

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA 431/96

Present : Hon'ble Mr.B.V. Rao, Member(J)
Hon'ble Dr.A.R. Basu, Member(A)

G.C. Chakraborty

-Vs-

- 1) Union of India service through the General Manager, S.E. Rly, Garden Reach, Calcutta – 43
- 2) Sr. Dvl. Personnel Officer, S.E. Rly, Kharagpur
- 3) Sr. Dvl. Signal and Telecom Engineer, S.E. Rly, Kharagpur
- 4) S.R. Samanta, Head Clerk working under Sr. DSTE, S.E. Rly, Kharagpur

For the applicant : Mr.A. Chakraborty, Counsel

For the respondents : Mr.K. Chakraborty, Counsel

Date of Order :

17.1.2007

ORDER

Mr.B.V. Rao, JM

Shri G.C. Chakraborty, working as Head Clerk in the S.E. Rly has filed this OA praying for the following relief :

- a) Declaration that the applicant is entitled to get the benefit of Special Pay before his posting as Head Clerk like respondent No.4
- b) An order do issue directing the respondents to fix the pay of the applicant after granting Special Pay of Rs70/- p.m. from the date of entitlement and to pass such other order or order, direction or directions.

2. The applicant while working as Sr. Clerk in the S&T Training School, Kharagpur, S.E. Rly was called to appear at the suitability test for the post of Head Clerk vide order dated 26-7-94 (wrongly written as 1998) to be held on 19-8-94. In all, 5 persons appeared in the suitability test and after being declared successful, they were appointed as Head Clerk as per order dated 7-10-94 (Annexure-'B') in the scale of Rs1400-2300/-. The applicant has been shown to have been appointed against existing vacant post of O.S. Grade I. His name is at SL No.3 of the said promotion list. The grievance of the applicant

is that he has been posted directly as Head Clerk from the post of Sr. Clerk without allowing him to touch the post of Sr. Clerk and thereby he has been deprived of higher pay fixation in the post of Head Clerk by taking into account Special Pay of Rs35/70 as Sr. Clerk. His case is that on an earlier occasion the respondent authorities allowed such benefit to one Shri S.R. Samanta, respondent No.4. In that case also 5 persons were called to appear at the selection test on 7-1-93 vide Annexure F. However, while giving promotion, Shri Samanta was posted initially by order dated 15-2-93 in the identified post of Sr. Clerk with Special Pay of Rs70/- w.e.f. 11-2-93 and thereafter he was promoted as Head Clerk by order dated 2-3-93. Thus, because of working in the identified post of Sr. Clerk with special pay of Rs70/- even for less than one month, his pay was fixed in the post of Head Clerk at a higher stage by taking into account such special pay as per rules. In other words, the promotion of Shri Samanta was splitted first by giving him posting in identified post of Sr. Clerk with Special Pay and then within a month he was promoted as Head Clerk. His grievance is that the respondents have denied him such benefit. As a result, he was deprived of higher pay fixation. Hence this application.

3. The official respondents contested this application. They have stated that there were clear 5 vacancies of Head Clerk and therefore five Sr. Clerks including the applicant according to seniority were called for appearing in the suitability test and after they qualified in the suitability test they were promoted as Head Clerk at a time. Since the applicant was at SL No.3 and the first two persons were already holding the identified post of Sr. Clerk with special pay, there was no scope for giving posting to the applicant, first as Sr. Clerk with Special Pay and then to the post of Head Clerk. So far as Shri Samanta is concerned, it is stated on that occasion, both existing and anticipated vacancies were taken into consideration for suitability test and as vacancy was available Shri Samanta was given appointment first to the identified post with special pay and thereafter promoted as Head Clerk. It is their further case that since the applicant had not worked in identified post, he was not eligible to get higher pay fixation by taking into account the special pay, as per rules.

4. We have heard the learned counsel for the parties at length.

5. The learned counsel for the applicant has argued that the vacancy against which the applicant and others were promoted as Head Clerk occurred in between May, 1993 and June, 1994. Therefore, all the vacancies did not occur at the same time and the examination was held in August, 94. It is his contention that had the vacancies been filled up as and when they occurred, the applicant would have got the chance of posting in the identified post of Sr. Clerk with special pay and in that event he could get higher pay fixation. He has pointed out that in the case of Shri Samanta, such a course of action was adopted by the respondents in order to give him higher pay fixation benefit, but the same was denied to the applicant and therefore the action of the respondents is discriminatory. He, therefore, prays for a direction to the respondents to fix the pay of the applicant in the post of Head Clerk by taking into account the special pay to which he was otherwise eligible being the seniormost Sr. Clerk at the relevant point of time.

6. We have given our thoughtful consideration, to the rival contentions.

7. The only prayer of the applicant is for grant of special pay posting as Sr. Clerk first and thereafter as Head Clerk so that he can get higher pay fixation. He has raised the question of discrimination. But the respondents have indicated in the reply that in the case of the respondent No.4, such splitting of promotion orders could be made in view of availability of vacancy. The applicant has pointed out that the vacancies against which he had others have been promoted as Head Clerk occurred on different dates between May, 1993 and June, 1994. His contention is that had the respondents filled up the posts immediately on the occurrence of the vacancies, he could have got the special pay posting. We are unable to accept this contention as it is now the settled position that administrative authorities have the right not to fill up a vacancy in administrative interest. Therefore, the claim of the applicant that the vacancy of Head Clerk occurred in 1993 or thereafter ought to have been filled immediately is without any merit. It is not the case of the applicant that any of his junior was given special pay posting ignoring his claim and therefore his pay has become less than his junior in the post of Head Clerk. The Hon'ble Supreme Court in the case of Union of India v. P. Jagdish and Others (1997 (3) SCC 176) has clarified the position. It has been held that only those who are posted against the

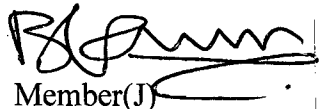
identified post of Sr. Clerk carrying special pay can claim the said special pay. In the instant case, the applicant has not worked in the identified post and therefore he cannot claim the special pay. However, the Hon'ble Supreme Court has further held that principle of stepping up of pay becomes applicable when a junior official on being posted in identified post carrying special pay of Rs35/70 gets promotion to the post of Head Clerk and have his pay fixed at a higher stage than the Senior who did not work in the special pay post; in that event, the senior person is entitled to stepping up of pay as per rules. In the aforesaid legal position, if any junior to the applicant on being promoted to the post of Head Clerk on regular basis gets his pay fixed at higher stage than the applicant because of special pay posting, in that event the applicant can claim stepping up of pay. Since no such averment has been made, we are unable to grant any relief to him at this stage.

8. In view of the above, we dispose of this OA with the observation that in the event any junior to the applicant on being promoted as Head Clerk get his pay fixed at higher stage than the applicant because of his working in the special pay post as Sr. Clerk, the applicant will be at liberty to make appropriate representation to the authorities concerned and if such representation is made, the respondent authorities shall decide the matter in the light of the decision in P. Jagdish's case, referred to above.

9. With the above observation, the application is disposed of. No costs.



Member (A)



Member (J)