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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

OA No.712/86
O.A. No.1628/90 198
T.A. No.

DATE OF DECISION 30.11.90.

1.Shri Rameshwar Dayal & 16 Ors. Petitioner
2.Shri R.S.Sagar & Ors.

Mrs. Subhadra Chaturvedi, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

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

CORAM :

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

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

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

MGIPRRND—12 CAT/86—3-12-86—15,000

(J.P. Sharma)
Member(Judl.)

(P.C. Jain)
Member(Admn.)

Central Administrative Tribunal
Principal Bench: New Delhi.

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Date of Decision: 30.11.90

1. Regn.No.OA-712/86

ShriRameshwar Dayal & 16 Ors. ....Applicants.

Vs.

Union of India & Ors. ....Respondents.

2. Regn.No.OA-1628/90

Shri R.S.Sagar & Ors. ....Applicants.

Vs.

Union of India & Ors. ....Respondents.

For the applicants ....Mrs.Subhadra Chaturvedi, Advocate.

For the respondents ....Shri M.L.Verma, Advocate.

CORAM: Hon'ble Shri P.C.Jain, Member(Administrative)
Hon'ble Shri J.P. Sharma,Member(Judicial)

JUDGEMENT

(Delivered by Hon'ble Shri J.P.Sharma)

The applicants, technicians,originally working in Delhi Telephones, joined on deputation as Instructors, Telecommunications Training Centre (TTC) in the office of General Manager, ALTTC, Ghaziabad. The applicants were getting Rs.30/- per month as special pay till 31.3.86 but the same has been withdrawn with effect from 1.4.1986, in spite of the fact that the applicants continued to discharge the same functions and responsibilities which they were performing as Instructors till 31.3.1986. In the T.T.C. Mukerji Nagar, Delhi the technicians were still getting Rs.30/-p.m. as special pay.

2. The applicants in OA-712/86 assailed the order dated 16.12.1985 and the applicants in OA-1628/90, assailed the same order dated 26.12.1985 and a subsequent order dated 20.6.1990 regarding the repatriation to their parent department. The order dated 26.12.1985 is the order issued by respondent No.3 by which technician Instructors in TTC were stopped from getting Rs.30/- per month as psecial pay from 1.4.1986.

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3. The applicants claimed the following reliefs: In OA-712/86, the applicants have prayed for quashing of the order dated 26.12.1985(Annexure-A-1) and a further direction to the respondents for payment of special pay of Rs.30/- per month to the applicants with effect from 1.4.1986. In OA-1628/90, the applicants have prayed(a) for quashing of the order dated 20.6.90 repatriating the applicants to their parent unit, (b) to direct the respondents to treat all the applicant technicians as entitled to receive the special pay of Rs.30/- p.m. and pay them the arrears also of such pay for the period starting from 1.4.1986 till the date of payment of such arrears, (c) to direct the respondents to pay 30% of the basic pay of the applicants as incentive allowance w.e.f. 1.1.1986 as per para 2(xii) of D.O.P.&T. No.12017/2/86/Training (TNP) dated 31.3.1987, (d) to declare para 2(xii) unconstitutional and discriminatory in payment of the 30% of the basic pay as instructional allowance with different dates to the officials and non-official staff.

4. The facts in both the cases are similar as well as the grievances of the applicants are also the same, so both the cases are being dealt with together and decided by a common judgement.

5. In both the applications as said above, the applicants are technicians in Delhi Telephones and are on deputation at ALTTC, Ghaziabad. In the said institution, the applicants are performing the functions of Instructors. Work of the Instructors is also being done in the said institution by Technical Supervisors who are indisputably in higher scale than that of the applicants. The Technical Supervisors posted as Instructors in ALTTC get special pay at the rate of Rs.30/- p.m. was also being allowed to the applicants since the time they were performing the functions and responsibilities of Instructors in ALTTC. However, by the O.M. dated 26.12.1985

which is Annexure A-1, in OA-712/86 and Annexure A-2 in OA-1628/90, the same has been withdrawn with effect from 1.4.1986, although, the applicants continued to discharge the same functions and responsibilities which they were performing till 31.3.1986. Special pay is, however, being allowed in the T.T.C. Mukherji Nagar, Delhi. The applicants have challenged this discrimination on the ground that they are being denied equal pay for equal work as enshrined in Article 39(d) of the Constitution of India and that it is also in conflict with the various decision of the Hon'ble Supreme Court, Randhir Singh Vs. Union of India, AIR 1982 SC 879, Narottam Ram Vs. State of Himachal Pradesh,1981(2) SLR 847. When the applicants made a representation, D.E. (Admn.), ALTTC, Ghaziabad, wrote to A.D.G.(TE) on 24.4.1986 (Annexure A-3) recommending the case of the applicants for awardind special pay.

6. In OA-1628/90 also which was filed on 6.8.90 by another set of six applicant Technicians working in ALTTC, a similar relief for quashing the aforesaid order dated 26.12.85 (Annexure A-2) has been prayed. In addition, they have also prayed for quashing the order of transfer dated 20.6.90(Annexure A-1) by which the applicants amongst others named therein were ordered to be repatriated to their respective parent units after completing their tenure stay in ALTTC, Ghaziabad. They have also prayed for a direction to the respondents to pay 30% of the basis pay as incentive allowance with effect from 1.1.1986, as per D.O.P.&T. dated 31.3.1987 (Annexure A-9). It is stated by the applicants that there are 58 posts of technicians and only 49 technicians including Supervisors are working in ALTTC, Ghaziabad and, therefore, there is no administrative need to disturb or dislodge the applicants. It is also stated that para 4 of O.M. dated 15.5.1987, issued by the Ministry of Communications (Annexure A-4), clearly enjoins that the normal tenure will be five years in the Training Centre with effect from 1.4.87.

Further, there are certain benefits which accrue to the technicians who successfully complete their tenure in ALTTC or other training centres in pursuance of O.M. issued by Department of Personnel and Training dated 31.3.1987, wherein better view is taken for promotion to the next grade and also three options are to be given for the next posting. In view of the above, it is said that the repatriation order dated 20.6.90 is arbitrary and malafide.

7. It is also stated by the applicants that by D.O.P.&T O.M.No.12017/2/86/Training (TNP), dated 31.3.1987 (Annexure A-7 for improvement in service conditions of faculty members in training institutions, training allowance at the rate of 30% of the basic pay has been allowed. The training allowance will be admissible to the faculty members who join on deputation. According to the O.M. dated 11.1.1989, only those faculty members who are already drawing special pay against posts specifically sanctioned with special pay for instructional duties and are engaged in teaching are to be considered for the grant of training allowance. Thus, according to the applicants non-payment of Special Pay/ instructional allowance is arbitrary, illegal and discriminatory. However, the respondents have agreed to pay incentive allowance with effect from 25.8.1989 as per letter at Annexure A-8. Further, it has been provided in the O.M. dated 11.1.1989 that "In accordance with para 2(xii) of the O.M. dated 31.3.1987, the incentive may be given effect to from 1.1.1987 for Training Institutions primarily meant for training officials other than Group 'A' officials." It is further stated that the incentive may be admissible from 1.1.1986 in the training institutions primarily meant for Group 'A' officials and from 1.1.1987 for training institutions primarily meant for of other officials. The grievance of the applicants, therefore, is that they have not been given institutional allowance from 1.1.1986/1.1.1987 till 25.8.89 and also the special pay was not allowed to them from 1.4.86

till 25.8.1989. The applicants in OA-1628/90 have filed O.M. No.61/1/83/Training dated 15.5.87(Annexure A-4) giving the guidelines for selection and posting of principals and lechurers in RTTC, DTTC etc. By this the applicants want to show that the normal tenure of five years in the training centre shall be adopted from 1.1.1987. The period for a station tenure of 8 years would be considered as the criteria for identifying the staff to be transferred out of the training centre even at present. The guidelines also lay down that the meritorious staff shall be selected otherwise also competent to give instructions in the training centres.

8. The respondents contested the application by filing their reply separately in both the OAs. In OA-712/86, the respondents took a preliminary objection that the application is not maintainable as the same is bad for misjoinder of petitioners and respondents. The point of territorial jurisdiction of the Principal Bench at Delhi was also taken as the applicants are posted at Ghaziabad which comes within the territorial jurisdiction of the Allahabad Bench of Central Administrative Tribunal. It is admitted by the respondents that the technicians posted as Instructors in ALTTC,Ghaziabad were paid special pay at the rate of Rs.30/- per month up to 31st March,1986 and as per the decision of the department, the same was stopped thereafter because technicians were to be replaced by Technical Supervisors, but that could not be done "due to being non-recruiting circle." It is further stated that the case is still under consideration of the department and the application filed is pre-mature and liable to be dismissed on this ground and the application is also hit by Section 20 of the Administrative Tribunals Act,1985

9. In the rejoinder filed by the applicants, it is stated that under Rules 7 and 19 of the Central Administrative Tribuna (Procedure)Rules,1987 there can be a joint application by

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several persons having a common cause. As regards territorial jurisdiction it is said that the impugned order had been issued by the authorities at New Delhi so the jurisdiction lies with the Principal Bench.

10. A Division Bench of the Tribunal passed the following order in OA-712/86 on 12th March,1990: "When the case was called out today, neither the applicant nor his counsel appeared. Shri M.L.Verma stated that the O.A. has become infructuous inasmuch as the applicant Shri Rameshwar Dayal has since been transferred to Bareilly on his own request and that the Special Pay @ Rs.30/- per month is being paid to the Technicians posted in the Chief General Manager, Advanced Level Telecom. Training Centre, Government of India, Ghaziabad.

In view of the above, it appears that the applicant has been granted substantial relief and he is not interested in pursuing his case. Consequentialy, this O.A. is disposed of accordingly." However, on the application of the learned counsel for the applicants this ex-parte order was set aside. The applicants filed an additional affidavit contending that the applicants are fighting for their special pay w.e.f. 1.4.1986 while the respondents have agreed to pay them from August, 1989, as instructional allowance and not the special pay. In their counter affidavit in para vii, the respondents have admitted that "Till the technicians are not replaced by technical supervisors, the special pay may be granted by the department. This case has already been taken up with the Directorate and is under consideration for grant of special pay for some more time." It is, further stated in the additional affidavit of the applicants that the petitioners have been deprived of the benefit of instructional allowance vide O.M. dated 11.1.1989(Annexure-2). Further O.M. dated 25.8.1989 (Annexure P-1) allows instructional allowance to the Technicians. It is, however, stated that

the D.O.P. & T O.M. No.12017/2/86 Trg.(TNP) dated 31.3.1987 (Annexure P-3) para 2 sub-para (I) allows training allowance at the rate of 30% of the basic pay to an employee of Government joining a training institution meant for training Government officials as faculty member excepting a permanent faculty member. Thus, in any case, the applicants are entitled to special pay of Rs.30/- per month from 1.4.1986 to 1.1.1987 and instructional allowance of 30% of the basic pay from 1.1.1987. In the alternative it is also stated that the applicants may be given instructional allowance from 1.1.1986 but the applicants have already been paid special pay of Rs.30/- p.m. upto 31.3.1986.

11. In OA-1628/90, the respondents have filed the reply stating almost the same objections as taken in OA-712/87. It is contended that a joint application for plural reliefs has been filed which is not permitted under Rule 10 of the Central Administrative Tribunals (Procedure) Rules,1987 and have supported the contention by the authority B.A.Sarjaro Vs. Union of India, 1988(1) SLJ Jabalpur page 102. Further, it has been stated that the feasibility or propriety of transfer is beyond the scope of the Tribunal as held in Harish Chandra Srivastava Vs. Union of India,1987(4)ATC(All) 638, AIR 1989 SC page 1774, Union of India Vs. H.N.Kirtania. In the same journal at page 1433, the case of Gujarat Electricity Board Vs. Atmaram Sungomal Pashani has been reported. It is stated that in view of the above authorities, the applicant first should make a representation and if the transfer order is not stayed, the public servant must carry ou the transfer order. Regarding the special pay to the technicians, it is said that it is a matter of payment by the Central Government, department of Telecom,Ministry of Communication and Finance. It is admitted by the respondent in para XI at page 6 of the reply that the matter of special

pay is a matter of policy and is under consideration in the Ministry of Finance and Communication at the Centre who have to chalk out the policy being the Competent Authority. Regarding the stand of the applicant for 'equal pay for equal work',the respondents have clearly stated that the matter of equalness of post and pay scale should be left to the sound judgement of the expert bodies like the Pay Commission and in this connection have placed reliance on the under noted authorities.*

12. We have heard the learned counsel for the parties at length and have gone through the record of the case. As regards relief No.(a) of OA-1628/90, for restraining the respondents from giving effect to the impugned letter (repatriation) dated 20.6.90 has not been pressed by the learned counsel for the applicant.

13. Regarding the entitlement of the applicants to special pay from 1.4.1986, which has been allowed in other Training Centres, like the Training Centre at Mukerji Nagar, Delhi or to Technical Supervisors. The respondents have, however, admitted in their reply that the matter of paying special pay to the technicians working in the Training Centres is also under consideration. It is also on record that by O.M. dated 25.8.1989(Annexure A-8),the special pay has been allowed to the technicians working in the Training Centres with effect from 25.8.1989. Otherwise also,when the technicians like the Technical Supervisors are discharging the same instructional duties in the same institution and performing identical functions of imparting training then in that event the benefit of special pay given to one i.e. Technical Supervisors cannot be denied to others that is technicians(applicants). The principle has been enunciate in Randhir Singh's case(supra) as well as in other authoritie

*1.Mewa Ram Knojia Vs. AIIMS,1989(2)ATR (SC) 17.
2.State of U.P. Vs. J.P.Chourasia,AIR 1989(SC)19.
3.T.S.Ravindra Vs.Director J.G.Survey, 1989(2)SLJ(Bang.)159.

referred to above by the Hon'ble Supreme Court. This is also because of Article 39(d) of the Constitution of India on which the Government or its departments are bound to formulate their policies. The objection of the respondents that fixation of pay scale is the domain of the expert bodies cannot be disputed in view of the authorities referred to above but at the same time two employees discharging the same duties and having the same responsibilities and functions in an organisation and also selected in a similar manner cannot be discriminated in regard to the decision of payment of the special pay. In view of the above facts as well as on account of the awarding of special pay by the O.M. dated 25.8.1989, the applicants cannot be denied the entitlement of special pay with effect from 1.4.1986.

14. The applicants have also claimed instructional allowance from 1.1.86/1.1.87 as has been allowed by the O.M. dated 31.3.1987. The aforesaid O.M. lays down that those who are imparting instructions in the Training Centres primarily meant for training Group 'A' officials shall get that instructional allowance at the rate of 30% of the basic pay from 1.1.1986 and in other cases where instructions are given/imparted to the officials other than Group 'A' officials then in those cases from 1.1.1987. The applicants are discharging instructional duties in ALTTC, Ghaziabad and so the applicants are also entitled to get instructional allowance with effect from 1.1.1987 as all these applicants have been held entitled to draw special pay with effect from 1.4.1986. The respondents, however, also allowed them instructional allowance from August,1989 and in view of this fact also the applicants cannot be denied instructional allowance at the rate of 30% of the basic pay from 1.1.1987 in view of the O.M. dated 31.3.1987.

15. In view of the above discussion both the applications, OA-712/86 and OA-1628/90 are disposed of with the following

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directions:

A) The respondents are directed to pay to the applicants in both the OAs, special pay at the rate of Rs.30/- per month with effect from 1.4.1986 till 31.12.1986 if all the applicants continued to work as Technicians on the instructional side of ALTTC, Ghaziabad.

B) The respondents are further directed to pay to the applicant technicians who continued to work throughout from 1.1.1987, the instructional allowance at the rate of 30% of the basic pay as explained in O.M. dated 11.1.1989 (Annexure A-9) in OA-1628/90. If any amount has already been paid to the applicants that shall be adjusted accordingly.

16. The above directions shall be complied with within a period of three month from the date of receipt of a copy of this order. In the circumstances of the case, the parties are left to bear their own costs.

(J.P. Sharma)
Member(Judl.)

(P.C. Jain)
Member(Admn.)