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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR.

Date of Decision: 25.6.98

OA 59/95

D.R.Balochi s/o Shri Karam Chand r/o Quarter No.22-A, Zonal Training Centre, Udaipur, Western Railway, last employed on the post of Office Superintendent, Z.T.C., Western Railway, Udaipur.

... Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. Divisional Railway Manager, Western Railway, Ajmer Division, Ajmer.
3. Principal, Zonal Training Centre, Western Railway, Udaipur.

... Respondents

CORAM:

HON'BLE MR.JUSTICE K.M.AGARWAL, CHAIRMAN

HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

For the Applicant

... Mr.J.K.Kaushik

For the Respondents ±

... Mr.S.S.Vyas

O R D E R

PER HON'BLE MR.JUSTICE K.M.AGARWAL, CHAIRMAN

By this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant mainly wants the following reliefs :-

"That impugned order dated 7.10.94 (Annexure A/1), order dated 10.11.94 (Annexure A/2) denying the grant of special pay of Rs.35/- p.m., not taking the special pay into account while fixing the pay of the applicant on the post of Head Clerk w.e.f. 10.1.83 and ordering recovering of the amount already paid towards special pay may be declared illegal and the impugned orders may be quashed. The respondents may be further directed to grant the due promotion at each stage at par with his next junior and allow all consequential benefits including the fixation, grant of special pay and taking the same into account for the purpose of fixation of pay on the post of Head Clerk."

2. Briefly stated, while working as Senior Clerk, the applicant was denied special pay of Rs.35/- as per Railway Board's letter No.PC.III/79/SP/1/UDC dated 11.7.79 (Annexure A/10). The special pay was granted to one Shri Nari Vadwani, who was wrongly shown as senior to the applicant in the seniority list of Senior Clerks. The applicant, therefore, made a representation for necessary

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corrections in the seniority list. It appears that the representation of the applicant was allowed and by letter No.ED/1030/13-1/1 dated 11.4.91 (Annexure A/4), necessary corrections were directed to be made in the seniority list of Senior Clerks, with the result the applicant became senior to Shri Nari Vadwani. As a necessary consequence of this correction in the seniority list, a further direction was made for giving proforma promotion to the applicant from the date his junior Shri Nari Vadwani was given. Shri Vadwani was promoted to the post of Head Clerk w.e.f. 10.1.83. Accordingly, the applicant was also given proforma promotion w.e.f. 10.1.83. It appears that because of the wrong placement of the name of the applicant in the seniority list of Senior Clerks, Shri Vadwani had started getting special pay of Rs.35/- w.e.f. 13.10.82. Accordingly, after he was promoted to the post of Head Clerk, special pay of Rs.35/- was taken into account while making fixation of his pay in the post of Head Clerk. However, the applicant was denied this special pay of Rs.35/- on the ground that on the date of proforma promotion he was not getting such special pay, whereas his junior Shri Vadwani was getting the same. Being aggrieved, the applicant has filed this application praying for the aforesaid reliefs.

3. The respondents are resisting the claim of the applicant.

4. After hearing the learned counsel for the parties and perusing the records, we are of the view that the applicant is entitled to the reliefs claimed by him in this application. The respondents virtually admitted by allowing the representation of the applicant that his name was wrongly shown below the name of Shri Vadwani in the seniority list of Senior Clerks. Had the seniority list been correctly prepared and maintained, in place of Shri Vadwani, the applicant would have received the special pay of Rs.35/- w.e.f. 13.10.82. Accordingly, the respondents were not justified in saying that while making pay fixation of the applicant in the post of Head Clerk, special pay of Rs.35/- could not be taken into account because he was not taking that pay on the date of his proforma promotion. His junior, Shri Vadwani, was, no doubt, getting the special pay of Rs.35/- on the date of his promotion to the post of Head Clerk but that was due to the mistake committed by the respondents in not properly maintaining the seniority list of Senior Clerks.

5. It further appears that the applicant got actual promotion w.e.f. 1.12.81 to the post carrying special pay of Rs.35/-. Accordingly, he started getting special pay of Rs.35/- w.e.f. 1.12.83. Subsequently, pursuant to certain audit objections, mentioned in the document filed at Annexure A/6, payment of special pay of Rs.35/- to the applicant was stopped and at the same time a decision was taken to recover the amount already paid to him as special pay w.e.f. 1.12.83. However, we are of the view that no such decision was taken to recover the amount of special pay paid to Shri Vadwani, who was junior to the applicant. His name

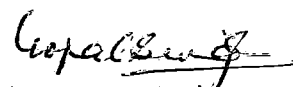
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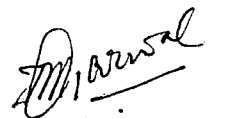
also does not appear in Annexure A/6 because he was admittedly senior to all the 11 persons who were held to be eligible for special pay of Rs.35/-. Accordingly, the applicant must also be held to be senior to all the 11 persons mentioned in Annexure A/6, as persons eligible for special pay of Rs.35/- and, therefore, he must be further held to be entitled to special pay of Rs.35/- as was being paid to his immediate junior, Shri Vadwani.

6. The learned counsel for the respondents cited a decision of this Bench of the Tribunal in the case of P.Khandelwal v. Union of India and others, OA 98/95, decided on 21.5.97, to submit that the applicant's case is squarely covered by this decision of the Tribunal and, therefore, the applicant is not entitled to the reliefs claimed in the OA.

7. After going through the aforesaid decision of the Tribunal in P.Khandelwal's case, we are of the view that this case is clearly distinguishable on facts with those of the present case. In P.Khandelwal's case, the applicant had denied promotion to the pin-pointed post of Senior Clerk against 10% quota carrying special pay of Rs.35/-. For that reason, he was debarred from getting any special pay for the period between 30.1.82 to 29.1.83. During this period he got promotion at the place of his choice and, therefore, he was denied the special pay. In the present case, the applicant is not been shown to have refused any offer of appointment against a pin-pointed post of Senior Clerk against 10% quota carrying special pay of Rs.35/- p.m. pursuant to the aforesaid Railway Board's circular dated 11.7.79.

8. We are informed that by the time this OA is filed, the respondents have already recovered the amount paid to the applicant as special pay since 1.12.83. We are, therefore, of the view that the applicant is entitled to get back the amount recovered by the respondents towards special pay paid to him from 1.12.83. Besides, in the result, this OA succeeds and it is hereby allowed. The impugned orders dated 7.10.94 and 10.11.94, at Annexures A-1 and A-2 respectively, are hereby quashed to the extent they relate to the applicant. The applicant is declared to be entitled to get special pay of Rs.35/- w.e.f. 1.12.83 and his pay fixation w.e.f. 10.1.83, the date when his immediate junior, Shri Vadwani, was actually promoted to the post of Head Clerk, taking into account the special pay of Rs.35/-. The reason is that the applicant got proforma promotion w.e.f. 10.1.83 but got actual promotion w.e.f. 1.12.83. Accordingly, we are directing pay fixation of the applicant w.e.f. 10.1.83, taking into account the special pay of Rs.35/-. Accordingly, this application is finally disposed of. No costs.


(GOPAL SINGH)
ADM.MEMBER


(K.M. AGARWAL)
CHAIRMAN

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of
3/20/62

Rec'd
3/29/62

Part II and III destroyed
in my presence on 11/14/2000
under the supervision of
section officer [signature]
order dated 3/6/62

Section officer [signature]