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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

R.A.No. 46/98 in

O.A.No. 40/97

Date of Orders: 17.2.99

BETWEEN :

N.V.Ramajoga Rao, S/o Late N.R.M.Rao
Head Clerk, O/o Senior Civil Personnel
Officer, S.E.Rly, Visakhapatnam.
AND

.. Applicant.

1. Senior Divisional Personnel Officer,
S.E.Railway, Visakhapatnam.
2. Divisional Railway Manager,
S.E.Railway, Visakhapatnam.
3. The General Manager,
S.E.Railway Garden Reach,
Calcutta.

.. Respondents.

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Counsel for the Applicant

.. Mr. G.V.Subba Rao

Counsel for the Respondents

.. Mr. V.BHimanna

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CORAM :

HON'BLE SHRI H.RAJENDRA PRASAD : MEMBER (ADMN.)

HON'BLE SHRI B.S. JAI PARAMESHWAR : MEMBER (JUDL.)

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O R D E R

(As per Hon'ble Shri B.S.Jai Parameshwar, Member (Judl.))

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The applicant has filed this application seeking review of the order dated 17.7.98 passed in OA.40/97. By the said order the claim of the applicant for stepping up of his pay on par with his immediate junior Smt.G.Bhagya Lakshmi was rejected.

2. The applicant ^{has} sought review of the said order on the following grounds :

(a) The Tribunal did not take note of the judgement of the Hon'ble Supreme Court Union of India v. P.Jagdish 1997 (2) SLJ 136.

(b) Wazir Ali case which was produced by the respondents is not relevant to the facts of this case and in any case this decision was an earlier decision which in a way was superseeded by Jagdish case.

(c) Although he was on deputation with the Construction Wing even such deputation was at his own request, his seniority in the parent unit was maintained intact and besides maintained ~~lein~~ in the original wing.

(d) Although he was the seniormost in his line even if on deputation no willingness was asked for him for grant of special pay whereas a junior J.Sreenivasa Rao who was similarly not working at the relevant point of time was asked for willingness.

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(e) The conclusion of the Tribunal that the special pay is not given according to seniority is incorrect.

(f) The principle laid down by this Tribunal in the judgement in OA.192/90 has been disregarded.

(f) Establishment circular No.216 although cited by the learned counsel was disregarded in arriving at an incorrect conclusion.

3. Admittedly between 1984 and 1992 the applicant was working on deputation in the construction project of S.E. Railway, Waltair. The said deputation was as per his own request. While on deputation the applicant was working as Head Clerk.

4. In the parent department certain percentage of posts were identified as identified posts for grant of special pay of Rs. 35 or Rs.70/- . While the applicant was working on deputation in the Construction Organisation, juniors to him who were working in the parent department held the identified posts and accordingly they were granted the special pay.

5. On repatriation the applicant was promoted as Head Clerk on par with his juniors. Since some of his juniors were working in the identified posts they were getting special pay of Rs.35/- and Rs.70/-.

6. In this background the applicant sought for stepping up of his pay on par with his junior Smt. G.Bhagya Lakshmi.

7. Smt. G.Bhagya Lakshmi became senior to the applicant in the cadre of Senior Clerk on the basis of the directions given by this Tribunal in TA. 157/86 and RA. 24/89. Smt. G.Bhagya Lakshmi was a graduate and therefore she was given promotion to the cadre of Senior Clerk w.e.f. 1.10.80. Further she was working in the identified post and had drawn special pay.

8. It may be noted that the applicant while working on deputation was drawing more pay ^{than his junior in the parent Dept.} (inclusive of the special pay) than Smt. G.Bhagya Lakshmi. Infact the applicant was working as Head Clerk in the Construction Organisation of S.E.Railway while on deputation. When that is so, we felt that the applicant was not entitled to step up his pay on par with Smt. Bhagyalakshmi.

9. We have considered the grounds raised by the applicant in the RA. It is stated that we have ignored the decision of the Hon'ble Supreme Court in the case of Union of India v. P.Jagdish reported in 1997 (2) SJL 136. The Hon'ble Supreme Court has considered the grant of special pay in paras 4 to 6 the Hon'ble Supreme Court has observed as under :-

"4. The question for consideration, therefore, would be : (1) whether the respondents who had not been posted against the identified posts carrying a special pay of Rs.35/- per month can even claim fixation of their pay with Rs.35/- per month in the cadre of Senior Clerk even on notional basis.



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(2) whether the respondents can claim for stepping up of their pay in the promoted cadre of Head Clerks when their juniors who were later promoted were fixed up at a higher slab in the cadre of Head Clerks taking into account the special pay which they are drawing in the lower category of Senior Clerks.

15. So far as the first question is concerned, it is to be seen that a special pay of Rs.35/- per month is attached to certain identified posts in the category of Senior Clerks and, therefore, only those who would be posted against those identified posts can claim the said special pay. The respondents who had already been promoted to the higher category of Head Clerks cannot claim that special pay even on notional basis merely because their juniors in the cadre of Senior Clerks were given that special pay on being posted against those identified posts carrying the special pay. It is an additional pay attached to the post and any incumbent who occupies the post can only claim the same. The claim of the respondents on this score, is not sustainable in law and the Tribunal has rightly rejected the said claim of the respondents.

6. so far, as the second question is concerned it depends upon the applicability of the principle of stepping up. Admittedly the respondents had been promoted earlier to the category of Head Clerks and some of their juniors who were continuing as Senior Clerks against the identified posts carrying special pay of Rs.35/- per month on being promoted to the post of Head Clerks later than the respondents got their pay fixed at a higher level than the respondents. Under the provisions of Fundamental Rules to remove the anomaly of a Government servant promoted or appointed to a higher post earlier drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to the higher post, the principle of stepping up of the pay is applied. In such cases the pay of the

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senior officer in the higher post is required to be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up is required to be done with effect from the date of promotion or appointment of the junior officer. On refixation of the pay of the senior officer by applying the principle of stepping up, the next increment of the said officer would be drawn on completion of the requisite qualifying service with effect from the date of the relaxation of pay. This principle becomes applicable when the junior officer and the senior officer belong to the same category and the post from which they have been promoted and in the promoted cadre the junior officer on being promoted later than the senior officer gets a higher pay. This being the principle of stepping up contained in the Fundamental Rules and admittedly the respondents being seniors to several other Senior Clerks and the respondents having been promoted earlier than many of their juniors who were promoted later to the post of Head Clerks the principle of stepping up should be made applicable to the respondents with effect from the date their juniors in the erstwhile cadre of Senior Clerks get promoted to the cadre of Head Clerks and their pay was fixed at a higher slab than that of the respondent. The stepping up should be done in such a way that the anomaly of juniors getting higher salary than the seniors in the promoted category of Head Clerk would be removed and the pay of the seniors like the respondents would be stepped up to a figure equal to the pay as fixed for their junior officer in the higher post of Head Clerk. In fact the Tribunal by the impugned order has directed to apply the principle of stepping up to a figure equal to the pay as fixed for their junior officer in the higher post of Head Clerk. In fact the Tribunal by the impugned order has direct to apply the principle of stepping up and we see no infirmity with the same direction subject to the aforesaid clarifications. This principle of stepping up which we have upheld would prevent violation of equal pay for equal work but grant of consequential benefit of the difference of salary would not be correct for the reason that the respondents had not worked in the post to which 35% special pay was attached in the lower cadre. But by reason of promotion the promotee-juniors who worked on the said posts, in fact, performed the hard duties and

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earned special pay. Directions to pay arrears would be deleterious to inculcation of efficiency in service. All persons who were indolent to share higher responsibilities in lower posts, on promotion would get accelerated arrears that would be deleterious to efficiency of service. Therefore, though directions to step up the pay on notional basis is consistent with Article 39(3) of the Constitution, it would be applicable only perspective from the date of the promotion and the fixation of the scale stepping up in promotional post only perspective. The appeal is dismissed but in the circumstances there would not be no order as to costs".

10. Further Annexure-5 to the reply is the letter of the Railway Board which considered to step up the pay of the senior when the junior was drawing special pay. Railway Board in the said letter para-3 as stated as follows:-

"Further in case disciplinary proceedings were pending against a senior employee at the time when his junior was appointed to the identified post carrying this special pay and he was not ultimately exonerated, his pay is not to be stepped up even though he is covered by the category (b) or (c) mentioned in para-2 above. Further the stepping up of pay will also not be allowed in the following cases :

- i. Where an employee, even though senior was not found suitable for appointment to the identified posts.
- ii. Where the employee declined to accept deployment/ appointment to the identified posts for whatsoever reasons.
- iii. Where an employee was away on deputation outside that cadre at the time when his junior was appointed to the identified post."

11. While rejecting the OA, we considered the Wazir Ali's case decided by Hon'ble Supreme Court. The Hon'ble Supreme Court

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of India taking note of the decision of the Bangalore Bench of this Tribunal reported in 1996 (1) SCALE 696 held that special pay is a personal pay and the seniors cannot claim stepping up of pay on par with juniors performing such onerous duties. The principle enunciated in the case of P.Jagadish is not different.

12. It is his contention that while posting his junior in an identified post his option was not called. Posting to an identified post is based on seniority-cum-suitability. Further it is not the case of the applicant that while he was working on deputation in Construction Department, he was not getting more pay than the pay in the parent department including the special pay attached to an identified post. As already observed the applicant was working as a Head Clerk in the Construction Organisation of the S.E.Railway. The pay of the Head Clerk on deputation was quite more than the pay of the senior clerk working in an identified post with the special pay of Rs.35/- and Rs.70/- in the parent department.

13. Accepting for the moment that the respondents failed to seek his option, we do not find that irregularity can make the applicant eligible to get his pay stepped up on par with Smt. G.Bhagya Lakshmi. For the simple reason that the applicant was getting more pay while working on deputation. Therefore the applicant cannot have any grievance for not obtaining an option to work in an identified post in the parent department.

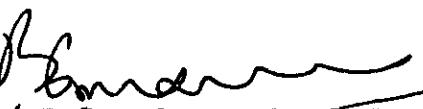
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14. Apart from that, the applicant is an educated person. Having worked as a Head Clerk we feel that he was aware of certain rules regarding the emoluments to be given to an identified post and the nature and duties of the identified post. If the applicant felt at any time while on deputation that an identified post in his parent department was more advantageous and beneficial than working as a Head Clerk in the Construction Organisation on deputation then nothing prevented him to submit a representation to the respondent authorities repatriate him to his parent department. He was not done so.

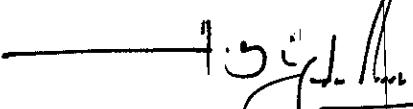
15. Considering the case of the applicant as put forth in the RA we do not find any error apparent on the face of the record justifying the review. We have reached this conclusion after carefully examining the various contentions of the applicant in the RA.

16. Hence the RA is dismissed. No costs.


(B.S. JAI PARAMESHWAR)

Member (Judl.)

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(H. RAJENDRA PRASAD)

Member (Admn.)

Dated : 17th February, 1999

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