

In the Central Administrative Tribunal
Jodhpur Bench, Jodhpur

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Date of Order : 21.12.2000

O.A.No. 129 of 1999

Mohd.Wasi Siddiqui S/o Shri Mohd. Siddique by Caste
Mohammedon, aged about 67 years, Ex.Office Superin-
tendent in Electrical Branch, DRM's Office, Northern
Railway, Jodhpur, R/o Plot No. 183/MB, BJS Colony,
Jodhpur.

..... Applicant.

versus

1. The Union of India, Through: General Manager
Northern Railway, Baroda House, Headquarter
Office, New Delhi.
2. The Divisional Railway Manager, Northern Railway,
DRM Office, Jodhpur Division, Jodhpur.
3. The Divisional Personnel Officer, Northern
Railway, D.R.M.'S Office, Jodhpur Division,
Jodhpur.

..... Respondents.

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CORAM :

HON'BLE MR.JUSTICE B.S.RAIKOTE, VICE CHAIRMAN
HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

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Mr.S.N.Trivedi, Counsel for the Applicant.

Mr.Manoj Bhandari, Counsel for the Respondents.

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Order

Per Hon'ble Mr.Gopal Singh :

In this application, under section 19 of the

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Administrative Tribunals Act, 1985, the applicant, Mohd. Wasi Siddiqui, has prayed for setting aside the impugned order dated 16.4.98 at Annex A/1 and further for a direction to the respondents to extend the benefit of stepping-up of pay to the applicant at par with his junior Mohd. Azizudeen, in terms of Railway Board's Circular dated 10.4.97 with all consequential benefits.

2) Applicant's case is that he was initially appointed as Junior Clerk with the respondent department on 10.10.1957. He was promoted to the post of Head Clerk scale Rs. 425-700 with effect from 7.7.1982. One Shri Mohd. Azizudeen, junior to the applicant, was at that time working as Senior Clerk and he was also granted Special Pay of Rs. 35/-. Under the cadre restructuring effective from 1.1.1984, the applicant's pay was fixed on the post of Assistant Superintendent scale Rs.550-750 whereas, the pay of Shri Mohd. Azizudeen was fixed in the scale of Rs. 425-700. Since Shri Mohd. Azizudeen was drawing a special pay of Rs. 35/- at that time and the same was taken as pay for the purpose of fixation of pay in the higher scale of Head Clerk, his pay was fixed at Rs. 545/- with effect from 1.1.1984 but the pay of the applicant was fixed at Rs. 530/- with effect from 1.1.1984, thus, resulting in an anomaly. The anomaly in pay drawn by a senior vis-a-vis a junior drawing a special pay of Rs. 35/- on promotion was removed vide Railway Board's Circular dated 14.2.1995 circulated by the Northern Railway vide their letter dated 10th April, 1997. The contention of the applicant is that his pay should be stepped-up with reference to the pay of his junior with effect from 1.1.1984 in terms of the Railway Board's Circular dated 10.4.1997.

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3) In the Counter, it has been stated by the respondents that the pay of the applicant cannot be stepped-up with reference to his junior in terms of Northern Railway Headquarter's letter dated 10.4.1997 as he does not fulfil the conditions laid down in that letter for stepping-up of his pay. The learned counsel for the respondents has also cited the case of Calcutta Municipal Corporation and Another Vs. Sujit Baran Mukherjee and Others, reported in (1997) 11 SCC 463, in support of his contention that the applicant is not entitled to stepping-up of pay with reference to his junior. It has, therefore, been averred by the respondents that the Application is devoid of any merit and deserves dismissal.

4) We have heard the learned counsel for the parties and perused the record of the case carefully.

5) The Railway Board's Circular dated 14.2.1995 circulated by the Northern Railway vide their letter dated 10.4.1997 provides the following conditions for grant of stepping-up benefit to a senior vis-a-vis his junior drawing special pay of Rs. 35/-.

"In pursuance of the agreed conclusions it has been decided in consultation with the Ministry of Finance to step up the pay fixed on promotion of senior UDCs not in receipt of this special pay equal to the pay fixed on promotion of junior UDC in receipt of this special pay in the following cases only :-

- (a) Where a senior UDC promoted before 5/5/79 started drawing less pay than a junior UDC promoted after 5.5.79.
- (b) Where the senior UDC was in receipt of special pay of Rs.35/- but this special pay was denied to him on appointment to the non-functional selection grade of UDC.

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(c) Where the UDCs even though senior were not considered for appointment to the identified posts on the grounds that they were already holding some other posts carrying special pay of Rs.35/-or more.

The stepping up of pay in these cases will be subject to the fulfilment of the conditions of natural principles viz. (i) both senior and junior employees belonged to the same cadres in the lower and higher posts and their scales of pay in the two posts were also identical ; (ii) the senior employee was drawing equal or more pay than junior in the lower post (of course without taking into account the element of special pay, (iii) the senior employee was promoted earlier than his junior."

6) As has been mentioned above, the applicant was promoted as Head Clerk on 07.07.1982 while Shri Mohd. Azizudeen was appointed as such on 1.1.1984. Thus, the applicant is not fulfilling the first condition mentioned above. It is also not the case of the applicant that he was granted non-functional selection grade of UDC and, therefore, special pay was denied to him. Thus, he does not fulfil the second condition also. It also came-out during the arguments that the applicant was not holding any other post carrying special pay of Rs. 35/- or more when the applicant was not considered for appointment to the identified post carrying the special pay. Thus, we are of the view that the applicant does not fulfil the prescribed conditions for grant of stepping-up benefit at par with his junior with effect from 1.1.1984. In (1997) 11 SCC 463- it has been held by Hon'ble the Supreme Court that where junior gets more pay because of special pay received by him in the pre-revised pay scale is taken into consideration while fixing his pay in the revised pay scale, the senior, held, is not entitled to stepping-up of pay in the revised pay scale with reference to the junior's pay. The case in hand deals with fixation of pay in the higher scale as on 1.1.84 on account of

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re-structuring of cadres. The principle laid down by Hon'ble the Supreme Court as above, can be applied to the case in hand because the junior, before promotion to the post of Head Clerk, was holding the identified post of Senior UDC carrying onerous duties and responsibilities involving the special pay of Rs. 35/-

7) In the light of the above discussions, we do not find any merit in this application and the same deserves to be dismissed. The Original Application is accordingly dismissed with no order as to costs.

Gopal Singh
(Gopal Singh)
Adm.Member

BSR
(B.S.Raikote)
Vice Chairman

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