

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.163/93

Friday, this the 21st day of January, 1994.

CORAM:

SHRI N DHARMADAN, MEMBER(J)
SHRI S KASIPANDIAN, MEMBER(A)

1. P Krishna Bhatt,
S/o P Parameswara Bhat,
Aged 58 Years, Retired Chief Clerk,
Personnel Branch, Divisional Office,
Southern Railway, Palakkad.
2. R Govindan,
S/o late V Govindan Nair,
Aged 54 years, Chief Clerk,
Personnel Branch, Divisional Office,
Southern Railway, Palakkad.
3. A Kunhikrishnan,
S/o A Kannan Nambiar,
Aged 50 years, Head Clerk,
Personnel Branch, Divisional Office,
Southern Railway, Palakkad.
4. T Chandrasekharan,
S/o P Thankappan, Aged 49 years,
Head Clerk, Personnel Branch,
Divisional Office, Southern Railway,
Palakkad.

- Applicants

By Advocate Mr P Santhoshkumar

Vs.

1. Union of India represented by the General Manager, Southern Railway, Madras.
2. The Divisional Personnel Officer, Southern Railway, Palakkad.
3. The Divisional Accounts Officer, Southern Railway, Palakkad.

- Respondents

By Advocate Mr TPM Ibrahimkhan, ACGSC

O_R_D_E_R

Four applicants have jointly filed this application under Section 19 of the Administrative Tribunals Act, mainly for

getting the benefit of an earlier judgement of this Tribunal in OA-764/89 dated 17.6.1991, Annexure-X, and the consequential benefits of special pay, based on the inclusion of their names in Annexure-XIV, office memorandum of Divisional Personnel Officer recognising their duties of complex and important nature, discharged by them while working as Upper Division Clerk/Senior Clerk within the 10% identified posts carrying special pay.

2. There is no factual dispute. First applicant was promoted to the post of Senior Clerk in the scale of Rs.330-560 with effect from 22.2.1979. While he was working as such, he was posted in the Mechanical Section for dealing with Class-III Supervisory work in October 1980 and he continued in that cadre upto his retirement in July 1985. The second applicant while working as Senior Clerk was posted in the Traffic Section for discharging the duties of Commercial Clerk/Ticket Checking on 20.4.1983 and he continued in that position till 1985. The third applicant was posted in the Court Section on 15.6.1984 while working as Senior Clerk. He is continuing in that section even now. The fourth applicant was posted in the Traffic Section dealing with Personnel matters concerning SMs and ASMs from 1.5.1985 till 1.8.1985 while he was working as Senior Clerk. He is still continuing in that post. 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. The eligibility of the applicants for the special

pay has been recognised by the respondents, but their bills were not passed. When respondents initiated steps for cancelling the same and orders were issued for giving special pay to senior Clerks who were not actually discharging complex and important nature of works, the applicants along with others jointly filed OA-764/89. The judgement is marked as Annexure-X. It was partly allowed. The operative portions of the judgement are extracted below:

"7. In the above circumstance, we do not find anything wrong in the impugned orders at Annexure-X, XII and XIII by which an erroneous pay fixation is being corrected. There is nothing arbitrary also. On the other hand the legality of the foundation of the impugned orders at Annexure-II is suspect in our eyes. However, we feel that recovery of overpayment at this stage when the applicants were not a party to the overpayment and no notice was given to them before ordering overpayment, would not be defensible.

8. 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 applicants 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, no recovery for overpayment on the basis of the impugned orders be made and any overpayment recovered should be refunded to them within a period of three months from the date of communication of this order."

After the judgement, the third applicant filed Annexure-XIII on 30.9.1991 claiming the special pay indicating that he has worked in the post carrying special pay. Similar representations were filed by the other applicants also. Considering the representation in implementation of the judgement of this Tribunal, Senior DPO issued Annexure-XII on 18.9.1991 calling upon the applicants to furnish the details of their duties in the important post for further verification and disposal. Relevant portion of the proceeding is extracted below:

"As per the judgement of the case referred to above the complex pay already allowed according to seniority with effect from 1.10.1980 is not in order and those staff who have worked in the following pin pointed complex post are eligible for complex pay of Rs.35/- P.M. from 1.10.1980 to 31.12.1985 and Rs.70/- P.M. w.e.f. 1.1.1986.

Pin pointed complex posts

1. Traffic cell - Dealing with SM/ASM/YM etc.
2. -do- -do- C1.III Comm1.Clerks TTEs, TCs etc.
3. Mechanical cell - Dealing with - Power running
4. -do- -do- C1.III Supervisory, Clerks etc
5. Misc. staff - Dealing with C1.III Personnel, Works Supervisory S&T Supervisory.
6. -do- -do- Screening Engg. Dept. with other connected work.
7. Court Section dealing with Court Section.
8. -do- -do- -do-
9. Budget -do- Budget

If any of the staff have worked in the above mentioned posts, they may indicate the period of their working and on verification from this office records if it is found correct, they will be given complex pay."

The applicants have furnished necessary details for the grant of special pay. Accordingly, by Annexure-XIV, a consequential office memorandum was issued by Senior OPO. It is the list of persons who are eligible for fixation of pay and arrears from 1.1.1985 to 30.9.1989 in accordance with the judgement. The applicants were included in that list. But no further proceedings were issued for granting special pay implementing the decisions in Annexure-XII and XIV. The applicants again submitted representations. It resulted in the impugned orders cancelling the decision to give special pay to the applicants with the proposal for recovery of some amounts treating them as overpayments. All these orders are under challenge in this case.

3. The respondents opposed the contentions. But they have not denied the statements of the applicants based on Annexure-X judgement and the decision of the department in Annexure-XII

and XIV. They placed reliance on Annexure-R1 proceedings dated 7.11.1989 and contended that the petitioners are not eligible for special pay because their case will not come within the ambit of Annexure-R1 proceedings which restrict the payment of special pay. According to this, officers who were getting special pay before their promotion as Chief Clerks alone are eligible. This proceeding dated 7.11.1989. The relevant portion is extracted below:

"2. In this connection, attention is invited to Board's letter of even number dated 11.7.79 wherein special pay of Rs.35/- has been granted to 10% posts of UDCs for doing complex and arduous nature of job. Subsequently, as per the award given by the Board of Arbitration, special pay has been allowed for the purpose of fixation on promotion to those UDCs who fulfil the conditions laid down in Board's letter of even number dated 27.11.87. In the light of the circumstances explained above, the question of extending the benefit to UDCs promoted without getting special pay or having worked for less than three years in terms of Board's letter of even number dated 2.8.89 does not arise."

4. Having heard the learned counsel on both sides, we are of the view that the contention of the respondents that Annexure-R1 applies to the facts of the case cannot be accepted. In the first place, it appears that when original decision to grant special pay was taken Annexure-R1 was in force. The respondents in OA-764/89 ought to have raised this objection to deny the benefit of special pay to the applicants. But the judgement Annexure-X was passed on 17.6.1991. No such contention was taken before the Tribunal. The applicants became eligible for special pay on the basis of the observations/directions in the same. Secondly, the rights occurred in favour of the applicants on the basis of the above judgement cannot be denied relying on Annexure-R1. Moreover, the department had decided

after the judgement to grant the special pay to the applicants and directed them to furnish necessary details of their duties in posts carrying special pay. After verification of such details their names were included in Annexure-XIV. That office order is even now in force without being cancelled. Thus when Annexure-R1 proceedings were in force on 7.11.1989 ... the judgement Annexure-X was passed. The consequential orders Annexure-XII and XIV were also was issued. At this stage, without satisfactory and convincing reason, Annexure-R1 cannot be pressed / into service for denying the rights accrued in favour of the applicants. It is to be noted in this connection that persons who have actually worked in the earmarked post of complex and important nature carrying special pay and earned their right to get the special pay cannot be denied the same on technical ground like the one raised in this case. The respondents are really estopped, for in fact while considering this issue along with the case of others, this Tribunal has indicated that in Annexure-X judgement that persons who held the post carrying special pay are eligible to get it irrespective of seniority or other consideration.

5. In the instant case the applicants have given the clear details of the period during which they ~~xxx~~ held ⁴ these posts and earned special pay. These details were not denied. Accepting the same, they were included in Annexure-XIV office memorandum. In the light of these facts, according to us, there is nothing wrong in holding that the applicants have the right for getting special pay and such right cannot be denied to them on the ground

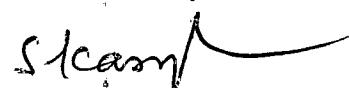
raised by the respondents in this case based on Annexure-R1.

According to Annexure-R1 does not apply to the facts of this case.

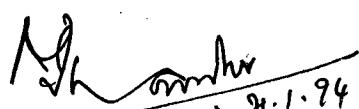
6. In the light of the above discussion and Annexure-X judgement and Annexure-XII and XIV office memoranda, we are of the view that the applicants are entitled to special pay, particularly their right had been upheld in the judgement Annexure-X on account of the fact that they actually worked in the posts carrying special pay.

7. In the result, we are of the view that the OA is to be allowed declaring that the applicants are entitled to get the special pay in terms of their claim in para-5 of the OA which is stated in para-2 of the judgement and fixation of the same in accordance with law. The second respondent shall verify the claim and pass orders in this behalf as expeditiously as possible without any delay, uninfluenced by any of the statements and decisions in the impugned orders.

8. The OA is allowed as above. No costs.



(S KASIPANDIAN)
MEMBER(A)


N. Dharmadan
9.1.94

(N DHARMA DAN)
MEMBER(J)

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