(9) CAT/7/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

OA-1792, 1826, 1833, 1841, 1856, 1857, 1859, 1861, 1872 & 1884/88

NEW DELHI

O.A. No. 199

~~T.A.No.~~

DATE OF DECISION 4.10.1991

Jogeshwar Mahanta & Ors. Petitioner

Shri D. R. Gupta Advocate for the Petitioner(s)

Versus

Union of India Respondent

Shri M. L. Verma Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. G. Sreedharan Nair, V.C.(J)

The Hon'ble Mr. P. C. Jain, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? NO
2. To be referred to the Reporter or not ? YES
3. Whether their Lordships wish to see the fair copy of the Judgement ? X
4. Whether it needs to be circulated to other Benches of the Tribunal ? X

Vice Chairman (J)

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

DATE OF DECISION : 04-10-1991

O.A. 1792/88

Jogeshwer Mahanta ... Applicant

Vs.

Union of India ... Respondents

O.A. 1826/88

D. P. Sravastava ... Applicant

Vs.

Union of India ... Respondents

O.A. 1833/88

R. K. Gupta ... Applicant

Vs.

Union of India ... Respondents

O.A. 1841/88

Varinder Kumar ... Applicant

Vs.

Union of India ... Respondents

O.A. 1856/88

Chanderesh Nigam ... Applicant

Vs.

Union of India ... Respondents

O.A. 1857/88

Rajinder Kumar ... Applicant

Vs.

Union of India ... Respondents

O.A. 1859/88

Suresh Chander ... Applicant

Vs.

Union of India ... Respondents

O.A. 1861/88

Ami Lal Taksh ... Applicant

Vs.

Union of India ... Respondents

O.A. 1872/88

P. Sharma ... Applicant

Vs.

Union of India ... Respondents

O.A. 1884/88

Dev Karan ... Applicant

Vs.

Union of India ... Respondents

Applicants through Shri D. R. Gupta, Advocate

Respondents through Shri M. L. Verma, Advocate

CORAM : HON'BLE SHRI G. SREEDHARAN NAIR, V.C. (J)

HON'BLE SHRI P. C. JAIN, MEMBER (A)

J U D G M E N T

Shri P. C. Jain, Member (A) :

The applicants in all these O.A.s are employed in the Institute of Criminology and Forensic Science (for short, ICFS), Ministry of Home Affairs, Government of India, New Delhi. Applicant in O.A. 1792/88 was Reader (Psychology) and Officiating Professor in the Institute. Applicant in O.A. 1826/88 was employed as Senior Scientific Assistant. Applicant in O.A. 1833/88 was employed as Senior Scientific Officer. Applicant in O.A. 1841/88 was employed as Laboratory Assistant. Applicant in O.A. 1856/88 was employed as Laboratory Assistant (Ballistic). Applicant in O.A. 1857/88 was employed as Senior Scientific Assistant (Serology). Applicant in O.A. 1859/88 was employed as Laboratory Assistant. Applicant in O.A. 1861/88 was employed as Laboratory Assistant (Documents). Applicant in O.A.1872/88

was employed as Laboratory Assistant. Applicat in O.A. 1884/88 was also employed as Laboratory Assistant. The applicants in all these cases have a common grievance and have also prayed for a similar relief. Their grievance is that the training allowance which was sanctioned to them, in pursuance of the O.M. dated 7.2.1986 (Annexure-I) issued by the Ministry of Personnel, Public Grievances and Pensions, vide Ministry of Home Affairs letter dated 1.7.1986 (Annexure-III) read with office order dated 30.7.1986 (Annexure-IV), has been stopped with retrospective effect from 1.1.1986 and recovery of the allowance paid for the period 1.1.1986 to 31.3.1987 has been ordered vide Ministry of Home Affairs letter dated 28.4.1987 (Annexure-VI) in pursuance of Ministry of Personnel, Public Grievances and Pensions O.M. dated 31.3.1987 (Annexure-V). The relief prayed for in all these cases is to quash the aforesaid orders of 31.3.1987 and 28.4.1987 and for a direction to the respondents to implement the original policy order in O.M. dated 7.2.1986 on revised scales from time to time with 12 per cent interest on the arrears due to them. The representations made against the impugned orders are said to have not been replied to.

2. As the applicants in all these O.A.s are employed in the same organisation, they have a common grievance, the relief prayed for is virtually identical and the issues of law and facts involved in these cases are common, it will be convenient to dispose of all these O.A.s by a common judgment.

3. The relevant facts, stated briefly, are as below :

Training Division of the Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions issued an O.M. dated 7.2.1986 (Annexure-I) in which guidelines were laid down with a view to attract the best trainer talent in the faculty of the training institutions under the control of different Ministries/ Departments. These guidelines inter-alia provide that — (1) the faculty members who join the training institutions on deputation (emphasis supplied), their emoluments may be raised by 30% of the total emoluments which they would be getting in their cadre, while posted in the field; (2) so far as permanent faculty members of training institutions were concerned, suitable proposals for enhancement of their pay/special pay on similar lines should be worked out by the Department concerned (emphasis supplied); (3) other things being equal, those who have had a successful tenure on the faculty of training institutions may be given preference in matters like promotion, and on the completion of the tenure with the training institutions, each officer should be given the facility of three options relating to his next posting and the Department concerned would arrange for posting according to the option exercised by the officer; and (4) each child of the member of the faculty continuing his education at a centre other than the place of training institution, should be given leave travel concession twice a year, to be able to join his parents. It was also stated in this O.M. that "this Ministry may please be kept informed of action taken in this regard from time to time".

4. In pursuance of the above O.M., Ministry of Home Affairs issued O.M. dated 19.2.1986 (Annexure-II) asking for information/particulars prescribed theirin in respect

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of the training institutions under the control of the respective CPOs by 28.2.1986. The Ministry of Home Affairs conveyed the decision of the President to the Director, ICFS in the letter dated 1.7.1986 (Annexure-III) which letter inter-alia provided for payment of training allowance in respect of the members of the teaching/ training faculty of the academy (i.e., Director, Additional Director, Professor, Superintendent of Police, Assistant Directors, Readers, Lecturer, Senior Scientific Assistants and Laboratory Assistants). In respect of the members of the teaching/training faculty, who were on deputation, the training allowance was to be paid at the rate of 30 per cent of the emoluments received in the parent cadre in the last posting, reduced by the amount of emoluments based on special pay admissible in the Institute on deputation, and in respect of the members of teaching/training faculty other than deputationists, at the rate of 30 per cent of the emoluments. There was no maximum ceiling but this was not to form part of 'pay' as defined in F.R.9(21) but will count for the purpose of leave salary. Each chile of the member of the faculty continuing his education at a centre other than New Delhi/Delhi, was to be given leave travel concessions twice a year, to be able to join his parents. These orders were to take effect from 1.1.1986 but were made subject to other general or specific orders issued by the Government from time to time on the subject. (Emphasis supplied).

5. In pursuance of MHA's letter dated 1.7.1986 (supra) an office order was issued by IEFS (Annexure-IV) conveying the sanction of the Director to the grant of training allowance as admissible under the aforesaid letter of the MHA w.e.f. 1.1.1986. The names of all the applicants in the cases before us are included in the list of 18 persons mentioned in this office order.

6. The Training Division of the Department of Personnel & Training issued an O.M. dated 31.3.1987, to all Ministries/Departments of Government of India with reference to their O.M.s of even number dated 7.2.1986, 17.4.1986 and 3.6.1986. It was stated therein that taking into account the introduction of the Fourth Pay Commission pay scales and the various references received from the Ministries/Departments, revised guidelines were issued in supersession of the previous OMs from the Ministry referred to above. It was inter-alia provided in these revised guidelines that (1) when an employee of the Government joins a training institution meant for training Government officials, as a faculty member other than as a permanent faculty member (emphasis supplied), he will be given a training allowance at the rate of 30 per cent of his basic pay drawn from time to time in the revised scales of pay; (2) the training allowance will not form part of 'pay' as defined in F.R. 9(21) but will count for purposes of leave salary; (3) the training allowance will be admissible to faculty members whose work is to impart training/teaching and not to others; (4) these guidelines will not be applicable to the faculty members recruited specifically for training institutions; (5) that incentive outlined in this O.M. and consequential orders will take effect from 1.1.1986 in so far as these relate to training institutions

primarily meant for training Group 'A' officials and from January, 1987 for training institutions primarily meant for training other officials; and (6) each Ministry/ Department will issue orders in pursuance of these guideline in consultations with their Integrated Finance. It was in pursuance of the revised guidelines in this O.M. that the Ministry of Home Affairs issued orders on 28.4.1987 (Annexure-VI) in supersession of the sanction earlier issued. These orders are in consonance with the revised guidelines issued by the Ministry of Personnel etc. As a result the training allowance earlier sanctioned by the MHA was stopped w.e.f. April, 1987 and onwards to the faculty members recruited specifically for training institutions and recoveries of payments made to them till then were directed to be made. The MHA also made their orders effective from 1.1.1986 and until further orders.

7. It may also be stated here that the prayer for interim relief to the effect that the recovery of training allowance already paid from 1.1.1986 to 31.3.1987, be stayed till the final decision in the O.A., was specifically declined in O.A. 1859/88 by the Tribunal vide order dated 10.11.1988, and that no order granting interim relief was passed in O.A. Nos. 1792/88, 1872/88, 1884/88, 1833/88 and 1841/88. In other cases the recovery of the training allowance already made was stayed.

8. The respondents have contested all the cases by filing their return.

9. We have perused the material on record and also heard the learned counsel for the parties.

10. The applicants have assailed the impugned orders dated 31.3.1987 and dated 28.4.1987 on the grounds : (1) that no reasonable opportunity was given to explain before the training allowance was terminated; (2) that paying the training allowance to the deputationists and not to the regular incumbents/direct recruits is violation of Articles 14, 16 and 39 (d) of the Constitution; (3) that an executive order cannot be made effective retrospectively either from 1.1.1986 or from 1.4.1987; (4) that the impugned orders defeat the purpose of improvement in service conditions which was the object of the orders in regard to payment of training allowance; (5) and that severe injustice has been caused by depriving the applicants of the training allowance.

11. When the applications were filed, only the Union of India (through the Ministry of Personnel, Public Grievances and Pensions) was arrayed as the respondent. This respondent in its return raised some preliminary objections. One of the preliminary objections was that the O.A. is bad for non-joinder of Ministry of Home Affairs. Later on the applicants moved miscellaneous petitions for adding (1) the Secretary to the Government of India, Ministry of Home Affairs, and (2) the Director, ICFS, as additional respondents. These petitions were allowed and as such, this preliminary objection is no more sustainable. Another preliminary objection was that the O.A.s are barred by sections 20 and 21 of the Administrative Act, 1985. This objection can also not be sustained for the simple reason that the applicants have made representations against the impugned orders to which no reply is shown to have been given and as such there is

no violation of the provisions of section 20 of the Act ibid. Secondly, the O.A.s having been filed within limitation, these cannot be barred under section 21 of the Act ibid. Another preliminary objection is that no cause of action had accrued in favour of the applicants against the respondent No.1, and that an illegal order passed in contravention of the rules cannot confer a right on the applicants to claim that the illegality be continued in their case. Whether one of the impugned orders is illegal or not will be dealt with hereinafter, but the mere fact that one of the impugned orders has been issued by the MHA, who has since been made a respondent, this objection raised as preliminary objection on behalf of the original respondent has to be rejected.

12. The case of respondent No.1, e.g., Ministry of Personnel, Public Grievances and Pensions, on merits, is that the O.M. dated 7.2.1986 as partly amended by O.M. dated 17.4.1986 (Annexure-VIII), never sanctioned training allowance to the faculty members directly recruited for the faculty posts in the ICFS. It may be stated here that the amendment vide O.M. dated 17.4.1986 does not relate to the main issue before us as it deals only with the definition of total emoluments on the basis of which 30 per cent increase was to be allowed to faculty members other than the permanent faculty members of the training institutions. It is also stated that the need to grant training allowance by way of attracting serving Government servants as deputationist faculty members had arisen because of the following facts :

> "i) In most of the training institutions, there has been constant and consistent feedback from the participants that the lectures by permanent faculty members are theoretical and academic and that the lectures should be made more practical for the participants who are serving Govt. Servants.

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ii) In order to impart this practical orientation it is necessary to get faculty members on deputation who are serving Govt. Servants and can bring the practical idiom to their lectures.

iii) Such Government Servants are practising administrators not specifically recruited as trainers and are not willing to come over to Training Institutions as faculty members on deputation.

iv) It is, therefore, necessary to attract them by offering them over and above the normal deputation terms, a special incentive by way of training allowance. Such faculty members have been recruited specifically for the job of training and they are fully aware of this fact while joining the Institute.

v) For several years officers who have been going as faculty to their own cadre Training Institutions have been receiving special pay even though these were not deputation posts, as a measure of incentive.

vi) This would not be the case for permanent faculty member as such faculty members have been recruited specifically for the job of training and they are fully aware of this fact while joining the Institute.

It is, therefore, only in the case of deputationists that it was considered necessary to give 30% training allowance in order to attract the best talent suited for faculty job outside their normal scope of vocation."

The contention about violation of Articles 14, 16 and 39(d) of the Constitution has been refuted. It is further stated that no evil has visited the applicants as a result of the guidelines issued by the respondent No.1.

13. In the return filed on behalf of the newly added respondents No.2 and 3, a preliminary objection has been raised that respondents No.2 and 3 have been impleaded when the cause of action against them became time barred. This preliminary objection cannot be sustained

as the misc. petitions for adding respondents No. 2 and 3 were allowed by the Tribunal. In their reply it is stated that the training/teaching faculty in any training institution under the Government of India consists of two categories of members — (1) regular members who are specifically recruited for faculty posts, and (2) members who are deputationists from other departments of the Government of India, and till 1.1.1986, the regular members of the faculty were drawing pay in the scale sanctioned for such faculty posts, while deputationists members were allowed deputation allowance at certain prescribed rates in addition to their grade pay in their parent departments or their pay was fixed in the pay scale of the deputation post under the normal rates of pay fixation. It is further stated that according to the guidelines issued by the Ministry of Personnel on 7.2.1986 as amended by O.M. dated 17.4.1986, the incentive for the deputationist members of the faculty was to be in the form of an enhancement of their "emoluments" (as defined in the said O.M.s) in their parent cadre by 30 per cent and subject to other conditions as laid down therein. As for the permanent (i.e., regular) members of the faculty, these guidelines envisaged formulation of suitable proposals for enhancement of their pay/special pay on similar lines by the respective departments. It is emphasised that in para 4 of the sanction letter of July, 1986, it was made clear that these orders were subject to other general or specific orders issued by the Government from time to time on the subject. It is also stated that the guidelines issued earlier were specifically revised by the Department of Personnel & Training vide their O.M.

dated 31.3.1987 taking into account the introduction of the Fourth Pay Commission pay scales, and these revised guidelines were effective from 1.1.1986 and were to be followed by all Ministries/Departments of Government of India. It is in accordance with the revised guidelines that the impugned orders dated 28.4.1987 were issued by the Ministry of Home Affairs.

14. To take up the contention which has been raised by respondent No.1 as a preliminary objection that an illegal order passed in contravention of the rules cannot confer a right on the applicants to claim that the illegality will continue in their case, it may be stated that in the O.M. dated 7.2.1986 addressed to all Ministries/Departments of the Government of India, the Ministry of Personnel, Public Grievances and Pensions had only stated that suitable proposals for enhancement of the pay/special pay of permanent faculty members of training institutions on similar lines should be worked out by the Department concerned. It is on this basis that the contention of respondent No.1 seems to be that the Ministries and Departments were probably not authorised to issue any orders about training allowance to the permanent faculty members of such institutions. While it is true that in the aforesaid O.M. specific directions in regard to the package of training allowance had been mentioned in respect of faculty members who join training institutions on deputation only, yet specific orders were issued by the MHA in their letter dated 1.7.1986 in regard to the permanent faculty members also, and a copy of the same had been endorsed to the Training Division of the

Department of Personnel & Training with reference to their O.M. of 7.2.1986, but the Department of Personnel & Training does not appear to have raised any objection. Further, the sanction letter issued by the MHA on 1.7.1986 states that this was being issued as per the decision of the President. In this view of the matter, it is not possible to hold that the order dated 1.7.1986 issued by the MHA was illegal; at best it may be considered as irregular.

15. One of the main grounds of attack taken up by the applicants is the plea of discrimination and violation of Articles 14, 16 and 39 (d) of the Constitution inasmuch as the training allowance has been continued for the deputationists while it has been withdrawn in case of the permanent faculty members. They have also cited the case of Telecommunication Research Centre Scientific Officers (Class I) Association & Ors. vs. Union of India & Ors. (SLJ 1987 (3) 84) in which their lordships of the Supreme Court had held that when the direct recruits and the transferred Field Officers Group 'A' working in the Telecommunication Research Centre discharge the same functions and duties, the qualifications for recruitment prescribed in the case of both classes are the same, and they were in the same pay scales at the comparable levels/ grades, it was not justified to deny special pay to one and pay it to one. It is axiomatic that the doctrine of equality before law and equal protection of law as enshrined in Article 14 of the Constitution is applicable only to those who are similarly placed and that there can be no equality between unequals. Applicants have not stated that all the factors referred to in the cited case are equal in the cases before us. There is no

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material on record to show that the qualifications prescribed for the deputationists for their recruitment to their parent cadre and the qualifications prescribed for recruitment of the permanent faculty members are identical or equal. Similarly, no parity in their pay scales at various levels or grades depending on the posts held by the various applicants has been established or even shown. It can also not be said that the Recruitment Rules applicable to the two categories of staff were the same. All the parameters of the incentive scheme as annunciated in the guidelines issued by the Ministry of Personnel, Public Grievances and Pensions clearly highlight the differences between the two groups and the difference in the basic concept. Thus the plea of discrimination cannot be upheld.

16. A contention has been raised by the applicants that withdrawal of training allowance amounts to change in the conditions of service. Obviously no rules in regard to the introduction of payment of training allowance exist as none has been referred to in the pleadings of the parties nor any such rules have been produced before us. The O.M.s issued by the Training Division of the Department of Personnel & Training clearly show that these were guidelines issued to all the Ministries/Departments of the Government of India. These are undoubtedly administrative in nature and cannot be deemed to have created any vested right in favour of the applicants. Moreover, the orders issued by the Ministry of Home Affairs on 1.7.1986 clearly state in para 4 thereof that these are subject to other general or specific orders issued by the Government from time to time on the subject. Social, political and economic environment in the country keeps on changing and in such a dynamic situation policies

of the Government cannot remain static. It is inherent in such a situation that policies undergo change from time to time depending on the requirements of the situation both from macro and micro points of view. It cannot, therefore, be said that the Ministry of Personnel, Public Grievances and Pensions did not have the inherent right to revise the guidelines. The reasons for revision are specifically mentioned in the impugned O.M. dated 31.3.1987, eg., introduction of new scales of pay pursuant to the recommendations of the Fourth Pay Commission and the various references received from Ministries/Departments. For making revision in the guidelines or in other policy matters in such a situation it is not warranted that all concerned with the matter should be consulted in advance before bringing about the changes in the policy or in the guidelines. Even if the training allowance were to be considered as a part of contitions of service, which in our opinion it is not, even then the Government was competent to effect the change in policy/ guidelines. A Constitutional Bench of the Supreme Court in the case of Roshan Lal Tandon vs. Union of India & Ors. (AIR 1967 SC 1889) held that "Terms of service can be altered unilaterally by the Government" and that there was no vested contractual right for the Government servant. It was further held that "the legal position of a Government servant is more one of status than of contract", and "The hall mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement by the parties."

17. Another ground of attack is that an executive order cannot be made effective retrospectively. This contention of the applicants has to be upheld as it is

well settled that while a legislation can be enacted to have retrospective effect, an administrative order can be effective only from the date of issue.

18. The applicants have impugned two orders — (1) the O.M. dated 31.3.1987 by which revised guidelines were issued by the Ministry of Personnel, Public Grievances and Pensions, and (2) the orders issued by the MHA on 28.4.1987, which directly concerned the applicants herein. It is, therefore, not necessary to even partly quash the revised guidelines issued by the Ministry of Personnel, Public Grievances and Pensions; it would suffice to strike down the following words in para 5 of the orders dated 28.4.1987 (Annexure-VI) :-

"These orders will take effect from 1.1.86"

19. In the light of the foregoing discussion, all these applications are disposed of with the direction that the words "These orders will take effect from 1.1.86" in para 5 of the Ministry of Home Affairs letter No. F.No.27012/5/86-FP.I dated 28th April, 1987 (copy annexed at Anexure-VI) are struck down as illegal. Consequently the applicants shall be entitled to the training allowance sanctioned to them vide Ministry of Home Affairs letter No.27012/42/85-FP.I dated 1st July, 1986 (copy annexed at Annexure-III) read with office order No.3/6/86-ICFS dated 30th April, 1986 (copy annexed at Annexure-IV), issued by the Institute of Criminology & Forensic Science, w.e.f. 1.1.1986 till 27.4.1987, i.e., the date immediately preceding the date on which the revised orders were issued by the Ministry of Home Affairs. The other reliefs

prayed for by the applicants are disallowed. In the facts and circumstances of the case we leave the parties to bear their own costs.

A copy of this order may be placed on the file of each of these O.A.s.

(P. C. JAIN)
MEMBER (A)

4.X.1991

(G. SREEDHARAN NAIR)
VICE-CHAIRMAN (J)