

**HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT
JAIPUR**

S.B. Civil Writ Petition No. 5806 / 2006

Divisional Railway Manager, North-western Railway, Ajmer.

-----Petitioner

Versus

1. The Judge Labour Court-cum-Industrial Tribunal, Ajmer.

2. Shri Kedarmal Verma, Through Divisional President North-Western Railway Employees Association, Ajmer.

-----Respondents

For Petitioner(s) : Mr. PC Sharma.

For Respondent(s) : Mr. Harshit Kapoor.

HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Order

07/11/2017

(1) The order dated 23.05.2006 passed by the labour Court-cum-Industrial Tribunal Ajmer awards special pay to the respondent Kedar Mal Verma with directions to recalculate his pay and allowances accordingly and also recalculate his pension and other allowances since he retired in August 1993. The railways have opposed the award stating that the affidavit of the head Clerk Anil Chobe mentions that Kedar Mal Verma could not have been granted special pay as KC Mishra was not relieved on promotion awarded to him vide order dated 13.2.1984. It is also stated that the special pay granted to two other persons, who were admittedly junior to the respondent, was also sought to be recovered. A look at the statement of Anil Chobe reveals that he does not deny the order dated 13.2.1984 having been passed in favour of the respondent-workman and that directions were issued

to grant him special pay of Rs.35/- per month. However, it appears that the concerned head clerk did not do the needful and has taken a plea of non-joining of KC Mishra on the promoted post vide the same order dated 13.2.1984. It is seen that KC Mishra was promoted on the higher posts with higher salary. Merely because he was not relieved would not mean that his promotion is cancelled or that he was drawing salary of the lower post after order dated 13.2.1984 had been passed in his favour. Moreover with regard to other two clerks who were granted special pay the said deponent supports the special pay having been granted legally to both the said clerks. In the pleadings it has not come on record as to when recovery was made from the said two clerks nor there is any such documents on record. The labour Court has examined all these aspects at length and, therefore, it cannot be said that there is an illegality committed in passing of the order dated 23.5.2006 by the Judge, Labour Court cum Industrial Tribunal Ajmer.

(2) Learned Counsel for the railways has also additionally submitted that the labour Court cum Industrial Tribunal did not have the jurisdiction to decide the issue and the jurisdiction fall only with the Central Administrative Tribunal in terms of the Industrial Tribunal Acts 1985. The submission has been noted to be rejected in view of the matters mention in the IIIrd Schedule to Act of 1947 which includes wages, compensatory and other allowances and thus special pay falls within the said subject. It is settled principle of law that coming into force of the Administrative Tribunal Act, 1985 did not take away the right of raising of the

dispute under the Industrial Disputes Act, 1947. Moreover the reference was made by the Central Government which was not opposed by the railways.

(3) In the circumstances, having noted above the writ petition is devoid of merit, same is dismissed.

(4) The petitioner is now directed to comply with the award within three months from today, failing which, the respondents who is already retired in 1993 shall be free to initiate contempt proceedings without further notice.

(SANJEEV PRAKASH SHARMA)J.

N.Gandhi/20

