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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1835 OF 2002

Union of India, through
General Manager Central Railway … Petitioner
Vs.
Miss S.G. Khalsa and Ors. … Respondents

Mr. Suresh Kumar for the Petitioner.

CORAM : A.S.OKA AND
SANDEEP K. SHINDE, JJ.

DATE : 6th DECEMBER 2018.

ORAL JUDGMENT (Per A.S. Oka, J.)

1 Heard the learned counsel appearing for the petitioner. By this petition under Article 226 of the Constitution of India, the challenge is to the order dated 7th March 2002 passed by the Central Administrative Tribunal on the Original Application filed by the respondents. The case of the respondents was that they were promoted as Head Clerks vide order dated 29th August 1985. Their contention was that while fixing their pay on the promotional post of Head Clerk, the petitioner did not take into consideration the special pay of Rs.35/- drawn by them as a Senior Clerk.

2 The prayer in the Original Application was for a direction to fix their pay on the post of the Head Clerk by taking into consideration special pay of Rs.35/-.

3 The basic contention raised by the petitioner for opposing the Original Application was that special pay of Rs.35/- pm was being paid to Senior Clerks who shouldered additional onerous duties and therefore, the respondents were not entitled to any relief.

4 In the impugned order, the Tribunal found that only some of the respondents were drawing special pay of Rs.35/- before promotion to the post of Head Clerk and others were not receiving it. The Tribunal referred to the decision of the Apex Court in the case of the Chief *Commissioner of Income Tax (Administration), Bangalore Vs. V.K. Gururaj and Ors.*[1]. By the impugned order, a very limited relief was granted by the Tribunal. The Tribunal held that those respondents who were receiving special pay of Rs.35/- as Senior Clerk would be entitled to count the special pay as pay for the purposes of fixing their pay for the promotional post of Head Clerk. The Tribunal rejected the prayer of those respondents who were not in receipt of special pay.

5 We have heard the submissions of the learned counsel appearing for the petitioner who submitted that the impugned order is illegal. He has taken us through the impugned order. None appears for the respondents.

6 We have considered the submissions. We have also perused

1. (1996) 7 SCC 275

the decision of the Apex Court in the case of the Chief Commissioner of Income Tax (Supra). Paragraph 3 of the said judgment reads thus :-

> **3.** We have heard the counsel for the appellant. The Government in OM No. F 7(52) E III/78, dated 5-5-1979 have stated that special grant of pay of Rs 35 per month to the Upper Division Clerks in the non-Secretariat administrative offices was provided. Out of the UDCs carrying the scale of Rs 330-560, 10% of the posts were earmarked with special grant of pay of Rs 35 in the Secretariat and other places and they were directed to handle cases of complex nature involving deep study and competence. For dealing with such cases certain officers have been promoted to that 10% posts specified among the UDCs in the Secretariat as well as non-Secretariat administrative offices. They were being paid @ Rs 35 per month as compensation for discharge of special duties. The respondents were not actually discharging those duties but being UDCs they claimed special pay of Rs 35. The Tribunal in the impugned order following its earlier decision dated 9-10-1991 made in OA No. 394 of 1990 allowed the petition and directed payment. We have directed the counsel to find out whether any appeal has been filed against the said order. It would appear that no appeal has been filed against the said order. However, it being a question of law and since the matter is of perennial problem applicable to several places, we are of the

> considered view that the failure to file an appeal in one case does not have the effect of following in all other cases. It is seen that payment of Rs 35 per month to UDCs discharging special duties of onerous nature, is personal pay so long as they discharge the same. Therefore, other UDCs who do not perform the special duties, though seniors, do not ipso facto get the same pay on the parity of equal pay due to juniors getting higher pay. Under these circumstances we are of the view that the Tribunal was wholly incorrect in directing payment to all the persons who did not discharge such duties assigned to the 10% special posts of UDCs carrying special pay of Rs 35 per month."

7 As held by the Apex Court, those Senior Clerks who received the special pay of Rs.35/- pm, received the same for performing special duties of onerous nature and they were entitled to receive special pay so long they discharge the same. In view of what is held by the Apex Court, we find no error in the impugned order inasmuch as limited relief has been granted only to those respondents who were receiving special pay of Rs.35/- for discharging special duties. The other prayers made by the respondents have been rejected. Hence, no case for interference is made out. Rule is discharged. There will be no order as to costs.

(SANDEEP K. SHINDE, J.) (A.S.OKA, J.)