

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 763/88
T.A. No.

199

DATE OF DECISION

15.9.1993

Shri S.N. Paracer & Ors.

Petitioner

Shri S.R. Virmani, one of

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri P.H. Ramchandani,

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. I.K. Rasgotra, Administrative Member

The Hon'ble Mr. J.P. Sharma, Member (Judl.)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

ORAL JUDGEMENT

(By Hon'ble Mr. I.K. Rasgotra, Member)

Shri S.N. Paracer and 18 others have filed this application, aggrieved by the order of the respondents dated 21.4.1988 withdrawing the Special Pay which was being paid to them w.e.f. 2.9.1986 retrospectively. The petitioner No.13, Shri S.K. Virmani, appeared in person and argued the case on behalf of the petitioners. The principal contention of the petitioners is that there is no change in the duties and responsibilities which they

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were shouldering prior to the order of 21.4.1988 and after the order of 21.4.1988. In fact, they continued to perform the same functions and responsibilities. In that view of the matter, the action of the respondents to withdraw the Special Pay which was being paid to them, is not legally maintainable. The petitioners accepted that while the respondents have the right to withdraw the Special Pay in the changed circumstances, viz., reorganisation of the office, with prospective effect, they cannot do so retrospectively. The petitioners, therefore, prayed that they would be satisfied if the impugned order is set aside to the extent it contemplates to recover the Special Pay paid during the period from 2.9.1986 to 21.4.1988.

2. The stand of the respondents in their counter-affidavit is that with the creation of Superintending Surveyor of Works (Electrical), a Field Planning Circle was set up. This Field Planning Circle does not constitute a part of the Headquarters. The Special Pay being paid to the petitioners was, in fact, a Headquarters Allowance when there was no separate Field Planning Circle and the Planning Circle was part of the Office of the Chief Engineer (Elec.). The Headquarters Allowance cannot be continued to be paid to them after they ceased to be part of the Headquarters Office w.e.f. 2.9.1986. The respondents contend that the Headquarters Allowance/Special Pay should have been automatically withdrawn after the formation of Field Planning Circle w.e.f. 2.9.1986. The short question which arises from the above pleadings is whether the respondents are justified in withdrawing the Headquarters Allowance/Special Pay retrospectively w.e.f. 2.9.1986.

If the Field Planning Circle was set up w.e.f. 2.9.1986 as a Field Unit, it was for the respondents to have passed orders simultaneously withdrawing the Headquarters Allowance/Special Pay. This was not done. Payment of Headquarters Allowance/Special Pay was continued to be made to the petitioners right upto 21.4.1988. They were under the bona fide impression that their responsibilities and duties have remained the same and their posts also continued to remain at the same station and, therefore, they would continue to receive the same compensation/which they were getting prior to the reorganisation of the establishment. The respondents, having failed to take action simultaneously with the reorganisation of the office, in stopping the payment of Headquarters Allowance/Special Pay, over a period of time, cannot transfer the blame on to the petitioners. There cannot be any automatic withdrawal of a privilege which is conferred by an order on the Government servant. It has to be withdrawn by passing a specific order. This specific order was passed in case d this, on 21.4.1988. In that view of the matter, the withdrawal of the Headquarters Allowance/Special Pay should also be given effect from the same date. The order, in our opinion, should have been made to take prospective effect. It would not be fair, ~~and~~ just

and equitable to make an order retrospectively, causing financial hardship to the Government servants.

3. In view of the above facts and circumstances of the case, we set aside the order to the extent
~~which~~ ^{it} purports to withdraw and recover the Special Pay/Headquarters Allowance w.e.f. 2.9.1986. The order dated 21.4.1988 shall be effective with effect from the date of issue of the order. No costs.

J.P. Sharma
Member (J)

I.K. Rasgotra
Member (A)