

**CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH**

O.A. NO. 182 of 1993  
T.A. NO.

DATE OF DECISION 31.3.1999

Mr. L.I. Vasavada & other

Petitioner

Mr. M.M. Xavier

Advocate for the Petitioner(s)

**VERSUS**

Union of India & others

Respondents

Mr. R.M. Vin

Advocate for the Respondent(s)

**CORAM**

The Hon'ble Mr. V. Ramakrishnan, Vice Chairman

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

**JUDGMENT**

1. Whether Reporters of Local Papers may be allowed to see the judgement ? <sup>✓</sup>
2. To be referred to the Reporters or not ? <sup>✓</sup>
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 ? <sup>✓</sup>

1. Laxmikant Ishwarlal Vasavada,  
Aged 60 years, Occupation-  
Ex. Accounts Assistant (Retired on 28.2.91)  
In the office of the  
Divisional Accounts Officer,  
Western Railway, Bhavnagar Para.

Residential Address:

Government Quarter No.C-1/7,  
Jail Ground, BHAVNAGAR  
Pin code 364 002.

2. Ishwarlal Vithaldas Parekh,  
Aged 60 years, Occupation  
Ex-Accounts Assistant in the  
Office of the Assistant Accounts Officer  
(Workshop & Stores)  
Western Railway, Bhavnagar Para

Residential address:

Crescent Building,  
Near Gandhi Smurthi,  
Bhavnagar- 364 001.

.. Applicants

(Advocate Mr. M.M. Xavier)

VERSUS

1. The Chairman  
Railway Board  
Rail Bhavan  
NEW DELHI.

2. The Union of India  
Representing Western Railway  
Through its General Manager,  
Churchgate, Bombay 20.
  3. The Divisional Accounts Officer,  
Western Railway,  
Bhavnagar Division  
Bhavnagarpara 364 003.
  4. The assistant Accounts Officer,  
(Workshops & Stores)  
Western Railway, Bhavnagar Division  
Bhavnagar Para 364 003 .. Respondents.
- (Advocate Mr. R.M. Vin)

**ORAL ORDER**

**OA No. 182 of 1993**

**Dt. 31.3.1999**

Per Hon'ble Mr. V. Ramakrishnan, Vice Chairman.

We have heard Mr. Xavier for the applicants and Mr. Vin for the Respondents.

2. The applicants, who were functioning as Clerks Grade/I in 1985 and who were promoted as Sub Heads with effect from 16.12.85 are aggrieved by the order of the Railway administration, which refuses to grant them special pay

of Rs. 35 per month to identified posts of Grade/I clerks retrospectively from 1.1.84.

3. The applicants were functioning as Grade I Clerks at the relevant time and they had reached this level prior to 1.1.84. On the basis of the report of the Committee of the JCM which was adopted by the National Council and as per the agreed conclusions, Government of India decided that Clerks Grade I in the scale of Rs. 330-560 would be entitled to special pay of Rs. 35 per month if they were attending to work of more complex and important nature; provided the total number of such posts should be limited to 10% of the posts in the seniority group of the respective clerical cadre. This scheme was conveyed by the letter of Railway Board dt. 11.7.79 and is enclosed as Annexure A/4. We find from the relevant materials on record that so far as in the Accounts organization of the Bhavnagar Division of the Western Railway is concerned, where the applicants were functioning, the work of restructuring of the Accounts cadre was finalized on 13.12.85 wherein 34 posts of Clerks, Grade I were upgraded as Sub Heads and the grant of Rs. 35 per month as special pay to the Senior Clerks could be finalized only thereafter since as a result of upgradation, the cadre of Clerks Grade I shrank and only 10% of the posts were to be given the benefit of special pay. The shape of the post of Clerks Grade I crystallised only towards the end of 1985

and after the applicants were promoted as Sub Head with effect from 16.12.85.

The contention of the applicants is that the scheme envisages the benefit of special pay of Rs. 35 per month to 10% of the posts at any time and they being senior-most in the cadre were entitled to be considered for such posts carrying special pay of Rs. 35 per month. Mr. Xavier brings out that subsequently Government decided that the special pay of Rs. 35 was taken into account for the purpose of pay fixation on promotion to the next higher grade. He states that if the applicants had been given promotion as and when they became eligible for the same, they would have not only got the benefit of Rs. 35/- per month as special pay till 27.12.85 but also more importantly they would have got their pay fixed in the scale of Rs. 425-700 at a much higher level. Mr. Xavier contends that the delay on account of identification of the special pay posts should not act in a manner detrimental to the applicants. It is also his stand that that the department has not always been following the principle of <sup>grant of</sup> special pay in identified posts and in some cases had given special pay of Rs.35 to senior-most. He refers to the case of one Mr.P.D. Parmar who was working in the office of SAO © Baroda, who was granted special pay of Rs. 35 per month, even though he was borne on Bhavnagar division but was on deputation to the Rly. Electrification,



Baroda. Mr. Xavier further brings out that as per the restructuring order as communicated by the Railway Board by their letter dt. 25.6.85 as at Annexure A/ 5 that the restructuring orders visualized grant of special pay to certain categories with effect from 1.7.85. He says the applicants may be considered for special pay of Rs. 35 per month with effect from 1.7.85 if not from 1.1.84. He, therefore, submits that the OA may be allowed.


4. Mr. Vin for the respondents resists the application. He takes the stand that the present OA was filed in 1993; whereas the applicants were aware that their juniors were getting the special pay as per the order dt.12.2.86 (Annexure A/6). As per this order the benefits of special pay were admissible from 13.1.86 which has been subsequently modified by order dt.16.6.87 as per which the special pay became admissible from 27.12.85. He says that the applicants had not approached the Tribunal within the limitation period. Mr. Xavier states that the applicant approached the Tribunal within one year from the date of the letter dt. 20.4.92. He also contends that pay fixation is a continuing process as decided by Hon'ble Supreme Court in the case of Mr. M.R. Gupta and can be agitated at any time.

5. Mr. Vin contends <sup>even on merits</sup> that the applicants have no right to claim special pay retrospectively from 1.1.84 in the lower scale or any date prior to the

promotion as Sub Head. He says that as brought out in the letter dt. 16.12.85, which is enclosed as Annexure R to the reply statement, the applicants were promoted with effect from the date to the post of Sub Head. Mr. Vin says that the scheme of special pay was limited only to the cadre of Clerks Grade I and not to the cadre of Sub Heads. As regards the claim for giving special pay to the applicants in the lower scale from any date prior to 27.12.85, Mr. Vin refers to Annexure A/1 of the reply statement and says that some time was taken to identify the specific posts against 10% of the cadre after restructuring and this could be finalized only subsequent to the promotion of the applicants to the higher scale.

6. Mr. Vin also submits that the applicants filed MA for amendment in which it was brought out that some persons namely Mr. P.D. Parmar and Mr. M.J. Joshi who were getting special pay of Rs. 35 were promoted as Sub Heads with retrospective effect from 1.1.84 on account of upgradation. The special pay was withdrawn and the excess amount has been recovered. Mr. Vin says that the administration has been following a consistent policy in such matters.

7. We have carefully considered the submissions of both sides. The main grievance of the applicants is that Bhavnagar division has taken delayed action in shaping the cadre and identifying the posts for grant of special pay



of Rs. 35 after restructuring and this had come in the way of the applicants. As has been brought out by the Railway administration, the scheme for special pay came into effect from 1979. On account of restructuring, a number of persons senior to the applicants were promoted to the scale of Rs. 425-700 with effect from 1.1.84 retrospectively. The restructuring also resulted in reducing the number of posts at the lower level with corresponding increase in the higher level. Orders for restructuring were issued some time in June, 1985 but took effect from 1.1.84. Obviously the applicants were not senior enough to be considered for the 10% posts of Clerks Gr.I carrying special pay of Rs. 35 prior to the restructuring orders issued in June, 1985. Their claim has arisen only when their seniors have been promoted retrospectively to the higher grade vacating some of the posts carrying special pay. The number of such posts had to be re-identified, as the cadre post had come down and only 10% of the cadre post can carry such special pay. Some time has been taken by the division in identifying the posts. Nothing has been brought out by the applicants to establish that the applicants were holding such posts carrying the higher responsibilities at any time after the restructuring orders were issued in June, 1985. Although they submit that they were senior to be given the special pay posts, it is not established that they were holding such responsibilities, which would have



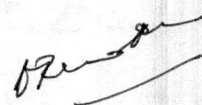
entitled them to special pay of Rs. 35 per month. The applicants were promoted to the post of Sub Heads with effect from 16.12.85 and the orders to their juniors were issued on 12<sup>th</sup> February, 1986 after identification of posts initially with effect from 30.1.86 and later on from 27.12.85.

8. In the circumstances, we hold that the applicants are not entitled for the relief sought for in the OA. Mr. Xavier submits that their juniors have been given special pay after the applicants' promotion as Sub-Heads and this would result in getting more pay to them on their promotion to the post of Sub-Head. This <sup>is</sup> not an issue in the present OA. However, if it is found that any of their juniors draw more pay than the applicant after their promotion as Sub-Heads on account of the special pay of Rs. 35 per month in the cadre of Clerks Grade I, it is <sup>left</sup> to the applicants to bring out this aspect and take such appropriate steps with the Railway administration as may be warranted.

9. In the light of the above we hold that the applicants are not entitled for the relief sought for in the OA and this OA is dismissed with no orders as to costs.



(P.C. Kannan)  
Member (J)



(V. Ramakrishnan)  
Vice Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL, DE LHI

Application No.

of 19 .

OA | 182 | 93

Transfer application No.

Old Write Pet. No.] .....

CERTIFICATE

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

Dated: 16/04/99

Countersigned.

Section Officer/Court Officer.

*Mr. Ravi*  
*21-4-99*

Signature of the Dealing Assistant.

MGIPRRND—17 CAT/86—T. S. App.—30-10-1986—150 Pads.

CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD

CAUSE TITLE

01A | 182 | 93

OF THE PARTIES

Mr. L. L. Vasaradey R02

VERSUS

4. 2 20

[illegible]