

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH , MUMBAI

O.A. NO. 1047/1999

Mumbai, this.... 31st day of July 2001

Hon'ble Shri S.L. Jain, Member (J)
Hon'ble Shri Govindan S. Tampli, Member (A)

1. Shri Gurunani, Age 62 years
Retired O.S. Gr. I, C. Rly
C&W Workshop, Matunga,
R/o A/73m Nirmala Niwas,
Third Floor, A1-MAI
Meharwanji Street, Parel,
MUMBAI - 400 012
2. Shri Peter John, Age 61 yrs,
Retired O.S. Gr.I, C&W Workshop,
Mtn., R/o Room No. 1, Micheal,
Renny Chawl, Near Vijay,
Tailoring Classes, Dharavi,
Koliwada, North Sion- Bandra Road,
MUMBAI - 400 017

Versus

1. Union of India though the Secy.
Rly. Board (Min. of Rlys.)
Rail Bhavan, New Delhi - 110 001
2. The General Manager, C. Rly.
Mumbai, C.S. T. Mumbai - 400 001
3. The Chief workshop Manager,
C. Rly. C&W Workshop, Matunga,
Mumbai - 400 019.

O R D E R

By Hon'ble Shri Govindan S. Tampli, Member (A)

Applicants in this case seek refixation of their pay taking into account the special pay of Rs.35/-, w.e.f. 1.1.84 / 1.9.85, keeping in mind, Railway Board's orders dated 27.11.87 and 2.8.89.

2. Shri R.D. Deharia and Shri Suresh Kumar, learned Counsel, represented the applicants and respondents respectively both in the pleadings and during oral submissions.

3. The applicants have retired from Western Railway as Office Supdts Grade-I, having risen from Sr. ^{1.6 ranks of} Clerk through Sr. Clerk with special pay, Head Clerk, Head Time Keeper and Office Supdt Grade-II. They had been promoted as Head Clerk/Head Time Keeper w.e.f. 1.1.84 by order dated 15.6.85 at Sl Nos. 15 & 28 along with a few others, while some others were promoted subsequently. At the time of their promotion, the Special pay of Rs. 35/- they were drawing was not included, while fixing their pay as Head Clerk / Head Time Keeper. Railway Board's order No. PC-III/79/SP/1/UDC dated 27.11.87 had directed the inclusion of the Special pay of Rs.35/- on promotion, if the incumbent was working in the special pay post in a substantive capacity, or was officiating in the said post for not less than three years. Railway Board subsequently clarified that UDCs who were drawing the special pay of Rs.35/- in terms of Railway Ministry's letter dated 11.7.79 and promoted before 1.9.85, could be given notional refixation, including the special pay as well, with actual benefit only from 1.9.85. Both the applicants fulfilled the above conditions and were entitled for the re-fixation. Both the applicants made a series of representations. While applicant No. 1 was given a vague reply on 10.12.97, applicant No.2 was not even responded to. Their meeting with Sr. Personnel Officer on 3.4.99, also did not yield any favourable result and they were advised that their case did not come within the purview of the Rly. Board's instructions for fixation in the higher grade. The applicants followed it up with legal notice on 6.9.99, but did not receive any response . Hence this application. According to the applicants they were correctly entitled to have the refixation of their pay as Head Clerk/ Head Time

-3-

keeper, taking into account the special pay of Rs. 35/- w.e.f. 1.1.84 with actual benefits on 1.9.85 with all consequential benefits including pensionary benefits. Their requests deserved favourable consideration as they were already retired personnel and justice had been denied to them even long after their superannuation, more so as a few of their colleagues including their juniors similarly placed have been given the benefit denied to them.

4. In their rebuttal, the respondents state that the application was misconceived and suffered from suppression of facts as ~~they~~ ^{the applicants} had not shown as to when they were asked to perform as Sr. Clerks with Special pay. According to them, the benefit of pay fixation with special pay was available only till his exercising the option in the revised scale and not thereafter. The actual benefit of special pay fixation was available only from 1.9.85. Applicants' plea that it was a continuous cause of action was not correct and the application was hit by limitation and repeated representations would not cure the malady of limitation. Applicant No. 1 has been given the fixation as being claimed by him. On the other hand applicant No. 2 was promoted on 1.1.84 as Head Clerk and therefore Order dated 1.2.84 granting him special pay of Rs. 35/- had been withdrawn and therefore he was never deemed to have drawn it. Applicant had not worked in the post carrying special pay of Rs.35/- before 1.1.84, while a few others who have been given the benefit had so worked before their promotion as Head Clerk and had thus earned the benefit. The applicants are not entitled for the benefit and therefore the application should be dismissed, plead the respondents.

h

5. In the rejoinder, it is stated by the applicants that the respondents are misinterpreting the law to deny them their due. Applicant No. 2 had worked as Sr. Clerk with Special Pay of Rs.35/- from 2.1.84 and continued to perform so till his promotion as Head Clerk on 15.6.85 but w.e.f. 1.1.84. He was entitled to the benefit of refixation especially as a few of the juniors like S/Sh. Madan, Karandhikar and Deshmukh promoted as Sr. Clerks subsequently but ^{who} _l were also promoted as Head Clerks retrospectively from 1.1.84 were given the benefit. Though respondents have stated that applicant No. 1 has been given ^{the} refixation, orders as have been issued in the case of juniors have not been issued in his case. Both the applicants point out that their having retired on superannuation does not disentitle them to benefits, if they are legally entitled to get them.

6. Respondents reply that while applicant No. 1 has been given the fixation, applicant No. 2 was not entitled for the same. Order in terms of applicant No. 1 was issued on 30.3.90. Applicant No. 2 was ordered to officiate as Sr. Clerk with Special Pay w.e.f. 2.1.84 and therefore he was not entitled for fixation in the higher grade with Special pay also. It is further shown that applicant No. 1 had his pay refixed on 1.11.84, on promotion, including the element of Special pay and the same was refixed accordingly w.e.f. 1.1.86, after the adoption of IV Pay Commission recommendations. In fact after the fixation in the revised scale nothing remained to be done. Fixation of pay of K.M. Madan has been revised with direction that similar cases also should be reviewed. Applicants cannot therefore have any case to agitate. Even otherwise one wrong or mistake in granting a benefit does

not give any right to others to demand similar benefits.

respondents reiterate that the application deserve to be dismissed.

7. During the oral submission, learned counsel for the parties strongly press their respective claims.

8. We have carefully considered the matter. Respondents have raised the preliminary objection of latches and limitation while the applicants have rebutted it on the ground of its being a continuing cause of action. We observe that this is basically a matter of pay fixation and as such a continuing cause and not hit by limitation in view of the Hon'ble Apex Court's decision in the case of M.R. Gupta Vs UOI in Civil Appeal No. 7510 SLP (Civil) No. 9969 of 1993 decided on 21.8.95. This objection is therefore not sustained.

9. On merits, the point for determination is the eligibility for refixation of pay of the applicants w.e.f. 1.1.84 on their promotion as Head Clerks/ Head Time Keepers, taking into account the special pay of Rs. 35/- p.m. they were drawing as Sr. Clerks with special pay. In this context the relevant letter from the Ministry of Railways /Railway Board are No. PC III/79/SP/I/UDC dated ^(A) 27.11.1987 and ^(B) 2.8.89, The same are reproduced as below:

A)

No. PCIII/79/SP/1/UDC Dated 27.11.1987

" A demand was made by the Staff side in the National Council that Rs. 35/- p.m. paid to the UDC as special pay should be taken into account in fixation of pay on promotion. The matter was referred to the Board of Arbitration who have decided that Rs. 35/- p.m. paid to UDCs as special pay under Board's letter

No. PC III/79/SP-1/UDC dated 11.7.79 shall be taken into account for fixation of pay on promotion subject to the following conditions:-

a) that the incumbent is a substantive holder of the post to which the special pay is attached;

OR

b) that the incumbent on the date of his appointment to higher post, is officiating in the lower post to which the special pay is attached, continuously for a period of not less than three years.

2. These orders amend the previous orders of this Ministry's letter of even number dated 30.1.1980 and becomes effective from 1st September 1985.

3. As and from 1.1.86 or the later date when the employee opts for the Revised pay scales (1986) this special pay will cease to count for fixation of pay on promotion.

This has the sanction of the President.

Sd/ M. SEETHARAM
EXECUTIVE DIRECTOR PAY COMMISSION-II
RAILWAY BOARD."

B)

No. PCIII/79/SP/1/UDC Dated: 2.8.89

"Reference is invited to this Ministry's letter of even number dated 27.11.87 under which the Special Pay of Rs. 35/- p.m. paid to Upper Division Clerks has been allowed for fixation of pay on promotion w.e.f. 1.9.85. Aggrieved by this decision, a number of UDCs, who while drawing special Pay of Rs. 35/- p.m. were promoted to higher posts prior to 1.9.85 and whose pay on promotion was fixed without taking into account the special pay of Rs. 35/- filed a petition before CAT claiming that their pay should also be fixed taking into account the special pay of Rs. 35/- as their juniors who have been promoted after 1.9.85 are getting higher pay.

The judgement of CAT delivered in this case has been examined in consultation with Ministry of Finance and it was decided that pay of those UDCs who were drawing Special pay of Rs. 35/- in terms of this Ministry's letter No. PC III/79/SP/1/UDC dated 11.07.79 and were promoted to higher posts prior to 1.9.85 and who fulfil the conditions mentioned in this Ministry's letter No. PC III/79 Sp/1/UDC dated 27.11.87 may be re-fixed on notional basis from the

date of their promotion by taking the special pay of Rs. 35/- into account and the actual benefit may be allowed to them only from 1.9.85 without payment of any arrears.

Sd/- (N. GOPALKRISHNAN)
Executive Director Pay Commission II"

In short, the UDCs who were drawing Special Pay of Rs.35/- and who were promoted before 1.9.85 as Head Clerk would be allowed to include the Special Pay, while having the pay refixed, provided they were either holding the special pay post substantively or for three years if the same was being held as officiating. Conditions to be fulfilled in this regard are:

- i) drawing of Special pay as Sr. Clerk.
- ii) promotion as Head Clerk before 1.9.85.
- iii) holding the special pay post in a substantive capacity or more than three years in officiating capacity.

10. It is not disputed that both the respondents were promoted as Head Clerk/ Head Time Keeper in the grade of Rs.425 - 700 / 1400 - 2300 w.e.f. 1.1.84 in terms of order dated 15.6.85. They have thus been promoted before 1.9.85. It is also seen that both of them were drawing the Special pay of Rs.35/- as senior clerk at the time of their promotion. Applicant No. 1 has been holding the post of Senior Clerk ^{w.e.f.} ~~Special pay~~ in a substantive capacity while applicant No. 2 has been given the promotion as Senior Clerk special pay on 2.1.84, though at a subsequent date he was promoted as Head Clerk / Head Time Keeper w. e.f. 1.1.84 itself. That being the case there is a slight distinction between the applicant No. 1 and 2. In the case of *the cases of* ¹ 2

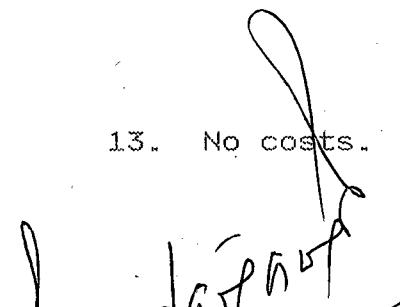
applicant No. 1 all the three conditions prescribed by the Railway Board letters dated 27.11.87 and 2.8.89 have been fulfilled ^{while} in the case of applicant No. 2 the condition that the incumbent should have been holding the special pay post in the substantive capacity or more than 3 years officiating capacity has not been fulfilled. therefore while the applicant No. 1 is entitled to get higher fixation of his pay on his promotion as Head Clerk with effect from 1.1.84, taking into account the special pay of Rs. 35/- he has been drawing as senior clerk, ^{while} applicant No. 2 is not so entitled as it is not proved that either he was holding the post in the substantive capacity or for more than 3 years in officiating capacity. Unless all the conditions are fulfilled the fixation of the pay in the higher scale is not possible and the applicant No. 2 cannot get the benefit. It is true that a few individuals who were junior to applicant No. 2 i.e. Shri K M Madan who became Senior Clerk ^{with} ~~Special~~ pay after the applicant No. 2 ^{and} ~~who~~ got promotion as Head Clerk w.e.f. 1.1.84 was given the benefit of refixation in the higher grade. This is a clear mistake as that individual also would not have been either a substantive Senior clerk with ~~Special~~ pay or having officiating service for more than 3 years. The respondents have realised their mistake on receipt of applicant No. 2's representation and have by their order No. AC/3116/WA7/MTN/90 dated 29.8.90 directed the revision of Shri Madan's pay and recovery of amount paid in excess. The bottom of the applicant case is ^{knocked} ~~out~~ on this account as well. Even otherwise, mistake committed by the respondents in favour of one

individual cannot give rise a right to the to claim that the benefit of the same mistake be extended to him as well . His case therefore has to fail.

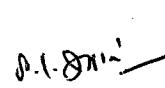
11. In the above view of the matter application succeeds in respect of applicant No.1, but fails in respect of applicant No. 2 and is accordingly disposed off. The respondents are directed to have the pay of applicant No. 1 revised w.e.f. 1.1.84 notionally on his promotion as Head Clerk taking into account the special pay of Rs.35/- he was drawing as Senior Clerk with special pay and grant the actual benefit from 1.9.85 with all consequential benefits including pensionary benefits. This exercise should be completed within 3 months from the receipt of a copy of this order.

12. No relief is being ordered in respect of applicant No.2 as he is found to be not entitled for the same.

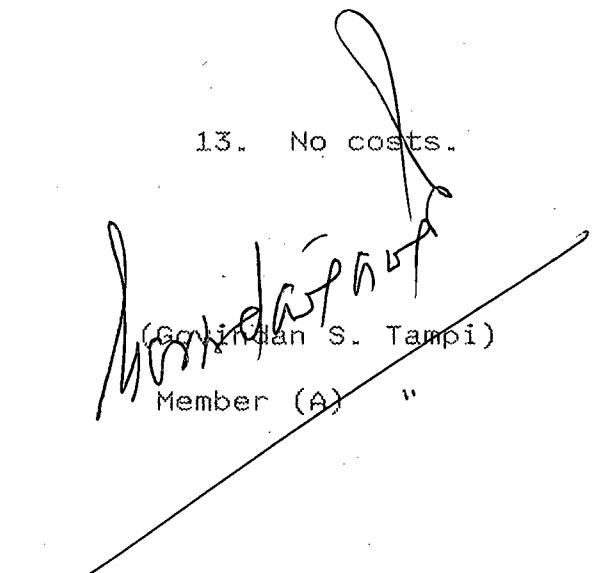
13. No costs.


(Gokulan S. Tamai)

Member (A) "


S.L. Jain

Member (J)


Patwal/