

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 147 of 1994.

Tuesday, this the 29th day of November, 1994.

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HON'BLE MR P SURYAPRAKASAM, JUDICIAL MEMBER

KN Subramanyan,
Retired Chief Clerk,
Southern Railway, Palakkad.
(Now residing at Sree Nilayam,
Kallekulangar Post,
Palakkad)

...Applicant

By Advocate Mr P Santhoshkumar

Vs

1. Union of India rep. by
the General Manager,
Southern Railway, Madras.
2. The Senior Divisional Personnel Officer,
Southern Railway, Palakkad. ...Respondents

By Advocate Mr KV Sachidanandan.

O R D E R

P.SURYAPRAKASAM, JUDICIAL MEMBER

Applicant has filed the present application for a declaration that he is entitled for fixation of pay adding complex allowance of Rs 35/ from 1.1.84 with consequential benefits, and also to set aside Annexure A6.

2. Brief facts of the case are that the applicant while working as a Chief Clerk under second respondent, due to defective vision was medically declared unfit on 4.2.1991, and thus his services were terminated. Later on, he was a party to group of petitions filed by various people attacking the order of the department wherein the special pay of Rs 35/ was denied to them. Subsequently, the applicant has withdrawn

from the said group of cases. The above said group of cases were disposed of under OA 764/89. In pursuance of the success achieved by the various applicants in the batch of cases relating to OA 764/89, the applicant also subsequently filed another O.A. claiming the same benefits (O.A.218/92) which was disposed of by the Tribunal under Annexure A5. In pursuance of the same, applicant's representation claiming special pay of Rs 35/- stating that he was holding the 'pinpointed complex post.' Further the same was given to one TS Ganesan, and hence the applicant who is similarly situated is also entitled to the benefit as such. The said representation was considered by the department, and was rejected under Annexure A6. Now the present application has been filed to quash the said A6 and also for the above said prayer as in para-1 supra.

3. Applicant based this contention on the ground that he was holding the post which was held by one Maduraimuthu who was subsequently promoted. Further more, TS Ganesan who was similarly situated like the applicant was given the benefit of special pay Rs 35/-, and therefore, applicant is also entitled to get the same benefit.

4. Respondents in the reply statement stated that the applicant's case could not be equated with that of TS Ganesan. Besides, the benefit conferred under OA 764/89 is not applicable to the applicant since he does not fulfil the conditions as per the Railway Board's letter dated 27.11.87.(R-1).

5. In O.A.764/89 the Tribunal observed as follows:

"In the conspectus of facts and circumstances, we allow the application only in part to the extent of declaring that whereas the pay of the applicant as Head Clerk with effect from 1.1.84 should be fixed without taking into account the special pay if the applicants had not been holding a pinpointed post with special pay immediately before that date."

Thus as per the judgment, the respondents submitted that only those who are working against pinpointed post with special pay are eligible for the fixation benefits. As per available records, the applicant was working in the 'Mechanical Bill Section' of Personnel Branch from December 1981 onwards, which involve only a job of the routine nature. Such posts were never earmarked as complex posts.

6. Applicant was continuing as a Senior Clerk (Complex) from 25.10.83 to 31.1.84 only on an adhoc measure against a leave vacancy and was working only as a Senior Clerk (Without Complex) from 1.2.84 to 8.2.84 and was given substantive posting as Senior Clerk (Complex) only from 9.2.84. Therefore, he is not entitled to get the benefit of the principles laid down in O.A.764/89. According to them, as per the Railway Board's letter dated 27.11.87 special pay should be taken into account for fixation of pay on promotion to the post of Head Clerk, subject to the following conditions:

"(a) that the incumbent is a substantive holder of the post to which the special pay is attached.

or

"(b) that the incumbent on the date of his appointment to higher post, is officiating in the lower post to which the special pay is attached continuously for a period of not less than three years."

and as such, he is not entitled to get the benefit.

7. With regard to the example cited by the applicant, namely, that of TS Ganesan, the stand taken by the department was that he was a Senior Clerk, and he was regularly holding the post of Senior Clerk (Complex) with effect from 1.1.84 on continuation of his earlier adhoc service as Senior Clerk from 8.11.83. So, therefore, his case has to be dealt with separately. Subsequently, by marking document (R2), the department has revised the scale of TS Ganesan on the ground that the earlier fixation adding complex pay of Rs 35/- was erroneous and they revised his pay as per the Railway Board's Office Order No.J/PB 41/93 dated 9.12.93 and therefore, on this count also the applicant fails.

8. Applicant relied on the judgment rendered in OA 163/93 of this Tribunal wherein the benefit of OA 764/89 has been given to four applicants. With regard to the said judgment the very second paragraph of the same commences as follows:

"There is no factual dispute Thus according to the applicants they had been posted in the complex and important nature of duties which come within the 10% of identified post carrying special pay."

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Under O.A. 764/89 as mentioned earlier, the effective portion is that:

"Whereas the pay of the applicant as Head Clerk with effect from 1.1.84 should be fixed without taking into account the special pay, if the applicants had not been holding a pinpointed post with special pay immediately before that date."

In the present case, there is a dispute in regard to the applicant's holding a pinpointed post coming within the category. In fact, respondents specifically stated in the reply statement that the applicant was not holding a complex post as required under the rule. So, therefore, he is not entitled to get the benefit.

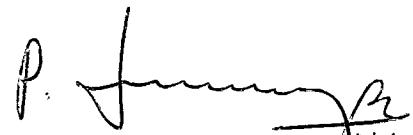
9. I, therefore, feel that referring to OA 163/93 is not of any help to the applicant. Respondents relied on the judgment rendered by the Tribunal in OA 2036/93 wherein the clarification issued by the Railway Board under letter No. PC III/79/-SP.I/UDC dated 11.7.79 and 7.11.89 has been followed. Further more, respondents relied on the judgment in OA 173/90 of the Madras Bench of the Tribunal where this question has been discussed in detail, and the clarification given by the Railway Board in their letter of 7.11.89 has been sustained.

10. In the facts and circumstances of the case, and in the light of the above discussions, I hold that the applicant's

claim cannot be sustained, and the application is, therefore, dismissed as devoid of merit.

11. There will be no order as to costs.

Dated the 29th day of November, 1994.



P SURYAPRAKASAM
JUDICIAL MEMBER

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