R. Vashi,
16. L.M. Pariani,
17. T.G. Doshi,
18. P.K. Hiranandani,
19. N.T. Kulkarni,
20. B.Y. Manjure,
21. K.J. Joshi,
22. I.M. Shah,
23. Smt. S.S. Chitne,
24. Shri S.K. Dua
25. A.G. Bhattiwala
26. M.H. Brahmabhatt
27. K.R. Valand
28. P.T. Shukla
29. A.R. Korde
30. V.A. Darji
31. R.B. Thakkar
32. B.B. Dave
33. I.S. Pandya

.... Applicants.

Head Clerk in Divisional
Railway Manager's Office
Western Railway,
Pratapnagar, Vadodara.

(Advocate: Mr. P.S. Handa)

Versus.

1. Union of India
Secretary,
Ministry of Railway,
Rail Bhavan,
New Delhi.
2. General Manager,
Western Railway,
Churchgate,
Bombay - 20.
3. Divisional Railway Manager,
Western Railway,
Pratapnagar,
Vadodara.
4. Sr. Divisional Personnel Officer,
Western Railway,
Pratapnagar,
Vadodara.

.... Respondents.

(Advocate: Mr. N.S. Shevde)

7


ORAL ORDER


O.A.No. 242/1989

Date: 6-11-1992.

Per: Hon'ble Mr. N.V. Krishnan, Vice Chairman.

Mr. P.S. Handa for the applicant. He submits that in view of subsequent developments, nothing remains for adjudication and he seeks permission to withdraw this application. Hence permission is granted. Application is closed as having become infructuous. *& withdrawn*


(R.C. Bhatt)
Member(J)


6/11/92
(N.V. Krishnan)
Vice Chairman

vtc.

AT AHMEDABAD BENCH

INDEX SHEET

CAUSE TITLE. BA 242/88. OF 19 88.

NAMES OF THE PARTIES Shri. C.M. Godbole & a/s.

U.O.F. VERSUS 4020

PART A B & C

[illegible]

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD.

Application No. OA/242/88 of 199

Transfer Application No. _____ Old Writ Pet. No. _____

C E R T I F I C A T E

Certified that no further action is required to be taken
and the case is fit for consignment to the Record Room (Decided).

Dated : 24/12/92

Counter-signed :

amhafer 5.1.93
Section Officer/Court Officer

B. Cugan
Sign. of the Dealing Assistant

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.

Submitted;

C.A.T./Judicial Section.

Original Petition No.: 242 of 89.

Miscellaneous Petition No.: 2 of 89.

Shri C M Godbole 2G Petitioner(s).

Versus.

Union of India 2G Respondent(s).

This application has been submitted to the Tribunal by Shri P K Hundy under Section 19 of The Administrative Tribunal Act, 1985. It has been scrutinised with reference to the points mentioned in the check list in the light of the provisions contained in the Administrative Tribunals Act, 1985 and Central Administrative Tribunals (Procedure) Rules, 1985.

The application has been found in order and may be given to concerned for fixation of date.

The application is not been found in order for the same reasons indicated in the check list. The applicant may be advised to rectify the same within 21 days. Draft letter is placed below for signature.

8
13/6

8/5

to

or

We may put up 15/6 O.A for admission on 17/6/89 as per DR J's direction on urgent note.

14/6/89

14/6/89

13/6/89
14-06-89

CENTRAL ADMINISTRATIVE TRIBUNALAHMEDABAD BENCHAPPLICANT (S) C M GodboleRESPONDENTS (S) Union of India & CoPARTICULARS TO BE EXAMINEDENDORSEMENT AS TO
RESULT OF EXAMINATION

1. Is the application competent? YH
2. (A) Is the application in the prescribed form? YH
- (B) Is the application in paper book form? YH
- (C) Have prescribed number complete sets of the application been filed? YH
3. Is the application in time? YH
If not, by how many days is it beyond time?
Has sufficient cause for not making the application in time stated? -
4. Has the document of authorisation/ Vakalat nama been filed? YH
5. Is the application accompanied by B.D./I.P.O for Rs.50/-? Number of B.D./I.P.O. to be recorded. DD 6 400722
6. Has the copy/copies of the order(s) against which the application is made, been filed? YH (Annc A P.13)
7. (a) Have the copies of the documents relied upon by the applicant and mentioned in the application been filed? YH
- (b) Have the documents referred to in (a) above duly attested and numbered accordingly? YH
- (c) Are the documents referred to in (a) above neatly typed in double space? YH
8. Has the index of documents has been filed and has the paging been done properly? YH

PARTICULARS TO BE EXAMINED

ENDORSEMENT AS TO BE
RESULT OF EXAMINATION.

9. Have the chronological details of representations made and the outcome of such representation been indicated in the application? Y
10. Is the matter raised in the application pending before any court of law or any other Bench of the Tribunal? No
11. Are the application/duplicate copy/spare copies signed? Y
12. Are extra copies of the application with annexures filed. Y
 - (a) Identical with the original.
 - (b) Defective.
 - (c) Wanting in Annexures
No _____ Page Nos _____?
 - (d) Distinctly Typed?
13. Have full size envelopes bearing full address of the Respondents been filed? No
14. Are the given addresses, the registered addresses? Y
15. Do the names of the parties stated in the copies, tally with those indicated in the application? Y
16. Are the translations certified to be true or supported by an affidavit affirming that they are true? Y
17. Are the facts for the cases mentioned under item No.6 of the application. Y
 - (a) Concise?
 - (b) Under Distinct heads?
 - (c) Numbered consecutively?
 - (d) Typed in double space on one side of the paper?
18. Have the particulars for interim order prayed for, stated with reasons? Y

checked.

pho
14/6

URGENT NOTE

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT AHMEDABAD

To

The Registrar,
Central Administrative Tribunal,
Ahmedabad.

MATTER BETWEEN

C.M.GODBOLE AND OTHERS _____ APPLICANT

V/s

UNION OF INDIA AND OTHERS

MINISTRY OF RAILWAY

NEW DELHI _____ RESPONDENT

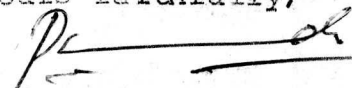
Sub:-Ad-interim Injunction Sought.

...


Dear sir,

The applicants were granted special pay of Rs. 35/- since 1979 and the same was to be added for fixation on promotion as per the Arbitration Award given in 1987. The award was effected from 1.9.1985. Accordingly, the arrears were paid to the applicant from 1.9.85 but from 2.11.88 letter, the orders have been cancelled by the Divisional Railway Manager (Estt:O Vadodara and the orders of recovery of arrears have been issued to stay the recovery. You are requested to fix the matter at an early date.

Yours faithfully,


(P.K.HANDA)

ADVOCATE

 P. K. Handa
BSc. LLM, DPM.
(Advocate)

DD 400922
6

Calc &
orig
circulate
on 15-08
if on scrutiny
every thing is
found in order
13/6/89
Encl

Date 13.06.89

PKH
2tu

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

O. A. NO: 242 of 1989

C.M. Godbole

and others

.....

Applicants

VS.

Union of India, *ministry of Reg's*,
and others

....

Respondents

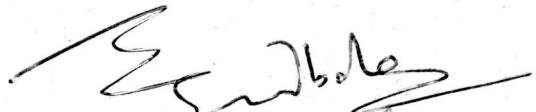
Application under Rule 5 (a) of the
Central Administrative Tribunal
(Procedure) Rules, 1987).

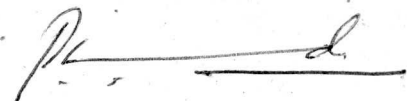
The applicants abovenamed most respectfully
submit as under:-

1. That the cause of action and nature of relief
prayed for is the same and have a common interest in the
O.A. filed today by the applicants, and therefore, all the
applicants are required to join together in a single petition.
2. In view of the above circumstances, the applicants
most respectfully pray that:

Be pleased to permit the applicants to join together
and to file a single application in the interest of
justice.

And for this Act of kindness and justice, the
applicants shall as in duty bound for ever pray.


Signature of applicant.



P. K. Gunda BSc, LL.M. DPM.
Advocate,
Opp. Apsara Talkies.
Above Partap Nagar Post Office,
VADODARA-4, 390004.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AT AHMEDABAD

APPLICATION NO: 242 of 1989
C. M. Godbole and others
~~H.P. Patel~~ APPLICANTS.

UNION OF INDIA AND OTHERS

SECRETARY,

MINISTRY OF RAILWAYS

RAIL BHAVAN

NEW DELHI _____ RESPONDENTS

I N D E X

.....
 ANNEAURE PARTICULARS PAGE NO:

A	Divl. Rly. Manager (Estt:) Vadodara's letter No: ED/NG/773/2/4 dated 20.11.1988 regarding refixation of pay N.G. Class III-clerical staff-Reckoning of special pay of Rs. 35/- for fixation	13
A1	Grant of special pay to U.D.C. in Admn Office vide Rly. Board's letter No: PC/III/79/sp/1/UDC dt 17.7.79	14 & 15
A2	Rly. Bd's letter of even No. Dt. 30.1.1980	16 & 17
A3	Railway Bd's letter of even No. Dt. 1.7.80	18
A4	Arbitration Award circulated vide Rly. Bd's letter of eve Number dt 27.11.87	19
A5	Application for refixation of Applicant	20
A6	Statement of refixation of applicant	21
A7	Rly. Bd's letter of even No. dt 10.3.88	22
A8	Representation of the applicant	23
A9	Orders of recovery issued by Divisional Railway Manager (Estt:) Vadodara vide letter No: E/PD/774/2/2 dated 6.6.1989.	24

Copy served
 to respondents
 for 13/6
 Adm.

(2)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT AHMEDABAD

APPLICATION NO. 242 of 1989

IN THE MATTER OF ARTICLE 14 AND 16
OF THE CONSTITUTION OF INDIA
AND

IN THE MATTER OF RAILWAY MANNUAL
AND

IN THE MATTER OF SECTION 19 OF THE
TRIBUNAL ACT, 1985

MATTER BETWEEN

1) PARTICULARS OF THE APPLICANT:-

1) NAME OF THE APPLICANTS:-

1. Shri C.M.Godbole
2. " V.S.Pradhan
3. " V.N.Thakar
4. " D.J.Patel
5. " M.Y.Christy
6. " G.C.Trivedi
7. " K.M.Sutaria
8. " B.S.Pandya
9. " I.P.Pandya
- 10." U.V.Thakar
- 11." B.L.Joshi
- 12." M.A.Dharmadhikari
- 13." J.C.Shah
- 14." G.C.Joshi
- 15." N.R.Vashi
- 16." L.M.Pariani
- 17." T.G.Deshi
- 18." P.K.Hiranandani
- 19." N.T.Kulkarni
- 20." B.Y.Manjure

3

21. Shri K.J.Joshi
22. " I.M.Shah
23. "Smt. S.S.Chitve
24. Shri S.K.Dua
25. " A.G.Batthiwala
26. " M.H.Brahmbhatt
27. " K.R.Valand
28. " P.T.Shukla
29. " A.R.Korde
30. " V.A.Darji
31. " R.B.Thakkar ~~2xxxxxx2xxxx~~
32. " B.B.Dave
33. " I.S.PANDYA
34. "
35. "

ii) NAME OF THE FATHER: MAHADEV B. GODBOLE

iii) DESIGNATION & OFFICE : HEAD CLERK IN
IN WHICH EMPLOYED DIVISIONAL RAILWAY
MANAGER'S OFFICE
W.RLY.PRATAPNAGAR
VADODARA

iv) OFFICE ADDRESS: C/O-Sr.DIVISIONAL
PERSONAL OFFICER,
W.Rly,PRATAPNAGAR
VADODARA

v) ADDRESS FOR SERVICE: 580, SHARADNAGAR
OF ALL NOTICES TARSALI ROAD?
VADODARA -390009

2. PARTICULARS OF THE RESPONDENT

- i) UNION OF INDIA
SECRETARY, MINISTRY OF RAILWAY
RAIL-BHAVAN-NEW DELHI
- ii) GENERAL MANAGER, WESTERN RAILWAY
CHURCHGAGE, BOMBAY-400020
- iii) DIVISIONAL RAILWAY MANAGER,
W.RLY.-PRATAPNAGAR, VADODARA-390004
- iv) SR.DIVISIONAL PERSONNEL OFFICER
W.RLY.PRATAPNAGAR,
VADODARA-390004

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3. PARTICULARS OF THE CADER AGAINST WHICH APPLICATION IS MADE:-

The application is against the following orders:-

- i) Order No.ED/NG/773/2/4
- ii) Date: i. 2.11.88
- iii) Passed by: DRM(E)VADODARA
- iv) Subject in brief:- The applicants are working as Head Clerks/Chief clerks in the administrative office of Divisional Railway Manager, W.Rly. Pratapnagar, Vadodara. As per Rly. Bd.'s Letter No. PC/III/79/SP\$1 UDC dated 11.7.1979 addressed to GM's all Indian Rlys. which is shown at BKA 1. Accordingly Rs. 35/-Special pay was sanctioned to upper division clerks senior clerks or clerks Gr.1 in the then scale Rs.330-560(R) and the total number of such posts should be limited to 10% only. The railway Board further in their letter No. PC/III 79/SP/1/UDC dt.14.1.1981 shown BKA2 has clarified in para 2 that identification of posts of senior clerks/CG1 need not be restricted to 10% of the posts of the concerned cadre or seniority group, but all such posts in the various seniority groups not necessarily compared to 10% of the cadre.

Railway board vide letter No. PC/III/79/SP/1/UDC dt.30.1.1980 shown at BKA3 in para 2 has clearly indicated that the spl. pay of Rs. 35/- to Sr. Clerks (330-560) is not be considered for the purpose of fixation of pay on promotion to higher grade nor it should be kept as a

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personal pay in future, but on representation to Rly. Bd. vide its letter No. PC/III/79/SP/1 UDC dt. 1.7.80 shown at EXA4 has further clarified that the special pay cannot be treated as part of pay for fixation of pay on promotion to higher post and that they have agreed to protect at grant of spl. pay equal to the difference between pay + spl. pay drawn in lower post and the pay fixed in the higher post on the basis of pay in lower post subject to the conditions.

As the matter was referred for arbitration by JCM to Railway board and arbitration has given its award vide Rly. Bd.'s letter No. PC/III/79/SP/1/UDC dt. 27.11.87 shown at EXA5 according to the award which is in Ref. to Rly. Bd.'s letter No. PC/III/79/SP-1/UDC dt. 11.7.79 shown at EXA7 spl pay of Rs. 35/- shall be taken into account for fixation of pay on promotion subject to the following conditions.

1. The incumbent is a substantive holder of the post to which the special pay is attached.
2. These orders amend the previous orders of this ministry's letter of even No. dated 30.1.80 shown at EXA3 and become retrospective from 1st Sept. '85.
3. As and from 1.1.86 or the latter date when the employee opts for the revised pay scale (1986) this special pay will cease to count for fixation of pay on promotion on this basis of the above award

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On the basis of above award the petitioners have applied for performs fixation from the date of promotion and arrears from Sept.'85 as per the award for example, the applicants' fixation chart is shown in A6. The administration has paid the arrears also to the applicants from 1.9.85.

The divisional railway manager(E) EX W.Rly.Pratapnagar vide this letter No. ED/NG/773/2/4 of 2.11.88 shown at EXA has issued the memorandum cancelling the memo's No.ED/NG/773/2/4 of 29.7.88 and No.ED/NG/773/2/BWSM dt.6.9.88 and the staff whose fixation has already been done is to be revised and recovery of arrears is to be made if paid. There orders of the DRM(E) are arbitrary and void, when the arbitration has given the award, the divisional authorities has got no right to deviate from the award.

The authorities by infringing all norms of service rules and violating the fundamental rights of the applicant under Art-14 & 16 of the constitution of India, the authorities are issuing the orders of recovery of arrears from the salary of the petitioner without considering and replying representation made by the applicants individually dt.4.11.88. Copy of orders of recovery are attached. The applicant have exhausted the channels and left with no other alternate except to approach the Hon'ble tribunal for justice.

4. JURISDICTION OF THE TRIBUNAL.

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

5. LIMITATION.

The applicant further declares that the application is within the limitation prescribed in section 21 of the Administrative Tribunal Act, 1985

6. FACTS OF THE CASE.

The facts of the case are given below:

- i) The applicants at present are working as Head clerks/Chief Clerks in grade Rs. 1400-2300(RP)/1600-2660(RP) respectively, in the Administrative office of Divisional Railway Manager, W.Rly. Pratapnagar, Vadodara.
- ii) As per Railway Board's letter No: PC.III/79/SP/1/UDC dated 11.7.1979 shown as Ex.A1. The upper division clerk e.g. Sr.clerks, Clerks Gr.I in scale Rs. 330-560(R) maybe granted special pay of Rs. 35/- per month. The total number of such posts should be ~~limited to total number of such posts should be~~ limited to 10% of the posts in the seniority groups of the respective clerical cadre.

The filling up the posts should be on seniority cum suitability. These orders will be effective from 5.5.1979.
- iii) Railway Board vide their letter No. ~~PC.922~~ PC.III/79/SP/1/UDC of 30.1.1980 shown in Ex.A2 in para-2 has very clearly stated that this special pay of Rs. 35/- granted to the senior clerks the then grade Rs. 330-560(R) should neither be

treated as pay for the purpose of fixation of pay on promotion to higher grade nor it should be kept as personal pay to be absorbed in future increments.

iv) Railway Board letter No.PC.III/79/SP/1/UDC dated 1.7.80 shown at Ex.A3 regarding grant of special pay of Rs. 35/- to upper division clerks, have decided about fixation of pay on promotion to higher grade. The Railway Board with the consent of Ministry of Finance clarified that the special pay granted to UDCs (Senior clerks) under the provision of Railway Board's letter of even number dt 11.7.79 shown in Ex.A, has now been decided (overruling the letter of even number dated 30.1.1980) that it can be protected by grant of special pay equal to the difference between pay and special pay drawn in 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 Railway servant would have continued to draw special pay.
- ii) The protection will be for so long as the Railway servant would have continued to draw the special pay.
- iii) The personal pay will be absorbed in subsequent increase in pay.

- x) As such the letter of Railway Board of even number dated 30.1.1980 was protected by the letter of Railway Board even number dated 1.7.1980.
- v) Still the National Council was not satisfied and as such ^{the} ~~that~~ matter was referred to the Board of arbitration in which it was demanded that Rs. 35.00 paid to the UDC as special pay should be taken in account in fixation of pay on promotion.
- vi) The Board of Arbitration has given its award and it was circulated vide Railway Board's letter No: PC.III/79/~~SP~~1/UDC dated 27.11.87 shown at Ex.A4.. The Board of Arbitration have decided that Rs. 35/- p.m. paid for UDCs as a special pay under Board's letter No: PC.III/79/~~SP~~1/UDC dated 11.7.1979 should 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~~ 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 3 years.
2. These orders amend the previous orders of this ministry's letter of even number dated 30.1.1980 and becomes effective from 1.9.85.

3. As and from 1.1.86 and the letter date when the employee opts for the Revised Pay scales (1986), the special pay will cease to count for fixation of pay on promotion. Accordingly to condition 2nd of the above award it amends the orders issued by Ministry's letter of even number dated 30.1.80 shown in Ex.A.2, it means the employees who were debarred with the above order for counting the special pay for the purpose of fixation of pay on promotion is to be now considered and the cases to be reviewed.

vii) In reference to above mentioned award the petitioners have applied for refixation of pay of senior clerk promoted as Head Clerk, e.g. for example-the application of one of the applicant's is attached dated 15.2.1988 shown at Ex.A.5 along with the statement shown at Ex.A.6.

viii) The refixation request from applicants was accepted by the Railway authorities and as per the ~~XXXXX~~ ~~XXX~~ 1987 award, the proforma fixation was given and as the award was effected from 1.9.85, the arrears were paid to the applicants from 1.9.85 onwards. The Divisional Rly. Manager (Estt) Baroda vide their letter No: ED/NG/773/2/4 of 2.11.88 shown in Ex.A, has cancelled the previous order of ~~fixing~~ refixing the salaries of senior clerks by adding special pay of Rs. 35/- in reference to Railway Board's letter No: PC.III/79/SP-1/UDC dated 27.11.87 (Arbitration award) stating that the clarification received from the Railway Board's

letter No: PC.III/79/SP/UDC dated 10.8.88
shown at Ex.A.7

These orders are arbitrary and void. The Railway authorities have got no right to deviate from the award given by the Board of arbitration. As far as clarification is concerned, nothing has been mentioned in Railway Board's letter shown at Ex.A.7 regarding the implementation of the award. The effect of the award is from 1.9.85 and the same has been accepted by the applicants as well as the authorities and the arrears were paid from 1.9.85 and not prior to that.

As such the Divisional Rly. Manager (Estt:) Baroda's order shown in Ex.A are void and should be quashed.

- x) The applicants have made a representation to Divisional Railway Manager (Estt:) Baroda regarding the orders of cancellation of their own orders of sanctioning the refixation dated 4.11.88 shown at Ex.A.8.
- xi) Without considering the representation and replying to the applicants the authorities have issued the individual orders for example the order of one applicant is attached, order No: E/PB/774/2/2 of 6.6.89 shown at Ex.A.9 advising that the revised fixations are cancelled and arrears payment made from 1.9.85 to Oct: 1988 is to be recovered in suitable instalments from June 1989 and onwards.
- xii) The Railway authorities have decided to act arbitrarily and violating all norms of rules and regulations of services. The administration

is also infringing the Fundamental Rights of the applicants under Article 14 and 16 of the Constitution of India. Article 14 enshrines equality in law while article 16(1) enshrines equality in employment.

- xiii) The applicants are left with no other way except to approach the Hon'ble Tribunal for justice.

7. RELIEF SOUGHT:

In view of the facts mentioned in para 6 above, the applicant prays for the following relief:-

- i) The applicants pray to the Hon'ble Tribunal to direct the respondents to quash the orders issued by Divisional Railway Manager(Estt:) Baroda vide letter No;ED/NG/773/2/4 dated 2.11.88 shown in Ex.A by keeping in view the award given by the Arbitration circulated by Railway Board's letter No.PC.III/79/SP-1/UDC dated 27.11.1987 shown at Ex.A.4.

8. INTERIM ORDER

Pending final decision on the application, the applicant seeks issue of the following interim order:

- i) The applicants request the Hon'ble Tribunal to direct the respondents to stay the recovery of the arrears which has been ordered vide letter No: E/PB/774/2/2 dated 6.6.89, which is arbitrary and void.
- ii) The respondents may also please be directed that salary of the applicants which is fixed as per arbitration award, should not be refixed in reference to letter No:ED/NG/773/2/4 dated 2.11.1988 till the case is decided.

(13)

9. DETAILS OF REMEDIES EXHAUSTED.

The applicant declares that he has availed of all the remedies available to him under the relevant service rules etc. The representation was made vide Ex.A.8

10. MATTER NOT PENDING WITH ANY OTHER COURT ETC.

The applicant further declares that the matter regarding which this application has been made is not pending before any court of law or any other Bench of the Tribunal.

11. PARTICULARS OF POSTAL ORDER.

- i) NUMBER OF INDIAN POSTAL ORDER 400922
- ii) NAME OF THE ISSUING POST OFFICE PRATAPNAGAR
VADODARA
- iii) DATE OF ISSUE OF POSTAL ORDER 10.6.1989
- iv) POST OFFICE AT WHICH NAVRANGPURA POST
PAYABLE: OFFICE AHMEDABAD

12. DETAILS OF INDEX.

An index in duplicate containing the details of the document to be relied upon is enclosed.

13. LIST OF ENCLOSURES

As per index.

VERIFICATION


I, C.M.Godbole S/O Mahadev B.Godbole aged 52 years working as Head Clerk, residing of Baroda do hereby verify that the contents from 1 to 13 are true to my personal knowledge and belief and I have not suppressed any material facts.


Signature of applicant

Place: Vadodara

Filed by Mr. P.K. Handa
Learned Advocate for Petitioners
with second set & ...4... copies
copies copy served/not served to
other side

Date: 13-6-1989



P. K. Handa
BSc, LL.M, DPM.
(Advocate)

Di. 13/6/89 Dy.Registrar C.A.T.(J)
A'bad Bench

Western Railway

Divisional Office,
Baroda.

Dated: 02/11/1988.

No. ED/NG/773/2/4

Memorandum

Sub : Refixation of pay N.G. Class III Clerical Staff - BWSM and other units - BRC Division
Reckoning of Special Pay of Rs. 35/- for fixation.

AS per clarification received vide Railway Board's letter No. PC III/79/Spl./UDC dated 10-8-88. Benefit of reckoning Special pay of Rs. 35/- to Sr. Clerk for the purpose of fixation of pay on promotion as Head Clerk extended to only those staff who are promoted during the period from 1-9-85 to 31-12-85 as original orders are effective from 1-9-85.

- This privilege not to be granted to those staff who are promoted as Head Clerk prior to 1-9-85 and in this circumstances this office Memos. No. ED/NG/773/2/4 dated 29-7-88 and No. ED/NG/773/2/BWSM dated 6-9-88 are hereby cancelled. Staff whose fixation is already drawn should be revised considering this letter as authority for the same, and should be paid according to their previous position as shown in Column 4, 5 and 6 i.e. to be paid at previous rate of pay which they were drawing before issue of re-fixation orders. Recovery of arrears if paid may please be made.

- Please treat this as urgent and immediate action initiated to avoid further complaints, etc. The staff who are affected may give their representation if they have any complaint.

-- With in fortnight.

A. K. S. Jadhav
for DRM (E) BRC.

Copy forwarded to :

OS E/PB (12 copies) OSs WA&B, Works, Stores Branch.
MS BRC. Sr. DAO BRC. ATN-I BH, Sr. DEE (TRD) BRC.
Sr. DEE (TRS) BRCY.
Divisional Secretary WRMS/WREU for information.
For Personal Files and Guard Files.

Copy to: S/Shri C.M. Godbole HC Works Br., B S Pandya AB WA/B, A R Korde HC TRS BRCY, J L Shah CC WA/B, I P Pandya HC Works Br., S K Dua CC Works Br., U V Thakar HC Works Br., T G Doshi HC Stores., L M Parani HC Sr. DEE (TRD), K M Sutatriya HC Works., BB B Dave HC Works., B S Sali Ex CC., M R Vashi CC WA/B, R T Bachani CC Stores, A B Battiwala HC AEN(I) BH, V M Thakar HC WA&B, M Y Christi HC Works, P K Hirapandani HC TS BRC.

Verified
P. S. Jadhav
Adesh

A

(12/5)

WESTERN RAILWAY

No.E 839/0/1/ADI

C.E.(C)'s Office,
Ahmadabad

ENC(C)RJT Dy.CSTE(C)ADI Dated 20 Feb., 1981
XEN(C)NKM ADI, SUNR I & II RJT, I, II, III, IV JAM
DSTE(C)I & II RJT DEE(C)ADI DME(C)ADI
C/- Secy WREU/WRMS ADI

Sub: Grant of Spl.pay of Rs.35/- p.m. to the UDCs in
non-Secretariat Administrative Offices.

A copy of Rly Board's letter No.PC III/79/SP/1/UDC dt.
11-7-79, 7-9-79, 30-1-80, 23-4-80, 7-5-80, 22-9-80 and 14-1-81
circulated under HQ Office' letter No.EP 839/41 dt. 12-9-79,
10-10-79, No.3(P&A)1064/41 dt. 22-2-80, No.EP 839/41 dt.
14-5-80, 17-6-80, 13-10-80 and 6-2-81 respectively and copies
of HQ Office letters No.EP 839/41 dated 26-12-79 and 27-2-80,
are sent herewith for your information & necessary action.

For Chief Engineer (Const.),
Ahmadabad

Encls: (Typed below)

Copy of Railway Board's letter No.PC III/79/SP/1/UDC dated
11-7-1979 addressed to the General Managers, All Indian Rlys
etc.

Sub: Grant of special pay of Rs. 35/- p.m. to the Upper
Division Clerks in the non-Secretariat Administra-
tive Offices.

A committee of the National Council (J.C.M.) was set
up to consider the request of the Staff Side that in the
non-Secretariat Administrative Offices since a certain
percentage of Upper Division Clerks in the scale Rs.330-560
in handling cases of complex nature involving deep study and
competence to deal with these cases, a certain number of
posts of U.D.Cs should be upgraded to the grade of Assistants
in the scale of Rs.425-800 in the Secretariat. The Committee's
report which was finalised on the 27th January 1979 was adopted
by the National Council at its meeting held on 2nd & 3rd Feb.
1979. Pursuant to the agreed conclusions arrived at and
accepted by the National Council, the President is pleased to
decide that the Upper Division Clerks e.g. Senior Clerks, Clerks
Gr.I in scale Rs.330-560 in the non-Secretariat Administrative
Offices attending to work of a more complex and important
nature may be granted special pay of Rs. 35/- p.m. The total
number of such posts should be limited to 10% of the posts
in the seniority groups of the respective clerical cadres
i.e. 10% of the posts of Senior Clerks/Clerks Gr.I in scale
Rs. 330-560 and these posts should be identified by you in
consultation with your Financial Adviser as carrying
discernible duties and responsibilities of a complex nature
higher than those normally expected of Senior Clerks/Clerk
Grade I etc.

2. The filling up of the 10% of the posts should be on
seniority cum-suitability basis. However, before pasting the
persons against 10% posts, it should be ensured that senior
persons are not ignored and in case some body senior enough
is not willing to be considered for these pots or he is not
considered suitable for the same, he should clearly be told
that he will have no claim for higher fixation of pay
subsequently when he is selected for higher grade.

3. Percentage of posts should be worked out separately for permanent, temporary and work-charged posts.
4. These orders take effect from 5-5-1979.
5. The number of posts to which the special pay of Rs. 35/- is attached in terms of these orders may be intimated to the Ministry of Railways.
6. Hindi version will follow.

....

Copy of Railway Board's letter No. PC III/79/SP-1/UDC dated 7-9-1979 addressed to GM, C.Rly and copy to GMs, all Indian Railways.

....

Sub: Grant of special pay of Rs. 35/- p.m. to the Upper Division Clerks in the non-Secretariat Administrative Offices.

Ref: Your Addl.CPO's DO letter No. HPE/788/PCIII/R/- Spl/Pay dt. 10-8-1979 addressed to Addl. DPC, Railway Board.

....

Your presumption that the term "non-Secretariat Administrative Offices" includes Offices of Head of Departments, Divisional Rly Managers/Divisional Supdts. Administrative Offices (Workshops of Civil Engineering, Electrical, Mechanical, Signal & Telecommunication) but does not cover Depots/Sheds/Offices of AEN/XEN incharges etc. is confirmed. If, however, senior clerks (Rs.330-560) employed in Depots/Sheds/Offices of AEN/XEN etc. belong to the same seniority group of the clerical cadres of the Administrative Offices of Head of Departments, Divisional Rly Managers, Divisional Supdts etc, their strength should be taken into account for the purpose of calculation of 10% of posts. Identification of posts should, however, be made on the basis of instructions contained in this Ministry's letter of even number dated 11-7-1979.

...

GM(E)CCG's letter No. EP 839/41 (HQ Estt Circular No.218) dated 26-12-79 to all concerned.

.....

Sub: Grant of special pay of Rs.35/- p.m. to the Upper Divisional Clerks in the non-Secretariat Administrative offices.

Ref: This office circulars of even No. dated 12-9-79 and 10-10-79.

....

In consultation with the FA&CAO it has been decided that powers to sanction the special pay in terms of the Board's directive circulated under this office circulars quoted above may be exercised by the DRM/DS in the case of Divisionalised Departments and by the Dy.HODs in the case of non-divisionalised Departments/Workshops in consultation with associated Accounts Officer.

- 3 -

Verified
R. Advech

16/17

- 3 -

2. In the case of proposals pertaining to Divisional Accounts Offices etc., where the DAOs are in senior scale, the powers will be exercised by Dy. CAO(G)-CCG. For all other Accounts offices under the charge of Dy.HOD/Sr.DAOs the powers will be exercised by them.

3. In earmarking the portions within the 10% limit first preference should be given to the portions involving the nature of work with high degree of responsibility and the heavy quantum. Second priority should be given to those portions where the quantum is reasonable but the high degree of responsibility is involved with regard to the nature of work.

4. Special attention is drawn to para 2 of Board's letter dated 11-7-79 reproduced below which should be followed in implementation:-

" The filling up of the 10% of the posts should be on seniority-cum-suitability basis. However, before posting the persons against 10% posts, it should be ensured that senior persons are not ignored and in case some body senior enough is not willing to be considered for these posts or he is not considered suitable for the same, he should clearly be told that he will have no claim for higher fixation of pay subsequently when he is selected for higher grade".

5. Implementation of Board's directives may be advised immediately. Proposals which may have been sent to H.Q. but not sanctioned so far may now be dealt with under local powers as above.

6. Hindi version will follow.

....

Copy of Board's letter No. PC III/79/SP/1/UDC dt. 30-1-1980 to the GMS, All Indian Rlys and others.

A2

.....

Sub: Grant of Special pay of Rs. 35/- p.m. to the Upper Division Clerks in the non-Secretariat Administrative Offices.

....

A plain reading of para 2 of this Ministry's letter of even number dt. 11-7-1979 has created a doubt on certain Railways about the special pay of Rs. 35/- p.m. being reckoned as pay for the purpose of fixation to the higher grade.

2. The Ministry of Finance, to whom the case was referred, have clearly indicated that the special pay of Rs.35/- p.m. granted to the Senior Clerks (Rs.330-560) who are handling cases of complex nature should neither be treated as pay for the purpose of fixation of pay on promotion to higher grade nor it should be kept as personal pay to be absorbed in future increments. All cases where special pay has been granted may therefore be reviewed and regulated accordingly.

3. This has the sanction of the President.

Verified
Advocate

- 4 -

Copy of DO letter No. EP 839/41 dt. 30.1.80 from ACPC to
Jt. Director, Pay Commission, Railway Board.

Sub: Grant of special pay of Rs. 35/- to the
Upper Division Clerks in the Non-Secretariat
Administrative offices -
Ref: Board's letter No. PC-III/79/SP/1/UDC
dt. 11-7-79.

While implementing the orders in question a few points have
come up as under. The action taken by this Railway adminis-
tration is also indicated against each. Board may kindly
confirm.

1.1. In the directive dated 11.7.79 the date of effect is
prescribed as 5.5.79 i.e. back effect. But for posting
the persons on the basis of seniority-cum-suitability
the Board have prescribed that the portions of duty should be
on the basis of the seniority-cum-suitability. Naturally,
this action will be taken after 11.7.79 and the question
arises as to whether the payment is to be made to those
senior suitable persons from the day they take over charge
of the portions so earmarked or with effect from 5.5.79
even though they were not the incumbents.

This railway has, as an interim measure, taken the view
that since the basic condition is earmarking of the portion
and the posting of senior suitable persons thereon comes
secondary the employees will be paid with effect from the
day they take over charge. This is of course rendering
retrospective effect given by the Board to this directive
as null and void.

1.2. Further if the action of this Railway is confirmed
a question comes up whether the junior persons who were
holding charge of those important portions from 5.5.79
onwards till they are replaced by one of the senior suitable
person should be paid this special pay or not. No
decision has been taken and Board's orders are requested.

1.3. In this connection the third point is that there are
cases where a junior person, but falling within the list
of the senior suitable persons eligible for this special
pay, may have been working on that very post which got
earmarked from 5.5.79 in that case will such a person
get the benefit from 5.5.79 even though his seniors who
have been shifted and brought on these pinpointed
portions are getting from the date of their posting. For
example 14 posts are to be pinpointed and similarly 14
persons are to be considered suitable on the basis of
seniority-cum-suitability. From this list Sl.No.11 is the
person who is working on the same post which is pinpointed
whereas Sl.No.1 to 10 are to be shifted to other pinpointed
posts. The question is whether Sl.No.11 will get benefit
from 5.5.79 while other seniors from 1 to 10 will only be
getting from the day they are posted to the pinpointed posts.

This Administration is of the opinion that to avoid any com-
plications and to give retrospective effect from 5.5.79

Verified
P. de
Advocate

A3

18
19

WESTERN RAILWAY.

Dy.CME(L)'s Office, Dahod.

Date: 5/9/1980.

No.E.1064/0.

PR POs.Fdy & BS.

All SSS/ASSs/Hd.of Sections.

Sub:- Grant of special pay of Rs.35/-p.m. to the Upper Division Clerks in Non-Secretariate Administrative Offices.

Ref:- This Office letter No.E.1064/2 dt.29-2-80
.....

A copy of Rly.Board's letter No.PC-III/79/SP/1/UDC dt. 1-7-80 received under GM(C)/CCG's letter No.E(P&A)/1064/41 dt.22-8-80 is reproduced below for information. Board's letter dated 11-7-79 has been circulated vide this Office letter No.E839/0 Vol.III dt. 12-10-79.

for Dy.CME(L)/DAHOD.

G/- Secy.WREU/WRMS DHD for Inf.

G/- E.839/0 & E.1064/2.

Copy of Board's letter No.PC-III/79/SP/1/UDC dt.1-7-80 addressed to GMS., All Indian Rlys. and others.

Sub:- Grant of special pay of Rs.35/-p.m. to the Upper Division Clerks in the Non-Secretariate Administrative Offices - Fixation of pay on promotion to higher grade.
.....

With reference to this Ministry's letter of even Number dt.30-1-1980, it is hereby clarified in consultation with the Ministry of Finance that the Special pay granted to UDCs(Senior Clerks) under the provisions of this Ministry's letter of even Number dated 11-7-1979 is not in lieu of a higher Scale of pay but it is intended for complex (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.

2. However, it has now been decided that it can be protected by grant of special pay equal to the difference between pay plus special pay drawn in lower post and the pay fixed in the higher post on the basis of pay in lower post, subject to the following conditions:-

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

3. All cases of fixation of pay -
litigation with your FA&CAC and regulated in accordance with the above instructions.

Verified
P. Adveer

Churchgate, Bombay.

No.E(P&A)10E4/41

Dated: 28/12/87

ALL CONCERNED.

C/- GS - WREU-GTR/WRMS-BCT.

Sub: Grant of special pay of Rs.35/- p.m. to the upper division clerks in the non-secretariate administrative offices.

A copy of Railway Board's letter No.PC III/79/SP-1/UDC dated 27/11/87 is sent herewith for information, guidance and necessary action. Railway Board's letter No. PC III/79/SP-1/UDC dated 11/7/79 referred to therein was circulated under this office letter No. EP 839/41 dated 12/9/79.

Hindi version is enclosed.

Encl: As typed below.

(Signature)
(M.A. BOHRA)
For General Manager (E).

Copy of Railway Board's letter No PCIII/79/SP-1/UDC dated 27/11/87 addressed to The General Managers, All Indian Railways and among others.

Sub: Reckoning of special pay of Rs.35/- to Upper Division Clerks in the non-secretariat Administrative Offices for the purpose of fixation of pay on promotion.

A demand was made by the staff side in the National Council that Rs.35/- p.m. paid to the UDC 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.PCIII/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 30/1/80 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.

Verified
(Signature)
A. Chack

From: C.M.Godbole,
Head Clerk, Budget Branch,
DRM's Office, BRC

Dt. 15/2/88

(20)(21)

To

The DRM(E)BRC.

Sub: Refixation of pay of Senior Clerk
promoted as head clerk.

Ref: Railway Board's letter No. PC III/79/SP/1/UDC
dt. 27/11/87 circulated vide GM(E)CCG's
(A) No. E(P&A) 1064/41 dt. 28.12.87. (Copy enclosed)

Respected Sir,

With kind respect I have to state that, I was granted special pay of Rs. 35/- p.m. in grade Rs. 330-560 (R) from 9.2.82. I was promoted as Head Clerk in gr. Rs. 425-700 (R) w.e.f. 1.1.84. While fixing my pay as Head Clerk in gr. Rs. 425-700 (R) my special pay of Rs. 35/- was not included for fixation of pay on promotion but was protected.

2. As per Rly. Board's letter under reference, special pay of Rs. 35/- granted to UDCs is to be taken into account for fixation of pay on promotion in the higher grade.

3. Under the circumstances, I request your honour to arrange refixation of my pay considering Spl. pay Rs. 35/- for fixation in scale Rs. 425-700 (R) from 1.3.84 i.e. the date I opted for fixation of pay from 1.3.84 on account of my next increment in scale Rs. 330-560 (R) and fix my pay in scale of Rs. 425-700 (R) as Head Clerk. Accordingly my fixation in scale Rs. 1400-2300 (RP) as per IVth Pay Commission from 1.1.86 will be revised.

4. Details of my pay and revised pay are as under for ready reference please:-

i) Special pay of Rs. 35/- granted from 9.2.82 vide ED/NG 839/2/54 Vol. II dt. 9.2.82.

ii) Pay as on 1.1.84 in gr. 330-560 (R) was Rs. 515+35 Spl. Pay and I opted for fixation of pay from 1.3.84 on account of my next increment in gr. Rs. 330-560 (R). Accordingly my pay on 1.3.84 in scale Rs. 425-700 (R) as Head Clerk in terms of above order on 1.3.85 Rs. 620/- and on 1.1.86 Rs. 620.

As per IVth Pay Commission's report, pay in gr. Rs. 1400-2300 (RP) pay fixation will be as under:-

Pay Rs. 620/- + DA + IR + 20% total comes to Rs. 1890/- as on 1.1.86

(a) on account of next increment on 1.3.86 Rs. 1850/-

(b) on 1.3.87 Rs. 1900/-

(c) on 1.3.88 it will be Rs. 1950/-

I request your honour to consider my case for refixation of my pay and issue orders at the earliest please.

Thanking you in anticipation,

Yours faithfully,

(G.M. Godbole)

Shri C.M. Goibale, Head Clerk (BWSM Gr.)

Present position

		Rs.
1.	1-3-81	488/-
2.	Spl. Pay granted from 9/2/82 (Rs. 35/-)	488/- + 35/-
3.	1-3-82	500/- + 35/-
4.	1-3-83	515/- + 35/-
5.	1-1-84	515/- + 35/-
6.	Opted for fixation of Pay from 1/3/84 on accrual of next increment in scale 330-560(R)	515/- + 45/- (Inc.) 560/- + 45/- (Lower) 545/-
	Next stage....	560/- + 5/- (PP)
	Pay fixed in scale 425-700(RS) as HC	560 + 5 (PP)
7.	1-3-85	580/-
8.	1-1-86 Due to IVth. pay commission pay re-fixed---IN SCALE 1400-2300.	1720/-
9.	1-3-86	1760/-
10.	1-3-87	1800/-
11.	1-3-88	1850/-

Revised Position

	Rs.
1-3-81	488/-
9-2-82	488/- + 35/-
1-3-82	500/- + 35/-
1-3-83	515/- + 35/-
1-1-84	515/- + 35/-
1-3-84 (*)	530/- + 35/- (Spl. Pay) 565/- + 45/- (Lower) 580/-
Next Stage	600/-
Pay to be fixed in scale 425-700 (RS) as Hd. Ck.	600/-
1-3-85	620/-
1-1-86	1800/-
1-3-86	1850/-
1-3-87	1900/-
1-3-88	1950/-

(*) NE Rs. 35/- Spl. pay is to be included on promotion as head clerk in fixation of pay in terms of PRO. & M. Rly. Bd.'s No. PC III/79/SP/1/UDC/ dated 27-11-87.

.....

verified
P. Advoca.

24

584 as per Refixation in PC III/79/SP/1/UDC/ dated 27-11-87
Rs. 500 + 35 = 535
22 9 26 84
21-3-82

29

(22) A7 (23)

WESTERN RAILWAY

P.S. No. 231/88

Headquarter Office,
Churchgate, Bombay

No.E(P&A) 1064/41

Dated 12/9/88

ALL CONCERNED,

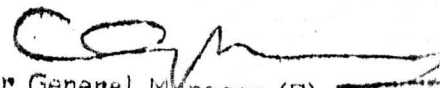
C/- GS - WREU-GTR/WRMS-BCT.

Sub: Grant of Special pay of Rs. 35/- p.m. to the upper division Clerks in the non-secretariate administrative offices.

A copy of Railway Board's letter No.PCIII/79/SP-1/UDC dt. 10.8.1988 is sent herewith for information, guidance and necessary action. Railway Board's letter No. PCIII/79/SP-1/UDC dt. 27.11.1987 referred to there in was circulated under this office letter No.E(P&A)1064/41 dt. 15.1.1988.

Hindi version is enclosed.

Encl: As typed below.


For General Manager (E)

Copy of Board's letter No. PCIII/79/SP-1/UDC dt.10.8.88 from Shri Elias Kullu, Dy. Director, Pay Commission-III, Railway Board addressed to The General Managers, All Indian Railways & Others.

Sub: Reckoning of special pay of Rs. 35/- to Upper Division Clerks in the Non-Secretariat Administrative Offices for the purpose of fixation of pay on promotion.

Please refer to this Ministry's letter of even number dated 27.11.87 on the above subject.

2. In connection with Board's letter quoted above, references have been received from the Zonal Railways stating that special pay of Rs. 35/- granted to UDCs promoted prior to 1.9.85, should also be reckoned for fixation of their pay. This matter has been examined in consultation with Ministry of Finance and it is clarified that the order in the instant case was issued by the Railway Board based on an order issued by the Ministry of Finance pursuant to an Award given by the Board of Arbitration. As the Award itself mentions 1st Sept., 1985 as the date of its taking effect, the question of putting back this date does not arise.

Paralkar/Kini 14/9/88

Verified by
P. Advocate

AS 23/24
4.11.88

To,
Divisional Railway Manager(E),
Baroda.

Sub:- Refixation of pay of NG staff class III
clerical staff-BWSM and other units -
BRC Division Reckoning of special pay of
Rs.35/- for fixation.

Ref:- Your memorandum No.ED/NG/773/2/4 dt.2.11.88

Dear Sir,

I the undersigned, submit my representation
as under:-

that the administrative decision must be in the
welfare of all effected staff who were granted special
pay of Rs.35/- in terms of Rly. Bd.'s No.PC/III/79/SP/1/
UDC dated 27.11.87 & not for the staff who are promoted
during the period from 1.9.85 to 31.12.85 as clarified
in para one of the memorandum under reference. Therefore
clarification given is not lawful & it cannot promote
the welfare of the staff. It should be justified. Therefore
it should be withdrawn.

that it is clearly stated in the Rly. Board's letter
No.PC/III/79/SP/1/UDC dated 27.11.87 addressed to the
General Manager, All Indian Railways and among others.
that the Bd.'s of Arbitration gave its award on 28.4.87
as under:-

"Rs.35/-per month paid to UDC as Special pay under
Bd.'s letter No.PC/III/79/SP-1/UDC dated 11.7.79 shall
be taken into account for fixation of pay on promotion w.e.
f.1.9.85 to the incumbant who is substantive holder of the
post or continuously officiated for a period of three
years."

I am a substantive holder of the post. It clearly
indicate that fixation of pay on promotion is to be made
in term of Board's letter dt.11.7.79 & becomes effective
from 1.9.85. Therefore it clearly indicate that effect
of payment due to fixation will be from 1.9.85.

(-----2)

verified
P. Adwani

Therefore refixation made vide DRM(E)BRC's memorandum No.ED/NG/773/2/4 dt.9.7.88 and ED/NG/773/BWEM dt.6-9-88 are absolutely in order in respect of award declared dt 28.4.87 by board's of Arbitration & it has a President sanction & have question does not arise to cancel the same.

In view of the above clarification given in para one is not understood in terms of said award of Arbitration & therefore you are requested to extend the welfare among the staff to withdraw the said orders under reference, otherwise I may please be granted permission to represent the issue to Tribunal (CAT)/ National Council/Trade Union to get justice and to ensure complete implementation of award dated 28.4.87. Till such time orders issued for effecting recovery may kindly be kept in abeyance.

With regards submitted for justices.

Yours faithfully,

Copy to Secy.WRMS. Please refer the matter in the National council in the welfare of staff for proper implementation of award dt.28.4.87 to get cancellation of clarification given in DRM's letter No.ED/NG/773/2/ 4 dated 2.11.88.

WESTERN RAILWAY

No.E/PD/774/2/2

Divisional Office,
Baroda.

Date : 6-6-89

To,

Shri

C.M. Godbole Head Clerk
Thron OS (BWA)

Through OS -

Sub : Refixation of pay N.G. Staff Class III staff DRC
division - Reopening of SPL pay Rs. 35/- for fixation.

Ref : CRM(E)DRC's memorandum No. ED/NG/773/2/2 DWSM dtd. 29-7-88
and 6-9-88.

The above revised fixation orders are cancelled vide CRM(E)DRC's
No. ED/NG/773/2/4 dated 2-11-88 and arrears payment made from 1-9-85
to Oct. 88. That comes to Rs. 4099-00 and the same will be re-
covered in suitable installments from June 89 and onwards. Please Note.

Please acknowledge the receipt.

A. K. Ambekar
for CRM(E)DRC

Copy to WRMS & WREU for information.

*Verified by
P. R. Advach*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

O. A. NO.242 OF 1989

C.M.Godbole & Ors....

..... Applicants

V/s

Union of India & Ors...

..... Respondents.

WRITTEN STATEMENT.

The respondents humbly beg to file written statement to the application as under:-

1. The present application filed by more than one applicant is not maintainable at law. The applicants have not obtained any permission to pursue this application as a joint application and hence is not maintainable.
2. Contents of paras 1 and 2 need no reply.
3. Contents of para 3(i), (ii) & (iii) need no reply.
4. Regarding para 3(iv) it is submitted that the applicants do not belong to one cadre but are working in different cadres like Head Clerk & Chief Clerk in DRM Office, Baroda. The respondents rely on true and proper interpretation of Railway

Received by
P. A.

Board's letter No.PC/III/79/SP/1 UDC, dated 11.7.79 as well as 14.1.81 (Annexure A/1 & A/2 respectively).

The respondents rely on Railway Board's letters of even number dated 30.1.80 and 1.7.80 (Annexure A/3 & A/4 respectively). It is not disputed that as per the said Circulars special pay of Rs.35/- to Senior Clerks in the scale of Rs.330-560(R) is not to be considered for the purpose of fixation of pay on promotion to the higher grade nor it should be kept as personal pay in future. It is submitted that as per the Railway Board's letter dated 1.7.80 it was clarified that the special pay granted to UDCs (Senior Clerks) under letter dated 11.7.79 is not in lieu of higher scale of pay but is intended for complex nature of work performed by them and cannot be treated as part of pay for fixation of pay on promotion to higher posts and that it was decided that it can be protected by grant of special pay equal to the difference between pay plus special pay drawn in lower post and the pay fixed in the higher post on the basis of pay in the lower post subject to certain conditions enumerated therein.

As regards Railway Board's letter No.PC III/79/SP/1/UDC, dated 27.11.87, the respondents rely on true and proper interpretation thereof. The said letter of the Railway Board amends the previous orders of the Ministry of

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Railways letter of even number dated 30.1.80 and becomes effective from 1.9.1985. It was stated in the said letter dated 27.11.1987 that as and from 1.1.86 ~~for~~ or the later date when the employee opts for the revised pay-scale(1986) the special pay will cease to count for fixation of pay on promotion. The said letter has the sanction of the President.

It is stated that as per clarification received vide Railway Board letter NO.PC III/79/Spl/UDC, dated 10.8.88 the benefit of reckoning special pay of Rs.35/- to senior clerk for the purpose of fixation of pay on promotion as Head Clerk extended to only those staff who are promoted during the period from 1.9.85 to 31.12.1985 as the original orders are effective from 1.9.85 and that the said privilege cannot be granted to those staff, who are promoted as Head Clerk prior to 1.9.85 and under these circumstances Divisional Office Memos Nos.ED/NG/773/2/4, dated 29.7.88 and NO.ED/NG/773/2/BWSH, dated 6.9.88 were cancelled vide Memo dated 2.11.88 (Annexure A with the application). It was, therefore, ordered that the staff whose fixation was already drawn should be revised considering the said letter as authority for the same and should be paid according to their previous position as shown in the Column Nos.4, 5 & 6 i.e. at previous rate of pay, which they were drawing before issued of re-fixation

orders and recovery of arrears, if paid, may be made. An opportunity was also given to the staff who are affected to submit their representation if they had any complaint. It is submitted that the Divisional Authority has to implement the orders issued by the Railway Board and the higher authorities. It is denied that the aforesaid orders of DRM(E) are arbitrary and void.

It is denied that the authorities have infringed all the norms of Service Rules and violated the fundamental rights of the applicants under Articles 14 & 16 of the Constitution of India. It is denied that the authorities have issued the orders for recovery dated 6.6.89 without considering the representation dated 4.11.88 submitted by the applicants. The said order of recovery based on the extant rule were legal and proper.

5. Contents of paras 4 & 5 need no reply.

6. Regarding para 6(i), the respondents rely on the service record of the applicants. It is not disputed that the applicants are working in DRM Office, Baroda.

7. Regarding para 6(ii) to (vii), the respondents rely on true and proper interpretation of the Railway Board's letters ~~dated~~ No.PC III/79/SP/1/

UDM dated 11.7.79, 30.1.80, 1.7.80

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and 27.11.87. It is submitted that as per letter dated 1.7.80 special pay of Rs.35 to UDC which was granted under the provision of Railway Board's letter dated 11.7.79 was to be protected by grant of special pay equal to the difference between pay and special pay drawn in lower post and the pay fixed in the higher post on the basis of pay in lower post subject to the conditions enumerated therein. As per letter dated 27.11.87 the Board of Arbitration decided that Rs.35/- per month paid for UDCs as a special pay under Board's letter dated 11.7.79 should be taken into account for fixation of pay on promotion subject to the conditions stated in the said letter and the said order amending the previous order dated 30.1.80 became effective from 1.9.85. It was also provided in the said order dated 27.11.87 that as and from 1.1.86 and the later date when the employee opts for the revised pay scales (1986), the special pay will cease to count for fixation of pay on promotion. It is submitted that necessary action is required to be taken by the Administration in the light of the aforesaid orders.

8. Regarding para 6(vii), the respondents rely on the original letter dated 15.2.88 submitted by the applicant No.1 to DRM(E), BRC for re-fixation of his pay.

9. Regarding para 6(viii), the respondents rely on the letter dated 2.11.88 issued by the DRM(E) Baroda cancelling the previous order of re-fixation of salaries of senior clerks on the basis of counting

special pay of Rs.35/- for the purpose of fixation of pay on promotion as head clerk as the said benefit could be extended only to those staff who are promoted during the period from 1.9.85 to 31.12.85 as the original orders are effective from 1.9.85. The said letter dated 2.11.88 was issued on receipt of clarification vide Railway Board's letter dated 10.8.88. It is denied that the said orders are arbitrary and void as alleged. It is denied that the Railway Authorities have deviated from the award given by the Board of Arbitration. It is denied that nothing has been mentioned in Railway Board's letter dated 10.8.88 regarding implementation of the award. It is denied that the effect of the award is from 1.9.85 and the same has been accepted by the applicants as well as the authorities and the arrears were paid from 1.9.85 and not from the prior date as alleged. It is submitted that the Railway Board's letter dated 10.8.88 has been issued in reference to the letter dated 27.11.87 clarifying that the order was issued by the Railway Board based on an order issued by the Ministry of Finance pursuant to an award given by the Board of Arbitration and since the award itself mentions 1.9.85 of the date of its taking effect the question of putting back the said date did not arise. Thus, the employees who were promoted prior to 1.9.85 were not eligible for

the benefit of reckoning special pay of Rs.35/- for the purpose of fixation of pay on promotion as Head Clerk and hence the Railway Authorities had correctly issued letter dated 2.11.88. 18

10. Contents of para 6(x) need no reply. The respondents rely on the original representation.

11. Contents of para 6(xi) are not true and are not admitted. It is denied that without considering the representation of applicant No.1, the authorities have issued the order dated 6.6.89 to each applicant advising that
/the revised fixation has been cancelled and arrears are to be recovered in suitable instalments. It is submitted that the said order was passed after considering the representation of the applicant No.1.

12. Contents of para 6(xii) are not true and are denied. It is denied that the Railway Authorities had decided to act arbitrarily and violating all norms of rules and regulations of service. It is submitted that the respondents have been acting as per the orders of the Railway Board. There is no violation of fundamental rights of the applicants under Articles 14 and 16 of the Constitution of India.

13. Respondents submit that during the pendency of the present proceedings Divisional Office, Baroda, has issued letter No.ED/NG/839/2/4/Spl Pay, dated 27.9.89 circulating the Railway Board's letter dated 2.8.89 in reference to the Railway Board's letter dated 27.11.87 and the

judgement of CAT stating that pay of those UDCs, who were drawing special pay of Rs.35/- in terms of the Railway Ministry's letter dated 11.7.79 and were promoted to higher posts prior to 1.9.85 and who fulfilled the conditions mentioned in the letter dated 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. It is submitted that the Divisional Office has thereafter issued Memorandum No.ED/NG/773/2/4 Vol III, dated 2.1.90 regarding fixation of the employees who were granted special pay of Rs.35/- and promoted as Head Clerks prior to 1.9.85 and arrears payable to them from 1.9.85 and onwards in terms of Railway Board's letter dated 2.8.89. It is submitted that in view of the said refixation of pay and payment of arrears ordered from 1.9.85 the applicants' grievance does not now survive and have no cause to pursue.

14. The applicants are not entitled to any of the reliefs claimed in para 7 of the application.

15. The applicants are not entitled to interim order as prayed for in para 9 of the application.

16. Contents of paras 9 to 13 need no reply.

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In view of what is stated above, the application may be dismissed with cost and interim relief granted in favour of the applicants may be vacated.

VERIFICATION.

I, Vidhu Kashyap, age about 32 years, son of Shri B.B.Kashyap, working as Divisional Personnel Officer, Western Railway Baroda and residing at Baroda do hereby state that what is stated above is true to my knowledge and information received from the record of the case and I believe the same to be true. I have not suppressed any material facts.

Baroda

Dated: 17.12.1990

File 27.12.90

Vidhu Kashyap

Divisional Personnel Officer,
Western Railway, Baroda.

Reply/Rejoinder/written submissions
Filed by Mr. *AT S. S. Shinde*
learned advocate for petitioner/
Respondent with second ...
Copy served/not served to other side

28/1/90 By Registrar C.A.T (I)
A'bad Bench