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CENTRAL ADMINISTRATIVE TRIBUNAL
ALIA HABAD BENCH(LUCKNOW)

....

Registration O.A. No. 89 Of 1991 (L)

Chandra Prakash and another ... Applicants

vs

The Union of India and others... Respondents

Hon 'ble Justice K. Nath, V.C.

Hon 'ble Mr. A.B. Gorthi, A.M.

(By Hon 'ble Mr A.B. Gorthi, A.M.)

The applicants, Sri Chandra Prakash and Sri T.N. Sharma, both senior Clerks in A.M.V. Depot under the Deputy Controller of Stores (Respondent No.2) claim that they were entitled to special pay of Rs.35 per month w.e.f. 5-5-1979 when it was introduced by the Railway Board and not from 14-1-1981 when it was actually granted to them. Through this ~~the~~ application under section 19 of the Administrative Tribunals Act, 1985, they pray for the quashing of the orders (Annexure-A-I and A-2) under which their representations were rejected, and for a declaration that they were entitled to the special pay w.e.f. 5-5-1979.

2. We have heard the learned counsel for both the parties. Since the facts of the case are neither complicated nor in dispute, we proceed to dispose of this application at the admission stage itself.

3. Most of the essential facts of the case emerge straight from the documents, viz. Annexures-A-1^{to} ~~and~~ A-14 attached to the application. All the said annexures, except Annexure-A-12 which is a representation from the applicant, are the official communications issued by the respondents and are not in dispute.

Whether they have ^{resulted} in any injustice to the applicants,

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is the main question for our consideration.

4. Railway Board decided to grant special pay of Rs.35 per month to "Upper Division Clerks e.g. Senior Clerks, Clerks Grade I in scale of Rs.330 - 560 in the non Secretariat Administrative Offices attending to work of a more complex and important nature". General Managers were asked to identify such posts limited to 10% of the posts in the seniority groups of the respective clerical cadres. The policy decision dated 11-7-1979 was communicated to all, vide Annexure-A-3. It was, however, to become effective retrospectively from 5-5-1979.

5. So far as Charbagh Depot and Alambagh Depot were concerned, the posts of Senior Clerks were identified by respondent no.2 vide his office order No.E/387 dated 23-8-79 (Annexure-A-14). Through that very order respondent no.2 transferred both the applicants to two such posts in A.M.V. Depot so as to make them eligible for the special pay of Rs.35/- per month. They thus began to draw the special pay w.e.f. 23-8-79. A query arose whether such Senior Clerks in Depots were entitled to Special Pay which was introduced only for non Secretariat Administrative Officers, and it was answered in the negative by the Railway Board despite recommendations of respondent no.2 for the grant of the benefit to Senior Clerks in Depots also. Based on the Railway Board's decision which was communicated vide Annexure-A-6 dated 19-4-1980, the special pay that was being given to the applicants was withdrawn and necessary recovery was effect^{ed}~~ive~~.

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6. The desirability of extending the benefit of special pay to Senior Clerks in Depots was pressed again by the respondent no.2 and finally the Railway Board relented vide ^{dated 14-1-81 JK} Annexure-A-8_A stipulates that the decision was to be given effect from 14-1-1981, " so that eligible staff already drawing the special pay of Rs.35/-per month after identification of the post in terms of earlier orders of this Ministry were not disturbed." It is thus obvious that the sole reason why this extension of special pay to Senior Clerks in the Depots was made effective from the date of issue of the order was that those already drawing the benefit were not to be adversely effected.

7. The mere fact that the applicants were denied special pay prior to 14-1-1981 would not have perhaps hurt them so much as the later development under which a decision was taken to reckon the special pay for the purpose of fixation of pay on promotion. Annexure-A-13 containing Railway Board's decision dated 27-11-1987 refers. Applicant No.1 was promoted as Office Superintendent on 23-9-1980 and applicant no. 2 was also promoted on 8-12-1980. Had they been drawing the special pay of Rs.35 per month at that time, it would have been taken into consideration for the fixation of pay on their promotion.

8. The aforesaid facts are not in dispute. The applicants were initially considered suitable and posted to appointments which were identified for the grant of special pay and were indeed granted

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the special pay w.e.f. 23-8-79. It was of course withdrawn as it was not applicable to Senior Clerks in Depots. Later on while authorising the said benefit of special pay ^{& to Senior Clerks} in Depots also, the Railway Board did not give it retrospective effect so as not to disturb those already in receipt of the special pay. Initially when the scheme of special pay was introduced on 11-7-79, it was given retrospective effect from 5-5-79. Similar benefit was denied to Senior Clerks of the Depots despite the fact that some of them had already been positioned and were working in posts carrying important work of a complex nature. If the aim of the Railway Board was merely not to disturb those already in receipt of the special pay, the same could have been achieved by granting the special pay to Senior Clerks in the Depots on a notional basis, from the date of their assumption of the identified posts.

9. We have given our anxious consideration to the main issues involved in this case. The applicants were not only senior enough, but also were found suitable to be appointed to posts carrying work of an important and complex nature. They assumed ^{the} ~~the appointment~~ the said appointments and performed ^{ed &} ~~the~~ work there at. Grant of special pay to them from 14-1-1981, while several others including those ^{juniors &} ~~seniors~~ to the applicants were granted the said special pay from 5-5-1979, resulted in such juniors receiving higher salary than the applicants in view of the Railway Board's decision to count special pay for fixation of pay on promotion.

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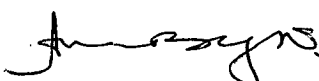
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To cap it all, authorities in the Northern Railway themselves consistently took the view that the initial denial of special pay to Senior Clerks of Depots was discriminatory and unjust. Keeping all these factors in view, we come to the conclusion that the decision of the Railway Board to deny the Senior Clerks of Depots, the benefits of special pay from at-least the date of their appointment to identified posts is arbitrary, besides being unjust.

10. In the result, we are of the view that the applicants are entitled to special pay, on a notional basis, w.e.f. 23-8-79 the date when they assumed the posts identified for the grant of special pay of Rs.35/-. We, therefore, direct that the respondents shall give the benefit of special pay on notional basis to both the applicants w.e.f. 23-8-79. Accordingly, the notional grant of special pay of Rs.35/- per month shall be taken into account in the fixation of pay of applicants no. 1 and 2 from the respective xx dates of their promotion to the post of Office Superintendent.

11. We dispose of the application with the above orders, which the respondents are hereby directed to implement within 6 months from the date of receipt of a copy of this judgment.

12. Parties to bear their own costs.


MEMBER (A)
(sns)


VICE CHAIRMAN

2 May, ~~April~~ 06, 1991.
Allahabad.