

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.1213 of 1996

Present : Hon'ble Mr. S. Biswas, Administrative Member
Hon'ble Mr. Shanker Raju, Judicial Member

Avijit Roy, S/o Sri N.N. Roy workign as
Head Clerk, CCM's office, S.E. Rly.,
Garden Reach, Calcutta-43 at present
residing at 26, Nevidita Road, Purbachal
(N), Haltu, Calcutta-78

... Applicant

VS

1. Union of India, services through
General Manager, S.E. Rly., Garden Reach,
Calcutta-43

2. Chief Personnel Officer, S.E. Rly.,
GRC, Calcutta-43

3. Chief Engineer (Con), S.E. Rly., GRC,
Calcutta-43

4. S.P.O. (P&T), S.E. Rly. GRC, Calcutta

5. Sri Chinmoy Chakravorty, Sr. Clerk,
COM's Office, GRC

... Respondents

For the Applicant: Mr. B. C. Sinha, counsel

For the Respondents: Ms. A. Singh, counsel

Date of order: 24.09.2002

O R D E R (ORAL)

S. Raju, JM

Applicant impugns the respondents' letter dated 5.8.96 denying the grant of special pay of Rs.70/- per month and has sought proforma benefit when his junior was given promotion from 1.6.94 to 28.7.94 with consequential benefits.

2. Applicant was selected as Junior Clerk in S.E. Railway and subsequently posted under the Chief Engineer (Con). He was promoted as Senior Clerk with effect from 21.8.84. As per the seniority maintained in COM's office where his lien is maintained, the applicant is entitled for the benefit of the special pay in January, 1991. By a letter dated 2.1.91 the Construction Division was requested to obtain an option from the applicant to avail the benefit of the special pay. The applicant

joined the parent Department on 1.6.94. On resumption of duties he represented to the respondents, but the same was denied. Subsequently he was promoted to the post of Head Clerk on 29.7.94.

3. Learned counsel of the applicant drawing attention to the memo dated 28.3.94 contended that six persons who are admittedly junior to him as Sr. Clerk in his parent Department though initially granted special pay of Rs.70/- on ad hoc basis had been granted the same on regular basis with effect from 27.9.84 and as the applicant had already joined his parent Department, he has been deprived of the same benefit without any justified reason. According to the applicant this violates Arts. 14 and 16 of the Constitution of India.

4. He further placing reliance on Board's letter dated 11.7.79 contended that before posting the persons against 10% posts, it has to be ensured that senior persons are not ignored in the matter of higher fixation of pay and it was incumbent upon the respondents to have afforded opportunity to the applicant to exercise the option which accordingly has not been done. As he was not aware that it is his turn to get the special pay in his parent Department where his lien is maintained, he suffered irreparable loss due to non granting of special pay by the respondents.

5. On the other hand, the respondents in their reply denied the contention stating that his appeal was examined and as no post of senior Clerk was available from 1.6.94 to 28.7.94, which was occupied till the promotion of Shri Roy, Head Clerk, the benefit could not be given to him. Further it is stated that the applicant was aware of his position and option, but despite this he has not exercised the same as he got simultaneous promotion as ad hoc on officiating basis in the construction Division and has been promoted as Sr. Clerk in the parent cadre. He has not shouldered higher responsibility which is a prerequisite for

getting special pay. The applicant was given promotion as Head clerk in July, 1994.

6. We have carefully considered the rival contentions of the parties and perused the materials on record. In our considered view the reasons assigned by the respondents to deprive the applicant of the special pay are not justifiable. Their contention that all the posts were occupied and the applicant has not exercised the option to come back cannot be countenanced in view of the fact that though junior Shri B. Mitra, Shri Arun Adhikary, Shri Goutam Das, Shri Pradip Sengupta, Smt. Jaya Roy and Shri Chinmoy Chakraborty were given the special pay of Rs.70/- on ad hoc basis with effect from 31.3.93, but it was accorded on regular basis with effect from 29.7.94. When the applicant had already joined his parent Department, he cannot be discriminated in the matter of giving special pay for not shouldering higher responsibility. In view of the settled law that when junior has been given the benefit, the senior cannot be denied the same, if he fulfills the criteria.

7. In the result we find that the decision of the respondents is not legally sustainable and we are of the view that the matter requires reconsideration in the light of our observations (supra) above and also keeping in view the letter dated 23.8.94. Accordingly the OA is ^{is} ~~admitted~~ partly allowed. We set aside the impugned order dated 5.8.96 and remand the case back to the respondents for reviewing the case for special pay to the applicant and if he is declared entitled for it the same shall be given to him with all consequential benefits. This exercise shall be completed within a period of three months from the date of receipt of the copy of the order. No costs.

S. Raju
(S. Raju)

MEMBER (J)

S. Biswas
(S. Biswas)
MEMBER (A)