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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA No. 681/86 ..

Date of decision: 05.02.93

Sh. Des Raj Bhargava ..

Applicant

Versus

Union of India & Others..

Respondents

For the applicant ..

Applicant in person.

For the respondents ..

Mrs. Rajkumari Chopra,

Counsel.

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Hon`ble Sh. P.K. Kartha, Vice Chairman (J)

Hon`ble Sh. B.N. Dhoundiyal, Member (A)

1. Whether Reporters of local papers may be
allowed to see the judgement? *Yes*

2. To be referred to the Reporters or not ? *Yes*

J U D G E M E N T

(Of the Bench delivered by Hon`ble Sh. B.N.

Dhoundiyal, Member(A)

The applicant, Sh. Des Raj Bhargava is aggrieved by the impugned orders dated 29.5.1986 and 11.7.1986 whereby his revised enhanced pension taking into account the special pay drawn by him was cancelled and recoveries were ordered to be made. *Yes*

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2. The applicant retired on 30.4.1984 as Senior Barrack Stores Officer (Group A-scale Rs. 1100-1600) from Engineer-in-Chief's Branch, Army Head Quarters, New Delhi. During his tenure on that post, he was in receipt of a special pay of Rs. 200/- p.m. which was based on the accepted recommendations of the 3rd Pay Commission. Originally the special pay was not taken into consideration while fixing his pension. This was done vide a corrigendum issued by C.D.A. Allahabad on 10.1.1985. After two years of his retirement, the impugned orders dated 29.5.86 and 11.7.86 were issued reducing his pension and ordering recoveries for the past payments. He has prayed for the following reliefs :

"(a) That the respondents be directed not to cancel the PPO dated 10.1.85 (Annexure C), as he was in receipt of special pay of Rs. 200/- before retirement and pensionary/terminal benefit till now. Accordingly, impugned orders dated 29.5.86 and 11.7.86 be quashed as being arbitrary and illegal, apart from not affording any opportunity under the principles of natural justice.

(b) That the Hon`ble Delhi High Court in CW 176/1979 allowed the special pay of Rs.200/- p.m., against which the Respondents did not file any appeal; further in CWP No. 887 of 1983 decided on July 11, 1984 the Hon`ble Delhi High Court (Annexure F) again adversely commented against the U.O.I. for increasing litigation for which it burdened them with costs- Counsel's fee Rs.1,000/-.

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(c) In view of the foregoing, he submits that apart from quashing the impugned order (Annexure D), the UOI be burdened with costs - Counsel's fee of Rs. 1,000/- alongwith interest at 18% for delayed payments on pensionary benefits: SC's ruling refers. "

3. On 17.9.86, this Tribunal issued an interim order staying recovery pending further orders on the petition. On 8.1.87, this order was made absolute.

4. The respondents have contended that the HeadQuarter special pay given to the applicant from 1.9.83 to 30.4.84 was not found admissible to him as the special pay is admissible to Class I Officers of the organised service only. The SBSOs do not belong to Class I organised services. A revised L.P.C. was, therefore, issued by C.D.A. Head Quarters, Sena Bhavan, New Delhi to CDA (P) Allahabad for deletion of the special pay. The reduction in pension and the recovery of over paid amount was correctly notified. The judgement of the Hon'ble High Court referred to by the applicant was applicable only to the petitioners in that Writ Petition. In any case, the judgement of the Single Judge was stayed vide order dated 14.11.84 by a Division Bench of the Delhi High Court till the disposal of L.P.A. 121/84.

5. We have gone through the records of the case and heard the learned counsel for the parties. The question whether S.A.Os/S.B.S.Os/P.B.S.Os are entitled to special pay on the

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basis of resolution dated 1.5.1974 of the Government of India accepting the recommendations of the Third Pay Commission has been considered by the Division Bench of the Hon'ble High Court of Delhi while considering L.P.A. 121/84 (U.O.I. Vs. Sh. K.R. Swami & Others). In their judgement dated 23.8.91, the High Court referred to Rule 7 of C.C.S.(CCA) Rules which reads as under :

"7. Central Civil posts of any class not included in any other Central Civil Service shall be deemed to be included in the General Central Service of the corresponding class and a Government servant appointed to any such post shall be deemed to be a member of that service unless he is already a member of any other Central Civil Service of the same class. "

It was held that CCS(CCA) Rules do recognise General Central Service Class I and the petitioners in any case would be deemed to be members of the General Central Service Class I and, thus, entitled to special pay. CWP 176/79 filed by some of their colleagues had been decided by a Single Judge who issued a Writ of Mandamus directing grant of special pay to them. No appeal had been filed against that judgement which had become final. It was held that the Government remained bound by the principles laid in Writ petition No. 176/79 which assumed finality. It was also observed that once such judgements have become final, the Government should apply the principle laid therein to all similar cases. 4y

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6. We respectfully reiterate the above views. The application is, therefore, disposed of with the following orders and directions:

- (i) The impugned orders dated 29.5.86/11.7.86 (Annexure D of the OA) are hereby set aside and quashed. The applicant shall continue to draw his pension as per P.P.O. dated 10.1.85 (Annexure C) whereby special pay of Rs. 200/- p.m. has been taken into account while fixing his pension.
- (ii) Any recoveries made or payments delayed shall be refunded to the applicant immediately. An interest of 12% shall be payable from the due date to the date of actual payment.
- (iii) The respondents shall comply with the above directions expeditiously and preferably within a period of 3 months from the date of receipt of this order.

There will be no order as to costs.

B.N. Dhoundiyal
(B.N. Dhoundiyal) 5/2/83.

Member(A)

P.K. Kartha
(P.K. Kartha) 5/2/83

Vice Chairman(J)