

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

O.A. No. 387/92

Lucknow this the 15th day of Feb., 2000.

HON. MR. A.V.HARIDASAN, V.C.

HON. MR. J.L.NEGI, MEMBER(A)

1. Krishan Kumar Suri, aged about 59 years son of late Gurdas Mal Suri, resident of 316/Shrinagar, Lucknow.
2. Gandhi Prasad Dwivedi, aged about 61 years son of late Shri Sri Ram Dwivedi resident of L-I/89-G, L.D.A Colony, Kanpur Road, Lucknow.
3. Man Mohan Singh aged about 61 years, son of late N.K. Chaturji, Resident of 28/A Durgapuri, Lucknow.
5. Harishanker Gautam, 60 years son of late Shri G.P. Gautam, resident of D 475-D, L.D.A. Colony Kanpur Road, Lucknow.

Applicant.

versus

1. Union of India through Chairman Railway Board, New Delhi.
2. General Manager, Northern Railway, Baroda House, New Delhi.
3. Senior Divisional Accounts officer, Northern Railway, D.R.M. Office, Lucknow.
4. Senior Accounts officer (Workshop) Northern Railway, Charbagh, Lucknow.
5. Senior Accounts Officer (Workshop) Northern Railway, Alambagh, Lucknow.

Respondents.

O R D E R

BY J.L. NEGI, MEMBER(A)

The relief sought by the applicants in this O.A. is as under:

".....to set aside the impugned order dated 13.8.91/26.8.91 contained in Anneuxre no. 1 by declaring it as nul and void.

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consequently, the respondents be directed to fix the pay of the applicants (notional) by including Rs.35/- as special pay w.e.f. the date when the applicants were promoted on the post of Section Officer Accounts in the pay scale of Rs.500-900.

(ii)...the applicants notional fixation of pay be allowed by giving the benefit of Rs.35/- special pay/incentive and the same may be included in every revised pay scale enhanced time to time alongwith consequential benefits upto retirement and thereafter.

2. The facts of the case are that the applicants were working as Accounts Clerk Grade I under the respondents and were qualified for Appendix III Examination by virtue of their service and seniority. The respondents have been allowing certain incentive for the accounts staff who have passed the Appendix IIIA Examination, having been promoted to the next higher grade of Section Officer. This scheme has been invoked since 1965. Under the Scheme, the applicants who had passed the Appendix III A Examination were allowed to enhance the rate of increment of Rs.15/- The Railway Ministry by its letter dated 29.10.76 and thereafter, advised that special pay of Rs.20/- per month be granted in place of Rs.15/- as before w.e.f. 1.1.73. It was further modified to sanction special pay @ Rs.35/- per month vide order dated 28.4.80 (Annexure.3). It was further mentioned that the order shall take effect from 22.9.79. The applicant has made representation.

3. The applicant's request regarding notional fixation of pay at the time of promotion on the post of Section Officer (accounts) was clarified by the respondents vide letter dated 26.8.91 that the enhanced rate of special pay/incentive of Rs.35/- P.M. will be effective only from 22.9.79 and the question of notional fixation of pay from a date prior to 22.9.79 does not arise.

4. The applicant, in his application stated that the staff of railway accounts department were granted incentive from the date of passing

Appendix III-A Examination till the date of promotion to the eligible post till 31.12.72 and it was paid at different rates of enhanced increments. This mode of payment was replaced by granting special pay w.e.f. 1.1.73 at the rate of Rs 20/- for the first year after passing and Rs 35/- from the second onward but effective from 22.9.79. The original scheme was prejudicial to the interest of qualified staff whose pay including incentive could not exceed the maximum stage of the pay scale. In contrast the revised scheme ensures that the pay plus special pay may exceed the maximum stage of pay scale till the date of promotion. The applicant further submitted that the incentive increment having been merged with pay had the effect of reaching to the maximum pay of appropriate scale earlier than otherwise normal date, then causing premature blockade at maximum till promotion. The applicant alleged that he was adversely hit because the incentive amount of Rs 44/- being paid to him since 8.5.70 was merged into the basic pay while fixing his pay in the revised scale in 1974 (effective from 1.1.73) and continued to be treated as such even after replacement of the overall procedure by the revised scheme in 1976 made applicable from 1.1.73. As his pay reached to the maximum stage on 1.1.74, earlier than the normal date of 1.5.77, he had to face premature stagnation for 4 years and the incentive amount of Rs 44/- fell down to nil. Thus, the applicant alleged that he was ^{not} paid any incentive from 1.5.77 to 16.3.78 and again on his promotion to the post of Section Officer (Accounts) on 17.3.78 and no amount of incentive was taken into account for purposes of fixing pay in promotional grade. He also stated that the incentive amount of Rs 44/- availed by the applicant

from 8.5.70 to 31.12.70 was a matter of his vested right which was taken away before promotion under unlawful procedure.

5. The applicant has relied upon the following decisions:

- i) 1998 SCC (L&S) 1217
- ii) 1998 SCC(L&S) 1376
- iii) 1996 SCC(L&S) 579
- iv) 1997 SCC (L&S) 1527
- v) 1986 ATC 541 (SC)
- vi) 1990(2) CAT
- vii) 1991(17)ATC 673

5. The respondents, on the other hand vehemently opposed the O.A. and submitted that an incentive amount equal to enhanced increment of Rs 15/- was made payable on passing the said examination upto 31.12.72 in authorised Pay structure before promotion as Section Officer (Accounts). On the revision of pay scale on 1.1.73, the question of grant of incentives in the revised pay structure to the railway Accounts staff who qualified in the said Departmental examination was under consideration of the Government when the Railway Ministry by its order dated 29.10.1976 advised that special pay of Rs 20/- per month be granted in place of Rs 15/- as before w.e.f. 1.1.73. The earlier order dated 29.10.76 (Annexure -2) was modified to sanction special pay at the rate of Rs 35/- per month vide order dated 28.4.1980. It was also mentioned that the order shall take effect from 22.9.79. As the applicant was promoted as Section Officer prior to 22.9.79, he was not entitled to this benefit. A clarification ~~was~~ sought was replied vide Annexure-1 dated 13.8.91 that special

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pay/incentive will be effect only from 22.9.79. Thus, the applicant was not entitled to special pay of Rs 35/-.

6. It was further submitted that after fixation of pay in the corresponding revised scale of Rs 330-380 EB-12-15-500 EB 560 on 1.1.73 with reference to pay inclusive of enhanced increment. The applicant was granted two additional increments of Rs 15 plus 15 on 2.1.73 raising his pay to Rs 545/-. Since the pay of the applicant as on 2.1.73 was at the stage of Rs 545/-, he was to earn only one increment of Rs 15/- to touch the maximum of the revised scale of Rs 330-560. On his promotion to the higher grade of Rs 500-70-700 EB-25-900 (revised scale of Section Officer (Accounts) prior to 22.9.79 the pay was fixed under the normal rules with reference to his pay in the lower post in grade Rs 330-560 under rule 2018 of the Indian (B)/1316 (F.R. 22 C of Indian Railway Establishment Code (volume II). Thus, it was stated that the pay of the applicant was correctly regulated from time to time under extant rules and order without any ground of attack.

7. We have heard the learned counsel for the applicant and the respondents and also the applicant in person. We find that the scheme of incentive of special pay introduced by the letter dated 29.10.76 supersedes the earlier scheme which was intended to benefit most of the staff qualifying in the Appendix III A Examination w.e.f. 1.1.73 by grant of special pay of Rs 20/- for the first year and Rs 35/- w.e.f. 22.9.79 for the second year of passing of the said examination. Since the applicant was promoted as Section officer (accounts) in the year 1978, it appears that there was no anomaly in his pay due to direct result of the change in the nature of incentive

from rate of enhanced increment to special pay from 1973. The pay of the applicant was properly regulated in terms of Indian Railway establishment Code (Volume II) which is quoted below:

"Provided also that where a railway servant immediately before his promotion or appointment to higher post is drawing pay at the maximum of the time scale of the lower post, his initial pay in the time scale of the higher post, shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of lower post by an amount equal to the last increment in the time scale of lower post."

8. Thus, the respondents had correctly regulated the scheme. The learned counsel for the applicant had relied on a number of rulings cited above and we find that these rulings have no direct bearing on the case of the applicant.

9. The respondents have placed a copy of the judgment dated 9.3.92 passed in O.A. 2405/91 of the Principal Bench of the Central Administrative Tribunal New Delhi vide which a similar and identical facts was adjudicated against the petitioners. The Hon. Members of the Principal Bench while rejected the petition have observed as under:

"This matter came up for review before the Third Pay Commission but the system did not favour with them. Consequently, the Railway Board dispensed with the system of inflated rate of increment and replaced it by a special pay of Rs 20/- p.m. This special pay was later increased to Rs 35/- p.m. from 22.9.1979. Thus, the incentive to the qualified accounts staff is not only to compensate the qualified Appeneix III employees for bringing about greater efficiency with their approved professional skill for undertaking higher responsibility. Keeping in view the

background and the modified system, as now prevalent we are not persuaded to accept that there is an arbitrariness or illegality in improving the rate of special pay from a certain date. Since the special pay is taken into account for fixation of pay irrespective of the rate, those who are promoted prior to 22.9.1979 would never draw lower pay than those who are promoted after 22.9.1979."

9. This finding of the Principal bench has been further confirmed by the Principal Bench in another similar case in O.A. No. 360/90 vide order dated 27.12.96 in the case of J.C. Bhorl vs. Union of India and others. The Hon. Members of the Bench while adjudicating and rejecting the applicant's petition observed as under:

"On the other hand, it was provided as a matter of policy that only in respect of such of those persons who have qualified in the Appendix III A examination but had not been promoted, would get a special pay equal to Rs 20/- less the benefit in higher rate of increment already derived under the old scheme upto 31.12.1972 and in case they had already drawn a higher rate of increment, i.e., Rs 20/- or Rs 35/-, as the case may be, they would not be entitled to any special pay. The object of the whole scheme was to limit the grant of incentive upto Rs 20/-/ Rs 35/- only. In such matters of policy the courts or the Tribunals cannot interfere. Therefore, the applicant's claim for grant of Rs 20/-/Rs 35 as special pay over and above the pay which was fixed consequent on the revision of the scales of pay, is misconceived."

10. We find no reason to deviate from the above ruling, on the contrary, we are in respectful agreement with the view taken there.

11. In view of the facts mentioned above, we

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find no merit in this application. The same is dismissed . No order as to costs.

J. S. J.

MEMBER(A)

Lucknow; Dated:

M. K. S.

VICE CHAIRMAN.