

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH: CALCUTTA

Original Application No.573/97

Date of decision: 21-12-2004

Hon'ble Mr. Mukesh Kumar Gupta, Judicial Member

Hon'ble Mr. M.K. Misra, Administrative Member.

Asok Kumar Roy & ors

vs.

UOI and ors.

Mr. B.C. Sinha : Counsel for the applicant.

MR. S.R. Kar : Counsel for the respondents.

ORDER

Mr. Mukesh Kumar Gupta, Judicial Member.


Eleven applicants in this case, who were working/
retired from the office of Senior Divisional Accounts Officer,
S.E. Rly, Adra, seeking the following reliefs :

- A. To set aside and quash the impugned letter dated 25.11.93 issued by FA & CAO (Admn) Annex. A/9.
- B. That the benefits of the judgement be extended to the applicants by granting Spl. Pay of Rs. 35/- p.m. from 05.05.79 and counting for fixation of pay in the higher grade of Rs. 425-700/- (RS) from 01.04.80 with all consequential benefits as given to the colleagues & junior in terms of the Orders of the Hon'ble Tribunal, and pay fixed under FR 22 C with all consequential benefits.
- c. Cost and interest.
- D. Any other order as the Hon'ble Tribunal deems fit and proper.
- E Liberty be granted to file appl. jointly.

[Handwritten signature]

2. The facts as stated are that interms of Railway Board's letters dated 11.07.79(Estt. Srl. No.224/79) and dated 16.05.80 (Estt. Srl. No. 134/80) they are entitled to the benefit of Special Pay of Rs. 35/- in the pay scale Rs.330-560/- with effect from 05.05.79 and SG CG I in scale Rs. 425-700with effect from 01.04.80, which has not been granted to them till date. In terms of judgement of the Calcutta Bench in O.A. No. 306/86 and in O.A. No. 1025/88, the said benefit of special pay was required to be extended to the applicants. Despite the representations made to the concerned authorities for grant of Special pay, the applicants were denied the same, particularly when they were similarly placed circumstances to those in the above-mentioned O.As. The respondents rejected the applicant's claim vide letter dated 25.11.93, stating that the applicants in the said cases were granted the benefits in compliance of the orders passed by this Tribunal. It is contended that the applicants had passed Appendix 2-A examination and were promoted to Clerk Gr. I between 1967 and 1972 and as such they were eligible for the Selection Grade. The 5th Respondent who passed the Appendix 2-A examination was junior to the applicants and was granted the special pay of Rs. 35/- in compliance with the judgement dated 20.01.92 of this Bench in O.A. No. 1025/86 and as such since the benefit of said judgement was not extended to them. The respondents action is discriminatory, arbitrary and violative of Art. 14, 16 and 21 of the Constitution of India and this would amount to malice in law. The applicants were entitled to the extension of the said benefits.

3. The respondents 1-4 filed reply and contested the applicants claim on the ground of limitation and on merits. It was contended that as per the Estt. Srls. quoted by the



applicants for the benefit grant of Special Pay of Rs.35 was awarded to 10% posts of Clerk Gr.I. The applicants were not eligible to get the above benefit as per the cadre position and the same was denied to them vide EA & CAO (Admn) letter dated 25.11.93. The judgements relied on by the applicants cannot be pressed into service by the applicants and therefore the benefit of the said judgement was not extended to them. It is further stated that the cadre was de centralised from 01.07.84. The present applicants did not come within the purview of seniority position as per the centralised the cadre and hence they were not allowed the said benefit.

4. We heard the learned counsel for the parties and perused the pleadings carefully. Mr. B.C. Sinha, learned counsel for the applicant strongly relied upon the judgement of the Apex Court in the case of Union of India and ors. vs. P. Jagdish and ors. (AIR 1997 SC 1783), and contended that the applicants were entitled to stepping up of their pay at par with their juniors, which benefit has been denied to them, which is not permissible under law. For this purpose he relied on para 7 of the above said judgement. Heavy reliance was also placed on the order dated 25.08.99 passed by this Bench of the Tribunal in O.A. No. 1295/94 (Sazir Chandra Ganguly vs. UOI and ors.), as well as the order and judgement dated 05.12.2003 (M.Kr. Ghosh vs. Union of India and ors- O.A. No. 1096/2000) and the order dated 14.02.2000 passed in O.A. No. 917/95 (B.N. Mitra vs. UOI and ors.). It is contended that there are ~~about~~ ² two aspects, which were considered by the Apex Court in P. Jagdish case (Supra). The first was Special Pay and the second was stepping up of pay. The applicants contended that they are seeking stepping up of pay and not special pay.

[Handwritten signature]

5. On the other hand, Mr. S.R. Kar, learned counsel appearing for the respondents 1-4, vehemently contended that the present application is not maintainable and the ~~Q~~ judgements relied on by them are ^{not} applicable to the facts of this case in as much as a bare perusal of the relief clauses extracted herein above. What the applicants in fact seeking are ~~Q~~ more than special pay and not stepping up of pay, as contended during course of oral hearing. He also placed reliance on the judgement of the Hon'ble Supreme Court in Ramesh Chand Sharma vs. Udhham Singh Kamal and others (2000 (SCC (L&S) 53). It was further contended that the present application is barred by limitation and there being no application for condonation of delay, the O.A is liable to be dismissed and rejected straight away. It was contended that the applicants representations were rejected vide communication dated 25.11.93 ^Q (Annex. A/9) and the present application was instituted only on 26.5.97, making thereby a delay of almost 3 years in approaching this Tribunal. We may note that there is no application for condonation of delay in instituting the present application.

6. We bestowed our careful consideration to the entire matter and after perusal of the judgment cited by both sides, we find substance in the contention of the learned counsel for the respondents that the relief prayed for in the present O.A is only for grant of special pay and not for stepping up of pay. More over there is a delay in approaching this Tribunal, as rightly contended by the learned counsel for the respondents. It is seen that the representation of the applicants was rejected on 25.11.93 ^Q and the present O.A

[Handwritten signature]

[Handwritten mark]

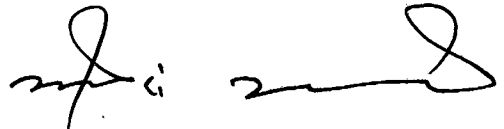
:5:

was instituted only on 26.05.97. The delay in approaching this Tribunal has not been explained. The reliance placed on the judgements by the learned counsel for the applicants in our considered view are misplaced and the same are not applicable to the to the facts and circumstances of this case.

7. In view of the discussion made herein above, we find no merit in the present application and the same is accordingly dismissed. No costs.



(M.K. Misra)
Administrative Member.



(Mukesh Kumar Gupta)
Judicial Member.

jsv.