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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

✓ 1) O.A. NO. 1602/90

2) O.A. NO. 1610/90

New Delhi, 29 1994

CORAM :

THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

THE HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

1) O.A. NO. 1602/90

M. P. Nayyar,
R/O H. No.2/3, Malviya Nagar,
New Delhi-110017.

2) O.A. NO. 1610/90

K. L. Khanna,
R/O Qr. No.871, Sec. 8,
R. K. Puram,
New Delhi.

... Applicants

By Advocate Shri K. L. Sharma

Versus

1. The Union of India through
Financial Adviser, Govt. of
India, M/O Defence (Finance
Div.), South Block,
New Delhi-110011.

2. Controller General of Defence
Accounts, West Block V,
R.K.Puram, New Delhi.

3. Controller of Defence Accounts
(Air Force), 107, Rajpur Road,
Dehradun (UP).

4. Controller of Defence Accounts
(Air Force), R.K. Puram,
New Delhi.

... Respondents

None present for the Respondents

O R D E R

Shri S. R. Adige, Member (A) -

As the facts and points of law in these two
O.A.s both filed on 7.8.1990 are similar, they are
being disposed of by this common judgment.

A

2. The two applicants S/Shri M. P. Nayyar and K. L. Khanna have prayed for grant of special pay at the rate of Rs.35/- p.m. from 1.5.1984 to 31.12.1985, with interest on arrears, and counting of the special pay for higher pay fixation and allowances w.e.f. 1.1.1986.

3. Both the applicants began their career as LDCs in the Defence Accounts Deptt. in 1952 and were promoted as selection grade Auditors there in 1975. They aver that in that department there was a scheme for grant of special pay to Auditors performing work of a complex and more important nature, which was implemented w.e.f. 1.5.1984 according to which upto 10% of authorised posts in the Auditors cadre, including selection grade posts in each office/sub office would carry special pay, subject to such post being at least one in that office/sub office. For appointment to these posts, suitability-cum-seniority in the All India seniority would be considered, and if an eligible person was not senior enough to be accommodated in that office, he would be posted in another office/station. If a person declined, the next senior eligible person would be considered and so on. The cases of persons who declined a special pay post on transfer would be reviewed annually. The applicants state that one Shri B. C. Baurai, selection grade Auditor, office of LAO (Air Force), New Delhi, who is much junior to them in the All India seniority list, filed O.A. No. 4/86 in the Principal Bench of the Tribunal for grant of special pay @ Rs.35/- p.m. w.e.f. 1.5.1984 which was allowed by judgment dated 10.4.1987, but the same has been disallowed to the applicants in spite of representations made by them to the respondents.

4. The respondents in their reply have resisted the claims made by the applicants and aver that special pay is not admissible to them. They state that in the office of LAO (AF), special pay was admissible for only one post of Sr. Auditor as per rules governing the scheme and the incumbent was senior to the applicants. The applicants were asked to give their willingness for posting to other offices where such posts existed, which carried special pay, but they expressed their unwillingness. The respondents also state that Baurai's case (supra) is different from the two present cases inasmuch as Shri Baurai was never asked about his willingness for posting to other office.

5. We have given this matter our careful consideration. It is not denied by the respondents that as there was no posts carrying special pay in the offices where the applicants were working to accommodate them, as per the instructions governing the scheme for grant of special pay, they were offered postings in other offices where such posts carrying special pay were available, but the applicants expressed their unwillingness to be posted there. The basis of their claim is the Tribunal's judgment in Baurai's case (supra). In this connection, the Hon'ble Supreme Court in Bhup Singh vs. Union of India : JT 1992 (3) SC 322 has held that the judgments and orders of the court in other cases do not give rise to cause of action.

6. Under the circumstances, as the applicants were offered posts carrying special pay which they refused, they cannot claim any hostile discrimination, and in

the background of the Hon'ble Supreme Court's ruling in Bhup Singh's case (supra) the judgment in Baurai's case (supra) gives the applicants no cause of action. This matter, therefore, does not warrant any interference and these two applications are dismissed. No costs.

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Member (J)

Adige
(S. R. Adige)
Member (A)

/as/