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UNION OF INDIA AND ORS.

v.

P. JAGDISH AND ORS.

DECEMBER 17, 1996

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[K. RAMASWAMY AND G.B. PATTANAİK, JJ.]

SERVICE LAW—PAY FIXATION—Special pay attached to certain identified posts in category of Senior Clerks—Additional pay attached to the post—Incumbent who occupies the post can only claim it.

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Fundamental Rule—Stepping up of pay—Principles of—Applicability—Senior officer in higher post drawing lower rate of pay than officers in lower grade promoted or appointed subsequently—Pay of senior officer to be stepped up to a figure equal to pay fixed for junior officer.

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Prior to 1.1.1986, 10% of the posts of Senior Clerks were identified to be the posts involving arduous nature of work and those of the incumbents who were being posted to those identified posts were getting special pay of Rs. 35 per months. The respondents, Senior Clerks not working against the identified posts of Senior Clerks were promoted as Head Clerks w.e.f. 1.1.1984 the date from which there had been upgradation to the posts of Head Clerks and while fixing of the pay in the category of Head Clerks, the pay which they were drawing as Senior Clerk was taken into account. While the respondents were promoted to the post of Head Clerks, their juniors who were posted against the identified posts of Senior Clerks getting Rs. 35 as special pay on being promoted as Head Clerks, were getting higher pay than the respondents, though respondents promoted prior to their promotion.

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Respondents approached the Tribunal claiming that their pay should be refixed in the cadre of Head Clerks on the notional basis that they were drawing Rs. 35 p.m. as special pay in the cadre of Senior Clerk. The Tribunal though did not grant the relief as claimed, directed on equitable consideration, that the salary of the respondents should be stepped up, so that, they would not get less than their juniors in the category of Senior Clerks were getting on being promoted to the cadre of Head Clerk. This appeal had been filed against the direction of the

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Tribunal.

The appellant contended that the special pay of Rs. 35 per month being attached to the specified post in the cadre of Senior Clerk only those of the Senior Clerks would get the same who were posted against those specified posts and the respondents having not been posted on those posts, they were not entitled to be granted notionally the special pay of Rs. 35 per month; that once the respondents were not in fact drawing the special pay of Rs. 35 per month on account of the fact that they had not been posted against the identified posts of Senior Clerks would not be entitled to get their pay fixed in the cadre of Head Clerks by following the principle of stepping up solely on the ground that their juniors were getting a higher salary.

The questions raised for consideration were (i) whether the respondent who had not been posted against the identified posts could even claim fixation of their pay with Rs. 35 per month in the cadre of Senior Clerk even on notional basis; (ii) whether the respondents could claim for stepping up of their pay in the promoted cadre of Head Clerks when their juniors who were promoted were fixed up at a higher slab in the cadre of Head Clerks taking into account the special pay which they were drawing in the lower category of Senior Clerks.

Dismissing the appeals, this Court

HELD : A special pay of Rs. 35 per month was attached to certain identified posts in the category of Senior Clerks and, therefore, only those who would be posted against those identified posts could claim the said special pay. The respondents who had already been promoted to the higher category of Head Clerks could not 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. It was an additional pay attached to the post and any incumbent who occupied the post could only claim the same. The claim of the respondents on this score, therefore, was not sustainable in law and the Tribunal had rightly rejected the said claim of the respondents. [225-E-G]

1.2. Under the provisions of Fundamental Rules to remove the anomaly of a Government servant promoted or appointed to a higher post earlier drawing a lower rate of pay in that post than another Government

- A** servant junior to him in the lower grade and promoted or appointed subsequently 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.
- B** 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 pay. This principle 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 gets a higher pay. This being the principle of stepping up contained in the Fundamental Rules and admittedly the respondents being seniors to several other Senior Clerks
- C** and the respondents 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 eartwhile cadres of Senior Clerks got promoted to the cadre of Head Clerks and their pay was fixed at a higher slab than that of the respondent. The stepping up should be done in such a way that the anamoly 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.
- D** 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 35% special pay was attached in the lower cadre. But by reason of promotion the promotee-juniors who worked on the said posts, in fact, performed the hard duties and earned special pay. Directions to pay arrears would be deleterious to inculcation of efficiency in service. All persons who were indolent to share higher responsibilities in lower posts, on promotion would get accelerated arrears that would be deleterious to efficiency of service. Therefore, though direction to step up the pay on notional basis is consistent with Article 39(d) of the Constitution, it would
- E** be applicable only prospectively from the date of the promotion and the
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fixation of the scale stepping up of the scale of pay would be prospective to calculate future increments on the scale of pay in promotional post only prospectively. [226-A; 227-B] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 16736 of 1996. B

From the Judgment and Order dated 23.1.95 of the Central Administrative Tribunal, Hyderabad in O.A. No. 600 of 1994.

Avtar Singh and A.K. Sharma for the Appellants.

The Judgment of the Court was delivered by C

PATTANAİK, J. : Leave granted.

The short question that arises in this appeal is whether the Tribunal was justified in directing the appellant to fix up the pay of respondents in the cadre of Head Clerk by notionally holding that they are also eligible to receive the special pay of Rs. 35. per month in the lower post even though factually respondents were not getting the said special pay. D

The short facts leading to the filing of the application before the Tribunal by the respondents are that they were working as Senior Clerks and while so working they were promoted to the post of Head Clerks. Under the orders of the competent authority 10% of the posts of Senior Clerks were identified to be the posts involving arduous nature of work and those of the incumbents who were being posted to those identified posts were getting special pay of Rs. 35 per months. This was the state of affairs prior to 1.1.1986. Usually on the basis of seniority amongst the Senior Clerks, postings were being made to the identified posts carrying a special pay of Rs. 35 per month. On account of restructuring of the cadre a large number of vacancies occurred in the category of Head Clerk. The respondents who were not working against the identified posts of Senior Clerks were promoted as Head Clerks w.e.f. 1.1.1984 the date from which there had been upgradation to the posts of Head Clerks and necessarily while fixing of the pay in the category of Head Clerks, the pay which they were drawing as Senior Clerks was taken into account. While the respondents were thus promoted to the post of Head Clerk, their juniors who were posted against the identified posts of Senior Clerks used to get Rs. 35 as E
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- A special pay until they were promoted as Head Clerks. So far as those persons are concerned on being promoted as Head Clerks, the special pay which they are drawing in the category of Senior Clerks was taken into account in fixing their pay in the promoted category of Head Clerks. Consequentially even though the respondents were promoted to the post of Head Clerks earlier, they were found to be getting less pay than their junior who were promoted as Head Clerks later and who had been posed against the identified posts of Senior Clerks prior to their promotion. Some of these persons similarly situated as the respondents who were promoted as Head Clerks before, have not been posted against any identified post of Senior Clerk and therefore were not getting the special pay of Rs. 35 per months, approached the Tribunal by filing OA No. 192 of 1990 claiming that their pay should be refixed in the cadre of Head Clerks on the notional basis that they were drawing Rs. 35 per months as special pay in the cadre of Senior Clerk. The Tribunal, however, did not grant the relief as claimed but taking into account the fact that when persons junior to the applicants in the category of Senior Clerks on being promoted were getting a higher salary than those who had been promoted earlier, on equitable consideration the salary of the earlier promoted Head Clerks should be stepped up so that they would not get less than what their juniors are getting. This judgment of the Tribunal in OA No. 192/90 has become final as the special leave petition against the same stood dismissed. When the respondents in the present appeal made a similar claim before the Tribunal, the Tribunal following its earlier decision dated 4.3.1993 in OA. No. 192/90 directed that the salary of the respondents should be stepped up, so that, they would not get less than their juniors in the category of Senior Clerks are getting on being promoted to the cadre of Head Clerk.
- F Challenging the aforesaid direction of the Tribunal the present appeal has been preferred.

- The learned counsel for the appellant contends that the special pay of Rs. 35 per month being attached to the specified post in the cadre of Senior Clerk only those of the Senior Clerks would get the same who were posted against those specified posts. That being the position and the respondents having not been posted on those posts question of granting notionally to them the special pay of Rs. 35 per month does not arise. He further contended that once the respondents were not in fact drawing the special pay of Rs. 35 per month on account of the fact that they had been not posted against the identified posted of Senior Clerks carrying Rs. 35

as special pay would not be entitled to get there pay fixed in the cadre of Head Clerks by following the principle of stepping up when their juniors who had been getting the special pay of Rs. 35 per month as Senior Clerks on being posted against the identified posts on promotion gets a higher amount as Head Clerks and the principle of stepping up will not be applicable. According to the learned counsel the Tribunal committed serious error in directing the stepping up of the salary of the respondents in the pay scale meant for Head Clerks solely on the ground that their juniors are getting a higher salary. A B

The question for consideration, therefore, would be : (1) whether the respondents who had not been posted against the identified posts carrying a special pay 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 of 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 lower category of Senior Clerks. C D

So far as the first question is concerned, it to be seen that a special pay of Rs. 35 per month is attached to certain identified posts in the category of Senior Clerks and, therefore, only those who would be 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. It is an additional pay attached to the post and any incumbent who occupies the post can only claim the same. The claim of the respondents on this score, therefore, is not sustainable in law and the Tribunal has rightly rejected the said claim of the respondents. E F G

So far as the second question is concerned it depends upon the applicability of the principle of stepping up. Admittedly, the respondents had been promoted earlier to the category of Head Clerks and some of their juniors who were continuing as Senior Clerks against the identified posts carrying special pay of Rs. 35 per month on being promoted to the H

- A post of Head Clerks later than the respondents got their pay fixed at a higher level than the respondents. Under the provisions of Fundamental Rules to remove the anomaly of a Government servant promoted or appointed to a higher post earlier drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently 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 re-fixation 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 the re-fixation of pay. This principle 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 on being promoted later than the senior officer gets a higher pay. This being the principle of stepping up contained in the Fundamental Rules and admittedly the respondents being seniors to several other Senior Clerks and the respondents 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 get promoted to the cadre of Head Clerks and their pay was fixed at a higher slab than that of the respondent. 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 Board Clerks. In fact the Tribunal by the impugned orders has directed to apply the principle of stepping up and we see no infirmity with the same direction subject to the aforesaid clarifications. This principle of stepping up which we have upheld would prevent violation of equal pay for equal work but grant of the 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 35% special pay was attached in the lower cadre. But by reason of promotion the promotee-juniors who worked on the said posts, in fact, performed the hard duties and earned special pay. Directions to pay arrears would be deleterious to inculcation of efficiency in service.
- H All persons who were indolent to share higher responsibilities in lower

posts, on promotion would get accelerated arrears that would be deleterious to efficiency of service. 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 prospectively from the date of the promotion and the fixation of the scale stepping up of the scale of pay would be perspective to calculate future increments on the scale of pay in promotional post only prospectively. The appeal is dismissed by in the circumstances there would not order as to costs. A B

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Appeal dismissed.