

PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
P. JAGDISH AND OTHERS

DATE OF JUDGMENT: 17/12/1996

BENCH:
K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

PATTANAIK, 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/- pre month in the lower post even though factually the respondents were not getting the said special pay.

The short facts leading to the filing of the application before the Tribunal by the respondents are that they were 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/- pre month. 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 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 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 juniors who were promoted as Head Clerks later and who had

been posed against the indentified 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 month, approached the Tribunal by filing OA No. 162 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 month 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 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 Rs. 35/- per month on account of the fact that they had been not posted against the identified posts of Senior Clerks carrying Rs. 35/- as special pay would not be entitled to get their 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 Head Clerks solely on the ground their juniors are getting a higher salary.

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 Clerks 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.

So far as the first question is concerned, it is 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. 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.

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 juniors who were continuing as Senior Clerks against the identified posts carrying special pay of Rs. 35/- per month on being promoted to the 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 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 refixation of the pay of the senior officer would be drawn on completion of the requisite qualifying service with effect from the date of the 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 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 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 Head Clerk. In fact the Tribunal by the impugned order has directed to apply 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 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 be applicable only perspective from the date of the promotion and the fixation of the scale stepping up of scale of pay would be perspective to calculate future increments on the scale of pay in promotional post only perspective. The appeal is dismissed but in the circumstances there would not no order as to costs.

JUDIS