

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.254/2001 Date of order: 8-07-02

Vimal Chand Jain S/o Sh.Udai Raj Jain, R/o Vill. & Post  
Jethana, Distt.Ajmer, last employed as Office Supdt.

...Applicant.

Vs.

1. Union of India through General Manager, Western Railway, Church Gate, Mumbai.
2. Divisional Railway Manager, Western Railway, Ajmer.
3. Sr.Divisional Personnel Officer, Western Railway, Ajmer.

...Respondents.

Mr.C.B.Sharma, Counsel for applicant

Mr.R.G.Gupta, Counsel for respondents.

CORAM:

Hon'ble Mr.H.O.Gupta, Administrative Member

Hon'ble Mr.M.L.Chauhan, Judicial Member.

PER HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER.

The applicant was initially appointed as Jr.Clerk with the respondent department on 21.7.1957. He was promoted to the post of Senior Clerk and thereafter he was promoted as Head Clerk. Finally, the applicant retired on superannuation on 31.5.93 as Superintendent. When the applicant was promoted as Head Clerk, his pay was fixed taking into account the special pay of Rs.35/- which was admissible to some of the posts of Senior Clerk vide order dated 22.10.86 (Annex.A5). Subsequently, when this mistake came to the notice of the respondent authorities, they issued orders dated 24.5.93, 14.5.93 and 30.6.93 (Annex A6, Annex.A7 and Annex.A8) respectively thereby refixing the pay of the applicant by excluding the amount of special pay Rs.35/- per month and withheld a sum of Rs15,860/- as excess payment

to be recovered from DCRG. Against these orders, the applicant filed O.A No.243/98 before this Tribunal which was disposed of vide order dated 7.11.2000. The relevant portion of the order is reproduced below:

"We, therefore, quash and set aside order dated 24.5.93 (Annex.A1), order dated 14.5.93 (Annex.A2) and order dated 30.6.93/2.7.93 (Annex.A3) and direct the respondents not to recover anything in pursuance of these orders and if any recovery has been made, such amount shall be refunded within two months from the date of receipt of a copy of this order."

2. Pursuant to the aforesaid direction, the respondent authorities issued the impugned order dated 24.4.2001 (Annex.A1) thereby refunding the amount of Rs.15860/- which was withheld by the respondent authorities and further held that the applicant is not entitled to any further benefit as per the aforesaid order of this Tribunal.

3. The order dated 24.4.2001 (Annex.A1) is under challenge in the present application. The case set out by the applicant is that while working as Senior Clerk, he was posted on a post which carries special pay of Rs.35/- per month and the same has rightly been taken into consideration by the respondent authorities while fixing the pay on promotion as Head Clerk. As such the action of the respondents in not taking into consideration the special pay of Rs.35/- per month as was granted to him vide order dated 23.2.89 is wholly unjustified and is violative of the provisions of Articles 14, 16 and 21 of the Constitution of India. Thus, he has prayed that the respondents may be directed to refix the pay of the applicant at Rs.2260/- as on 1.3.93 and to allow benefit including pay

and allowances pension and other pensionary benefits by recalculating the same by quashing the impugned order dated 24.4.2001 (Annex.A1).

4. The case has been contested by the respondent authorities by filing reply statement. In para 4(i) of the reply, the respondents had made the following submissions:

"It is also not disputed that the applicant retired on superannuation on 31.5.93. It is denied that the applicant was granted of Rs.35/- while working as Senior Working Clerk. The applicant was not as Senior Clerk with special pay of Rs.35/- before his promotion of Head Clerk. After promotion on the post of Head Clerk he was granted pay fixation alongwith adding special pay of Rs.35/- vide order dated 22.10.86 (Annex.A5) and granted him the arrear on pay fixation of special pay with effect from 1.9.85 vide order dated 27.10.89. In fact, the applicant was not working as Senior Clerk with special pay of Rs.35/- prior to promotion of Head Clerk, hence the pay of the applicant has correctly been revised as and when the aforesaid irregularity has come into notice to the humble answering respondents."

5. In view of the specific averment made in the reply, the applicant was not entitled to special pay of Rs.35/- as Senior Clerk before his promotion as Head Clerk, his pay was wrongly fixed at the time promotion as Head Clerk by taking into account the special pay of Rs.35/- which mistake was subsequently rectified and the pay of the applicant has correctly been revised when the aforesaid irregularity came to the notice of the answering respondent. The Tribunal vide order dated 1.5.2002, passed the following order:

"The pension of the applicant, who stood superannuated in the year 93, has been calculated after excluding the amount of special pay of Rs.35/- per month. The learned counsel for the applicant urged that the applicant was working on the post which carried the special pay of Rs.35/- per month. Reliance was placed on a circular letter dated 23.2.89 (Annex.A3) which provides that a special pay of Rs.35/- per month shall be admissible to the person holding certain specified posts. The Applicant maintains that he was holding the post at the time of his retirement which carried the special pay of Rs.35/- per month. The respondents have contested this assertion. According to them, the applicant never held any post which carried the special pay of Rs.35/- per month and, therefore, he is not entitled to the said benefit.

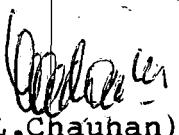
The applicant has not filed any order to indicate that he was posted on a post on which Rs.35/- per month as special pay was admissible. The learned counsel for the applicant wants time to produce the order whereby the applicant was required to perform the duties of the post which carries the special pay before his retirement."

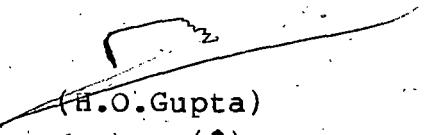
6. When the matter was taken up for hearing on 4.7.2002, the learned counsel for the applicant shows his inability to produce any document to indicate that the applicant was posted on a post on which Rs.35/- as special pay was admissible. Consequently, this Tribunal passed the following order:

"The learned counsel for the applicant submits that he does not possess any order to indicate that he was posted on a post on which Rs.35/- per month as a special pay was admissible. However, he submits that the respondents have

been paying the amount as seen from Annx.A3 & Annx.A4."

7. We have considered the matter in its entirety, we are of the view that <sup>but a</sup> for the simple averment made in the application that the applicant was drawing special pay prior to the issue of Annx.A3 & Annx.A4, vide order dated 22.10.86 as the applicant was already working on the post of Senior Clerk, the applicant has not placed any material on record to justify his claim that he was posted on the post on which Rs.35/- per month as special pay was admissible, despite the opportunity given to the counsel for the applicant vide order dated 1.5.2002. On the other hand there is categorical statement made by the respondents in the reply that the applicant was not working on the post of Senior Clerk with special pay of Rs.35/- per month before his promotion as Head Clerk and when he was promoted as Head Clerk, his pay was wrongly fixed taking into account the special pay of Rs.35/- vide order dated 22.10.86 (Annx.A5) and it was on account of this wrong fixation the applicant was granted arrear on such wrong fixation w.e.f. 1.9.85 which was subsequently corrected when the irregularity came to the notice of the respondents. The applicant has not chosen to controvert this specific plea of the respondents <sup>by filing rejoinder</sup> nor he has placed any document on record to indicate that he was ever posted against a post which carries special pay of Rs.35/- per month despite the opportunity granted by this Tribunal. In the absence of any such material and in view of the observations made above, we are of the view that the applicant has not made out any case for refixing his pay by taking into account a sum of Rs.35/- as special pay. Consequently, the applicant is not entitled to any relief and this application fails. No order as to costs.

  
(M.L.Chauhan)  
Member (J).

  
(H.O.Gupta)  
Member (A).