

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
OA 640 OF 1997

Present : Hon'ble Mr. B.P.Singh, Member (A)

Hon'ble Mr. Nityananda Prusty, Member(J)

1. Amulya Ratan Kayal
2. Tarapada Chatterjee
3. Nikhil Chandra Saha
4. Suhas Ch. Bhattacharyya
5. Abdul Khalique Khan
6. Rajendra Prasad Dubey
7. V.V.Subrahmayam
8. S.C.Neidu
9. Sajal Kr. Paul
10. Subhas Basu
11. V.Subrahmanyam
12. Tarapada nag
13. Rabindra Nath Saha
14. Rajarshri Sengupta
15. Ajit Kumar Roy
16. Binoy Shankar Sinha
17. Nakul Chatterjee
18. Bhim Kumar Das
19. M.V.Ramana
20. Baidya Nath Jha
21. Smt. Anjana Bhattacharjee

..... applicants

VS

1. Union of India through the General Manager, S.E.Rly. Garden Reach, Calcutta-43
2. Rly. Board, through Secretary, Rail Bhavan, New Delhi
3. General Manager, S.E.Rly. Calcutta-43
4. Chief Personnel Officer, S.E.Rly. Garden Reach, Calcutta-43
5. Financial Adviser & CAO, S.E.Rly. Calcutta-43
6. Sr. Div. Accounts Officer, S.E.Rly. Chakradharpur.

.... Respondents.

For the applicants : Mr. S.K.Ghosh, Counsel

For the respondents : Mr. S.R.Kar, Counsel

Heard on : 28.1.03 & 3.4.03

Order on : 29.4.03

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ORDER

B.P.Singh, A.M.:

21 applicants have jointly filed this OA being aggrieved by the order dated 15.5.97 (Annexure-G) by which it has been ordered that fixation of pay on their appointment to Selection Grade Scale of Rs. 425-700/- shall be made on the basis of Rly. Board's letter dt. 7.10.91.

2.1 The applicants were initially appointed as Clerk, Gr.II under SE Railway and were subsequently promoted to the post of Sub-Head and thereafter they got further promotion to different higher grades. It is submitted during hearing that all the applicants have since retired from service and even one of them viz. applicant No. 17, Shri Nakul Chatterjee, has since died.

2.2 The applicants were working in the Accounts Branch of Kharagpur, Chakradharpur and Adra Divisions. In 1979, Rly. Board issued a circular for grant of special pay of Rs. 35/- p.m. to the Clerks, Gr.I/Sr. Clerk, who were performing specially arduous nature of duties against certain pin pointed posts. Such special pay was to be given to 10% of total sanctioned cadre of Sr. Clerk/Clerk, Gr.I. This special pay was to be given with effect from 5.5.79. Thereafter, the Rly. Board issued another circular dt. 16.5.80 for restructuring of staff of Accounts Section of the Railways and as per the scheme of restructuring, 20% of total cadre strength of Clerk, Gr.I/Sr. Clerk will be upgraded to non-functioningal selection grade posts in the higher scale of Rs. 425-700/- and the remaining 80% will be in the lower grade of Rs. 330-560/-. Such upgradation was made effective from 1.4.1980.

2.3 The grievance of the applicants was that although this benefit of special pay and higher selection grade was extended to different railway zones of SE Rly., the same was not extended to their case. Similarly, the Accounts staff of Khurda Road Division under the same railway were also not given the said benefit. Being aggrieved thereby, some employees of Khurda Road Division moved a writ petition

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before the Orissa High Court, which on transfer, came before the Cuttack Bench of the Tribunal and registered as TA 380/1986. By judgement dated 6.7.87, the Cuttack Bench granted the said benefit of special pay and upgradation of posts to selection grade to the applicants of that case.

2.4 The present applicants thereafter made representation for extending them the benefit of the Cuttack Bench judgement dt. 6.7.87, but the same was not given to them. Being aggrieved, the applicants along with others filed an original application before this Tribunal bearing No. OA 1025/88 under the cause title B.K.Joardar & Ors -vs UOI & Ors. This Tribunal by order dt. 30.1.92 allowed the said application and directed the respondent authorities to extend the benefit of upgradation to the applicants w.e.f. 1.4.80 and special pay of Rs. 35/- p.m. w.e.f. 5.5.79. However, the said decision of the Tribunal was not allegedly implemented in full and being aggrieved, one of the applicants viz. Sri Nikhil Ch. Saha moved a contempt petition being CPC 90/92 (OA 1025/88) which was decided by this Tribunal on 24.11.93. In that CPC, the grievance ventilated was that although special pay and selection were granted but the pay fixation in the selection grade post was not done in accordance with FR 22C and instead it was done under FR 22A. In disposing the contempt petition, the Tribunal observed that no order regarding mode of fixation was passed in the OA and hence there was no contempt. But the applicant was given liberty to file appropriate representation before the authorities regarding his grievance and the respondents were directed to dispose of the representation, if made, with a speaking order.

2.5 Pursuant to that direction, the applicants also filed a representation, a copy of which is available at Annexure-C to this OA. Getting no favourable response, the applicants again filed an OA before this Tribunal being OA 1148/94 under the cause title Bhim Kumar Das & ors -vs- UOI & Ors. The said OA was decided on 25.2.97 by directing the respondent authorities to consider and dispose of the

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pending representation of the applicants. Pursuant to that direction, the respondent authorities issued order on 13.5.97 vide Annexure-E whereby the present 22 applicants were granted special pay of Rs. 35/- p.m. w.e.f. 5.5.79 to 31.3.80 and benefit of upgradation to non-functional selection grade in the scale of Rs. 425-700/- w.e.f. 1.4.80. Certain conditions were stipulated in the said order. It was provided that the grant of special pay of Rs. 35/- p.m. and upgradation of scale of Rs. 425/-700/- (selection grade) will be subject to the decision of the Hon'ble Supreme Court or Hon'ble High Court, where appeals were pending.

2.6 Upto this stage there was no dispute. However, the problem started thereafter. The applicants were surprised to receive the impugned order dt. 15.5.97 (annexure-G) whereby it was ordered that the fixation of their pay in the selection grade scale of Rs. 425-700/- shall be made on the basis of the Rly. Board's letter dt. 7.10.91. A copy of the Rly. Board's letter dt. 7.10.91 is annexed at Annexure-G. The relevant part of this order is quoted below :-

" As regards the clarification sought in your letter of 23.8.91, quoted above, it may be mentioned that the existing provision do not envisage reckoning of Rs. 35/- special pay for fixation on appointment to selection grade as such appointment is not being treated as a promotion involving fixation under FR 22-C. Hence, the situation described in the above mentioned letter should not arise."

2.7 According to the applicants, since the special pay of Rs. 35/which was granted to them was ordered not to be counted as part of the pay for the purpose of fixation of their pay in the higher selection grade scale of Rs. 425-700/-, they will be deprived of the benefit which has been extended to them by the original order dt. 13.5.97. It is their contention that the respondent authorities have sought to take away the benefit of special pay and upgradation of posts which were granted to them by the order dt. 13.5.97 after prolonged litigation and thus they will be deprived of a substantial amount per month. Hence they have filed the present OA praying for quashing of the order dt. 15.5.97 along with Rly. Board's letter dt. 7.10.91. They have also prayed for directing the respondents to fix

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their pay in the selection grade scale of Rs. 425-700/- w.e.f. 1.4.80 by taking into account the special pay of Rs. 35/- p.m. with consequential benefits.

3. On 6.6.97, an interim order was passed by this Tribunal directing that in terms of the impugned order dt. 15.5.97, no recovery of the payments made previously to the applicants on the basis of the earlier order. As a result, the applicant continued to draw pay fixed in terms of the earlier order dt. 13.5.97 and also consequential pay fixation in higher posts on that basis. Eventually, they have also retired from service.

4. The respondents have contested the application. It is their main contention that the applicants have been extended the benefit as prayed for by them in terms of the order of the Tribunal. However, fixation of pay has to be made strictly in accordance with the rules. It is stated that the selection grade is not considered as promotion and hence the applicants were not entitled to treatment of the special pay for the purpose of fixation in the higher pay scale of non-functional selection grade. In that view of the matter, it is contended that the applicants cannot raise any grievance as they have been granted the benefits but their pay has to be fixed in accordance with the rules and not otherwise.

5. We have heard the ld. counsel for the parties. Ld. counsel for both sides have also submitted written notes of arguments. We have also carefully perused the same.

6. Mr. Samir Ghosh, ld. counsel for the applicants has urged that it is now settled position of law that special pay of Rs. 35/p.m. has to be taken into account for the purpose of fixation in the higher scale of Rs. 425-700/- and as such the respondents cannot deny the said benefit to the applicant. He has referred to mainly two decisions viz. the decision of this Tribunal in OA 868/91 dated 6.5.94 (Lakshmi Kanta Kundu & Ors -vs- UOI & ors) and also the decision of the Hon'ble Apex Court in the case of UOI & Ors -vs P.Jagadish & Ors reported in (1997) 3 SCC 176. He has pointed out



that the decision of the Tribunal in Lakshmi Kanta Kundu (supra) was upheld by the Hon'ble Apex Court by its order dt. 23.4.97 following the decision in P. Jagadish's case (supra), a copy of which has been produced before us.

7. Ld. counsel for the respondents, on the contrary, has submitted that the special pay of Rs. 35/- was granted to the applicants from 5.5.79 to 31.3.80. In view of restructuring of Accounts cadre, selection grade posts in the scale of Rs. 425-700/- were created w.e.f. 1.4.80 and the applicants were also granted the selection grade scale from that date i.e. 1.4.80 and payment of special pay was stopped with effect from that date as no special pay was attached to the selection grade scale. He contends that the applicants are not entitled to count the special pay for the purpose of fixation in the higher scale of Rs. 425-700/- as appointment to the selection grade is not a promotion. It is argued that selection grade is only an extended pay scale for the same post and not a separate post involving promotion with higher responsibility. He has further contended that selection grade was sanctioned with the sole intention to ensure that regular employees who may not get a chance of promotion on account of limited outlets of promotion should at least be placed in a higher scale to prevent stagnation. He has referred to a decision of the Hon'ble Supreme Court reported in AIR 1972 SC 995 (Lalit Mohan Deb & Ors -vs- UOI & Ors) in support of his contention. He has also submitted that by not treating the special pay for the purpose of fixation on appointment to the selection grade, the applicants will not suffer any monetary loss because the Rly. Board took into consideration this position and issued a circular dt. 14.2.95 wherein the direction was issued to the effect that stepping up of pay should be allowed "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." The ld. counsel further submits that this position was also reiterated in the Rly. Board's circular dt. 7.3.97, a copy of which

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has also been produced before us. It is also pointed out that the special pay has been protected by granting personal pay on appointment to selection grade. Contending thus, the ld. counsel submitted that no illegality was done by the respondents in not treating the special pay for the purpose of fixation on appointment to non-functional selection grade. He has, therefore, submitted that the amount overdrawn by the applicant due to wrong fixation of pay is liable to be recovered from them.

The ld. counsel has, however, admitted that there was further restructuring of cadres of Accounts Section from 1.1.84 when the category of Sub-Heads i.e. Head Clerks in the scale of Rs. 425-700/- was re-introduced and promotions were given from the feeder post of UDC with the benefit of fixation under FR 22-C along with the benefit of counting special pay. According to him, although in the case of appointment to selection grade, no fixation benefit under FR 22-C is admissible nor the special pay of Rs. 35/- is counted for pay fixation, but in the case of promotion to Sub-Head in identical pay scale which was introduced from 1.1.84, such fixation benefit is admissible. Since the applicants were appointed to selection grade from 1.4.80, they were not entitled to the benefit of fixation under FR-22 C by taking into account the special pay.

8. We have considered the rival contentions very carefully.

9. The main issues to be decided in this case are (1) whether the applicants were entitled to have their pay fixed in the non-functional selection grade scale of Rs. 425-700/- w.e.f. 1.4.80 by taking into account the special pay of Rs./ 35/-, which they were granted earlier upto 31.3.80 as Sr. Clerk/Clerk, Gr.I, and (2) whether the respondents are entitled to recover the amount allegedly overpaid due to wrong fixation by taking into account the special pay from the applicants' DCRG or otherwise.

10. The ld. counsel for the applicants has submitted that both the issues have been settled by various decisions of this Tribunal. He has referred to the decision in Lakshmi Kanta Kundu (supra) which

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was upheld by the Hon'ble Apex Court. He has also cited the case of Sunil Baran Chowdhury & Ors -vs- UOI & Ors (OA 832/91). This case was referred to the Full Bench and on the basis of decision in the Lakshmi Kanta Kundu's case, final order was passed. Similarly, the ld. counsel relied on the decision in OA 400/95 decided on 18.2.96 (Anil Banerjee & Ors -vs- UOI & Ors). He has also referred to a common order dated 26.3.96 in OA No. 1121/93 etc. (T.P.Mukhopadhyay & Ors -vs- UOI & Ors). As already stated, the ld. counsel has also relied on the decision of the Hon'ble Supreme Court in P.Jagadish's case (supra). We have gone through these decisions.

11. In P.Jagadish's case, the question arose whether senior UDCs, who were promoted to the post of Head Clerk without enjoying the benefit of special pay of Rs. 35/-, were entitled to stepping up of their pay to the level of their juniors who were getting higher pay though promoted later on but with benefit of the special pay of Rs. 35/-. The Hon'ble Apex Court held that in such a situation, the pay of the senior employees has to be stepped up with reference to the pay of their juniors from the date of promotion to the higher post.

In Lakshmi Kanta Kundu's case, the prayer of the applicants was for grant of special pay of Rs. 35/- from 1.1.84 to 31.8.85 notionally and actually from 1.9.85 and for counting of special pay on promotion to the next higher grade. This benefit was allowed to the applicants.

12. In the instant case, the applicants have already been granted special pay from 5.5.79 to 31.3.80 as Clerk, Gr.I and upgradation from the post of Clerk, Gr.I in the scale of Rs. 330-560/- to the post of Selection Grade scale of Rs. 425-700/- w.e.f. 1.4.80.

It is the specific case of the respondents that appointment to non-functional selection grade is not a case of promotion and as such, pay is to be fixed under FR 22-B and not under FR 22-C because it was not a case of appointment/promotion involving higher responsibility. On that ground, the respondents have denied the benefit of pay fixation to the applicants by taking into account the special pay of

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Rs. 35/- on appointment to non-functional selection grade scale from 1.4.80. The respondents have issued the impugned order dt. 15.5.97 in accordance with the direction contained in the Rly. Board's letter dt. 7.10.91 and both these orders/letters have been impugned in this OA.

13. We find that this Tribunal in a group case headed by OA 1121 of 1993 (T.P.Mukhopadhyay & Ors -vs- UOI & Ors) etc. etc. decided on 26.32.96 considered this issue. In those cases, the issue was regarding recovery from DCRG after retirement from service on account of alleged overpayment due to wrong fixation of pay by taking into account the special pay of Rs. 35/- on appointment to selection grade from 1.4.80. There also the respondents relying on the Rly. Board's letter dt. 7.10.91 took the point that appointment to non-functional selection grade was not a promotion and hence fixation cannot be made under FR 22-C. While considering the aforesaid cases, this Tribunal found that the Madras Bench of the Tribunal had earlier decided the issue and the decision of the Madras Bench was also upheld by the Apex Court in SLP. There was another issue regarding recovery of excess payment so made from the DCRG of the applicants who had retired in the meantime.

14. We have gone through the judgement of the Madras Bench dated 6.9.1991 in OA 717/90, 874/90 and 767/0 (Kum. V.Saksha Bai & Ors -vs- Rly. Board & Ors) etc. etc. In those cases also the stand taken by the respondents was that benefit of special pay of Rs. 35/70 for purpose of fixation of pay was not applicable in case of placement of CG.I to SG scale which was not a case of promotion on the basis of Rly. Board's order dt. 29.5.90, the relevant portion of which was as below :-

" The benefit of Rs. 35/Rs.70 special pay for purpose of fixation of pay has been allowed in case of promotion of Sr. Clerk/UDC Rs. 330-560/- (RS) to higher grade of Rs. 425-700(RS). since placement of CG.I Rs. 330-560 (RS) to SG Rs. 425-700/- (RS) is not a promotion the question of extending the benefit of special pay for fixation in their case does not arise."

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The Madras Bench noted in para 12 that next higher level for Clerks Gr. I in the scale of pay of Rs. 330-560/- was originally the post of Sub Head in the scale of pay of Rs. 425-700/- . At that time the post of Sub-Head in the scale of pay of Rs. 425-700/- was treated as supervisor and promotion to that post was governed by FR 22C. In other words, before 1.4.1980, the promotion to the post of Sub Head was considered to be involving higher duties and responsibilities. From 1.4.1980, when the first re-organisation took place the posts of Sub-Heads were abolished. In fact, the posts were converted into selection grade posts in the same scale of pay of Rs. 425-700/. Subsequently, the selection grade was again abolished and the post of Sub-head was revived from 1.1.84 with identical pay scale, which has again become a promotional post. Thus, only for the brief interregnum from 1.4.80 to 1.1.84, the selection grade posts have been declared to be non-promotional and the incumbents were denied not only the benefit of special pay of Rs. 35/- for fixation of pay but also the benefit of FR 22C. The Madras Bench observed that this kind of treatment was definitely discriminatory and cannot be sustained as the respondents could not establish any rationale for such treatment except for the ipse dixit of the Rly. Board's letter dt. 29.5.90. There was no explanation at all as to why the selection grade was considered to be non-promotional and involved lesser duties and responsibilities vis-a-vis Sub-Heads.

Accordingly, the Madras Bench quashed the Rly. Board's letter dt. 29.5.90 and directed that the pay of the applicants therein to be fixed on promotion to the selection grade in accordance with the decision in para 16. In para 16 it was held as follows :-

" We are of the view that the appointment of the applicants in these cases to the post of Selection Grade in the scale of pay of Rs. 425-700/- during 1.4.80 to 31.12.83 was a promotion in so far as the order regarding reckoning the special pay of Rs. 35/- p.m. for fixation of pay, is concerned. We further find that accordingly, while fixing the pay of the applicants in the scale of pay of Rs. 425-700, the special pay of Rs. 35/- p.m. ought to be taken into account. We also conclude that such appointment of the applicants to the selection grade in question during the said period involving higher duties and

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responsibilities, as in the case of the Sub-heads. Therefore, the benefit of the provisions of Rule 2018(B) (FR 22-C) have to be extended to all the applicants."

15. Following this decision of the Madras Bench, the Calcutta Bench in OA 1121/93 (supra) held that since the applicants therein were similarly circumstanced, they would get the benefit of the judgement of Madras Bench. It was held as under :-

" We have no doubt that the appointment as Sub-Head was an appointment on promotion and accordingly, the pay of the persons concerned given promotion as Sub-Heads, has to be in terms of Rule 2018-B of R-II. We also observe that the Hon'ble Apex Court had given their seal of approval to this interpretation given by the madras Bench. We further note that the post of Sub-Head was abolished for a limited period of 4 years and this post was revived subsequently. We are, therefore, clearly of the view that the circular of the Rly. Board denying the benefit of Rule 2018-B (FR 22-C) is not sustainable under the law and hence, it has to be quashed."

16. Be it noted that in that case also the respondents relied on the Rly. Board's order dt. 7.10.91 as in the instant case. The Calcutta Bench made the following observations in para 9 :-

" This benefit was given to the applicants earlier, but was taken away subsequently in view of the Railway Board's circular in 1991. Since we have already held that the said circular is not sustainable, there is no doubt that the respondents shall now refix the pay of the applicants by giving them the benefit of FR-22C as discussed hereinbefore. In other words, the previous position should be restored. Therefore, the Railway respondents are now under obligation to not only refix the pay of the applicants as was given to them earlier before the benefit was taken away, but also to give all consequential benefits of pay and allowances based on such refixation in the post of Sub-Heads."

17. So far as question of recovery of overpayments on account of wrong fixation of pay from the DCRG of the applicants was concerned, it was held that that this was not sustainable in law. In arriving at this decision, the Bench relied on the decisions of the Hon'ble Apex Court in the cases of Shyam Babu Verma & Ors reported in 1994(2) SCC 521, B.D.Gupta, AIR 1972 2472, & L.N.Kashai, ~~and~~ AIR 1974 SC 1889. It was directed that the amount recovered from the applicants from their DCRG money should be refunded.

18. In OA 400 of 1995 (Anil Banerjee & Ors -vs- UOI & Ors) similar

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disputes were raised and the said OA was decided by this Tribunal on 18.2.96. The Tribunal directed the respondents to refund the entire amount recovered from DCRG on account of alleged overpayment due to supposed erroneous fixation of pay by taking into account the special pay of Rs. 35/- per month at the time of their upgradation to the post of Selection Grade Clerk-Grade I and not to make any recovery from the applicants from whom no recovery was made for the supposed overpayment. The Tribunal, however, did not go into the question as to whether special pay should be taken into account for the purpose of fixation of pay on appointment to selection grade as all the applicants in that OA retired in the meanwhile.

19. From the above, it is quite clear that the dispute raised in the present OA has already been decided by the Tribunal and even the decision of Madras Bench on this issue has also been upheld by the Hon'ble Apex Court in SLP. We find no reason to arrive at a different conclusion, especially when the Rly. Board's order dt. 7.10.91, on the basis of which the impugned order dt. 15.5.97 (Annexure-G) ~~was~~ ^{is} issued, was already declared as not sustainable and quashed in the earlier order of this Tribunal in OA 1121/93 dt. 26.2.96 referred to above.

20. In the result the application is allowed. The impugned order dt. 15.5.97 (annexure-G) be hereby quashed. The Rly. Board's letter dt. 7.10.91 (annexure G at page 36) having already been held to be not sustainable earlier, we need not pass any further order on the same. The pay of the applicant on appointment to the selection grade w.e.f. 1.4.80 vide order dt. 13.5.97 (annexure-E), be fixed in accordance with the said order i.e. by taking into account the special pay of Rs. 35/- p.m. with benefit of FR 22-C with consequential refixation in subsequent promotional posts. Consequently, there will be no question of any overpayment or recovery on account of erroneous fixation of pay. However, if any amount has been recovered from the applicants either from their salary or from

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