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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.1466/2003, MA-16/2004
OA NO.1467/2003,

New Delhi this the ^{21st} February, 2005

HON'BLE SHRI SHANKER RAJU, MEMBER (J)
HON'BLE SHRI S.A.SINGH, MEMBER (A)

OA NO.1466/2003, MA16/2004

Ram Gopal Bilgaiyan, Aged about 57 years,
Retired Sub-Head Central Railway Workshop Jhansi
R/o C/o S S Ramchandran, Flat No.144,
New Surya Kiran Apartment, Plot No.65 Fifth Avenue,
I.P.Extention, Patparganj, Delhi-92.

Through H.P.Chakravorty, Advocate,
CAT Bar Room, Principal Bench, New Delhi.Applicant.

(By Advocate:Shri H.P. Chakravorty)

Versus

1. The Union of India, through
The Chairman, Railway Board, Principal Secretary to
Govt. of India, Ministry of Railways,
Rail Bhawan, New Delhi.
2. The Financial Advisor & Chief Accounts Officer,
(FA&CAO), Central Railway, GM's Office,
Mumbai CST.
3. The Workshop Accounts Officer,
Central Railway,
Workshop Jhansi.Respondents.

(By Advocate: Shri R.L.Dhawan)

OA NO.1467/2003

Chandra Dutta Sharma,Retired Accounts Assitt.
S/o Shri Pokar Mal Sharma,
C/o Shri Jai Bhagwan Vasistha,
A-59 Yadav Park Kamruddin Nagar,
Nangoli Delhi-41.

Through H.P.Chakravorty, Advocate,

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Central Railway, GM's Office,
Mumbai CST.

3. Senior Divisional Accounts Officer,
DRM's Office, Central Railway,
Jhansi.

...Respondents.

(By Advocate: Shri R.L.Dhawan)

ORDER

By Shri S.A. Singh, Member (A):

As the questions in law involved in both cases are identical and similar, we proceed to decide both the cases by a common order. However, the OA 1467/2003 is being taken as the lead case in deciding the OAs.

2. The applicant in OA 1466/2003, impugns respondents' orders dated 26/28.8.1998, 30.5.2000/16.2.2000 and 19.3.2001, which are annexed at annexures A-1 to A-3. By the aforesaid orders the special pay of Rs.35/- per month for fixation in the pay scale of Rs. 425-700 w.e.f. 1.1.84 has been denied.

3. The applicant who belongs to 1964 batch for Accounts Clerk joined the Railways on 26.4.1965 as Clerk Grade II. He was promoted as Clerk Grade-I (CG-I) on 03.03.1970, i.e. prior to 01.01.1973.

4. In 1979, the Railway Board introduced a Scheme for grant of special pay of Rs.35 to CG-I (330-560) for doing complex and arduous nature of job in the Accounts Department. The applicant as per the seniority position, became

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eligible for grant of special pay w.e.f. 01.04.1985 and was so granted. He continued to draw special pay till the date of his voluntary retirement on 27.7.1985.

5. The cadre was restructured vide order dated 25.6.1985 and the applicant was promoted on notional basis as Sub Head with retrospective effect from 01.01.1984. On promotion to higher grades, the special pay of Rs. 35 was not taken into account for fixation of pay, however, this benefit was allowed after an award given by the Board of arbitration, but was subject to the condition that the incumbent should be a holder of the substantive post to which the special pay is attached. The benefit was to be given on notional basis from the date of promotion and on actual basis from 01.09.1985.

6. Consequent upon the restructuring of cadre, (vide Board's letter dated 25.6.85) 650 CG-I were promoted as Sub Heads. After their promotion, 10% of the 650 posts, became available for grant of special pay to CGI w.e.f. 1.1.84. While issuing the SOO for grant of special pay to CG-I against these 10% posts persons who had retired/died during 1.1.84 to 31.12.1985 were not taken into consideration. This benefit was, however, also extended to these staff after the issue had been raised by the recognized Union in November, 1989. Shri B.M.Deshpande was one such person who benefited from the extension of benefits. He had been promoted as Sub Head on 01.02.1985 and thus fell within the period of 1.1.84 to 31.12.1985. The special pay was taken into consideration in his case for fixation in the higher scale, on notional basis, from the date of promotion and actual basis from 1.9.1985.

7. The respondents withdrew the benefit of special pay from the applicant on the ground that on 1.1.84 (when he was promoted on notional basis as Sub

Head) he was not eligible for special pay because he became entitled for the said benefit only from 01.04.1985. But in the case of Shri Deshpande this benefit was allowed with the result Shri Deshpandey though junior to the applicant, was drawing higher pay. Thus the pay of the applicant was stepped up to that of Deshpande in terms of Board's letter dated 05.02.1997.

8. The grievance of the applicant is that the special pay, which had been granted to him w.e.f. 01.04.1985 has to be taken into consideration while restructuring of cadre. It had been ~~granted~~ taken into account while fixation of his pay in the higher grade of 425-700/- . The applicant argued that he was promoted on notional basis on 01.01.85 and special pay was given while fixing the pay notionally. This could not be snatched away with retrospective effect i.e. after a lapse of 10 years. It was hit by principles of limitation and estoppel as held in OA 477/1994, Mahavir Singh vs. Union of India in 1996 ATC Vol.33 by this Tribunal. The case of the applicant was also covered by the judgement dated 3.4.2000 in OA 2429/96, N.P.Dubey Vs. Union of India against while a Civil Writ Petition No. 7575/2000 filed by the Union of India was dismissed. Moreover, this benefit of special pay has been allowed to his junior Shri B.M. Deshpande on notional basis thereby making his pay higher than that of the applicant. Board's orders dated 11.12.90, were not applicable to the applicant as he was recipient of special pay prior to implementation of restructuring.

9. This was vehemently contested by the respondents' counsel stating that the special pay was granted to 10% of the CG-I on seniority basis. The applicant was granted the special pay from 01.4.1985 as per his seniority. He was, as per his seniority, not entitled to the special pay on 1.1.84 the date of retrospective

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promotion. The fixation of pay in the higher grade after taking into consideration of special pay, made earlier, was erroneous and hence refixation was made by excluding special pay of Rs.35. However, his pay was stepped up to that of his junior, B.M.Deshpande. The net effect was no reduction in his pension and settlement dues. The case of Shri Deshpande was not comparable because on the date of promotion he was eligible for special pay and on the basis of that, his pay had been fixed, which is not so in the case of the applicant.

10. We have heard the counsels and have gone through the record. The short question before the Tribunal is whether the special pay granted to the applicant is to be taken into consideration for fixation of pay in the higher grade of Sub Head on restructuring of cadre with retrospective effect? We find that the applicant was promoted to CG-I Grade prior 01.01.73 and based on his seniority he became eligible for special pay from 01.01.85. On the date of his promotion to sub head, on notional basis, i.e. w.e.f. 1.1.84, he was not entitled to this special pay as he had been promoted to CG-I prior to 1.1.1973. It is the claim of the applicant that he should be entitled to take into consideration the special pay for fixing his pay notionally in higher grade. We find that special pay was granted to the senior most 10% of the persons on the relevant date and the applicant was admittedly, not coming within the 10% seniormost persons. He came within the 10% 'seniormost' zone on 01.8.85 and he was accordingly granted special pay from that date. We see no infirmity in this.

11. With restructuring, persons who had been promoted after 1.1.1973 and junior to the applicant in the list of CG-I, benefited in as much as that they came within the zone of consideration for grant of special pay, which was granted and

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then taken into consideration for purpose of fixation of pay in the higher grade, in terms of letter dated 2.8.1989, which reads as under:

"Sub: Grant of Special Pay of Rs.35 per month to the Upper Division Clerks in the non-Secretariat administrative offices- question whether this amount should be taken into account in the fixation of pay on promotion-Decision regarding.

Reference is invited to this Ministry's letter of even number dated 27.11.1987 (see Bahri's Rly Bd. Order, 1987, Vol. II, p.360) under which the special pay of Rs.35 p.m. paid to Upper Division Clerks has been allowed for fixation of pay on promotion w.e.f. 1.9.1985. Aggrieved by this decision, a number of UDCs, who while drawing special pay of Rs.35 p.m. were promoted to higher posts prior to 1.9.1985 and whose pay on promotion was fixed without taking into account the special of Rs.35, filed a petition before CAT claiming that their pay should also be fixed taking into account the special pay of Rs.35 as their Juniors who have been promoted after 1.9.1985 are getting higher pay.

The judgement of CAT delivered in this case has been examined in consultation with Ministry of Finance and it has been decided that pay of those UDCs who were drawing special pay of Rs. 35 in terms of this Ministry's letter No. PCIII/79/SP/1/UDC dated 11.7.1979 and were promoted to higher posts prior to 1.9.1985 and who fulfil the conditions mentioned in this Ministry's letter No. PCIII/79/SP/1/UDC dated 27.11.1987 may be re-fixed on notional basis from the date of their promotion by taking the special pay of Rs.35 into account and the actual benefit may be allowed to them only from 1.9.1985 without payment of any arrears."

It is clear from the reading of the letter that those drawing special pay on the date of promotion would be entitled for taking into consideration special pay for fixation of pay in the higher grade. This has resulted in an anomaly because those persons who, on restructuring, were not eligible for special pay on the date of their promotion, drew less pay than their juniors promoted later, for the reason that the juniors were eligible and drawing special pay on their date of promotion. The respondents have resolved this anomaly by bringing on par the pay / pension of the senior persons to the level of their junior. The case of the

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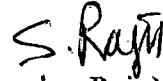
the applicant falls in this category and accordingly his pay was raised to match that of his junior Shri Deshpande. We see no error in this methodology.

12. In view of above, the OA, being without merit, is dismissed. No costs.



(S.A. Singh)

Member (A)



(Shanker Raju)

Member (J)

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