

E. Gopalakrishnan and Others

Vs

Union of India

Civil Appeal No. 1423 of 1995

(K. Ramaswamy, B. N. Kirpal JJ)

31.10.1995

### JUDGMENT

1. The appellants, nine in number, admittedly had retired prior to 1-9-1985 as either Head Clerks or Chief Clerks, the last being 30-6-1985. It appears that a practice was in vogue at one point of time that for the discharge of special duties, a sum of Rs 35 per month as special pay was granted to the Upper Division Clerks working in certain special posts. Decision was taken that on promotion as Head Clerk or Special Clerk, they would not be entitled to carry with them the special pay of Rs 35 per month. Admittedly, the appellants had been promoted, as stated earlier, as Head Clerks or Chief Clerks and they were not given the special pay of Rs 35 per month from the date of their promotion till the date of their retirement prior to 1-9-1985. It is also clear that in the memo dated 11-7-1979, it was expressly stated that the special pay would not be paid to the promoted Head Clerks or Chief Clerks. Subsequently, it appears that there was an agitation and a reference to the Board of Arbitration was made which had decided that with a view to remove the anomaly in the pay structure, the special pay of Rs 35 per month shall be paid to the promoted Head Clerks/Special Clerks w.e.f. 1-9-1985 but without paying arrears. Challenging the non-availment thereof, some of the employees had approached the Central Administrative Tribunal at Delhi which appears to have held that the persons who had not been paid from 11-7-1979 till 31-8-1985 would also be entitled to the special pay at Rs 35 per month but they were not entitled to the arrears of the salary. In other words, the result of the decision of the Board of Arbitration and the Central Administrative Tribunal is that the persons, who continued in service between 11-7-1979 and 31-8-1985 and thereafter, would be entitled to the special pay of Rs 35 per month though promoted as Head Clerks/Chief Clerks but without arrears of salary. This was also the decision taken by the respondents.

2. The question that emerges is whether the Head Clerks/Chief Clerks who retired prior to 1-9-1985 are also entitled to step up their pay by including Rs 35 per month for the purpose of calculating the pension. The Tribunal in this case held that they are not entitled.

3. Shri Sundaravaradan, the learned Senior Counsel, appearing for the appellants, contended that since the appellants had actually worked as Head Clerks/Chief Clerks on a par with other persons to whom the benefit of the pay of Rs 35 per month had been granted by the Board of Arbitration and also the Central Administrative Tribunal, they have been unjustly discriminated violating Article 14 of the Constitution and that, therefore, the Tribunal was not right in denying the benefit of stepping up of the scale of pay for computation of pension. Having considered the argument, we find that there is no justification in the stand taken by the appellants. Admittedly, they have retired prior to 1-9-1985. The benefit that was given by the Board as well as the order of the Tribunal and the respondents was to remove the anomaly in the pay structure and bring uniformity applying notional scale of pay of those promoted as Head Clerks/Chief Clerks between 11-7-1979 to 31-8-1985 but

denied payment of arrears. In other words, no salary with Rs 35 as special pay was made to anyone. That benefit was given only to those who continued in service after 1-9-1985. The notional pay is considered in that perspective only for the purpose of removing the anomaly. The pension is required to be computed on calculation of average of 10 months' pay actually drawn by the employee. Since the appellants admittedly were not in service as on 1-9-1985, the date on which the notional day was given effect to, they had not actually drawn the pay including Rs 35 per month. Accordingly, the scale of pay including Rs 35 per month cannot be stepped up for computing the pension. The appeal is accordingly dismissed but, in the circumstances, without costs.