

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 15/12/2005

OA 528/93

Smt .Santosh Mathur, Chief Clerk, Western Railway,
Divisional Office, Jaipur.

... Applicant

V/s

1. Union of India through General Manager, W/Rly,
Churchgate, Mumbai.
2. Divisional Rly. Manager, Western Railway, Jaipur.
3. Sr.Divisional Personnel Officer, W/Rly, Jaipur.

... Respondents

CORAM:

HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

For the applicant ... Mr.P.V.Calla

For the Respondents ... Mr.Hemant Gupta, proxy
counsel for Mr.M.Rafiq

ORDER

PER HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

In this application, filed u/s 19 of the Administrative
Tribunals Act, 1985, the applicant has sought the
following reliefs :-

- "i) That by appropriate order or direction the respondents be directed to pass appropriate order in favour of the applicant on the basis of promotional orders made by competent authority in December, 1986 (Ann.A/3) making her promotion effective from the date of such occurrence of vacancy of Senior Clerk - Special Pay Rs.35/-.
- ii) Alternatively, by appropriate order or direction the respondents be directed that since junior

persons i.e. Senior Clerks so promoted on the post of Senior Clerk - Special Pay by order dated 16.7.87 (Ann.A/7) and given benefit of fixation of pay, thereby raising their pay over the applicant be held to be illegal and it may be directed that such promotion be also made in favour of applicant, without which the order issued on 16.7.87 (Ann.A/7) is illegal because it is illegal to ignore one promotional step and directly promote on higher post, or applicant be also granted the benefit of stepping up of pay vis-avis these junior 5 persons."

2. The facts, as brought out by the applicant, are that she was appointed as a Clerk in the grade Rs.110-180 and joined this post on 25.7.72 at Ajmer. During the course of time she became a Senior Clerk. The element of special pay of Rs.35/- was attached to 10% of the posts of Senior Clerk. Her case against one such post was considered in December, 1986 but before formalising the arrangement she was directly promoted as Head Clerk vide order dated 16.7.87 (Ann.A/7). It is stated by the applicant that 5 of her juniors were posted against the posts identified as carrying special pay of Rs.35/- (later revised to Rs.70/- p.m.) vide order dated 6.2.87 (Ann.A/6). When these 5 persons were later promoted to the post of Head Clerk vide order dated 16.3.88, their pay as Head Clerk was fixed higher than the pay drawn by the applicant though the applicant was senior

to all of them. She claimed that she should have been first posted against one of the identified posts before being promoted as Head Clerk. But this was denied to her, which resulted into her drawing less pay in comparison to her juniors. This action of the respondent^d department stated to be violative of Articles 14 and 16 of the Constitution of India and also against ~~the~~ the fundamental rules which do not permit a junior person to draw more pay as compared to the senior.

3. The respondents in their reply have stated that though proposal to post the applicant against such post carrying special pay was under consideration at the relevant time, no orders to that effect were actually passed. Before the same could be done, the vacancy of Head Clerk became available and she was ~~promoted~~ promoted as Head Clerk. Since the applicant had already been promoted as Head Clerk and since she could not be granted special pay as Senior Clerk, she has no claim of pay protection with respect to her juniors. She had submitted ^a number of representations but they have been rightly rejected. It is stated that the applicant was duly informed of the decision that as per

Railway Board's letter dated 20.7.89 stepping up of pay is not permissible to her on account of the junior getting special pay. Special pay is not granted as a matter of right ~~and is paid only if a person actually holds~~ the post carrying special pay.

4. We have heard the learned counsel for the parties and have perused the whole record.

5. The learned counsel for the respondents resisted the claim of the applicant by raising a preliminary objection under Section 21. He has stated that the juniors were promoted to the post of Head Clerk against special posts and were promoted as Head Clerk on 16.3.88 and their pay was fixed as Head Clerk and ~~that~~ at that point of time. The applicant cannot claim any relief at such a belated stage. As brought to our notice, ~~at~~ this point of law has been settled by Hon'ble the Supreme Court in the case of M.R. Gupta V/s Union of India and Others, reported at (1995) 31 ATC 186, by holding that; "fixation of pay, if not done correctly, is a continuing wrong and gives rise to a recurring cause of action each time the petitioner is paid salary,

which was not computed in accordance with rules. So long the applicant is in service, a fresh cause of action arises every month when he is paid his monthly salary contrary to rules. To the limited extent of proper pay fixation, the application cannot be treated as time barred since it is based on a recurring cause of action." In this view of the matter, the instant case does not attract the provisions of Section 21 of the Administrative Tribunals Act.

6. Coming to the merits of this case, there were 10% of the posts of Senior Clerk identified ~~to~~ to be involving arduous nature of work. Incumbents posted against these posts were granted special pay of Rs.35/- per month (later revised to Rs.70/- per month). It was possible under the situation that some of the senior staff would get promoted directly to the category of Head Clerk without having occasion to hold such identified post carrying special pay. On the matter of relief claimed by the applicant, the controversy has been finally settled by Hon'ble the Supreme Court in the

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case of Union of India and Others V/s P.Jagdish and Others,

reported at 1997 (2) SLR 268. The facts of this case

are exactly ^{similar} ~~xxxx~~ and the relief sought is also the same.

Their Lordships in para-5 of the said order have

observed that;

"5. The question for consideration, therefore, would be: (1) Whether the respondents who had not been posted against the identified posts carrying a special 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. (2) Whether the respondents can claim for stepping up 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 ~~low~~ lower category of Senior Clerks."

7. On the question whether the respondents ~~xxxx~~ could claim for stepping up of their pay in the promoted cadre of Head Clerks with their juniors who were promoted later and were fixed at a higher slab, Hon'ble the Supreme Court held that under the provisions of fundamental rules to remove the anomaly of a government servant promoted to a higher post earlier drawing a lower rate of pay in that post than other government servants

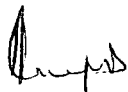
junior to him in the lower grade and promoted or appointed subsequently ~~xxx~~ to the higher post, the principle of stepping up of the pay is applied. In such cases, the pay of the senior officer in the higher post is required to be stepped up to a figure equal to the pay as fixed for the junior officer 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 refixation of the pay.


8. Based on this principle, as decided by the Hon'ble Supreme Court, the relief sought by the applicant to the extent of pay protection in the grade of Head Clerk, as paid to her juniors, is accepted.

9. We, therefore, allow this OA partly and direct the respondents to fix the pay of the applicant at par with her immediate junior from the date the junior was

promoted to the ~~xxx~~ grade of Head Clerk. On refixation of her pay, her next increment would be drawn on completion of requisite qualifying service with effect from the date of refixation of pay and she is entitled to all consequential benefits from that date.

10. The QA stands disposed of accordingly with no order as to costs.


(A.P. NAGRATH)
MEMBER (A)


(S.K. AGARWAL)
MEMBER (J)