

AS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL-LUCKNOW BENCH

LUCKNOW.

O.A. 286 of 1989.

Sri R.P. Katiyar and others.....Applicants.

Versus

The Union of India & others..... Opp. Parties

Hon'ble Mr. Justice U.C.Srivastava-V.C.

(By Hon.Mr.Justice U.C.Srivastava- V.C.)

By means of this application, the applicants who are employees of the North-Eastern Railway and working under the control of Divisional Railway Manager (Commercial) has prayed that the opposite parties may be directed to re-fix their pay on notional basis from the date of their promotion as Head Clerk by taking into account the special pay of Rs. 35/70 and actual benefit ~~xxx~~ may be given to them from 1.9.1985 as has been done in the case of their juniors so that they may not get less pay than their juniors as per Board's order dated 17.8.1989.

The applicants were appointed initially as a clerk in the year 1956 and promoted to the post of senior clerk in the year 1980 and as Head Clerk in the year 1984 and 1985. The first three applicants were promoted as Head Clerk on 1.1.1984 and the last two on 1.5.1985 and ~~xxx~~ 1.6.1985 respectively.

It has been pointed out by the applicants that the junior incumbents Sri D.B. Saxena who was appointed after their appointments on 1.7.1958 and promoted to the post of Senior Clerk after them viz on 29.9.1981 and as Head Clerk on 1.2.1986 has been drawing a salary on 1.9.1988 amounting to Rs. 1720/- that is more one what is applicants are drawing whose salary was fixed at Rs. 1600/- except applicant no. 2 whose

salary was Rs. 1640/-. The applicants submitted a representation against the same.

The cadre restructuring the strength of Head Clerk was revised from 8 posts to 20 posts and the post of Senior Clerk who were in receipt of Rs. 35/- as special pay and those who were not receiving that special pay, were promoted together by the same order and this special pay was made vide Board's order dated 11.7.1979 which was to be given to 10% of the incumbents of a unit on the basis of seniority-cum-suitability, and the salary of the applicants was fixed after structuring the special pay of Rs. 35/70 per month was not taken into account which was given to the juniors incumbents. It has also been pointed out that vide Board's order dated 17.8.1989 has been issued a circular regarding the stopping up of pay of seniors under Note 7 of the Rule 7 (1) of Railway Services (Revised Pay) Rules, 1986 and even then the applicants' pay has not been fixed and that is why they have challenged the respondents.

The respondents have contested the claim of the applicant and have made certain references of decided cases by this Tribunal and have pleaded that the special pay of Rs. 35/- was to be given on the basis of seniority/suitability with specific orders to perform the work on pin pointed seats, i.e. to deal with the complex nature of work, but the applicant could not receive that type of special pay because they were promoted straight way on the post of Head Clerk as a result of restructuring of the Ministerial cadre. The benefit of special pay of Rs. 35/- which was earlier Rs. 70/- was given to those senior posts.

(R)

Clerks who remained drawing Rs. 35/70 as special pay in fixation of their pay on promotion to higher grades. Those who were not drawing special pay of Rs. 35/70 were not found entitled for the benefit of this fixation of pay in higher grades. This matter has engaged the attention of this Tribunal earlier also after referring various other decisions of this Tribunal. We have taken the view in O.A. No. 87 of 1991 Hari Saran Shanker Srivastava Versus Union of India and others decided on 25.3.1992 in which it has been held that this benefit cannot be denied by the applicant also and there is no intelligible definitia that qualifying persons were promoted before and after a particular date. Consequently it was directed in this case that the respondent shall give a benefit of special pay of Rs. 35/- on notional basis to the applicant and this special pay of Rs. 35/- shall be taken into account in the fixation of pay from the date of promotion to the higher post. ~~By all the~~ ^{in all the terms} ~~in view of these very~~ ^{same} ~~directions~~ ^{in the above case} the respondents are directed to do the same within a period of two months from the date of communication of this order. No order as to the costs.

Dated: May 5, 1992.
(DPS)


Vice Chairman.