

62

CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH :
AT HYDERABAD.

O.A.NO.40/97.

DATE OF ORDER: 17-7-1998.

Between :

N.V.Ramajoga Rao,
Son of Late N.R.M.Rao,
aged 38 years,
Head Clerk, Office of the
Senior Divisional Personnel Officer,
South Eastern Railway,
Visakhapatnam.

... APPLICANT.

A N D

1. Senior Divisional Personnel Officer,
South Eastern Railway, Visakhapatnam.

2. Divisional Railway Manager,
South Eastern Railway,
Visakhapatnam.

3. The General Manager,
South Eastern Railway,
Garden Reach,
Calcutta.

... RESPONDENTS.

Counsel for Applicant : Mr.G.V.Subba Rao

Counsel for Respondents : Mr. V. Bhimanna, CGSC

CORAM :

HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMINISTRATIVE)

HONOURABLE MR.B.S.JAI PARAMESHWAR, MEMBER (JUDICIAL)

...

O R D E R.

(Per Hon.Mr.B.S.Jai Parameshwar, Member (Judicial))

Heard Mr. G.V.Subba Rao, learned
counsel for the applicant and Mr. V. Bhimanna, learned
Standing Counsel for the respondents.

2. This is an application under Section 19
of the Administrative Tribunals Act. The application was
filed on 7.1.1997.

Jr

3. The applicant herein was appointed as Clerk in South Eastern Railway with effect from 17.5.1978. He was promoted as Senior Clerk on 19.4.1984.

4. During December, 1984 he was transferred at his request on deputation basis to work in the Construction Branch under the control of the Chief Administrative Officer, South Eastern Railway, Visakhapatnam. While on deputation, the applicant was promoted as Head Clerk on ad hoc basis in the Construction Wing with effect from 12.2.1988 vide office order No.43/88 dated 12.2.1988.

He was repatriated to his parent unit on 18.11.1992.

5. In the provisional seniority list of Senior Clerks in his parent department which was published on 31.12.1993, his name finds place at Sl.No.56. In the said seniority list the applicant, his seniors and some of his juniors were shown to have been promoted as Head Clerks with effect from 1.10.1992.

6. The Railway Board vide its Establishment Serial No.224 of 1979 decided to grant special pay of Rs.35 per month (now enhanced to Rs.70 per month) to UDClerks/Senior Clerks/ Clerks Grade I working in the scale of pay of Rs.330-560 and who were attending to works of more complex and important nature. Further the total number of such posts were directed to be limited to 10% of the total strength in the senior grades of the respective Clerical cadre (Annexure R-II). The manner of filling up these 10% posts was on the basis of seniority-cum- suitability. These posts were known as identified posts or posts to which the special pay was attached. The said Railway Board's instructions came into force from 5.5.1979.

7. In Establishment Serial No.348/87 dated

Br

10.12.1987 the Railway Board decided to recommend the special pay of Rs.35 or Rs.70 for the purpose of fixation of pay on promotion, but however, subject to certain conditions. The said order came into force effective from 1.9.1985.

8. In this connection, Establishment Serial No.40/80, 182/89 and 61/95 are relevant. The Establishment Serial No.61/95 is at Annexure R-V to the reply.

9. The applicant on reparation to his parent unit ascertained that some of his juniors were granted special pay of Rs.35 or Rs.70 per month. He submits that his immediate junior is one Smt.G.Bhagyalakshmi.

10. The applicant submitted a representation for grant of special pay on par with Smt. Bhagyalakshmi. On 23.7.1996. The respondent No.1 rejected the request of the applicant on the ground that the applicant was not available on the rolls in the Open Line at that material point of time.

11. Hence the applicant has filed this O.A. calling for the records pertaining to the impugned order No.WPV/PB/182 dated 23.7.1996 and quash the same by declaring it as illegal, arbitrary and unconstitutional and for a consequential direction to the respondent No.1 to step up his pay by grant of special pay as was done in the case of his immediate junior Smt. G. Bhagyalakshmi from the date she commenced drawing higher rate of pay with all consequential benefits.

12. The respondents have filed their counter stating that 10% of posts which carried the work of complex and important nature were identified as special posts attached with special pay of Rs.35 or Rs.70; that the applicant had not worked in the identified post at any

5r

time, that the applicant was promoted as Senior Clerk on 19.4.1984; that his juniors, namely, Smt.G.Bhagyalakshmi, I.V.R.K.B.Sharma and A.V.V.Rao were promoted as Senior Clerks with effect from 2.9.1984; that however the date of promotion of those juniors was revised to 1.10.1980 as they were given proforma fixation with effect from 1.10.1980 in the grade of Senior Clerk as per order dated 14.2.1991; that the date of promotion of those juniors was now changed in accordance with the order of this Tribunal dated 16.1.1989 in T.A.No.157/86 and R.A.No.24/89; that Smt. G. Bhagyalakshmi and others who were juniors to the applicant started drawing increments in the grade of Senior Clerk effective from 1.10.1980; that the applicant was promoted to the Senior Clerk from April,1984; that therefore, the pay of Smt.G.Bhagyalakshmi and 3 others who were juniors to the applicant were drawing higher pay than the applicant. Hence the applicant cannot claim stepping up of his pay since his juniors were drawing pay in the grade of Senior Clerk earlier from 1.10.1980; that the difference may be on account of earning the annual increments by them; that as per the Establishment Serial No.224/79, special pay of Rs.35 or Rs.70 will be granted to those Senior Clerks who are attending to the work of more complex and important nature and that those posts were limited to 10%; that as per Establishment Serial No.348/87 it was decided to take into consideration the special pay for fixation of pay on promotion' but however, subject to certain conditions; that in accordance with the above rules and Establishment Serial No.224/79 and 348/87 the applicant cannot claim stepping up of his pay on par with Smt. G.Bhagyalakshmi; that the applicant is not entitled to claim special pay as he was not working

Jr

in the identified posts; that the applicant was not granted the special pay for the reason that he was working in the Construction organisation under the control of the Chief Administrative Officer, Visakhapatnam which was an ex-cadre post in the capacity of Head Clerk; his juniors were working in the identified posts and hence they were granted the special pay; that the applicant cannot claim for grant of special pay on par with his juniors; that the applicant cannot compare his case with his juniors Sri J.Srinivasa Rao and A.P.Narasimham and that both of them were given special pay as the said posts were pin-pointed for grant of special pay in view of the complex and arduous nature of duties involved in the said posts; that even the order bearing No.WPV/182/CLK/PF/32 dated 19.9.1980 issued by the D.R.M.(Personnel) Waltair and office order No.WPV/182/CLK/PB/18 dated 30.5.1980 issued by the D.R.M.(P), Waltair granting special pay respectively to both of them; that the copies of the orders are at Annexure R-IVA and R-IVB; that the juniors namely, J. Srinivasa Rao and A.P.Narasimham were granted special pay in accordance with the rules; that the averments made in para-7 of the O.A. that the procedure for identifying the posts was not followed is incorrect; that there was no procedure for calling for willingness of a particular employee to work in any of the identified posts; that the Establishment Serial No.224/79 is not applicable to all the persons working in the cadre of UDC/Senior Clerk/ Clerk Grade I; that it is applicable to those Clerks who were discharging the duties of complex and arduous nature and limited to 10% of the total strength; that in view of the Establishment Serial No.348/87 dated 10.12.1987 special pay was recommended for

34

held that the special pay and stepping up of pay on the basis of special cannot be granted to those persons who have not been discharging the functions of complex and arduous nature. They have produced the copy of the order at Annexure-R VIII. Thus they submit that the applicant is not entitled to any of the reliefs claimed in the O.A.

13. The respondent No.1 rejected the representation of the applicant by the impugned order dated 23.7.1996. The respondent No.1 has not considered the representation of the applicant in greater detail. He has not adverted to the rule position and also has not clearly stated that the special pay of Rs.35 or Rs.70 per month was granted to those persons in the cadre of U.D.Clerk/Senior Clerk/Clerk Grade I who were discharging the duties of complex and important nature.

14. It is an admitted fact that Smt. G.Bhagyalakshmi is the immediate junior to the applicant.

14. We will consider the case of the applicant. He was appointed as Clerk on 17.5.1978. He was promoted as Senior Clerk on 19.4.1984. Between December,1984 and November,1992 he was working on deputation under the control of the Chief Administrative Officer, South Eastern Railway, Visakhapatnam in the Construction organisation. It is stated that during this period, he was working as Head Clerk. The applicant has not specifically stated what was his emoluments at the time when he was working on deputation in the Construction organisation. The applicant has not stated whether or not there were any identified posts in the Construction Organisation.

15. Smt. G.Bhagyalakshmi was promoted as Clerk Clerk on 2.9.1984. However, as per the orders of this Tribunal in T.A.No.157/86 and R.A.No.24/89 her proforma

R

promotion was fixed with effect from 1.10.1980. We have perused the file in T.A.No.157/86 and R.A.No.24/89. In that O.A. Smt. G.Bhagyalakshmi was applicant No.2. Smt. G. Bhagyalakshmi and 4 others relying upon the order dated 10.11.1980 restructuring the ministerial cadre in the Personnel department sought for promotional prospects as the departmental candidates. As per the said order, 20% of the posts in the grade of Clerks in the scale of Rs.330-560 were to be filled through Railway Service Commission and out of 20%, 10% of the posts were to be reserved for working graduates in the department. Smt. G.Bhagyalakshmi and 4 others were Graduates and so against that 10%, they sought promotion with effect from 1.10.1980. The service particulars of Smt. Bhagyalakshmi and 4 others who were the applicants in T.A.No.157/86 are described in page 3 para 4 of the order. Smt. G.Bhagyalakshmi, the second applicant was appointed against 10% graduate quota from 29.5.1984. This Bench considered the letter dated 10.11.1980, clarificatory letter dated 6.2.1981 and the letter dated 1.1.1979 regarding payment of arrears. After considering all these letters, this Bench felt that the cumulative effect of these letters is that all those persons who were promoted against the up-graded posts with effect from 1.10.1980 will get arrears from 1.10.1980. Accordingly, this Bench directed that the applicant in the O.A. including Smt. G.Bhagyalakshmi were entitled to proforma fixation of pay from the date of their promotion with reference to 1.10.1980, but they are not entitled for any arrears of pay from 1.10.1980 to the date of their actual promotion.

16. The respondents had filed Review application for reviewing the order in T.A.No.157/86 vide

R

R.A.No.24/89. The same was dismissed on 29.6.1989.

17. Therefore, the applicant cannot compare his pay with that of Smt.G.Bhagyalakshmi. Her promotion was fixed with effect from 1.10.1980 as per the order of this Tribunal.

18. The applicant contended that when he was working on deputation, he should have given option to work in an identified post in his parent unit for grant of special pay. It may be borne in mind that while he was working on deputation in the Construction Organisation, he was drawing more emoluments. It is stated by the respondents that the applicant was working as Head Clerk in the Construction Organisation. When he was already drawing more pay, the question of asking him to come and work in an identified in the parent unit post to earn the special pay of Rs.35 or Rs.70 per month did not arise.

19. The applicant has stated an instance of J.Srinivasa Rao who was junior to him. In that case, J. Srinivasa Rao himself had pleaded his inability to discharge the duties of complex and important nature because of his physical deformity in his right hand and was posted to P.F. Link post. Subsequently the said P.F.Link post was identified as a special post or that post was attached with special pay. When that was so, the respondents should have placed another person in that post, for, the said Srinivasa Rao had himself pleaded inability to discharge the duties of complex or important nature. When that was so and when that post in which Srinivasa Rao was working without special pay was subsequently identified and special pay was attached, they should have posted some other person who is capable of discharging the duties of complex and important nature.

T

respondents granted special pay to J. Srinivasa Rao. The question of grant of special pay to J. Srinivasa Rao in this background may not be regular or proper. Therefore the applicant cannot take the benefit of the impropriety done by the respondents to claim grant of special pay to him on par with his junior Smt. G.Bhagyalakshmi.

20. The Establishment serial No.224/79 was not very much in existence when the applicant entered into the Railway Service. When he was discharging the duties of a Head Clerk on deputation, it cannot be said that he was not aware of the Establishment Serial No.224/79. If he felt that his emoluments while working in the Construction Wing at Visakhapatnam were far less and that he would have been more beneficial had he worked in the parent department in an identified post, nothing prevented him to request the authorities to repatriate him to the parent department. He has not done so. For nearly 8 years i.e. from December,1984 to November,1992 he worked on deputation basis and even he had a promotion as Head Clerk on ad hoc basis. After repatriation, his promotion was effected with effect from 1.10.1992.

21. In this background, the applicant having not worked in any of the identified posts as per the Establishment Serial No.224/79 and having failed to get himself repatriated to his parent department immediately when he felt that an identified post in the parent department was more beneficial to him and having worked on deputation basis, getting higher emoluments for nearly 8 years, he cannot now complain non-grant of special pay and pray for grant of special pay on par with his junior Smt.G.Bhagyalakshmi. The service of Smt. G.Bhagyalakshmi stands on a different footing. It is not fixation of pay

3

on promotion of the juniors to the cadre of Head Clerk; that the applicant on his own option worked on deputation basis in the Construction Organisation at Visakhapatnam; that he was working as Head Clerk with effect from 12.2.1988; that the applicant enjoyed the benefit of higher emoluments upto 1.10.1992 when he was promoted as Head Clerk in his parent department; that during the period while the applicant was on deputation, his juniors had enjoyed the benefit of special pay of Rs.35 or Rs.70 per month having worked in the identified posts; that as per the instructions of the Railway Board, an employee away on deputation outside his cadre at that time, his junior was granted special pay, is not eligible for stepping up of pay - para 3(iii) of the Railway Board's letter dated 14.2.1995 and as per instructions contained in the Establishment Serial No.61/95; that further the Hon'ble Supreme Court in the case of C.P.O., S.C.Railway v. Vazir Ali, Mahboob Ali (SLP(C) No.25985/95) has held that payment of Rs.35 per month to those who were discharging the special duties of onerous nature is a personal pay and they can get it so long they discharge the same and others who do not perform the special duties even though they are senior would not be entitled to stepping up of their pay on par with their juniors. The respondents have produced the copy of the judgment of the Hon'ble Supreme Court at Annexure- R VI. They further submit that as per the Establishment Serial No.182/89, para-3, the question of grant of special pay to the seniors who, in fact, did not perform the onerous duties does not arise. They further relied on the order passed by the Principal Bench of this Tribunal on 25.3.1994 in O.A.No.2432/91 wherein the Delhi Bench of this Tribunal

had negatived the claim for stepping up of pay on par with junior who was granted special pay.

22. The case of the applicant is not that he was discharging the works of complex and important nature even while working on deputation in the Construction Wing. If that was so, he should have requested the Chief Administrative Officer of the Construction Wing to grant him special pay. Even from his own representation it does give an impression that he was working in a post to which special pay was attached. His representation dated 20.4.1984 is at page 10 of the O.A. In para-3 he himself states that he was promoted as Head Clerk in the scale of Rs.1400-2300, and thereby he vacated the post of Senior Clerk and the special pay attached to that post. This gives an impression that he was working in a post to which special pay was attached in the Construction Unit, he cannot claim the same benefit over and again in his parent department and claim for stepping up of his pay by grant of special pay on par with his junior Smt. G.Bhagyalakshmi.

23. The respondents have relied upon the decision of the Hon'ble Supreme Court (Annexure-R 6). In that case the Hon'ble Supreme Court relying upon the judgment in the case of the Chief Commissioner of Income Tax(Administration), Bangalore v. V.K.Gururaj and others, reported in (1996) 1 SCALE 696, observed that payment of Rs.35 per month to those who were discharging special duties of onerous nature was a personal pay and they can get it so long as they discharged the same. Therefore, others who do not perform the special duties of that nature, even though they maybe seniors, will not be entitled to stepping up of their pay on par with their

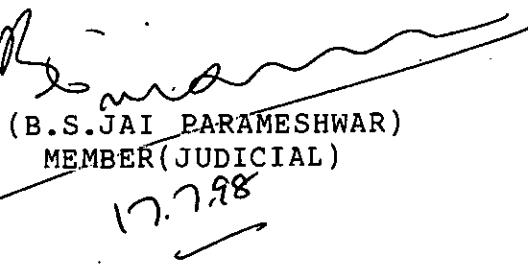
2

juniors performing such duties. In that case, the respondent claimed special pay on the ground of seniority. In the present case also the applicant claims special pay only on the ground of seniority on part with that of his junior Smt. G. Bhagyalakshmi. In that view of the matter, the decision of the Hon'ble Supreme Court is squarely applicable to his case.

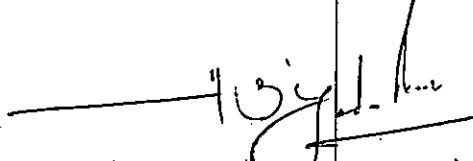
24. In view of the above discussion, the applicant is not entitled to the grant of special pay or for stepping up of his pay on par with his immediate junior Smt. G. Bhagyalakshmi.

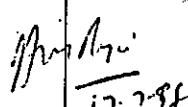
25. There are no merits in the O.A. and the O.A. is liable to be dismissed.

Accordingly, the O.A. is dismissed leaving the parties to bear their own costs.


(B.S.JAI PARAMESHWAR)
MEMBER(JUDICIAL)

17.7.98


(H.RAJENDRA PRASAD)
MEMBER(ADMINISTRATIVE)


17.7.98
2101

DATED THE 17TH JULY, 1998.

DJ/