

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
O.A. NO. 547 OF 96

Present : Hon'ble Mr. Justice A.K.Chatterjee, Vice-Chairman

Hon'ble Mr. M. S. Mukherjee, Member (A)

Pramatha Sen
O.S.Gr.II/CSTE
S.E.Railway, GRC
Arbinda Nagar, Thakurpukur,
Calcutta-700 063

VS

1. Union of India through the General Manager, S.E.Railway, Garden Reach, Calcutta-43
2. General Manager, SE Rly. Garden Reach, Calcutta-43
3. Chief Personnel Officer, S.E.Rly. Garden Reach, Calcutta-43
4. C.S.T.E. S.E.Rly. Garden Reach, Calcutta-43

.... Respondents

For the petitioner : Mr. B.C.Sinha, Counsel

For the respondents : Ms. B.Roy, Counsel

Heard on : 25.7.97 : Order on : 25.8.97

ORDER

M.S.Mukherjee, A.M.

This is a petition u/s 19 of the Administrative Tribunals Act, 1985, in which the petitioner is aggrieved with the impugned communication dt. 19.11.90 (Annexure-A4 to the petition) issued by the Sr. P.O./ S/S&T/GRC by which the petitioner's appeal for grant of special pay of Rs. 70/- per month as Sr. Clerk has been rejected by the respondents, despite the petitioner's alleged claim for eligibility for the same.

2. The petitioner had been appointed on 27.1.63 in the South Eastern Railway and was subsequently promoted as Senior Clerk on 8.4.80 (although in the petition the date is

mentioned as 8.4.88, but Mr. B.C.Sinha, the 1d. counsel for the petitioner during hearing orally submitted that this date should be 8.4.80). The petitioner has indicated the order of seniority of Sr. Clerks as follows :

1. Shri D.K.Mullick
2. Shri L.K.Ganguly
3. Shri P.G.Saha
4. Shri S.N.Dey
5. Shri P. Sen (petitioner)
6. Shri M.L.Roy

The petitioner's contention is that Shri D.K.Mullick and Shri L.K.Ganguly, the then Sr. Clerks had been given the benefit of special pay of Rs. 70/- per month with effect from 17.2.87. When these two Sr. Clerks had been promoted to the next higher grade of Head Clerk with effect from 21.9.87, in the resultant vacancies of Sr. Clerk with special pay, the next two Sr. Clerks viz. Shri P.G.Saha and Shri S.N.Dey became eligible for the grant of such special pay with effect from 21.9.87. But they could not be granted such special pay because on that date, both these two Sr. Clerks had also been promoted to the post of Head Clerk in the same office with effect from 21.9.87. Therefore, according to the petitioner, the benefit of special pay as Sr. Clerk should have gone at atleast to the next senior person in order of seniority viz. the petitioner. The petitioner had subsequently been promoted as Head Clerk with effect from 8.4.88. Therefore, the petitioner's case is that he should have been granted special pay of Rs. 70/- per month as Sr. Clerk between 21.9.87 and 7.4.88. The petitioner made representation claiming such benefit but the same has been rejected by the impugned communication dt. 19.11.90 (Annexure-A4) and it has been conveyed that since the petitioner had been promoted as Head Clerk straightway along with his seniors due to availability

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of higher post of Head Clerk, his claim for special pay was not admissible.

3. Being aggrieved, the petitioner has filed this petition and has prayed by implication for the quashing of the impugned communication dt. 19.11.90. He has also prayed for a direction on the respondents to grant him special pay of Rs. 70/- per month as Sr. Clerk for the period between 21.9.87 and 7.4.88 and taking into consideration such special pay, his pay on promotion as Head Clerk be refixed with consequential payment of arrears etc.

4. The respondents have contested the case by filing a written reply. Their contention is that the special pay is given to the senior clerks under the rules for only those who shoulder special responsibility and since at the material time the petitioner did not shoulder such special responsibility he cannot claim the same as a matter of right. Moreover, he has been promoted as ^{at Head} ^A Clerk straightway against existing vacancy w.e.f. 8.4.88 from the post he was holding without any special responsibility and therefore, he cannot get the benefit of pay fixation in the higher post of Head Clerk after taking into consideration of the special pay. The respondents have, therefore, urged for rejection of the case.

5. We have heard the learned counsel for the parties and have gone through the documents produced. In view of urgency of the matter we propose to dispose of the case at the stage of admission itself.

6. There is no dispute about the inter se seniority of the petitioner vis-a-vis other Sr. Clerks as claimed in the petition. It is also admitted that although two seniormost Sr. Clerks viz. Shri D.K.Mallik and Shri L.K.Ganguly had been enjoying the special pay as Sr. Clerk, when these two employees had been promoted as Head Clerk in higher scale of pay by the order dt. 21.9.87 with effect from the same date, the next

seniormost Sr. Clerks who could be considered for such special pay of Rs. 70/- per month were Shri P.G.Saha and Shri S.N.Dey, who were just above the petitioner. But these two employees also were not granted special pay as they had been simultaneously promoted to the higher post of Head Clerk straightway by the same order dt. 21.9.87 with effect from 21.9.87. The petitioner's contention is that in that event, the special pay should have been gone to the next seniormost persons viz. the petitioner who was just below Shri S.N.Dey and that this special pay should have been granted to him with effect from 21.9.87 itself when the special pay carrying post of Sr. Clerk became available.

7. The respondents of course contest this on the ground that the special pay could not be ipso facto be given to the petitioner as the post he was holding did not carry any special responsibility qualifying for such special pay. Incidentally, the petitioner was promoted to the post of Head Clerk with effect from 8.4.88 by an order of the same date and that he had been promoted as Head Clerk straightway from the previous post which was not carrying any special pay.

8. In our considered opinion, we do not find the action of the respondents in this regard as properly justified. The respondents do not deny that those Sr. Clerks who would get special pay of Rs. 70/- per month by virtue of the rules have the privilege of getting the benefit of such special pay for the purpose of pay fixation in the next higher post of Head Clerk as and when they are promoted. So, if any Sr. Clerk has not been sanctioned this special pay of Rs. 70/- per month, but his erstwhile juniors got such special pay, then in that case, such senior employees although promoted as Head Clerk earlier than their juniors, would perpetually lose in terms of pay fixation as compared to their juniors. Therefore, it is fair and proper that the post of Sr. Clerk carrying special

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pay should also be filled up from amongst serving senior clerks in order of seniority.

9. Now, it is the admitted position that when the first 2 seniors viz. Shri D.K.Mitra and Shri L.K.Ganguly enjoying special pay as Sr. Clerk had been promoted as Head Clerk, the next two seniormost Sr. Clerks were also on the same date promoted straightway as Head Clerk, the next seniormost Sr. Clerk in the order of seniority was the petitioner. Even though the post that the petitioner was contemporaneously holding can by ^{it is assumed} myth be described as a post not carrying any higher responsibility by connotation, yet it was necessary for the respondents to shift him at least to the resultant vacancy of Sr. Clerk carrying special pay which was available from 21.9.87 itself. In fact, according to an office note (photocopy annexed to the reply at Annexure-R1), it is seen that the office had proposed that in the resultant vacancies, the petitioner along with another person should be given special pay with effect from that date (21.9.87) itself and the note was marked to APO who also recommended the said proposal to SSTE(HO-I). But the SSTE, ^{Worley} however, disagreed with the ^{order} ^{under} that since "another selection is being conducted for adjudging suitability of the abovestated (employees) for promotion to HC, this may be kept pending till the above selection is over." So, on this ground, the petitioner's case for grant of special pay as Sr. Clerk was kept pending till he was promoted as Head Clerk.

10. But in our view this is unfair, as because of this, the petitioner would not only lose the special pay for the intervening period as Sr. Clerk but also would perpetually lose financially in terms of pay fixation when promoted as Sr. Clerk subsequently. We therefore consider this action of the respondents as unreasonable.

11. In the result, we dispose of the petition with the

order that the respondents shall, within 3 months from the date of communication of this order, grant the petitioner the benefit of special pay as Sr. Clerk at the rate of Rs. 70/- per month as per rules from 21.9.87 upto 7.4.88. But since during this period, the petitioner did not actually work in the particular earmarked post of Sr. Clerk carrying special pay, this benefit of special pay would be given to him notionally for this period with the further order that the benefit of such notional special pay of Rs. 70/- would be allowed to him for pay fixation on promotion as Head Clerk w.e.f. 8.4.88 and he would be paid all consequential arrears etc. w.e.f. 8.4.88. There will be no order as to costs.

Mukherjee
25/8/1992
(M.S.MUKHERJEE)

MEMBER(A)

Ar. Chatterjee
20.8.89
(A.K.CHATTERJEE)

VICE CHAIRMAN