

Central Administrative Tribunal
Principal Bench

O.A.No.2154/95

Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 27 day of March, 1998

Rakesh Kumar
s/o Late Shri Chandra Prakash
r/o M-3 Jangpura Extension,
New Delhi
employed in Civil Aviation Department
o/o the Director General of Civil Aviation
New Delhi. ... Applicant

(By Shri S.C.Duggal, Advocate)

Vs.

Director General of Civil Aviation
Technical Centre
Opp. Safdarjung
Airport
New Delhi - 3. ... Respondent

(By Shri V.S.R.Krishna, Advocate)

O R D E R

The applicant submits that he has been drawing a Special Pay (SP) of Rs.200/- per month continuously since 31.5.1989 when he was on deputation to National Airports Authority. Even though he was reverted back from the deputation in May, 1992, he has been drawing the afore mentioned Special Pay till date. His grievance is that while calculating the Dearness Allowances (DA) and the House Rent Allowances (HRA) the Special Pay of Rs.200 per month is not being taken into account.

2. The case of the applicant is that he is occupying the post of Assistant Director of Communication (ADC) in Civil Aviation Department which is governed by Statutory Recruitment Rules. The said Recruitment Rules include a provision that the post will carry the pay scale as well as Special Pay. Therefore, the Special Pay is to be deemed as an integral part of the pay and cannot be

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excluded from the definition of pay interms of FR-9(21)(a). He also submits that the post of Assistant Director of Communication is filled by promotion from the cadres of Senior Technical Officers and Senior Communication Officers. The Senior Technical Officer who are selected for the post of Assistant Director of Communications are also told that **refusal** to accept the higher post would also entail disqualification for promotion and would also attract disciplinary action. The scale of pay of STO or ADC is only distinguished by an element of Special Pay for the latter post. Thus, according to the applicant, the Special Pay is provided in order to distinguish it as a promotion post and have **thus** to be counted as part of the pay.

3. The respondents in reply state that **xx** **xxxxxxxxxx**, the special pay, is granted to Assistant Directors when they are appointed by transfer from comparable posts of Senior Aerodrome Officer/Senior Technical Officer in the field offices of the Civil Aviation Department. This special pay is **not** covered under the definition of Special Pay as defined in FR 9(25). Hence it is not a part of pay to be included as a Special Pay under FR-9(21)(a)(ii) for calculating various allowances. In other words, the Special Pay is a compensation for disturbance from the regular post and for performing duties on an ex-cadre post. The matter was also referred to the Finance Ministry who have also clarified that the Special Pay cannot be taken into account either for allowances or for retiral benefits.

4. I have heard the counsel. FR-9(21)(a) reads as follows:

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"(a) Pay means the amount drawn monthly by a Government servant as--

- (i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre; and
- (ii) overseas pay, 1[] special pay and personal pay; and
- (iii) any other emoluments which may be specially classed as pay by the President."

5. FR-9(25) reads as follows:

"Special Pay means an addition, of the nature of pay, to the emoluments of a post or of a Government servant, granted in consideration of-

- (a) the specially arduous nature of the duties;
- (b) a specific addition to the work or responsibility 1[***]."

6. FR-9(31) reads as follows:

"(a) Time-scale pay means pay which, subject to any condition prescribed in these rules, rises by periodical increments from a minimum to a maximum. It includes the class of pay hitherto known as progressive.

(b) Time-scales are said to be identical if the minimum, the maximum, the period of increment and the rate of increment of the time-scales are identical.

(c) A post is said to be on the same time-scale as another post on a time-scale if the two time-scale are identical and the posts fall within a cadre, or a class in a cadre, such cadre or class having been created in order to fill all posts involving duties of approximately the same character or degree of responsibility, in a service or establishment or group of establishments, so that the pay of the holder of any particular post is determined by his position in the cadre or class and not by the fact that he holds that post."

7. It is clear from the Recruitment Rules, Annexure-A/IV that special pay forms a separate component from the pay. The condition under which the Special Pay is to be granted are laid down under FR-9(25) reproduced above, i.e., in consideration of the specially arduous nature of the duty or a specific addition to the work or responsibility. Therefore, it cannot be said that by its

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very **definition** special pay can be granted to signify promotion from a lower to an higher-post. The special pay of Rs.200/- must therefore come within the definition laid down in FR-9(25). The respondents cannot also therefore say that the special pay in this case is a disturbance allowances or a deputation allowance. If it is classified as 'Special Pay' it would be regarded as falling within the ambit of FR-9(25). As to whether this special pay is to be counted as part of pay for the purposes of DA or HRA is to be determined by the relevant Government orders. Hence if the Government has decided the special pay will not be taken into account for the purposes of DA and HRA in this specific case then the same cannot be disputed on the ground that it was not in fact a special pay but a part of the time scale of pay.

8. For the aforesaid reasons, I find no ground for interference. Accordingly, the OA is dismissed. No costs.

R.K. Ahooja
(R.K. Ahooja)
Member (A)

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