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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No.1127/91

Date of Order: 13.8.93

BETWEEN:

K.Manohar

.. Applicant.

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1. Union of India, Rep. by
the General Manager, South
Central Railway, Rail Nilayam,
Secunderabad.
2. The Divisional Railway Manager,
Broad Gauge, Secunderabad Division,
Secunderabad.
3. The Senior Divisional Personal/
Officer, Broad Gauge, Secunderabad. .. Respondents.

...

Counsel for the Applicant

.. Mr.V.Durgaprasad Rao

Counsel for the respondents

.. Mr.D.Gopal Rao

CORAM:

HON'BLE SHRI A.B.GORTHY : MEMBER (ADMN.)

HON'BLE SHRI T.CHANDRASEKHARA REDDY : MEMBER (JUDL.)

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Order of the Division Bench delivered by
Hon'ble Shri A.B.Gorthi, Member (Admn.).

The applicant who was promoted to the post of Head Clerk in the scale of pay Rs.1400-2300 claims that on his promotion, the respondents should have fixed his pay by taking into consideration the special pay of Rs.70/- to which he was entitled to in the post of Senior Clerk. His specific allegation is that even his juniors^{who} were drawing the special pay of Rs.70/- p.m. in the posts of Senior Clerks were allowed the refixation of pay in the post of Head Clerk by taking into consideration the special pay that they were drawing.

2. The applicant joined the South Central Railway as a Junior Clerk on 20.8.1974 and was promoted to the post of Senior Clerk in October 1982. Some time in 1987 the respondents call^{ed} for volunteers for filling up the post of Personnel Inspector, Grade-III (Rs.1400-2300). The applicant gave his willingness and he was selected for appointment to the said post of Personnel Inspector, Grade-III vide office order dated 14.10.1987. In the said order it was mentioned clearly that the appointment was purely a local arrangement and is adhoc in nature. The applicant continued to work as Personnel Inspector, Grade-III till he was promoted to the post of Head Clerk w.e.f. 30.1.1989. On his promotion to the post of Head Clerk he found that the pay of

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some of his juniors was fixed at a higher level. This was on account of the fact that the juniors while working in the lower posts of Senior Clerks were drawing the special pay of Rs.70/- p.m. Had the applicant remained as a Senior Clerk only and had not opted to become a Personnel Inspector, Grade-III he would have been given the special pay in the post of Senior Clerk w.e.f. December 1987. The contention of the applicant is that although he was not actually given the special pay of Rs.70/- p.m. he should have been deemed^{ed} to be entitled to the special pay because he continued to hold the substantive post of Senior Clerk even while he was working as a Personnel Inspector, Grade-III on a purely adhoc basis.

3. The respondents in their brief counter affidavit have not disputed the basic averments made in the application. They, however, clarified that the grant of special pay of Rs.70/- is restricted only to 10% of the posts in the seniority groups of the respective clerical cadre. Accordingly 10% of the posts of Senior Clerk were identified as carrying higher responsibility of a more complex~~ion~~ⁱⁿ nature and the officials holding the said post were granted the special pay of Rs.70/- which initially was Rs.35/- before it was revised to Rs.70/-. As regards the question of taking into consideration the special pay for the purpose of fixation of pay in the higher promotional post, it was allowed vide Railway Board's letter dated 29.11.1987. The conditions stipulated in the said letter are:-

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(A) that the incumbent is a substantive holder of that post to which the special pay is attached, or

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

4. Although the applicant was holding the substantive post of Senior Clerk he was in fact working as a Personnel Inspector, Grade-III in the higher scale of Rs.1400-2300 at the relevant time. As he was not actually performing the duties of a Senior Clerk there was no question of granting him the special pay of Rs.70/p.m. which is meant exclusively for 10% of Senior Clerks. The respondents admit that the applicant's name came up for consideration for the grant of special pay during December 1987 but because of the fact that at that time he was holding the higher post of Personnel Inspector, Grade-III, it was decided that he would not be entitled to the grant of special pay.

5. We have heard Mr.V.Durga Prasad Rao, learned counsel for the applicant and Mr.D.Gopal Rao, Standing Counsel for the respondents. Learned counsel for the applicant contended that it would be not in accordance with the extant instructions or even in accordance with the rules of fair play and natural justice if a senior employee is made to draw lesser pay than a junior employee. In the instant case admittedly the applicant was not drawing the special pay of Rs.70/- p.m. as he was not working as a Senior Clerk at the time when he became

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due for it. From this point of view it cannot be said that the decision of the respondents in refusing the grant of special pay of Rs.70/- p.m. is in any way erroneous particularly when at the relevant time the applicant was already working in a post carrying a higher scale of pay. At the same time it is evident that the applicant was given the appointment of Personnel Inspector Grade-III purely as a local arrangement and on an adhoc basis. The said arrangement was liable to be terminated as and when selected and empanelled candidates became available. It cannot therefore be said that the applicant himself was in any way instrumental in rendering -----

When he became eligible for the special pay he might not be working as a Senior Clerk performing duties of a higher responsibility or of a complex nature, but he was certainly performing duties in the higher post of Personnel Inspector, Grade-III. Even according to the letters dated 15.8.1990 and 16.5.1990 addressed by the then Divisional Railway Manager to the Headquarters South Central Railway, it was felt that the applicant deserved to be granted special pay atleast on a notional basis, ~~so~~ that his pay on promotion to the post of Head Clerk is not less than what his juniors are drawing. We ~~agree~~ with the views expressed in the said communications. The applicant should not be penalised for no fault of his. ~~Merely~~ because he was selected for performing the duties in the higher ~~post~~ of Personnel Inspector, Grade-III he should not be made to suffer the consequences of not receiving the special pay which

in any case he would have got: had he continued as a Senior Clerk only.

6. In view of what is stated above we consider that the grievance of the applicant is genuine. According the respondents are directed to grant him special pay purely on a notional basis from the date on which he would have become due had he remain^{-ed} as a Senior Clerk only. Taking into consideration the special pay thus notionally granted, his pay should be refixed in the post of Head Clerk from the date on which he was promoted to that post. The applicant will be entitled to all the consequential benefits. The respondents shall comply with the above directions within 3 months from the date of the communication of the judgement.

7. O.A. is allowed in the above terms. There shall be no order as to costs.

(T. CHANDRASEKHARA REDDY)
Member (Judl.)

(A.B. GORTHY)
Member (Admn.)

Dated: 13th August, 1993

(Dictated in Open Court)

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Dy. Registrar (Judl.)

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Copy to:-

1. General Manager, South Central Railway, Union of India, Rail Nilayam, Secunderabad.
2. The Divisional Railway Manager, Broad Gauge, Secunderabad Division, Secunderabad.
3. The Senior Divisional Personnel Officer, Broad Gauge, Sec'bad.
4. One copy to Sri. V.Durgaprasad Rao, advocate, 11-3-292/36, Srinivas nagar, Secunderabad-36.
5. One copy to Sri. D.Gopal Rao, SC for Railways, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare copy.

Rsm/-

Handwritten:
T. M. S. R.
P. S. R.
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