

Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL

~~Lucknow~~
~~Allahabad Bench~~

Misc. Petition 131 of 1991

O.A. No. 87 of 1991(L)

Hari Saren Shanker Srivastav & Ors Applicants

Versus

Union of India & Ors. Respondents

Hon. Mr. Justice U.C. Srivastava, V.C.

Hon. Mr. A.B. Gorthi, Member(A)

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

The applicants by means of this application have prayed that the respondents be directed to re-fix the pay of the applicants on notional basis from the date of their promotion as Head Clerk by taking into account the special pay of Rs. 35/- and the actual benefit may be given to them from 1.9.89 as has been done in the case of their juniors so that they may not get less pay than their juniors as per Railway Board's letter dated 17.8.89, where in it has been laid down that if as a result of fixation of pay of Gr. I Clerk/Sr. Clerk (330-560) although gets higher than them in the revised pay scale because of their work of complex nature in the pin pointed post, the pay of such seniors will not be stopped up because it cannot be treated anomalous because juniors will be drawing performed duties of complex nature and drawn special pay. The applicants

are working under the control of the Divisional Railway Manager (Commercial) N.E. Railway, Ashok Marg Lucknow. They were appointed as Clerk. Their promotion to the senior clerk and head clerk date from which special pay of Rs.35/- was sanctioned to them from various dates between 1984-85. In view of the restructuring of the ministerial cadre of commercial branch were circulated under Divisional Railway Manager (P) Lucknow's letter dated 18.12.84 by which the senior clerks of Commercial cadre were given promotion on the basis of head clerk with retrospective effect from 1.1.84 was given in between 30.1.85 to 30.9.85 to persons who got promotion on the post of head clerk as a result of revised strength of the cadre, were denied the benefit of special pay of Rs.35/- p.m. on the fixation of pay to the higher post by the railway administration, as to whether they were getting special pay of Rs.35/- or not. On the plea that they were not receiving the special pay of Rs.35/- on 1.1.84, the date on which they were promoted as head clerk. It is to be seen that what was the fault on the applicants who had been given special pay of Rs.35/- p.m. on their turn on 7.2.84, 11.2.84, 14.11.84, 6.6.85 and 6.6.85 retrospectively by virtue of their seniority before the orders of restructuring dated 18.12.84. When their promotion was made with retrospective effect from 1.1.84 then as to why the Railway administration has denied the benefit of special pay to such senior staff with the result that their pay has become lesser than their juniors if the length of their service is considered. Initially the special pay of Rs.35/- was provided to the 10% senior incumbents on the basis of

seniority-cum- suitability vide order dated 11.7.79 which was merged in pay while fixing pay on promotion to higher post. But vide order of the Railway Board dated 5.1.89 the special pay of Rs.35/- was increased to Rs.70/- p.m. and it was also provided that the benefit of this special pay will be given to the incumbents in fixation of their pay on higher posts. It was also provided that this benefit will be given to the persons promoted on or after 1.9.85. Due to this reason the incumbents who were promoted prior to 1.9.85 got lesser pay in comparison to their juniors who were promoted on and after 1.9.85. As a result of this anomaly, some employees of the Posts and Telegraphs filed reference claim petition before the Central Administrative Tribunal Bangalore and the Bench of the Tribunal at Bangalore was pleased to decide the claim petition vide judgment and order dated 16.1.89 giving the benefit of special pay in fixation to the incumbents promoted prior to 1.9.85 also.

The Bangalore Bench of the Central Administrative Tribunal Bangalore vide its judgment dated 16.1.89 in M.S. Janjundaish and Others Vs. Government of India decided on 16.1.89 has held that;

"4. I have considered the rival contentions carefully, whatever the method by which the decision was taken to count special pay of Rs.35/- for fixation of pay in the higher post, no intelligible differentia is discernible in classifying persons promoted to ISG before and after a particular date. On the ratio

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of the judgment of the Supreme Court in Nakra's case the benefit of the orders conveyed in Government of India's letter of 1.9.1987 can be extended from that date only but it cannot be confined to those who are promoted on or after that date. That to my mind, would be the only way to interpret Government of India's letter of 1.9.1987 relating to the date from which the orders therein were to become effective to avoid the charge of discrimination. For, the hold otherwise would lead to an anomalous situation in which persons promoted later would get higher pay than those who are promoted earlier merely because in the case of the former special pay drawn and this would violate the rule of equality."

In some what similar matter a Bench of this Tribunal has taken the view in May 1991 in O.A. 87 of 91 decided by this Tribunal has held that;

"10. In the result, we are of the view that the applicants are entitled to special pay, on a notional basis, w.e.f. 23.3.79 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

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to both the applicant w.e.f. 23.3./9. 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 dates of their promotion to the post of Office Superintendent!

In a similar matter this very Bench has also taken such similar view and accordingly this application is allowed and ^{it is held} ~~the respondents are directed~~ that the applicants are entitled to special pay from the date when they assumed the post identified for the grant of special pay of Rs.35/-. We, therefore, direct that the respondents shall give the benefit of special pay of Rs.35/- on notional basis to the applicants 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. Let it be done within two months from the date of communication of this order.

Parties to bear their own costs.


MEMBER(n)


VICE CHAIRMAN

25 March 1992:

(Uv)