

IN THE CENTRAL ADMINISTRATIVE, JAIPUR BENCH,
JAIPUR

Jaipur, this the 11th March, 2005

ORIGINAL APPLICATION NO. 306/2002

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

Tenamal
s/o Shri Radha Kishan,
presently posted as Head Clerk,
Divisional Security Commissioner,
Railway Protection Force,
Western Railway, Ajmer
r/o Rajaradi, Madanganj,
Kishangarh, Ajmer.

.. Applicant

(By Advocate: Shri P.V.Calla)

Versus

1. Union of India through
Director General Manager,
Western Railway,
Church Gate, Mumbai.
2. The Chief Security Commissioner,
Railway Protection force,
Churchgate,
Mumbai.
3. The Divisional Security Commissioner,
Railway Protection Force,
Western Railway,
Ajmer.

.. Respondents

(By Advocate: Shri S.S.Hassan)

ORDER

Per Hon'ble Mr. M.L.Chauhan, Member (J)

The applicant has filed this OA being aggrieved of not granting special pay on the post of Senior Clerk from the date the applicant became eligible for the same. However, in relief clause, the applicant has prayed that direction may be given to the respondents to step-up, revise and refix the pay of the applicant w.e.f. the date his juniors started getting higher pay on their promotion to the post of Head Clerk.

2. Briefly stated, the facts of the case are that the applicant while working on the post of Assistant Sub-Inspector (ASI) in the scale of Rs. 1320-2040 was absorbed in the cadre of Senior Clerk w.e.f. 11.7.97 as he was medically de-categorised in the rank of Assistant Sub-Inspector. His request for seniority was considered and his name was interpolated above Shri Hashmukh Bhai from 13.9.91. It may be stated that Shri Hashmukh Bhai while working as Senior Clerk was given special of Rs. 70/-. Subsequently, as per Board's letter dated 17.8.98 the post of Senior Clerk in the grade of Rs. 4500-7000 with special pay of Rs. 70/- was upgraded to the post of Head Clerk in the scale of Rs. 5000-8000. Accordingly, those drawing special pay has been given the post of Head Clerk in the scale of Rs. 5000-8000. It may be stated that the special pay

which was admissible to the Senior Clerk has been done away w.e.f. 1.1.1996. Since the applicant was absorbed as Senior Clerk w.e.f. 17.9.97 and grant of special w.e.f. 1.1.96 was dispensed with, he was not given special pay, when he was absorbed as Senior Clerk though the applicant was given seniority in the cadre of Senior Clerk from the date when he was working as ASI from 13.9.91. Thus, the grievance of the applicant that he should be paid special pay of Rs. 70/- even though he has not physically worked against the post of Senior Clerk and though technically he was given seniority from the back date, is without merit and requires out right rejection.

3. It is admitted case between the parties that the special pay of Rs. 70/- was admissible to 10% posts of the Senior Clerk carrying arduous nature of duties and such pay was attached to those posts. Since the applicant has not physically held the post of Senior Clerk, he was not entitled to the special pay which was attached to the 10% posts. The reference made by the learned counsel for the applicant to the judgment of this Tribunal in OA No.605/94, Smt. M.M.Wales vs. Union of India and ors and other connected matters decided on 26.4.2001 is wholly misconceived. That was a case where junior persons were holding the post of Senior Clerk to which special pay was attached and the applicant who was admittedly senior was not posted

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against such posts and as such she was deprived of the benefit of special pay. It was under this context that this Bench has held that the senior persons are entitled to stepping up of their pay to the figure equal to the figure of their junior persons from the date such juniors were promoted as Head Clerk and got their pay fixed at the slab higher than the respondents therein. As stated above, the ratio of the said judgment is not attracted in this case. As such, the applicant is not entitled to any relief.

4. That apart, there is no infirmity in this case as Shri Hasmukh Bhai was drawing special pay of Rs. 70/- as Senior Clerk from 1995 when the applicant was not born on the cadre of Senior Clerk and was working as ASI. It has also come on record that Shri Hans Mukh Bhai was promoted as Head Clerk on 22.4.1996 when the applicant was not even absorbed in the cadre of Senior Clerk, as such name of the applicant could not have been interpolated over and above Shri Hasmukh Bhai in the seniority list as circulated vide letter dated 17-19.9.1997 (Ann.A2), As the applicant ~~on~~ on the relevant date ~~was~~ was not holding the post in the cadre of Senior Clerk, Thus, even if the name of the applicant has been interpolated over and above Shri Hasmukh Bhai ^{this fact} will not materially make any difference and it cannot be said that when the applicant was absorbed on 11.7.97 and when the seniority list of ~~W~~

Senior Clerks was circulated vide letter dated 17-19.9.97 Shri Hasmukh Bhai was holding the post in the cadre of Senior Clerk. Thus, the applicant cannot base his case for stepping up on the basis of the pay which Shri Hasmukh Bhai was drawing as the applicant and Shri Hasmukh Bhai belong to different cadres. It may also be stated here that Shri Hasmukh Bhai has been shown senior to the applicant in the cadre of Head Clerk as can be seen from seniority list dated 21.9.2001 (Ann.A8) which has been placed on record by the applicant himself in which name of Shri Hasmukh Bhai has been shown at Sl.No.22 and name of the applicant has been shown at Sl.No.23. Against column 'date of appointment of grade' it has been mentioned that Shri Hasmukh Bhai has been appointed on 22.4.1996 and in the case of the applicant it is August, 1998. Thus, from the material placed on record, it is clear that Shri Hasmukh Bhai cannot be said junior to the applicant and the applicant cannot base his claim for stepping up on the basis of the pay being drawn by Shri Hasmukh Bhai.

5. Besides this, the persons junior to the applicant were drawing higher pay than the applicant by virtue of working against the posts carrying special pay. The applicant has never worked against such post of Senior Clerk nor could have held such posts, as such, the applicant is not entitled to stepping up of pay. Thus,

we see no infirmity in the stand taken by the respondents whereby they have stated that the applicant was neither entitled to the special pay nor the benefit of Head Clerk scale Rs. 5000-8000 from 1.1.96 which was allowed to those Senior Clerks from 1.1.96 who were already granted special pay of Senior Clerks (limited to 10% of the cadre). This view which we have taken is fully covered by the decision rendered by the Apex Court in the case of Union of India vs P.Jagdish and ors., 1997 SCC (L&S) 701 whereby the Apex Court has held that special pay is attached to certain identified posts in the category of Senior Clerk 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 Clerk were given that special pay on being posted against those identified posts carrying the special pay. As regards the principle of stepping up, the Apex Court has held that the principle of stepping up of pay as contained in Fundamental Rules 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 get a higher pay. Even if for arguments sake

it is admitted that the applicant was senior to Shri Hasmukh Bhai, he was promoted as Head Clerk much after the promotion of Shri Hasmukh Bhai w.e.f. 22.4.96. Thus, it is not a case of the nature where junior person was promoted as Head Clerk later than the senior officer. It is a case where the so called junior officer was promoted as Head Clerk earlier to the applicant and thus the principle of stepping up is not attracted in the instant case.

6. For the foregoing reasons, the OA is dismissed with no order as to costs.


(A.K. BHANDARI)

Member (A)


(M.L. CHAUHAN)

Member (J)