

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 247/91
XxXXXNo.

199

DATE OF DECISION 30.4.92

A.Haridasan and ten others. Applicant (s)

Mr.P.Santhosh Kumar Advocate for the Applicant (s)

Versus

Union of India represented by the
General Manager, Southern Railway, Madras Respondent (s)
and four others.

M/s. M.C.Cherian & T.A.Rajan Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr.
S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement? *N*
4. To be circulated to all Benches of the Tribunal? *N*

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 14.2.1991 the eleven applicants who had been working as Accounts Assistants in the Divisional Accounts Office, Southern Railway, Palakkad, have challenged the impugned orders dated 5.4.90 at Annexure-IX and dated 20.7.89 at Annexure-X and similar orders passed against the applicants refusing them the benefit of stepping up of their pay by grant of special pay of Rs.35/- and have prayed that they may be declared to be entitled to the special pay of Rs.35/- along with arrears and refixation of their pay on that basis. The brief facts of the case are as follows.

2. The Railway Board on 11.7.1979 granted special pay of Rs.35/- to U.D.Cs/Senior Clerks/Clerks Grade I in the scale of Rs.330-560 against 10% of identified posts carrying duties of complex and important nature. Appointments to those posts were to be made on seniority-cum-suitability basis. Since the senior-most employees could not be transferred to identified posts, the second

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respondent decided that such seniormost Clerks may be granted the special pay wherever they are working. Thus 10% of the Clerks have been in receipt of special pay wherever they were working. The applicants were working as Clerks Gr.I till October, 1985 when by the restructuring process they were promoted as sub Heads retrospectively with effect from 1.1.1984. Because of this retrospective promotion they were not given the benefit of special pay in the lower posts while their seniors and juniors were getting the special pay. Their contention is that the respondents should have first fitted the applicants against complex posts and then given them promotion as sub Heads (Accounts Assistant) when they would have been able to get their pay as sub Heads fixed by including the special pay of Rs.35/- as part of their pay in the lower post as was allowed to be done by the Railway Board's order dated 27.11.1987 to be effective from 1.9.1985. Later this benefit was extended to those who were promoted as Sub Heads/Head Clerks prior to 1.9.85 on a notional basis and actual benefits accruing from 1.9.85 (Annexure-VII). Thus the special pay of Rs.35/- was taken into account for fixation of the pay of their seniors and juniors who were holding special pay posts prior to 1.1.1984. The applicants were denied the benefit as they were not holding the special pay posts before 1.1.84. The 8th applicant who actually held the special pay post from 10.10.1985 and was drawing the special pay of Rs.35/- had to surrender the special pay due to his retrospective promotion with effect from 1.1.1984. His and similar representations by other applicants were rejected by the respondents. The applicants have relied upon the instructions of the Railway Board dated 27.7.67 stating that when a railway servant happens to be promoted to two different posts carrying higher responsibilities on the same date, he should be deemed to have ^{been} promoted first to the lower post and his pay fixed accordingly.

3. In the counter affidavit the respondents have stated that since the applicants had never held any post earmarked as complex posts prior to their promotion as Sub Heads, they cannot claim the benefit of special pay to be included for fixation of their pay as Sub Heads

with effect from 1.1.84. They have referred to the decision of the Tribunal in similar cases in O.A. 764/89, 733/90 and 904/90 where similar claims were rejected. They have challenged the validity of the order at Annexure -II issued by the CPO, Madras granting special pay to senior-most Clerks irrespective of the posts held by them, by stating that the Chief Personnel Officer cannot modify the orders of the Railway Board.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. An identical application O.A 764/89 filed by similarly placed Clerks was decided by this very Bench in its judgment dated 17.6.1991. The following observations made in that judgment will be pertinent:-

" We have always been taking the view that special pay cannot be granted on the basis of seniority alone unless and until a post with complex and arduous nature of work attached to it, is identified and a person is posted to that post on the basis of his seniority and suitability. We cannot persuade ourselves to accept the principle enunciated by the Chief Personnel Officer at Annexure-II that Senior Clerks who for retaining their House Rent Allowance, CCA etc. at Madras did not move to places outside Madras where the identified posts were located, should be allowed the special pay irrespective of the posts held by them only because they are seniormost hands. This will be the negation of the established principles of grant of special pay for holding posts of arduous nature. The special pay is attached to the post and not to the person. If a person holds a post carrying special pay, he gets it irrespective of his seniority. If a junior person holds a special pay post, the senior person can have no grievance as the special pay is in compensation of arduous and complex nature of the work and not because of the higher responsibilities for which a higher pay scale is called for. We agree with the stand taken by the respondents that posting to a complex post carrying special pay is not a promotion. On that basis if the applicants had not been actually holding a special pay post or a post identified as one deserving special pay within the 10% ceiling, he cannot claim a notional appointment to a special pay post on the date of his promotion as Head

Clerk only for the limited purpose of getting the imaginary special pay added to his pay as Senior Clerk for the purpose of fixation of pay as Head Clerk."

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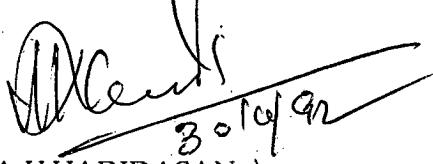
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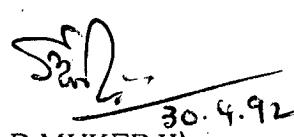
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" We are extremely doubtful about the legality of the order issued by the Chief Personnel Officer at Annexure-II completely changing the complexion of the Railway Board's order at Annexure-I whereby special pay is to be granted only when someone is holding the identified posts. To that extent Annexure-II is without competence. In Dalip Singh Gill vs. The Punjab State Education Board and others, 1979 (2) SLR 423, it has been held by the High Court of Punjab and Haryana that where an order of substantive appointment is made by mistake by an authority not competent to make the order, the employee concerned has no right to confirmation to the post. In State of Punjab vs. Jagdip Singh, AIR 1964 SC 521, the Supreme Court held that where the earlier confirmation was invalid inasmuch as no posts were available at the time of confirmation, the order of confirmation being contrary to the rules, did not entitle the persons to a substantive status and hence the notification deconfirming them was not invalid. In Gulab Chand vs. State of Rajasthan, 1979 SLJ 163 Raj., the High Court of Rajasthan held that a bonafide and apparent mistake can always be corrected and the Government in such cases is not required to act judicially or quasi-judicially but is required to act justly and fairly and cannot act arbitrarily or capriciously."

Based on the aforesaid judgment, similar applications were rejected by another Bench of this Tribunal in O.A. 733/90 and O.A. 904/90.

5. In the above circumstances we see no merit in the application and dismiss the same without any order as to costs.


(A.V.HARIDASAN)
JUDICIAL MEMBER


(S.P.MUKERJI)
VICE CHAIRMAN