

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 15.2.2001

OA 197/94

Ramesh Chand Gupta, Head Clerk O/o Dy. Controller of Stores (GS), Western Railway, Ajmer.

... Applicant

Versus.

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. The Controller of Stores, Western Railway, Churchgate, Mumbai.
3. Dy. Controller of Stores, Western Railway, Ajmer.

... Respondents

CORAM:

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

HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

For the Applicant ... Mr.W.Wales

For the Respondents ... Mr.S.S.Hasan

O R D E R

PER HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

In this application u/s 19 of the Administrative Tribunals act, 1985, applicant Ramesh Chand Gupta has prayed for setting aside the impugned order dated 17.8.90 (Ann.A/9), order dated 29.4.93 (Ann.A/12) and order dated 6.10.93 (Ann.A/1) and for a declaration that the applicant is legally entitled for grant of Special Pay of Rs.70/- w.e.f. 8.8.90 as per his seniority position in the cadre of Senior Clerk. The applicant has also sought a direction to the respondents to grant him Special Pay of Rs.70/- w.e.f. 8.8.90 as also to step up the pay of the applicant to that of his junior on his promotion to the post of Head Clerk, with arrears of pay and allowances alongwith interest @ 18% per annum.

2. Applicant's case is that he was promoted to the post of Senior Clerk scale Rs.330-560 on 26.8.85 and his junior, Shri Verma, was promoted on the same post and in the same scale on 26.8.85. Shri Verma was granted a Special pay of Rs.70/- w.e.f. 8.8.90 for appointment as Senior Clerk on

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the ear-marked post. On representation by the applicant he was told by the respondents that he was not found suitable for grant of Special Pay vide respondents' letter dated 8.8.90 (Ann.A/9). This grant of Special pay to Shri Verma, as Senior Clerk, holding the ear-marked post, has resulted in higher pay fixation of Shri Verma as Head Clerk also and therefore the applicant has prayed that his pay should be stepped up at par with Shri Verma on the post of Head Clerk. Feeling aggrieved, the applicant has filed this application.

3. In the counter it has been stated by the respondents that the applicant was also considered alongwith others for grant of Special Pay for holding the ear-marked post. However, he was not found suitable and his junior was appointed as such. It has also been stated by the respondents that grant of Special Pay has to be on selection basis and it does not go by seniority alone. It has further been stated by the respondents that the applicant is drawing lesser pay than his junior Shri Verma even as Head Clerk because Shri Verma was drawing a Special Pay as Senior Clerk before he was promoted as Head Clerk and that Special pay was taken into account for the purpose of fixation of pay of Shri Verma on the post of Head Clerk. It has, therefore, been averred by the respondents that the applicant cannot claim Special Pay as a matter of right and hence this OA being devoid of any merit is liable to be dismissed.

4. We have heard the learned counsel for the parties and perused the records of the case carefully.

5. The learned counsel for the applicant has cited the case of Union of India and Others v. P.Jagdish and Others, 1997 SCC (L&S) 701, in support of his contention that the applicant is entitled to pay at par with his junior, Shri Verma. In that case, Special Pay was attached to certain identified posts involving arduous nature of work in the feeder cadre of Senior Clerks. Prior to introduction of such Special Pay, respondents were promoted from the post

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of Senior Clerk to the post of Head Clerk and, therefore, getting less pay than their juniors who were promoted as Head Clerks later than the respondents but whose pay in that post was fixed, taking into account the Special Pay received by them as Senior Clerks in the identified posts. In such circumstances, it was held that the respondents' claim to refixation of their pay as Head Clerks on the notional basis that they were getting the Special pay as Senior Clerks, was not sustainable. They were, however, held entitled to stepping up of their pay to a figure equal to the pay of their juniors from the date such juniors were promoted as Head Clerks and got their pay fixed at a slab higher than the respondents.

6. In the instant case, the applicant, though senior, was not granted Special pay on the post of Senior Clerk. In terms of the judgement cited above, the applicant cannot claim grant of Special pay even on notional basis with reference to his juniors. The applicant can, however, seek stepping up of his pay at par with his junior on his promotion to the higher post of Head Clerk. We consider it appropriate to reproduce below the relevant portion of the cited judgement :-

"The special pay of Rs.35 per month is attached to certain identified posts in the category of Senior Clerks and, therefore, only those who are 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.

The principle of stepping up of the pay as contained in the Fundamental Rules, becomes applicable when the junior officer and the senior

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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. Hence, the respondents being senior to several other Senior Clerks and 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 got promoted to the cadre of Head Clerks and their pay was fixed at a higher slab than that of the respondents. 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. This principle of stepping up 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 Rs.35 special pay was attached in the lower cadre. Therefore, though direction to step up the pay on notional basis is consistent with Article 39(d) of the Constitution, it would be applicable only as stated above."

In the light of above discussion, we are of the view that the applicant can be allowed stepping up of his pay on his promotion as Head Clerk at par with his junior from the date his junior has been promoted as Head Clerk. Accordingly, we pass the order as under :-

The OA is partly allowed. The applicant will be entitled to stepping up of pay on the post of Head Clerk with effect from the date Shri Verma was

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promoted as Head Clerk and started drawing pay higher than the applicant as Head Clerk. No costs.

Gopal Singh
(GOPAL SINGH)
MEMBER (A)

S.K. Agarwal
(S.K. AGARWAL)
MEMBER (J)