

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

Present : Hon'ble Dr. B.C. Sarma, Administrative Member.
Hon'ble Mr. D. Purkayastha, Judicial Member.

O.A. No. 1026 of 96	R.C. Sengupta
O.A. No. 1027 of 96	B.K. Joardar
O.A. No. 1028 of 96	P.K. Roy
O.A. No. 297 of 97	S.K. Banerjee
O.A. No. 298 of 97	P.N. Murty

...Applicants.

1. Union of India service through the Chairman, Railway Board and Ex. Officio Principal Secretary to the Government of India, Ministry of Railways, Rail Bhawan, New Delhi-110 001.

2. The General Manager, S.E. Rly. Garden Reach, Calcutta-700 043.

3. The F.A. & C.A., S.E. Rly., Garden Reach, Calcutta-700 043.

4. The Dy. F.A. & C.A.O.(W/S), S.E. Rly., P.O. Kharagpur, Dist. Medinipur.

...Respondents

For the applicants : Mr. P.B. Misra, Counsel.
(O.A. Nos.1026-28/96 & O.A. Nos.297-98 of 97)
Mr. S.K. Mitra, Counsel.(O.A. Nos.1026-28/96)

For the respondents : Mr. P. Chatterjee, Counsel (O.A. Nos.1026-28/96)
Mr. S. Chowdhury, Counsel.(O.A. Nos. 297-98/97)

Heard on 12.9.97

Order on 12.9.97

O R D E R

B.C. Sarma, AM

All the five applications have been taken up together for hearing and order since they involve common question of law and fact.

2. The dispute raised in this application is about the non-fixation of pay to the applicants as SG.C.G.I under FR-22C denying higher pay and higher consequential benefits. The brief facts of the case are as follows:

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3. The applicants were all & one time clerk Gr.I in the pay scale of Rs.330-560. An amount of Rs.35/- p.m. was paid as special pay to 10% of the total strength of clerk Gr.I for rendering higher responsibility from 5.5.79. The next promotional post for clerk Gr.I is the post of Sub Head having pay scale of Rs.425-700. The post was abolished from 1.4.80 and the SG.C.G.I was introduced w.e.f. that date in the same pay scale. Thus the post of SG.C.G.I. was earlier the post of Sub Head ~~on 1.1.80~~. However, the post of Sub Head was reintroduced with effect from 1.4.84 abolishing the selection grade I. The applicants' special pay of Rs.35/- per month was not taken into account during this period while their pay was fixed in the post of SG.C.G.I. on the ground that it was not a promotional post. As a result thereof, there has been reduction in pay and consequentially the respondents have already recovered the excess amount of pay and allowances given.

4. Reduction of pay resulted in decrease in the pensionary and other benefits. Being aggrieved thereby, the instant application has been filed.

5. In all cases, the respondents have filed reply. The stand taken by the respondents has been that the appointment in the Selection Grade clerk Gr.I is not a promotional appointment. It was a method of appointment from C.G.I, therefore, the benefit of FR 22-C corresponding to Rule 2018 (B) R II cannot be given to them. Therefore, they have rejected their prayer.

6. We have heard the submission of the Id. counsel for both the parties, perused records and considered the facts and circumstances of the case. Mr. Chatterjee, Id. counsel appearing for the respondents in O.A.No.1026-28 of 96 invited our attention to para 4 of a letter issued by the Railway Board and submitted that the action has been taken by the respondents on the basis of the said direction given in the circular. Mr. Mishra, Id. counsel for the applicants produced a judgment and a copy of order dated 26.2.96 passed in a batch of O.A.s beginning with O.A. No.1121/93 where the same issue was raised as in this original. A detailed discussion was made and the applications were allowed on the

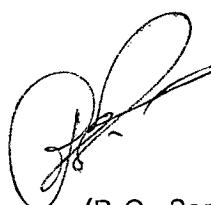


basis of the decisions of the Madras Bench Tribunal in three O.As which were disposed of by the judgment dated 6.9.91 as stated in para 17 of the judgment. Mr. Mishra, Id. counsel for the applicants submits that the judgment of the special leave petition of the Union of India and Ors. was dismissed by the Hon'ble Apex Court and the respondents have implemented the said judgment. Mr. Chatterjee, Id. counsel for the respondents invited our attention to another judgment of the Hon'ble Apex Court in the Union of India and Ors. Vs. Mohd. Haroon Rashid & Orws. reported in 1997 SCC L&S 1151 where the judgment on similar line was pronounced in respect of the case of postal department. We, therefore, find that the issue, which has been raised before us, has already been adequately adjudicated. We further observe that the decision of Madras Bench has been affirmed by the Hon'ble Apex Court and this being the position, since special leave petition of Union of India was dismissed, the judgment of the Madras Bench has just merged with the order of the Hon'ble Apex Court; but the Railway Board has taken different stand in its circular No. PC-III/96/8/1 dated 7.3.97. In view of the judgment of the Hon'ble Madras Bench and subsequent dismissal of the special leave petition by Hon'ble Apex Court, we find that this circular is contrary to law and railwas cannot act on this circular any more.

7. In view of the above, all the applications are allowed and the respondents are directed to take appropriate action as per direction given by us in the order dated 26.2.96 in the batches of O.As beginning with O.A. No.1121/93 (Tara Prasad Mukhopadhyay Vs. Union of India). We further direct that the respondents shall pay interest at the rate of 10% on the amount recovered and to be refunded to the applicants within a period of three months from the date when the special leave petition was dismissed i.e. 19.1.95 to the date of actual refund. No order is passed as regards costs.



(D. Purkayastha)
M e m b e r (J)



(B.C. Sarma)
M e m b e r (A)